

American Inns of Court

Judicial Roundtable Discussion

February 13, 2013

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- 17) Shirley S. Abrahamson, Susan M. Fieber, and Gabrielle Lessard, Judges on Judging: A Bibliography , 24 St. Mary's L.J. 995 (1992).
- 18) "Social Media Discovery and ESI in Motion Practice," New York Law Journal, January 8, 2013.
- 19) " Who Can Get Your Tweets, And Can You Object?" New York Law Journal, July 3, 2012.

Biography of Judge Abrams

Abrams, Ronnie

United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street
New York, NY 10007

Phone: (212) 805-0284

Fax: (212) 805-7997



Ronnie Abrams was nominated to the United States District Court for the Southern District of New York on July 28, 2011 and entered on duty on March 22, 2012. Judge Abrams received a B.A. from Cornell University in 1990 and a J.D. from Yale Law School in 1993. Upon graduation, she served as a law clerk for the Honorable Thomas P. Griesa of the Southern District of New York.

From 2008 until the time of her appointment, Judge Abrams served as Special Counsel for Pro Bono at Davis Polk & Wardwell LLP; she previously worked as an associate at Davis Polk from 1994 to 1998. Judge Abrams served in the United States Attorney's Office for the Southern District of New York from 1998 to 2008, holding the positions of Chief of the General Crimes Unit from 2005 to 2007 and Deputy Chief of the Criminal Division from 2007 to 2008. While at the U.S. Attorney's Office, Judge Abrams received several awards and commendations for her work, including the Department of Justice Director's Award for Superior Performance as a Federal Prosecutor.

Judge Abrams has served on the Public Service Committee of the Federal Bar Council and on the Pro Bono and Legal Services and Government Ethics Committees of the New York City Bar Association. She has also served as Counsel to the New York State Justice Task Force, one of the first permanent task forces to address wrongful convictions in the United States. Judge Abrams has been an Adjunct Professor at Columbia Law School since 1998.

Courtroom Deputy: Allison Cavale

Law Clerks: Jamie Bagliebter, Ben Schatz, Esq., Lauren Schorr, Esq.

SDNY

Biography of Judge Nathan

Nathan, Alison J.

United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 23B
New York, NY 10007

Phone: (212) 805-0278

Fax: (212) 805-7994



The Honorable Alison J. Nathan was nominated to the bench on March 31, 2011 and was confirmed the following October. From 2010 until her appointment, Judge Nathan served in the Office of the Attorney General of the State of New York as Special Counsel to the Solicitor General. From 2009 to 2010, she served as a Special Assistant to President Obama and an Associate White House Counsel.

Judge Nathan also spent several years as an academic, first as a Visiting Assistant Professor of Law at Fordham University Law School (2006-2008) and later as a Fritz Alexander Fellow at New York University School of Law (2008-2009). From 2002 to 2006, she was an associate in the New York and Washington, D.C. offices of Wilmer Cutler Pickering Hale and Dorr. Judge Nathan also served as a law clerk for the Honorable John Paul Stevens of the Supreme Court of the United States from 2001 to 2002 and as a law clerk to the Honorable Betty B. Fletcher of the Ninth Circuit Court of Appeals from 2000 to 2001.

Judge Nathan received her J.D., *magna cum laude*, in 2000 from Cornell Law School, where she was Editor-in-Chief of the Cornell Law Review. She received her B.A. in 1994 from Cornell University.

Courtroom Deputy: Sayra DeCasseres

Law Clerks: Ben Carlisle (until January 2013), Celia Cohen, Peter Halpern, Esq. (from January 2013)

SDNY

Biography of Judge Carter

Carter, Andrew L., Jr.

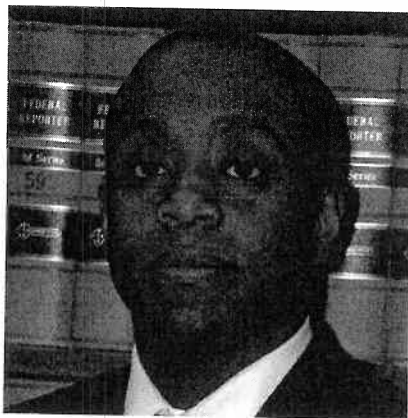
United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 14A
New York, NY 10007

Phone: (212) 805-0280

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Andrew L. Carter was nominated to the Southern District bench on May 19, 2011 and entered on duty on December 5, 2011. Judge Carter holds a Bachelor of Arts degree from the University of Texas and a J.D. from Harvard Law School. During law school, Judge Carter co-founded the B.E.L.L. Foundation, an operating foundation that seeks to advance the educational aspirations and achievements of young people from underserved communities.

After graduating from law school, Judge Carter was chosen to be in the inaugural class of Program Assistants at the Ford Foundation. In 1995, Judge Carter was honored with the Harvard Black Law Students Association's Young Alumni Award. From 1996-2000, Judge Carter served as a public defender with the Legal Aid Society's Criminal Defense Division. In 2000, Judge Carter began working with the Federal Defenders of New York, where he was the Supervising Attorney. In 2009, Judge Carter became a United States Magistrate Judge for the Eastern District of New York, where he served until his appointment.

Courtroom Deputy: Tara D. Hunter-Hicks

Law Clerks: Zachary Kerner, Esq., Francesca Perkins, Esq.

Biography of Judge Sullivan

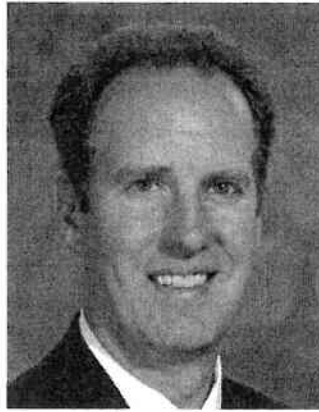
Sullivan, Richard J.

United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 640
New York, NY 10007-1316

Phone: (212) 805-0264



SDNY

Richard Sullivan was sworn in as a United States District Judge for the Southern District of New York in August 2007. Prior to becoming a judge, he served as the General Counsel and Managing Director of Marsh, Inc., the world's leading risk and insurance services firm. From 1994 to 2005, he served as an Assistant United States Attorney in the Southern District of New York, where he was Chief of the International Narcotics Trafficking Unit and Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. In 2003, he was awarded the Henry L. Stimson Medal from the Association of the Bar of the City of New York. In 1998, he was named the Federal Law Enforcement Association's Prosecutor of the Year. Prior to joining the U.S. Attorney's Office, he was a litigation associate at Wachtell, Lipton, Rosen & Katz in New York and a law clerk to the Honorable David M. Ebel of the United States Court of Appeals for the 10th Circuit. He is a graduate of Yale Law School and the College of William & Mary. From 1986 to 1987, he served as a New York City Urban Fellow under New York City Police Commissioner Benjamin Ward. Judge Sullivan is on the executive board of the New York American Inn of Court and is an adjunct professor at Fordham University School of Law, where he teaches courses on white collar crime and trial advocacy, and Columbia Law School, where he teaches a course on sentencing.

Law Clerks: Daniel Fieth, Brad Feldman, Esq., Erin Monju, Alex Scolnik, Esq. (until 12/1/12), Paul Swanson, Esq. (after 12/1/12)

Biography of Judge Furman

Furman, Jesse M.

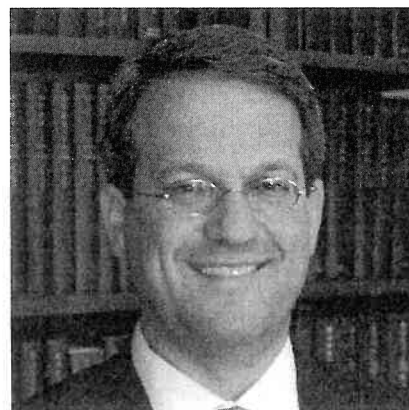
United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 26A
New York, NY 10007

Phone: (212) 805-0282

Fax: (212) 805-7996



Jesse M. Furman was appointed United States District Judge for the Southern District of New York on February 17, 2012 and entered on duty on March 9, 2012. Judge Furman graduated *summa cum laude* from Harvard University in 1994 and received his Juris Doctor from Yale Law School in 1998; he was also a Henry Fellow at Oxford University from 1994 to 1995. Following law school, Judge Furman clerked for the Honorable Michael B. Mukasey of the Southern District of New York from 1998 to 1999; the Honorable José A. Cabranes of the U.S. Court of Appeals for the Second Circuit from 1999 to 2000; and the Honorable David H. Souter of the United States Supreme Court from 2002 to 2003. From 2000 to 2002 and again from 2003 to 2004, Judge Furman was an Associate at Wiggin & Dana, LLP.

Prior to taking the bench, Judge Furman served as an Assistant United States Attorney in Criminal Division of the Southern District of New York. From 2009 until his appointment to the bench, he served in that Office as Deputy Chief Appellate Attorney, during which time he worked on a number of complex, high-profile cases involving issues of national security, including the September 11 terrorist attacks and the 1998 East Africa Embassy Bombings. From 2007 to 2009, Judge Furman served as Counselor to U.S. Attorney General Michael B. Mukasey.

Courtroom Deputy: Alexandra Barnes

Law Clerks: Megan Crowley, David Ettinger, Derek Stoopler

Biography of Judge Oetken

Oetken, J. Paul

United States District Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 1950
New York, NY 10007

Phone: (212) 805-0266



Paul Oetken was appointed United States District Judge for the Southern District of New York on July 20, 2011. He graduated from the University of Iowa in 1988 and received a J.D. from Yale Law School in 1991. Following his graduation from law school, he served as a law clerk for the Honorable Richard D. Cudahy of the United States Court of Appeals for the Seventh Circuit from 1991 to 1992, for the Honorable Louis F. Oberdorfer of the United States District Court for the District of Columbia from 1992 to 1993, and for the Honorable Harry A. Blackmun of the United States Supreme Court from 1993 to 1994.

From 1995 to 1997, Judge Oetken worked as an attorney at Jenner & Block in Washington, DC and then as attorney-adviser in the United States Department of Justice Office of Legal Counsel. In 1999, Judge Oetken joined the Office of Counsel to the President at the White House, where he served as Associate Counsel to President Bill Clinton. He then worked as an attorney at Debevoise & Plimpton in New York from 2001 to 2004, leaving to become head of litigation at Cablevision Systems Corporation, where he was Senior Vice President and Associate General Counsel until 2011.

Judge Oetken has taught as an Adjunct Professor of Law at Fordham Law School and has served on the Media Law Committee of the New York City Bar Association.

Courtroom Deputy: Brandon L. Skolnik

Law Clerks: Eric Feder, Esq., Jael Humphrey, Esq., Eli Lazarus, Esq.

Biography of Panel members and Judge Sullivan



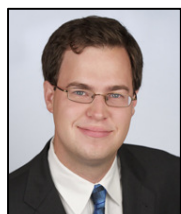
Michael Almonte is an associate in the New York office of Fragomen, Del Rey, Bernsen and Loewy, LLP. Michael represents multinational corporate clients in a variety of industries on all aspects of U.S. immigration, including permanent residence, non-immigrant visas and citizenship. From August 2010 until September 2011, Michael served as the Fragomen Fellow at the New York City Bar Justice Center, a rotating fellowship the firm established to enhance the pro bono immigration services provided at the City Bar Justice Center. In this position, Michael coordinated the Immigrant Outreach Program, where he developed and directed various pro bono immigrant outreach initiatives including organizing free immigration legal clinics throughout New York City and leading a new project aimed at providing pro bono representation to immigrants in detention facilities. Michael joined Fragomen in 2008 after spending a year as an immigration law clerk with the U.S. Court of Appeals for the Second Circuit.



Mark A. Berman is an experienced commercial litigator and a partner at Ganfer & Shore, LLP. He was the first law clerk for United States Magistrate Judge Michael L. Orenstein of the Eastern District of New York. He has had a column in The New York Law Journal since 1995 addressing New York State electronic discovery issues. Mr. Berman is a member of the New York State E-Discovery Working Group. He has taught e-discovery, ethics and social media law to a variety of judicial and bar groups as well as at various law schools. He is also co-chair of the Social Media Committee of the Commercial and Federal Litigation Section of the New York State Bar Association and Secretary of the Section's Electronic Discovery Committee. In addition, he is a member of the Second Circuit Committee of the Federal Bar Council.



Thomas A. Brown practices actively in complex civil litigation in state and federal courts and arbitrations. He also practices regularly in Surrogate's Courts. Mr. Brown is an accomplished trial attorney specializing in complex commercial litigation with extensive litigation and case management experience, including taking jury and bench trials to verdict, arguing before appellate and trial courts, engaging in arbitrations and mediations, taking and defending depositions in the United States and abroad, and advising corporations on litigation and litigation avoidance strategy.



Matthew Carhart is an associate with Paul, Weiss, Rifkind, Wharton & Garrison LLP. He recently completed a clerkship with the Honorable Carl E. Stewart, United States Court of Appeals for the Fifth Circuit. He received his J.D., *cum laude*, from New York

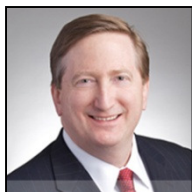
University School of Law, and his B.A. from Columbia University. Prior to attending law school, he worked as a teacher at Nativity Preparatory School in Wilmington, DE and as a legal assistant for Neighborhood Legal Services in Buffalo, NY.



Lisa C. Cohen is a founding partner of Schindler Cohen & Hochman LLP, a litigation boutique that handles litigation and arbitration in a wide variety of complex commercial areas. Her litigation experience includes disputes involving structured financial products, commercial fraud, contracts, intellectual property, patents, securities, suretyship, and RICO. She also has extensive experience in issues involving issues of foreign law, particularly Brazilian and Russian law, and she routinely counsels clients around the globe who have U.S.-based litigation. Ms.

Cohen received her B.A. from Brandeis University with highest honors and graduated from Columbia University School of Law as a Harlan Fiske Stone Scholar before clerking for the Hon. Irving R. Kaufman on the Court of Appeals for the Second Circuit.

Josh Greenblatt is a partner at Kasowitz, Benson, Torres & Friedman LLP. Josh's practice focuses on complex commercial litigation and securities litigation in state and federal courts and in arbitration. Josh represents public and private companies, partnerships and individuals in industries including financial services, real estate, insurance, accounting, manufacturing and media.



Daniel J. Fetterman is a partner at Kasowitz, Benson, Torres & Friedman LLP. Dan is a trial lawyer whose practice focuses on complex litigation and white collar criminal defense. Dan regularly represents corporations and individuals in government investigations, regulatory proceedings and internal investigations. Dan is a former Assistant U.S. Attorney in the Southern District of New York, where he received the

Justice Department's Director's Award for Superior Performance as an Assistant U.S. Attorney. He has tried numerous jury trials in both federal and state courts. Dan served as a law clerk for the Honorable Ellsworth A. Van Graafeiland of the United States Court of Appeals for the Second Circuit, and is a co-editor and co-author of "Defending Corporations and Individuals in Government Investigations," a highly-regarded West treatise on defending white collar matters.



Vilja B. Hayes is a litigation partner at Hughes Hubbard & Reed LLP, and her practice concentrates on employment law, product liability, insurance and commercial litigation. She is also Co-Chair of the Pro Bono Committee. Ms. Hayes received her law degree in 1980 from Fordham University School of Law (*cum laude*), where she served as Associate Editor on the *Fordham Law Review*. Prior to joining Hughes Hubbard, Ms. Hayes served as Law Clerk to the Honorable Charles L. Brieant, United States District Judge for the Southern District of New York (1980-1981). She has been

active in various professional associations, and is presently the President of the New York American Inn of Court, President - Elect of the Federal Bar Council, a member of the Board of New York County

Lawyers Association, VOLS, JALBCA and Legal Services - NYC and Lawyers Committee for Civil Rights Under Law.

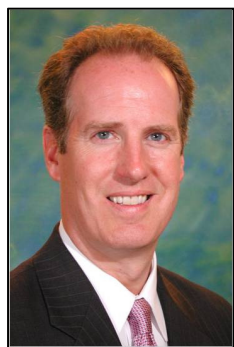


Lani Perlman is an associate with Holwell Shuster & Goldberg, LLP. Lani focuses her practice on complex commercial litigation, with particular experience in multi-district litigations and high-stakes products-liability matters. Her past litigation engagements cover a wide range of subject matter, including issues relating to securities fraud, corporate governance, employment discrimination, intellectual property questions over the use of trademarks and trade dress, and general contract disputes. She has also participated in FINRA arbitrations and AAA/ICDR arbitrations. Prior to joining Holwell Shuster & Goldberg, Lani was a litigation associate at Quinn Emanuel Urquhart & Sullivan, LLP and clerked for Judge Brian M. Cogan in the Eastern District of New York.



Steve Schoenfeld is a litigation partner at Robinson & Cole LLP. He handles a wide variety of civil litigation, including commercial, intellectual property and bankruptcy litigation. Steve regularly speaks to in-house counsel and bar association groups including leading a monthly CLE breakfast series on managing litigation for in-house counsel. He is involved in various professional activities, including as a court appointed mediator for the Commercial Division of the New York State Supreme Court, an Arbitrator and Mediator for the New York Joint Committee on Fee Disputes and Conciliation, a member of the Roster of Neutrals of the American

Arbitration Association, a member of the Corporate Counsel Section of the New York State Bar Association, volunteer for the Pro Bono Partnership, and a member of the Westchester County Planning Board. Steve received his A.B. from Princeton University summa cum laude and his law degree from New York University Law School.



Richard J. Sullivan was sworn in as a United States District Judge for the Southern District of New York in August 2007. Prior to becoming a judge, he served as the General Counsel and Managing Director of Marsh Inc., the world's leading risk and insurance services firm. From 1994 to 2005, he served as an Assistant United States Attorney in the Southern District of New York, where he was Chief of the International Narcotics Trafficking Unit and Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. In 2003, he was awarded the Henry L. Stimson Medal from the Association of the Bar of the City of New York. In 1998, he was named the Federal Law Enforcement Association's Prosecutor of the Year.

Prior to joining the U.S. Attorney's Office, he was a litigation associate at Wachtell, Lipton, Rosen & Katz in New York and a law clerk to the Honorable David M. Ebel of the United States Court of Appeals for the 10th Circuit. He is a graduate of Yale Law School, the College of William & Mary, and Chaminade High

School on Long Island. From 1986 to 1987, he served as a New York City Urban Fellow under New York City Police Commissioner Benjamin Ward. Judge Sullivan is on the executive board of the New York American Inn of Court and is an adjunct professor at Fordham University School of Law, where he teaches courses on white collar crime and trial advocacy, and Columbia Law School, where he teaches a course on sentencing.

Individual Rules & Practices in Civil Cases for Judge Abrams

August 23, 2012

**INDIVIDUAL RULES & PRACTICES IN CIVIL CASES
RONNIE ABRAMS, UNITED STATES DISTRICT JUDGE**

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 620
New York, NY 10007
(212) 805-0284

Courtroom

500 Pearl Street
Courtroom 9B
Allison Cavale, Courtroom Deputy
(212) 805-0162

Unless otherwise ordered by Judge Abrams, these Individual Practices apply to all civil matters except for civil *pro se* cases.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, which shall be emailed to Abrams_NYSDChambers@nysd.uscourts.gov as a .pdf attachment to the Court with a copy simultaneously delivered to all counsel. Emails shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number, and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the email; such communications shall be included only in the body of the attached letter. Copies of correspondence between counsel shall not be sent to the Court.
- B. Telephone Calls.** For docketing, scheduling and calendar matters, call Courtroom Deputy Allison Cavale at (212) 805-0162. Otherwise, telephone calls to Chambers are permitted only in situations requiring immediate attention. In such situations, call Chambers at (212) 805-0284.
- C. Faxes.** Faxes to Chambers are permitted only with the prior authorization of Chambers. In such situations, faxed submissions must clearly identify the person in Chambers who authorized the sending of the fax, and copies must be simultaneously faxed, emailed or delivered to all counsel.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and state: (1) the original due date, (2) the number of previous requests for adjournment or extension of time, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be included. If the request is for an adjournment of a court appearance, absent an emergency, the request shall be made at least 48 hours prior to the scheduled appearance.
- E. Preservation of Letters.** Letters to the Court are not ordinarily docketed. If a party wishes to preserve such letters for the record on appeal, it must submit a written request to the Court within ten days of closure of the case.

- F. Related Cases.** After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing, as well as the docket number of the case to which it is related (e.g., 11 Civ. 1234 [rel. 10 Civ. 4321]).

2. Conferences

- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court.
- B. Initial Case Management Conference.** The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be sent to the plaintiff's counsel, who will be responsible for distributing copies to all parties. This Notice will, *inter alia*, direct the parties to submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least one week prior to the conference date. In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. The pertinent instructions are available on the Court website at http://www.nysd.uscourts.gov/ecf_filing.php.
- C. Discovery Disputes.** The parties shall follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may write a letter to the Court, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond, it must call Chambers promptly to advise that a responsive letter will be forthcoming and do so by letter to the Court not exceeding three pages within three business days.

3. Motions

- A. Pre-Motion Conferences in Civil Cases.** Pre-motion conferences are not required, except for motions concerning discovery, which are governed by Section 2(C) above.
- B. Motions to Dismiss.** Prior to a defendant making a motion to dismiss, the parties must use their best efforts to resolve informally the matters in controversy. Such efforts must include either an exchange of letters outlining their respective positions on the matters, or a telephonic or in-person discussion of the matters. The plaintiff must indicate to the defendant whether it wishes to amend the subject pleading prior to motion practice, and the parties must consider in good faith a stipulation permitting such amendment. If a motion to dismiss is ultimately filed, the notice of motion must include a separate paragraph indicating that the movant has used its best efforts to resolve the matters raised in its submission.

C. Special Rules for Summary Judgment

- i.** Except in *pro se* cases, the moving party shall provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. The opposing party must reproduce each entry in the moving party's Rule 56.1 Statement, and set out its response directly beneath it.
- ii.** Except in *pro se* cases, the parties shall provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.

D. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, and shall conform to Local Civil Rule 11.1.

E. Filing of Motion Papers. Motion papers shall be filed promptly after service.

F. Courtesy Copies. Two courtesy copies of all motion papers, marked as such, should be submitted by the movant at the time the reply is served, in accordance with the SDNY policies regarding mail deliveries.

G. Default Judgments. A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.

H. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

4. Other Pretrial Guidance

A. Redactions and Filing Under Seal. Any party wishing to file in redacted form any document, or any portion thereof, must make a specific request to the Court by letter explaining the reasons for seeking to file that document under seal. The party must attach to its letter: (1) one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted), and (2) one partial, looseleaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed redactions. Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to

endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

- C. Bankruptcy Appeals.** Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009-10. Counsel may extend these dates by joint request submitted to the Court no later than two business days before the brief is due.

5. Trial Procedures

- A. Joint Pretrial Order.** Prior to trial on a date specified by the Court, the parties shall submit to the Court a proposed joint pretrial order that includes the information required by Fed. R. Civ. P. 26(a)(3) and the following:

- i.** the full caption of the action;
- ii.** the names, law firms, addresses, and telephone and fax numbers of trial counsel;
- iii.** a brief statement by the plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
- iv.** a brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not recite any evidentiary matter;
- v.** a statement as to the number of trial days needed and as to whether the case is to be tried with or without a jury;
- vi.** a statement as to whether or not all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- vii.** any stipulations or agreed statements of fact or law to which all parties consent;
- viii.** a list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
- ix.** a designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party;
- x.** a list by each party of exhibits to be offered in its case in chief, with an indication of whether any party objects to the exhibit and a brief statement of the nature of the objection (e.g., "relevance," "authenticity," "hearsay");

- xii. a statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and
- xiii. a statement of whether the parties consent to less than a unanimous verdict.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. in all cases, motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. in all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
- iii. in jury cases, joint proposed voir dire questions, verdict form and jury instructions. These joint submissions shall consist of single documents, jointly composed, noting any areas of disagreement between the parties. The voir dire questions and jury instructions shall include both the text of any requested question or instruction as well as a citation, if relevant, to the authority from which it derives. These documents should also be submitted by email to Abrams_NYSDChambers@nysd.uscourts.gov in Word format; and
- iv. in non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact must be detailed and include citations to the proffered trial testimony and exhibits. These documents should also be submitted by email to Abrams_NYSDChambers@nysd.uscourts.gov in Word format.

C. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed in a non-jury case, each party shall submit to the Court and serve on opposing counsel, but not file on ECF, the following:

- i. copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits shall be brought to trial to be marked as exhibits;
- ii. all deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts; and
- iii. all documentary exhibits.

D. Filings in Opposition. Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than three days before the scheduled trial date:

- i. objections to another party's requests to charge or proposed voir dire questions;
- ii. opposition to any motion *in limine*; and
- iii. opposition to any legal argument in a pretrial memorandum.

E. Courtesy Copies. Two courtesy copies of all documents identified in Sections 5.A, B, C.i–ii, and D above should be submitted to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into two independent sets.

2. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. **Mobile phones are permitted inside the Courtroom, but must be kept turned off at all times.** Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

B. Computers, Printers or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse shall submit a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Abrams. Leave blank the date and time of the conference. Judge Abrams will set the date and time when she signs the Order.
2. Provide the following supporting papers with the Order to Show Cause:
 - A. An attorney's affidavit setting forth:
 - i. the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 - ii. the procedural history beyond service of the summons and complaint, if any;
 - iii. whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 - iv. the proposed damages and the basis for each element of damages, including interest, attorney's fees and costs; and
 - v. legal authority for why an inquest into damages would be unnecessary.
 - B. A proposed default judgment.
 - C. Copies of all of the pleadings.
 - D. A copy of the affidavit of service of the summons and complaint.
 - E. If failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers to Chambers (Room 620, 500 Pearl Street) for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.
5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. (Chambers will retain the original signed Order for docketing purposes, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)
6. Prior to the return date, file through the CM/ECF system: (1) an affidavit of service, reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and

(2) the supporting papers. (The signed Order itself will be scanned and docketed by Chambers.)

7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.

Individual Rules & Practices in Civil Cases for Judge Carter

INDIVIDUAL PRACTICES OF ANDREW L. CARTER, JR.
Current as of July 11, 2012

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 725
New York, NY 10007
ALCarterNYSDChambers@nysd.uscourts.gov

Courtroom

Courtroom 14A
Tara Hunter-Hicks
Courtroom Deputy
(212) 805-0141

Unless otherwise ordered by Judge Carter, matters before Judge Carter will be conducted in accordance with the following practices:

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with Chambers should be by letter, with copies simultaneously delivered to all counsel. All letters must provide the name of the case and its docket number and, must state the name of the party that counsel represents.

Copies of correspondence between counsel should **not** be sent to Chambers. Letters on behalf of parties represented by counsel must be e-mailed as a .pdf attachment to the following address: ALCarterNYSDChambers@nysd.uscourts.gov and all counsel must be copied on the email. *Pro se* litigants may send letters via e-mail or regular mail. Counsel should include the case caption, docket number, and a brief description in the subject line of every e-mail sent to Chambers. Example: *Jane v. Joe*; 12 Civ. 0000; Defendant's request for a Pre-Motion Conference.

Letters to the Court are not ordinarily docketed and may not be preserved by Chambers. If a party wishes to preserve letters for the record on appeal, it must submit a written request to the Court as soon as reasonably practicable.

B. Telephone Calls. For routine docketing, scheduling, and calendar matters, please call Tara Hunter-Hicks, the Deputy Clerk, at 212-805-0141 between 9 a.m. and 4:30 p.m. Telephone calls to Chambers for other matters are permitted for urgent situations requiring immediate attention and should not be ex-parte. The telephone number for Chambers is 212-805-0280.

C. Faxes. Judge Carter prefers that counsel email letters to ALCarterNYSDChambers@nysd.uscourts.gov. Faxes to chambers are not permitted without express prior permission, and only in cases of unforeseeable emergencies. Requests for extensions of time and pre-motion letters, for example, are very rarely considered unforeseeable or emergencies.

D. Requests for Adjournments or Extensions of Time. Applications for adjournments and extensions of time must be made by letter (not by telephone) and received in Chambers by email (or regular mail for *pro se* litigants) at least two business days before the scheduled appearance. See Rule 1A.

All such applications must state (1) the original date, (2) the number of previous requests, (3) whether those previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. **Failure to comply with these requirements will result in a denial of the request absent good cause shown.** If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order **must be** attached. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge should be directed to that assigned Magistrate Judge.

E. Related Cases. After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing, as well as the docket number of the case to which it is related.

F. Proposed Orders and Stipulations. All stipulations and orders, including consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders, should be brought to the Orders Clerk (500 Pearl Street, Clerk's Office) and Judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk's Office). Counsel may also email them to orders_and_judgments@nysd.uscourts.gov. Courtesy copies need not be sent to chambers.

G. Courtesy Copies. Any courtesy copy submitted to Chambers that was originally filed on ECF must be clearly marked "Courtesy Copy," "Original Filed by ECF," and "Assigned Document Number [print or type assigned document number]."

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2, requiring the moving party to request an informal conference with the Court before the filing of any such motion. Strict adherence to Fed. R. Civ. P. 37(a)(1), the "meet and confer" rule, is required. To raise a discovery dispute with the Court, contact the assigned Magistrate Judge.

A pre-motion conference with the Court is required before making any motion, except:

- orders to show cause;
- motions in cases involving incarcerated *pro se* litigants;
- motions for admission *pro hac vice*;
- motions to remand;
- motions for reargument or reconsideration (parties should not submit an opposition to a motion for reconsideration unless directed to do so by the Court);
- motions for reduction of sentence;
- *in forma pauperis* motions;
- applications for attorney's fees;
- motions to be relieved as counsel;
- motions for a new trial or amendment of judgments;
- motions for default judgment;
- motions that are required by the Federal Rules of Appellate Procedure;
- objections to Magistrate Judges' rulings;
- motions for appointment of lead plaintiffs and counsel in class actions;
- petitions to confirm or compel arbitration;
- motions *in limine*
- habeas corpus petitions;
- motions in Social Security cases; and
- motions for temporary restraining orders or preliminary injunctions.

To arrange a pre-motion conference, the moving party should submit a letter, not to exceed 3 pages (exclusive of letterhead and signature block(s)), setting forth the basis for the anticipated motion. The opposing party should submit a letter, also not to exceed 3 pages, setting forth its position within 3 business days from the service of the moving party's letter. If

a pre-motion conference is requested in connection with a proposed motion to dismiss, the request will stay the deadline for the requesting party to move or answer.

B. Page Limits. A memorandum of law, in support of or in opposition to any motion, is limited to 25 pages and reply briefs should be no longer than 10 pages. All memoranda of law should be in 12-point font or larger, with 1" margins on all sides. Sur-reply memoranda will not be accepted without prior permission of the Court.

C. Filing of Motion Papers. Counsel should electronically file its own motion papers at the time of service. In cases involving *pro se* litigants, the party represented by counsel is responsible for filing the entire motion on ECF. **Counsel should deliver one courtesy copy of the respective motion papers to Chambers after service.**

D. Special Rules for a Motion to Dismiss.

- i. During a pre-motion conference to discuss a motion to dismiss, the non-moving party must advise the Court and its adversary whether it intends to file an amended pleading based on the pre-motion conference letter, and if so, when it will do so. If the party amends, the opposing party may then: (a) file an answer or (b) submit a letter stating that it still intends to file a motion to dismiss. No further requests for a pre-motion conference are necessary.
- ii. If the non-moving party elects not to amend its complaint and the motion to dismiss is granted, **it is unlikely that the Court will grant the non-moving party leave to amend.**

E. Special Rules for a Summary Judgment Motion.

- i. Except in *pro se* cases, the moving party should provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. The 56.1 Statement must contain only one factual assertion in each numbered paragraph. Each factual assertion must be followed by a citation to the portion(s) of the evidentiary record relied upon. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response

directly beneath it. The response must state specifically what is admitted and what is disputed, and the basis for any dispute, citing specific portions of the evidentiary record relied upon. The response may go on to make additional factual allegations in paragraphs numbered consecutively to those of the moving party (*i.e.*, do not begin re-numbering at 1). If additional factual allegations are made by the opponent, the moving party must file a responsive 56.1 Statement addressing the additional assertions.

- ii. If multiple parties are submitting 56.1 Statements, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.
- iii. With respect to any deposition that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.

F. Oral Argument on Motions. The Court will advise counsel if argument will be heard and, if so, of the argument date.

G. Default Judgments. See Attachment A.

H. Unpublished Cases. Westlaw citations should be provided, if available, to cases not available in an official reporter.

3. Conferences

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel must appear at all conferences with the Court.

B. Initial Civil Case Management Conference. The assigned Magistrate Judge will conduct all Fed. R. Civ. P. 16(c) conferences. If the conference is not scheduled within three months or less of the filing of the Complaint, counsel for the plaintiff should write to the Magistrate Judge requesting that the conference be scheduled. Counsel are required to register in accordance with the Procedures for Electronic Case Filing as soon as reasonably practicable and file a notice of appearance. Counsel can access the web site www.nysd.uscourts.gov and click on CM/ECF Home Page for complete instructions on how to register. **In any case involving allegations of personal injury -**

whether physical, psychological, emotional or otherwise - the plaintiff is to provide to the defendant prior to the initial pretrial conference all necessary medical authorizations.

C. Criminal Cases. Upon assignment of a criminal case to Judge Carter, the parties should immediately call the Deputy Clerk at 212-805-0141 to arrange for a prompt conference, at which the defendant will be present, in order to set a discovery and motion schedule. The Assistant United States Attorney should deliver a courtesy copy of the indictment and the criminal complaint, if one exists, to Chambers as soon as practicable.

D. Courtroom. All conferences will be held in Courtroom 14A, unless otherwise indicated. Parties should be aware that Judge Cedarbaum and Judge Carter share the courtroom and the location of the conference may change on short notice.

4. Matters Referred to Assigned U.S. Magistrate Judges

The following matters in civil cases are hereby referred to the assigned U.S. Magistrate Judge:

- Extensions of time to serve, answer, or file amended pleadings;
- Stipulations amending pleadings;
- Stipulations transferring venue or remanding to state court;
- *Pro hac vice* motions;
- Discovery disputes;
- So ordering of subpoenas and confidentiality/protective orders;
- Motions to quash subpoenas;
- Unsealing orders;
- Motions to be relieved as counsel;
- Requests for adjournments or extensions of time in arbitration or mediation proceedings; and
- Settlement matters.

All such applications should be directed to the assigned U.S. Magistrate Judge.

5. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery in a civil case, or, if a dispositive motion has been filed, within 30 days of its decision, the parties should file on ECF a joint pretrial order, which should include the information required by Fed. R. Civ. P. 26(a)(3) and the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), email addresses, and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements should include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. The parties should also identify all claims and defenses previously asserted that are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law.
- viii. A list of the witnesses each party expects to call on its case in chief, including a very brief description of the witness's role and/or the subject matter of

his or her anticipated testimony, and a statement as to whether any other party objects to the witness.

- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with an indication of whether any party objects to the exhibit and a *brief* statement of the nature of the objection (e.g., "relevance," "authenticity," "hearsay").
- xi. A statement of damages claimed, itemizing each component or element of the damages sought with respect to each claim, including the manner and method used to calculate the claimed damages.
- xii. A statement as to whether the parties consent to a less than unanimous verdict.

At least 14 days before the parties file their joint pretrial order, all counsel must meet for at least one hour to discuss settlement in good-faith. Counsel is encouraged to request a settlement conference before the assigned magistrate judge.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party should file on ECF (*pro se* litigants should file via regular mail) the following documents 21 days before the date of commencement of trial:

- i. In jury cases, proposed *voir dire* questions, requests to charge and verdict form. The plaintiff's proposed *voir dire* questions should include an agreed-upon paragraph (designated as such) for the Court to use in *voir dire* to provide the jury panel with a brief explanation of the case. If the parties cannot agree on such a paragraph after good-faith efforts, their respective proposed paragraphs (designated as such) should be set forth in their respective *voir dire* submissions. In addition to being filed on ECF, the proposed *voir dire* questions, requests to charge and verdict form should be emailed as single MS Word documents to ALCarterNYSDChambers@nysd.uscourts.gov. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction.

- ii. In nonjury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed, and proposed conclusions of law should include a statement of the elements of each claim or defense.
- iii. In all cases, motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iv. In any case where any party believes it would be useful, a pretrial memorandum.

C. Filings in Opposition. Unless otherwise ordered by the Court, any represented party should file on ECF the following documents within 1 week of the filing of any document described in section 5.B. above (*pro se* litigants may file via regular mail):

- i. Objections to the other party's proposed *voir dire* questions or requests to charge.
- ii. Opposition to any motion *in limine*.
- iii. Opposition to any legal argument made in a pretrial memorandum.

D. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party should serve, but not file, the following:

- i. Affidavits constituting the direct testimony of each trial witness, except for the testimony of an adverse witness for whom a party has requested and the Court has agreed to hear direct testimony during the trial. Three business days after submission of such affidavits, counsel for each party should submit a list of all affiants whom he or she intends to cross-examine at trial. Only those witnesses who will be cross-examined need appear at trial. The original affidavit should be marked as an exhibit at trial.
- ii. All deposition excerpts which will be offered as substantive evidence, as well as a 1-page synopsis (with page references) of those excerpts for each deposition.
- iii. All documentary exhibits.

One courtesy copy of the joint pretrial order and all documents filed with the pretrial order should be submitted to chambers on the date of filing.

6. Post-Trial Procedures

Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal. Counsel perceiving an error that is material should stipulate to the appropriate correction or, if agreement cannot be reached, should proceed by motion on notice. Non-material defects in syntax, grammar, spelling or punctuation should be ignored.

7. Other Pretrial Matters

A. Bankruptcy Appeals. Briefs must be submitted in accordance with Federal Rule of Bankruptcy Procedure 8009. Counsel may extend these dates by stipulation submitted to the Court no later than 2 business days before the brief is due. The page limits in Rule 7.1(b) of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York must be observed.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

C. Requests for Sealing. Parties must obtain leave of this Court before filing any document under seal. Any sealing request should include a party's proposed redactions. If leave is granted, parties must file redacted copies with the Clerk of the Court. Proposed protective orders should include a provision reflecting this requirement.

8. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney

wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. **Mobile phones are permitted inside the Courtroom, but must be kept turned off at all times.**

B. Computers, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should send a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter should identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A

DEFAULT JUDGMENTS

- 1. Certificate of Default.** To file for a certificate of default, parties must submit to the Clerk of the Court a "request for entry of default" and a proposed "clerk's certificate." Parties must submit this electronically through the ECF system but must also send a courtesy copy of the certificate only, by hand or mail (along with a self addressed stamped envelope) to the Orders and Judgments Clerk for signature and seal. This signed certificate is to be attached to the default judgment when the default judgment is electronically filed.
- 2. Motion for Default Judgment.** Once the plaintiff obtains a Certificate of Default, it should file on ECF its motion for a default judgment. The motion should include:
 - A.** An attorney's affidavit setting forth:
 - i) why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint;
 - ii) whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 - iii) the proposed damages and the basis for each element of damages including interest, attorneys' fees, and costs;
 - iv) legal authority for why an inquest would be unnecessary; and
 - v) that the defendant is not an infant or an incompetent.
 - B.** A proposed default judgment.
 - C.** Copies of all the pleadings.
 - D.** A copy of the affidavit of service of the original summons and complaint.

E. If failure to answer is the basis for the default, a Certificate from the Clerk of the Court stating that no answer has been filed.

F. A certificate of service complying with Local Civil Rule 55.2(c). Service on the defaulting parties must be made by certified mail and the plaintiff should submit the tracking number to the Court.

G. A memorandum providing the legal and factual authority proving that liability has been established.

3. Damages. If the plaintiff seeks an award of damages in the motion for a default judgment, the plaintiff must also include:

A. A request for an amount equal to or less than the principal amount demanded in the complaint;

B. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated. (If this requirement cannot be satisfied, a default judgment may be granted as to liability, and damages will be determined by an inquest);

C. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;

D. A request for interest on the principal amount not to exceed 9%, if interest is sought;

E. Reasonable attorney's fees incurred in the preparation of the default judgment application, usually not to exceed \$2,000, if attorney's fees are sought; and

F. The calculations made in arriving at the proposed judgment amount.

The plaintiff(s) must submit one courtesy copy to Chambers.

ATTACHMENT B

PROCEDURE FOR SENTENCINGS

Unless permission to the contrary has been obtained, every document in a sentencing submission, including letters, should be filed in the public record, either in paper form or through the ECF system, using the procedures described below. Defense counsel is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.

In this regard, the parties are referred to E-Government Act of 2002 and the Southern District's ECF Rules & Instructions, Section 21, Privacy and Public Access to ECF cases, ("Privacy Policy") and reminded not, unless necessary, to include the five categories of "sensitive information" in their submissions (i.e., social security numbers; names of minor children [use the initials only]; dates of birth [use the year only]; financial account numbers; and home addresses [use only the city and state]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying numbers; medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; and information regarding an individual's cooperation with the government) as described in the Privacy Policy, without application to the Court. If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.

1. A defendant's sentencing submission should be served two weeks in advance of the date set for sentence. The Government's sentencing submission should be served one week in advance of the date set for sentence. The parties should provide the Court with one courtesy copy of each submission when it is served. At the time it is served, a party should file its sentencing submission following one of the two procedures described here.
 - a. ECF Filing. If the case is electronically filed, letters must be filed electronically on the ECF system. A party should group and file the letters

together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.

- b. Paper Filing. If the case is not electronically filed, letters must be filed as hard copies. A party should group all letters together in a single paper filing under a cover marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated and submit it to the Clerk's Office.
2. If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

Individual Rules & Practices in Civil Cases for Judge Nathan

INDIVIDUAL PRACTICES IN CIVIL CASES
ALISON J. NATHAN, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 615
New York, NY 10007

Courtroom

Sayra DeCasseres, Courtroom Deputy
Courtroom 17B
500 Pearl Street
(212) 805-4505

Unless otherwise ordered by Judge Nathan, these Individual Practices apply to all civil matters except for civil pro se cases (see Rules for Pro Se Cases). In cases designated to be part of one of the Court's pilot programs or plans (e.g. Section 1983 Plan, the Case Management Plan for Complex Civil Cases, or Initial Discovery Protocols for Employment Cases Alleging Adverse Action), those procedures shall govern to the extent that they are inconsistent with these Individual Practices.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with chambers shall be by letter, which shall be e-mailed to the Court (NathanNYSDChambers@nysd.uscourts.gov) as .pdf attachments with copies simultaneously delivered to all counsel. Emails shall state clearly in the subject line (i) the full caption of the case, including the party names and docket number, and (ii) the subject of the letter. Parties shall not include substantive communications in the body of the emails; such communications shall be included only in the body of the letter attached as a .pdf. Copies of correspondence between counsel shall not be sent to the Court.
- B. Telephone Calls.** Telephone calls to Chambers are permitted only for urgent matters requiring immediate attention. In such rare situations, call Chambers at (212) 805-0278.
- C. Faxes.** Faxes are permitted only with prior approval of the Court, which will be granted in rare circumstances. All faxes must clearly identify the person in Chambers who authorized the sending of the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will not be read.
- D. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Courthouse and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. However, if the hand-delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be sent to Chambers by email (NathanNYSDChambers@nysd.uscourts.gov) as .pdf attachments and state: (1) the original date(s), (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent, and (5) if the adversary consents, counsel shall confer amongst each other and propose three (3) alternate conference dates. When parties seek to adjourn an initial pretrial conference, all of the proposed times should be on a Friday morning. These e-mails shall state in the subject line “SCHEDULING” and provide the caption for the case, including party names and docket number.

Any request for adjournments of court conferences shall be made at least 48 hours prior to the scheduled appearance. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

Absent extraordinary circumstances, requests for extensions of time will be denied if not made before the expiration of the original deadline.

F. Preservation of Letters. Parties should assume that letters they submit to the Court will be docketed. However, if a party wishes to insure preservation of a specific letter for the record on appeal, it must clearly so indicate in the body of the letter.

G. Related Cases. After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing, as well as the docket number of the case to which it is related (*e.g.*, 11 Civ. 1234 [rel. 10 Civ. 4321]).

H. ECF: All attorneys representing parties before Judge Nathan are required to register promptly as filing users on ECF. The pertinent instructions are available on the Court website, at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

2. Conferences

A. Attendance by Principal Trial Counsel. The attorney who will serve as principal trial counsel must appear at all conferences with the Court. Any attorney appearing before the Court must enter a Notice of Appearance with the Clerk of Court.

B. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16(c) conference for a Friday within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be docketed on ECF;

plaintiff's counsel is directed to notify all counsel of this Order forthwith and to confirm to the Courtroom Deputy that all counsel will attend the conference on the designated date and time. This Notice will, *inter alia*, direct the parties to submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least nine business days prior to the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Nathan>). In a diversity case, parties shall comply with Paragraph 4.C below.

- C. Discovery Disputes.** Parties should follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may write a letter to the Court pursuant to Rule 1.A above, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter pursuant to Rule 1.A above, it should promptly submit a letter to Chambers to indicate that a responsive letter will be forthcoming. The responsive letter shall be submitted within three business days of the initial letter raising the discovery dispute. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, including by telephone conference call.

3. Motions

- A. Pre-Motion Conferences in Civil Cases.** Pre-motion conferences are not required, except for disputes concerning discovery, which are governed by Rule 2.C above.
- B. Memoranda of Law.** The Court encourages and appreciates brevity. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be in 12-point font or larger and be double-spaced. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be tabbed and indexed.
- C. Filing of Motion Papers.** Motion papers shall be filed promptly after service. Discovery disputes are not to be raised by motion unless directed by the Court.
- D. Courtesy Copies.** Two courtesy copies of all motion papers, marked as such, should be submitted for Chambers by the movant at the time the reply is served. All courtesy copies should be three-hole punched, tabbed, and placed in binders.

- E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- F. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within ten days of receipt of the motion, notify the Court and its adversary in writing whether (1) it intends to file an amended pleading and when it will do so, or (2) it will rely on the pleading being attacked. If the non-moving party elects not to amend its complaint, no further opportunities to amend will be granted and the motion to dismiss will proceed in the regular course. This provision does not alter the time to file a response in the Fed. R. Civ. P. or Local Rules. If the party amends, the opposing party may then (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter stating that it relies on the initially-filed motion to dismiss.
- G. Summary Judgment Motions.** Summary Judgment motions shall be submitted within 30 days of the close of all discovery. Any Rule 56.1 statement in support of a motion for summary judgment is limited to no more than 25 pages unless leave of the Court to file a longer document is obtained at least one week prior to the due date of such motion for summary judgment. Parties submitting papers in support of or opposition to a motion for summary judgment should submit only those exhibits necessary to decide the motion and should not submit, for example, entire deposition transcripts or every exhibit used at a deposition. The Court may strike documents that do not comply with these rules.
- H. Failure of the Court to Schedule Argument or Decide a Motion.** If a motion is not decided within 60 days of the time that it has become fully briefed, counsel for the movant shall send a letter to alert the Court.
- I. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Section 5.C below.
- J. Motions to Exclude Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- K. Applications for a Temporary Restraining Order.** A party must confer with her or his adversary before making an application for a temporary restraining order unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party decides to seek a temporary restraining order, she or he must call Chambers at (212) 805-0278 and state clearly whether (1) she or he has notified their adversary, and whether the adversary consents to temporary injunctive relief; or (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable

to it and the adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.

- L. Default Judgments.** A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.
- M. Proposed Orders.** All proposed orders that parties wish the Court to sign should be submitted as attachments or exhibits to an appropriate formal application to the Court for the endorsement of such order.

4. Other Pretrial Guidance

- A. Redactions and Filing Under Seal.** Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, must make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal and addressing the request in light of the Second Circuit's opinion in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). If a request for redactions is based on another party's designation of information as confidential, the parties shall confer and jointly submit the request for redactions.

The letter requesting redactions must include as attachments: (1) one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted); and (2) one partial, loose leaf set of solely those pages on which the party seeks to redact material. On application of a party, and provided that the unredacted papers are timely served on the party's adversary, the Court will deem papers filed on the date the party delivers them to Chambers for review of proposed redactions.

If the Court approves redactions, Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

- B. Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.
- C. Diversity Jurisdiction Cases.** In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the Initial Pretrial Conference, submit to the Court a letter no longer than two pages explaining the basis for that party's belief that diversity of citizenship exists. Where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company,

or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

D. Cases Removed from State Court. Counsel for the party or parties which removed the case must, in addition to providing a copy of all process, pleadings, and papers served upon the defendants pursuant to 28 U.S.C. § 1446(a), provide the Court with a courtesy copy of any pleading filed or served while the case remained in State court. Counsel for all parties must file a notice of appearance in this Court promptly upon removal.

E. Bankruptcy Appeals. Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009–8010. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due.

5. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, within 40 days from the date for the completion of all discovery, or, if a dispositive motion has been filed, within 14 days of a decision on such motion, the parties shall submit by email (NathanNYSDCChambers@nysd.uscourts.gov) to the Court a proposed joint pretrial order, which shall include the following:

- i.** The full caption of the action;
- ii.** The names, law firms, addresses, and telephone and fax numbers of trial counsel;
- iii.** A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
- iv.** A brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not recite any evidentiary matter;
- v.** A statement as to the number of trial days needed and regarding whether the case is to be tried with or without a jury;
- vi.** A statement as to whether or not all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- vii.** Any stipulations or agreed statements of fact or law to which all parties consent;

- viii. A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
- ix. A designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party; and
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating an objection by the opposing party based on authenticity. When a party objects to an exhibit on any grounds other than authenticity, the objection should be noted by indicating the Federal Rule of Evidence that is the basis for the objection.
- xi. a statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and
- xii. a statement of whether the parties consent to less than a unanimous verdict.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. In all cases, motions addressing any evidentiary issues or other matters which should be resolved *in limine*;
- ii. In all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
- iii. In all jury cases, joint requests to charge and joint proposed *voir dire* questions as specified by Rule 5.C below; and
- iv. In all cases, one copy of each documentary exhibit sought to be admitted, contained in a loose leaf binder, organized such that the Court can easily refer to the exhibits.

C. Requests to Charge and Proposed *Voir Dires*. In all jury trials, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be filed as attachments to the proposed joint pretrial order. For any requests to charge or proposed *voir dire* for which the parties cannot agree, each party should clearly set forth its proposed charge or question, as well as the grounds on which the Court should use that charge or question and should include citations to any supporting case law sufficient to enable the Court to render a decision. When feasible, proposed jury charges should also be emailed to Chambers as Word documents. The joint proposed *voir dire* shall include a brief (1–2 paragraphs) statement about the case to be read to the prospective jurors at the beginning of *voir dire*.

D. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall submit to the Court and serve on opposing counsel, but not file on ECF, the following:

- i. Proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. At the time of filing, parties should also submit copies of those documents to the Court by email both in .pdfs and as a word document;
- ii. All deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts; and
- iii. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits.

E. Filings in Opposition. Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than three days before the scheduled trial date.

- i. Opposition to any motion *in limine*; and
- ii. Opposition to any legal argument in a pretrial memorandum.

F. Courtesy Copies. Two courtesy copies of all documents identified in Sections 5.A, B (except for motions *in limine*), C, and D above should be submitted to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into two independent sets. Courtesy copies of motions *in limine* and oppositions to motions *in limine* should be submitted in accordance with Rule 3.D.

G. Trial Schedule. Trials will generally be conducted Monday through Thursday from 9:30 a.m. to 5:00 p.m.

6. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a

telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse.

Mobile phones are permitted inside the Courtroom, but they MUST be kept turned off at all times. Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

- B. Computers, Printers, or Other Electronic Equipment.** In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should send a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Nathan in Courtroom 17B. Leave blank the date and time of the conference. Judge Nathan will set the date and time when she signs the Order.
2. Provide the following supporting papers with the Order to Show Cause:
 - a. an attorney's affidavit setting forth:
 - i. the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 - ii. the procedural history beyond service of the summons and complaint, if any;
 - iii. whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 - iv. the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - v. legal authority for why an inquest into damages would be unnecessary.
 - b. a proposed default judgment.
 - c. copies of all of the pleadings.
 - d. a copy of the affidavit of service of the summons and complaint.
 - e. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers to Chambers (Room 615, 500 Pearl Street) for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.
5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. (Chambers will retain the original signed Order for docketing purposes, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)

6. Prior to the return date, file through the CM/ECF system: (1) an affidavit of service, reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) the supporting papers. (The signed Order itself will be scanned and docketed by Chambers.)
7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.

Individual Rules & Practices in Civil Cases for Judge Oetken

Dated: February 16, 2012

INDIVIDUAL PRACTICES IN CIVIL CASES

**J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK**

Chambers

Room 620
500 Pearl Street
New York, NY 10007
(212) 805-0266

Courtroom

Courtroom 15D
500 Pearl Street
New York, NY 10007

Unless otherwise ordered, these Individual Practices shall apply to all civil matters before Judge Oetken. If a case is designated by Order of the Court to be part of one of the Court's pilot projects or plans (e.g., the Plan for Certain Section 1983 Cases Against the City of New York, the Pilot Project Regarding Case Management Techniques for Complex Civil Cases, or the Initial Discovery Protocols for Employment Cases Alleging Adverse Action), the procedures in such project or plan shall govern to the extent that they are inconsistent with these Individual Practices.

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to Chambers by fax at (212) 805-7991, provided that they do not exceed 10 pages in length. If a fax is transmitted to Chambers, it should not be mailed or delivered to Chambers. Letters should not be filed on ECF.

B. Telephone Calls. Telephone calls to Chambers are permitted only in urgent situations requiring immediate attention. In those situations, call Chambers at (212) 805-0266.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be in writing and should state (1) the original date and the new date requested, (2) the number of previous requests for adjournment or extension, (3) whether the previous requests were granted or denied, and (4) whether the adversary consents,

and if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. Absent extraordinary circumstances, the request must be made at least two business days prior to the original date.

2. Courtesy Copies

A. Pleadings. Two courtesy copies of pleadings, marked as such, should be submitted to Chambers as soon as possible after filing, in accordance with SDNY policies regarding mail deliveries.

B. Motions. Two courtesy copies of motions and supporting memoranda of law, marked as such, should be submitted to Chambers at the time the papers are served, in accordance with SDNY policies regarding mail deliveries. Only one copy of any exhibits should be submitted.

C. Joint Pretrial Order. One set of courtesy copies of the joint pretrial order, and of all documents filed or served with the joint pretrial order, should be submitted to Chambers on the date of filing or service, in accordance with SDNY policies regarding mail deliveries.

3. Conferences

A. Initial Case Management Conference. The Court will ordinarily schedule a conference pursuant to Fed. R. Civ. P. 16(b) within three months after the filing of a complaint. The Notice of Initial Pretrial Conference will be docketed on ECF. Plaintiff's counsel is directed to distribute copies of the Notice to all parties. The parties shall submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least three business days before the conference date. Prior to the conference date, two courtesy copies of the pleadings should be sent to Chambers. In diversity cases, the parties shall comply with paragraph 5(C) below.

B. Discovery Disputes. The parties shall comply with Local Rule 37.2. In addition, any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If the meet-and-confer process does not resolve the dispute, the party may submit a letter to the Court, no longer than three pages in length, explaining the nature of the dispute and requesting an informal conference with the Court. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must do so within three business days and should notify Chambers promptly to advise that a responsive letter is forthcoming.

4. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are not required, with the exception of (i) motions concerning discovery, which are governed by paragraph 3(B) above, and (ii) motions for summary judgment, which are governed by paragraph 4(F) below.

B. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

C. Filing of Motion Papers. Motion papers shall be filed promptly after service.

D. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether oral argument will be heard and, if so, will advise counsel of the argument date and time.

E. Motions to Dismiss. When a motion to dismiss is filed, the non-moving party shall, within 10 days of receipt of the motion, notify its adversary and the Court in writing as to whether it intends (1) to file an amended pleading, and when it will do so, or (2) to rely on the pleading being challenged. If the non-moving party elects not to amend its complaint, the motion to dismiss will be decided in the regular course. This paragraph does not alter the time in which to file a response under the Federal Rules of Civil Procedure or the Local Rules. If the party amends its complaint, the opposing party may then (a) file an answer, (b) file a new motion to dismiss, or (c) submit a letter stating that it relies on its previously filed motion to dismiss.

F. Motions for Summary Judgment. A pre-motion conference must be requested before the filing of a motion for summary judgment. To request a pre-motion conference, the moving party shall submit a letter, not to exceed three pages in length, setting forth the basis for the anticipated motion. Other parties may respond within three business days in a letter not to exceed three pages. When the Court is prepared to schedule a pre-motion conference, the parties will be contacted in order to schedule the pre-motion conference on a convenient date.

G. Default Judgments. A party seeking a default judgment shall proceed in accordance with the procedure set forth in Attachment A.

5. Other Pretrial Guidance

A. Redactions and Filing Under Seal. Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, shall make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal. The party shall attach to its letter: (1) one full set of the relevant document(s) in highlighted form (*i.e.*, with the words, phrases, or paragraphs to be redacted highlighted), and (2) one partial, looseleaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed redactions. Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish the Court to retain jurisdiction to enforce a settlement agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of the settlement agreement in their stipulation of settlement and dismissal.

C. Diversity Jurisdiction Cases. In any action in which subject matter jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the Initial Pretrial Conference, submit to the Court a letter not exceeding two pages in length explaining the basis for that party's belief that diversity jurisdiction exists. Where a party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases in which a party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

D. Bankruptcy Appeals. Briefs in bankruptcy appeals shall be submitted in accordance with Fed. R. Bankr. P. 8009-10. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due.

6. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, within 30 days after the close of discovery, or, if a dispositive motion has been filed, within 30 days after a decision on such motion, the parties shall submit to the Court a proposed joint pretrial order, which shall include the following:

- i. The full caption of the action.

- ii. The names, law firms, addresses, and telephone and fax numbers of trial counsel.
- iii. A brief statement by the plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied upon and any relevant facts as to citizenship and amount in controversy.
- iv. A brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not cite any evidentiary matter.
- v. A statement as to the number of trial days needed and regarding whether the case is to be tried with or without a jury.
- vi. A statement as to whether or not all parties have consented to trial by a Magistrate Judge, without identifying which parties do or do not consent.
- vii. Any stipulations or agreed statements of fact or law to which all parties consent.
- viii. A list of all trial witnesses, with an indication of whether each such witness will testify in person or by deposition, and a brief summary of the substance of each witness's testimony.
- ix. A designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one asterisk indicating exhibits to which no party objects on grounds of authenticity, and two asterisks indicating exhibits to which no party objects on any ground.
- xi. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages.

B. Required Pretrial Filings. Unless otherwise ordered by the Court:

- i. In jury cases, the following shall be filed with the joint pretrial order:

a. Proposed (i) voir dire questions to be asked of prospective jurors, (ii) requests to charge, and (iii) verdict form. The parties must meet and confer in an effort to reach agreement with respect to these submissions. The parties shall make a joint submission with respect to those items that are agreed upon, and separate submissions with respect to those on which the parties cannot reach agreement.

b. In cases in which a party believes it would be useful to the court, a pretrial memorandum of law addressing any issues of law that are expected to arise at or before trial.

ii. In non-jury cases:

a. With the filing of the joint pretrial order, the parties shall file proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. The parties must meet and confer in an effort to reach agreement with respect to those findings and conclusions as to which there is no dispute; as to those findings and conclusions, the parties should make a joint submission.

b. With the filing of the joint pretrial order, each party shall file a pretrial memorandum of law summarizing the applicable law and relevant facts, identifying the issues for trial, and addressing any evidentiary issues.

c. With the filing of the joint pretrial order, each party shall submit to the Court and serve on opposing counsel (but shall not file on ECF): (i) deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition (including page citations to the deposition transcripts); and (ii) one set of documentary exhibits to be used a trial.

iii. In all cases:

a. Any motions *in limine* shall be filed and served on or before the date on which the joint pretrial order is due.

b. Any brief in opposition to a motion *in limine* shall be filed and served within one week of service of such motion.

c. Any opposition to a legal argument in a pretrial memorandum of law shall be filed and served within one week of service of such memorandum.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

Any party wishing to obtain entry of a judgment by default must comply with Local Civil Rule 55.1 and 55.2 and shall proceed as follows:

1. Apply for and obtain a certificate of default pursuant to Local Rule 55.1.
2. After at least 30 days have passed following effective service of the summons and complaint (to allow for receipt of an appearance by mail), serve a copy of the Motion for Entry of a Default Judgment, together with a copy of the Clerk's certificate of default, on the defaulting defendant. These papers should be accompanied by a Notice stating:

THE ATTACHED LEGAL PAPERS ARE BEING SERVED ON YOU BECAUSE YOU HAVE FAILED TO APPEAR IN A LAWSUIT BROUGHT AGAINST YOU. IF YOU DO NOT ENTER AN APPEARANCE IN THE LAWSUIT ON OR BEFORE **[INSERT A DATE NO EARLIER THAN 20 DAYS FROM THE DATE OF SERVICE OF THE NOTICE AND MOTION]**, THE COURT WILL ENTER A DEFAULT JUDGMENT AGAINST YOU. IF YOU ARE A CORPORATION, YOU CAN ONLY APPEAR THROUGH AN ATTORNEY. IF YOU ARE AN INDIVIDUAL, YOU MAY APPEAR BY AN ATTORNEY OR APPEAR YOURSELF PRO SE. IN EITHER EVENT, YOU MUST TAKE SOME ACTION OR A JUDGMENT WILL BE ENTERED AGAINST YOU. ENTRY OF A JUDGMENT MAY RESULT IN A LEVY AGAINST YOUR PROPERTY.

3. File with the Office of the Clerk of the Court:
 - a. The Motion for Entry of a Default Judgment
 - b. A proposed form of default judgment
 - c. An affidavit setting forth:
 - i. A description of the nature of the claim;
 - ii. The basis for subject matter jurisdiction; and
 - iii. The basis for personal jurisdiction over the defendant;
 - d. The Clerk's certificate of default;
 - e. A copy of the claim to which no response has been made; and
 - f. Proof of service on the defaulting defendant of the Motion, the Clerk's certificate of default, and the Notice.

4. If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff must also include in its filing with the Clerk's Office:
 - a. A request for an amount equal to or less than the principal amount demanded in the Complaint;
 - b. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated (or, if this requirement cannot be satisfied, a default judgment may be granted as to liability, with damages to be determined by an inquest);
 - c. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
 - d. A request for interest on the principal amount not to exceed 9%, if interest is sought; and
 - e. The calculations made in arriving at the proposed judgment amount.
5. Submit to Chambers one courtesy copy of each of the above papers filed with the Clerk of Court.
6. Chambers will hold the motion until the date specified in the Notice has passed. If no appearance is entered for the defendant, the Court will decide the Motion.

Individual Rules & Practices in Civil Cases for Judge Furman

INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES
Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
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Unless otherwise ordered by Judge Furman, these Individual Practices apply to all civil matters except for civil *pro se* cases (see *Individual Rules and Practices in Civil Pro Se Cases*, available at <http://nysd.uscourts.gov/judge/Furman>).

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, which shall be e-mailed as a .pdf attachment to the Court (Furman_NYSDChambers@nysd.uscourts.gov) with a copy simultaneously delivered to all counsel. E-mails shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the body of the letter. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.) Copies of correspondence between counsel shall not be sent to the Court.
- B. Telephone Calls.** Communications with Chambers, including requests for extensions or adjournments, shall be by letter in accordance with Paragraph 1.A. For questions that cannot be answered by reference to these Rules or for *urgent* matters requiring immediate attention, call Alexandra Barnes, Courtroom Deputy, at (212) 805-4520.
- C. Faxes.** Faxes are *not* permitted except with prior approval of Chambers, which will be granted only in rare circumstances, and must not exceed 10 pages in length. All faxes must clearly identify the person in Chambers who authorized the sending of the fax and copies must simultaneously be faxed or delivered to all parties. Faxes sent without prior permission will not be read.

- D. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Courthouse and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing, consistent with Paragraph 1.A above and with the word "SCHEDULING" included in the e-mail subject line, and must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; and (4) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must also be attached. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.
- Absent an emergency, any request for extension or adjournment shall be made *at least 48 hours* prior to the deadline or scheduled appearance. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.
- F. Docketing of Letters.** Absent a request to file a letter under seal, the parties should assume that any substantive letter will be docketed by the Court.
- G. Related Cases.** After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing as well as the docket number of the case to which it is related (e.g., 12 Civ. 1234 [rel. 11 Civ. 4321]).
- H. ECF.** In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register promptly as ECF filers and to enter an appearance in the case. The pertinent instructions are available on the Court website, at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

2. Conferences

- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court. Any attorney appearing before the Court must enter a notice of appearance.
- B. Initial Case Management Conference.** The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference within three months of the filing of the complaint. The Notice of Initial Pretrial Conference will be docketed on ECF; plaintiff's counsel (or, in a matter removed from state court, defense counsel) is directed to notify all counsel of the Notice forthwith. The Notice will direct the parties, *inter alia*, to submit a joint letter and proposed Civil Case Management Plan and Scheduling Order to the Court by the Thursday of the week prior to the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>).
- C. Special Procedures for Cases Designated as "Complex Cases."** An entry will appear on the docket if an action has been designated for inclusion in the Complex Case Pilot Project under the Standing Order of Chief Judge Preska, filed as *In re: Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York*, 11 Misc. 388 (November 1, 2011) (the "Standing Order"). If it has been so designated, counsel for the parties are expected to review the Report of the Judicial Improvements Committee (the "Report"), which is an attachment to the Standing Order, and consider the matters therein. The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference within two months of service of the summons and complaint. The Notice of Initial Pretrial Conference will be docketed on ECF; plaintiff's counsel (or, in a matter removed from state court, defense counsel) is directed to notify all counsel of the Notice forthwith. The Notice will direct the parties, *inter alia*, to submit a proposed Civil Case Management Plan and Scheduling Order to the Court by the Thursday of the week prior to the conference date. The parties should, as a starting point, use the "Civil Case Management Plan for Complex Cases," available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>). For good cause shown, the parties may request that the Court exempt the case from the Pilot Project.
- D. Discovery Disputes.** Parties must follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may submit a letter to the Court, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter *must* include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond

to the letter, it must submit a responsive letter, not to exceed three pages, within three business days. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, by conference, or by telephone.

3. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are not required, except for disputes concerning discovery, which are governed by Paragraph 2.D above.

B. Special Rules for Motions to Dismiss.

- i. Prior to filing a motion to dismiss, including those contemplated in lieu of an answer, and before the time to do so as of right has expired, the defendant shall communicate with the plaintiff by letter not exceeding three single-spaced pages, either seeking a more definite statement or setting forth the specific pleading deficiencies in the complaint and other reasons or controlling authorities that defendant contends would warrant dismissal. The plaintiff shall respond by similar letter within seven calendar days indicating the extent, if any, to which plaintiff concurs with defendant's objections and the amendments, if any, to be made to the complaint to address them, or the reasons and controlling authority that support the pleadings as filed. (The parties should not submit copies of these letters to the Court, but a moving defendant must attest in its motion that it complied with this Rule.) The plaintiff may seek leave to amend the complaint to address deficiencies identified in the defendant's letter if the time to do so as of right has expired. Under these circumstances, the Court will liberally grant the plaintiff leave to amend and will grant the defendant an extension of time to answer the complaint as appropriate. This practice may be especially effective as to certain types of motions frequently made that may be avoidable by pre-motion communication between the parties, with or without the Court's involvement, including but not limited to the following: naming a wrong defendant; misnaming a defendant; failing to name a necessary or indispensable party; failing to exhaust available remedies; absolute immunity; expiration of the statute of limitations as to some or all of the claims asserted; failure to satisfy a prerequisite to litigation such as a Right to Sue Letter; and failure to plead the particulars of a fraud claim under Rule 9(b) of the Federal Rules of Civil Procedure.
- ii. If a motion to dismiss is filed, the plaintiff has a right to amend its pleading pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure within twenty-one days. If the plaintiff elects not to amend its

pleading, no further opportunities to amend to address the deficiencies identified by the motion to dismiss will be granted and the motion will proceed in the normal course, pursuant to the briefing schedule set forth in Local Civil Rule 6.1(b) or a briefing schedule set by the Court. If the plaintiff does amend its pleading, the moving party must, within twenty-one days of such amendment: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying the plaintiff, stating that it relies on the previously filed motion to dismiss. **If the moving party files an answer or a new motion to dismiss, the Court will dismiss the original motion to dismiss as moot without notice to the parties.**

C. Special Rules for Summary Judgment Motions.

- i. Absent good cause, the Court will not ordinarily have summary judgment practice in a non-jury case.
- ii. Any party moving for summary judgment shall provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- iii. With respect to any deposition that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iv. The parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

D. Memoranda of Law. The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages and reply memoranda are limited to 10 pages. All memoranda of law shall be in 12-point font or larger and be double-spaced. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be indexed.

- E. Unpublished Cases.** If a party cites to a case not available in an official reporter, it need not provide copies of the case to Chambers if the case is available on Westlaw.
- F. Filing of Motion Papers.** Motion papers shall be filed promptly after service.
- G. Courtesy Copies.** One courtesy hard copy of all motion papers, marked as such, should be submitted to Chambers *by the movant at the time the reply is due*. Courtesy copies should not be submitted to Chambers at the time of filing.
- H. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- I. Failure of the Court to Schedule Argument or Decide a Motion.** If the Court has not decided a motion or scheduled oral argument on the motion within three months of the time that the motion has become fully briefed, counsel for the movant shall send a letter to alert the Court.
- J. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Paragraph 5.D below.
- K. Motions to Exclude Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- L. Default Judgments.** A plaintiff seeking a default judgment must proceed by way of an order to show cause pursuant to the procedure set forth in Attachment A.
- M. Proposed Stipulations and Orders.** Except as otherwise provided in these Rules and Practices, parties should e-mail all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the ECF Rules & Instructions. Courtesy copies need not be sent to Chambers.

4. Other Pretrial Guidance

- A. Redactions and Filing Under Seal.** Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, must make a specific request to the Court by letter explaining the reasons for seeking to file that submission under seal. The party must attach to its letter:

(1) one full set of the relevant document(s) in *highlighted* form (i.e., with the words, phrases, or paragraphs to be redacted highlighted); and (2) one partial, loose leaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed redactions. Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.

B. Settlement Agreements. The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

C. Bankruptcy Appeals. Briefs must be submitted in accordance with Federal Rules of Bankruptcy Procedure 8009 and 8010. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due. One courtesy hard copy of the briefs and the bankruptcy record on appeal, marked as such, should be submitted to Chambers *by the appellant at the time the reply is due.*

5. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, no later than 30 days after the date for the completion of all discovery or, in the event a dispositive motion is filed, no later than 30 days after the Court's ruling on such motion, the parties shall submit by e-mail to the Court (Furman_NYSDChambers@nysd.uscourts.gov) a proposed joint pretrial order, which shall include the following:

- i. the full caption of the action;
- ii. the names, law firms, addresses, and telephone and fax numbers of trial counsel;
- iii. a brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
- iv. a brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the

party relies. Such summaries shall also identify all claims and defenses previously asserted that are not to be tried. The summaries should not recite any evidentiary matter;

- v. a statement as to the number of trial days needed and regarding whether the case is to be tried with or without a jury;
- vi. a statement as to whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- vii. any stipulations or agreed statements of fact or law to which all parties consent;
- viii. a list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
- ix. a designation by each party of deposition testimony to be offered in its case-in-chief and any counter-designations and objections by any other party;
- x. a list by each party of exhibits to be offered in its case-in-chief, with a single asterisk indicating exhibits to which the opposing party objects based on authenticity, and two asterisks indicating exhibits to which no party objects on any ground. When a party objects to an exhibit on any grounds other than authenticity, the objection should be noted by indicating the Federal Rule of Evidence that is the basis for the objection;
- xi. a statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and
- xii. a statement of whether the parties consent to less than a unanimous verdict.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. in all cases, motions addressing any evidentiary issues or other matters that should be resolved *in limine*;
- ii. in all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;

- iii. in all jury cases, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions as specified by Paragraph 5.C below;
- iv. in all non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), both in .pdf format and as a Microsoft Word document; and
- v. in all cases, one copy of each documentary exhibit sought to be admitted, pre-marked and assembled sequentially in a loose leaf binder or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference.

C. Requests to Charge and Proposed *Voir Dires*. In all jury trials, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be submitted as attachments to the proposed joint pretrial order. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), as Microsoft Word documents. For any request to charge or proposed *voir dire* question on which the parties cannot agree, each party should clearly set forth its proposed charge or question, and briefly state why the Court should use its proposed charge or question, with citations to supporting authority.

D. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party in a non-jury trial shall submit to the Court and serve on opposing counsel, but not file on ECF, the following:

- i. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits; and
- ii. all deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts.

E. Filings in Opposition. Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than three days before the scheduled trial date:

- i. Opposition to any motion *in limine*; and
- ii. Opposition to any legal argument in a pretrial memorandum.

F. Courtesy Copies. Two courtesy hard copies of all documents identified in Paragraphs 5.A, B.i-iv, C, D, and E above should be submitted to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into *two independent sets*.

6. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. *Mobile phones are permitted inside the Courtroom, but they MUST be kept turned off at all times.* Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

B. Computers, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a "personal electronic device," specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should e-mail a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

If you have any questions about these practices, please contact Alexandra Barnes, Courtroom Deputy, at (212) 805-4520.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Furman. Leave blank the date and time of the conference and the courtroom. Judge Furman will set the date and time and identify the relevant courtroom when he signs the Order.
2. Provide the following supporting papers with the Order to Show Cause:
 - a. an attorney's affidavit setting forth:
 - i. the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 - ii. the procedural history beyond service of the summons and complaint, if any;
 - iii. whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 - iv. the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - v. legal authority for why an inquest into damages would be unnecessary;
 - b. a proposed default judgment;
 - c. copies of all of the pleadings;
 - d. a copy of the affidavit of service of the summons and complaint; and
 - e. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, bring all of the papers to Chambers (Room 630, 500 Pearl Street) for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.

5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. (Chambers will retain the original signed Order for docketing purposes, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.)
6. Prior to the return date, file through the CM/ECF system: (1) an affidavit of service reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) the supporting papers. (The signed Order itself will be scanned and docketed by Chambers.)
7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 240, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.