

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 CRAIG YATES,

No. C 10-3073 CW

5                                    Plaintiff,

ORDER STRIKING  
OPPOSITION AND

6                                    v.

REPLY TO

7 DELANO RETAIL PARTNERS, LLC,  
8 doing business as DELANO'S IGA  
9 MARKET #1; and ARTHUR S. BECKER,  
as Trustee of the ARTHUR S.  
BECKER REVOCABLE LIVING TRUST,

DEFENDANT'S MOTION  
TO STAY AND  
SUPPORTING  
DECLARATIONS OF  
THOMAS E.  
FRANKOVICH AND  
MICHAEL J.

10                                   Defendants.

CHILLEEN (Docket  
Nos. 36, 36-1, 38,  
and 38-3)

11 \_\_\_\_\_/  
12                                   On February 9, 2012, Defendant Arthur S. Becker, Trustee of  
13 the Arthur S. Becker Revocable Trust, filed a motion to stay the  
14 entire action.

15                                   On February 23, 2012, Plaintiff Craig Yates, through counsel,  
16 filed an opposition to Defendant's motion and offered the  
17 declaration of Thomas E. Frankovich in support thereof. In these  
18 materials, Plaintiff disclosed certain items that happened or were  
19 said during a court-sponsored mediation session on May 18, 2011.

20                                   On March 1, 2012, Defendant filed a reply in support of his  
21 motion to stay and offered the declaration of Michael J. Chilleen  
22 in support thereof. In these filings, Defendant, among other  
23 things, objected to Plaintiff's use of the mediation information,  
24 disputed the substance of Plaintiff's disclosure and requested  
25 that the Court order Plaintiff's counsel to show cause why he  
26 should not be sanctioned for disclosing the mediation information.

27                                   Under the Court's Local Rules for Alternative Dispute  
28 Resolution (ADR Local Rules), discussions and disclosures made

1 during mediation are presumptively designated as confidential and  
2 may not be "disclosed to the assigned judge" or "used for any  
3 purpose, including impeachment, in any pending or future  
4 proceeding," absent "truly exigent circumstances." ADR Local Rule  
5 7-5(a); ADR Local Rule 7-5, Commentary. Plaintiff has not  
6 obtained prior court approval to disclose otherwise confidential  
7 information and has not provided any legitimate basis for the  
8 disclosure of such information without prior approval.

9 Accordingly, the Court STRIKES Plaintiff's Opposition and the  
10 Frankovich Declaration, as well as Defendant's Reply and the  
11 Chilleen Declaration (Docket Nos. 36, 36-1, 38, and 38-3). Within  
12 three days of the date of this Order, the parties shall re-file  
13 these documents omitting any reference to material deemed  
14 confidential under the ADR Local Rules. The parties may not add  
15 additional arguments to these documents.

16 Further, a motion for sanctions may not be presented for the  
17 first time in a reply brief. See Civil Local Rule 7-8. If  
18 Defendant wishes to pursue sanctions, he shall do so in compliance  
19 with ADR Local Rule 2-4, which sets forth the procedures for  
20 resolving complaints regarding violations of the ADR Local Rules  
21 and provides that such complaints shall not be filed with the  
22 undersigned, but shall instead be presented in writing to the ADR  
23 Magistrate Judge.

24 IT IS SO ORDERED.

25 Dated: 3/6/2012

  
\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

26  
27  
28