INDIVIDUAL RULES AND PROCEDURES FOR CIVIL CASES

Lorna G. Schofield
United States District Judge

Mailing Address:
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007
(212) 805-0288

Courtroom:
Courtroom 1106
40 Centre Street
Mr. James Street, Courtroom Deputy
(212) 805-4553

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I. GENERAL MATTERS

A. Procedural Rules

1. Applicability.

The Court's procedures are governed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the "Local Rules") and the Individual Practices set forth below. Unless otherwise ordered, these Individual Practices apply to all civil matters before Judge Schofield, except civil *pro se* cases. Nothing in these Individual Practices supersedes a specific time period for filing a motion specified by statute or Federal Rule -- including but not limited to Fed. R. Civ. P. 50, 52, 54, 59 and 60, and Fed. R. App. P. 4 -- where failure to comply with the specified time period could result in forfeiture of a substantive right.

2. 1983 Cases.

Cases designated for participation in the Plan for Certain Section 1983 Cases Against the City of New York will proceed under the Plan, except that the plaintiff may request and obtain document discovery in addition to what is provided in paragraph 5 of the Plan, if the discovery is otherwise permissible and would be useful in evaluating the case for the settlement conference. Any dispute concerning discovery shall be handled as provided in Section III.C.3 below and Local Rule 37.2. The Plan can be found at https://nysd.uscourts.gov/rules/proposed-amendments.

3. Discovery Protocols in Certain Employment and FLSA Cases.

The Initial Discovery Protocols for Employment Cases Alleging Adverse Action apply, where applicable, and can be found at https://nysd.uscourts.gov/sites/default/files/practice_documents/lgsEmploymentProtocols.pdf. The Initial Discovery Protocols for Fair Labor Standards Act Cases Not Pleaded as Collective Actions apply, where applicable, and can be found at https://nysd.uscourts.gov/sites/default/files/practice_documents/lgsInitialDiscoveryProtocolsForFairLaborStandardsAct.pdf. Unless otherwise ordered and in cases where they apply, these protocols supersede all other discovery protocols.

B. Communications with Chambers

1. General Matters.

Unless otherwise ordered by the Court, all communications with Chambers shall be by letter, not to exceed two pages, including exhibits, and in 12-point font, except as provided below.

Letters to the Court shall be filed via ECF and should not be sent to Chambers, except letters containing information that should not be in the public file (for example, information concerning settlement discussions or medical information) shall be emailed to Chambers as a .PDF attachment at Schofield_NYSDChambers@nysd.uscourts.gov. Emails shall state clearly in the subject line: (1) the docket number of the case, (2) the case caption with the lead party names and (3) a brief description of the contents of the letter (e.g., "11-cv-9999, *Jones v. Smith*, Request for Extension of Time"). Substantive statements shall be made only in the letter attachment. The Court will not review statements made in the body of the email. Copies of communications emailed to Chambers shall be emailed simultaneously to all counsel and unrepresented parties. The parties shall not send the Court copies of correspondence between counsel.

If a party does not want a letter to be docketed because of a protective order or for other good cause, the sender shall explicitly state in the letter the grounds for a request of confidential treatment, and include the header "CONFIDENTIAL" on every page of the letter. If a party wishes to ensure preservation of an undocketed letter for the record on appeal, it shall clearly so indicate in the first paragraph of the letter and apply to file the letter under seal, citing relevant case law and facts.

2. Requests for Adjournments and Extensions of Time.

All requests for adjournments or extensions of time shall be made as a **letter motion** filed via ECF except as provided above. The body of the letter shall state: (1) the original due date, the date sought to be extended and the new date the party now seeks; (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, the parties shall indicate the new proposed dates.

Requests for adjournment of court conferences shall be made by noon at least two business days before the scheduled appearance. Absent extraordinary circumstances, requests for extension of time will be denied if not made before the expiration of the original deadline.

The Court's permission is required to extend or adjourn Court-imposed dates and deadlines. Extensions and adjournments of Court-imposed dates and deadlines will be granted only for compelling reasons. When adjournments are granted, it is upon the condition that the party requesting the adjournment notifies all other parties of the new date and/or time.

3. Urgent Matters.

   For urgent matters requiring the Court's immediate attention, counsel may telephone Chambers at 212-805-0288 and shall include all counsel on the call.

4. Authorized Hand Deliveries.

   Material specifically permitted or ordered by the Court to be delivered by hand shall be left with the Court Security Officers at the Worth Street entrance of Daniel P. Moynihan Courthouse and shall not be brought directly to Chambers. If the hand-delivered material is urgent and requires the Court's immediate attention, counsel shall ask the Court Security Officers to notify Chambers that an urgent package has arrived and needs to be retrieved by Chambers staff immediately.

5. Other Communications.

   Emails, telephone calls and hand deliveries to Chambers are not permitted except as provided above. Faxes to Chambers are not permitted except with the prior authorization of Chambers, which will be given only in exceptional circumstances. In such situations, each faxed submission shall clearly identify the person in Chambers who authorized the sending of a fax, and copies shall be faxed or delivered to all counsel simultaneously.

C. **Filing and Submission of Papers**

1. Electronic Case Filing ("ECF").

   All attorneys representing parties before Judge Schofield are required to register promptly as filing users on ECF. Instructions are available on the Court website at https://nysd.uscourts.gov/electronic-case-filing. Counsel are responsible for updating their contact information on ECF and for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity. Parties shall consult ECF to confirm conference dates and times.

2. Proposed Stipulations and Orders.

   Except as otherwise provided in these Rules, parties shall submit all proposed stipulations and orders that they wish the Court to sign by filing on ECF, in accordance with the ECF Rules and Instructions. Courtesy copies shall not be sent to Chambers unless requested by the Court. The parties shall email Chambers at Schofield_NYSDChambers@nysd.uscourts.gov immediately upon an agreement to settle.

D. **Redactions and Filing Under Seal.**

1. Presumptive Right of Access.

   The public has a presumptive right of access to judicial documents. The parties shall not include any provision for filing under seal in any confidentiality order.

2. Sealing/Redactions Not Requiring Court Approval.

   Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court.

3. Sealing/Redaction Requiring Court Approval.

   Motions or Letter Motions for approval of sealed or redacted filings and the subject documents, including the proposed sealed document(s), must be filed electronically through the court's ECF system in conformity with the court's standing order, 19-mc-00583, and ECF Rules & Instructions, section 6.

   The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. The motion should include an appendix that identifies all parties and attorneys of record who should have access to the sealed documents. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

   The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

   Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the proposed redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion. If the submission exceeds 25 pages, a hard copy shall be delivered by hand, as provided in Section I.B.4 above, or by mail if hand delivery is impracticable. The party with an interest in confidential treatment bears the burden of persuasion. If this party is not the filing party, the party with an interest in confidential treatment shall promptly file a letter on ECF within two business days in support of the motion, explaining why it seeks to have certain documents filed in redacted form or under seal.

Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

The Court will review the proposed redactions and notify the parties of its decision via ECF. The party may then, to the extent permitted by the Court, file the redacted documents on ECF. On application of a party, and provided 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.

4. Confidentiality Agreements.

If the parties believe that a protective order is needed, they may file a proposed order. For documents to be filed under seal, the proposed order must state in substance that: "Documents may be filed under seal only as provided in Judge Schofield's Rule I.D.3" (above). The proposed order also must contain the following language, preferably in the last paragraph, "The parties acknowledge that the Court retains discretion as to whether, in Orders and Opinions, to afford confidential treatment to information that the parties have redacted, sealed or designated as confidential."

5. Sealed Settlement Agreements.

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

6. Related Cases.

After an action has been accepted as related to a prior case, all future court papers and correspondence shall contain the docket number of both the new case and the prior related case (e.g., 13-cv-1234 [rel. 12-cv-4321]).

E. **Electronic Devices**

1. Mobile Phones, Tablets and Personal Electronic Devices.

Attorneys' use of mobile phones, tablets and other personal electronic devices in the Courthouse is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse shall be a member of this Court's Bar, shall obtain the

necessary service pass from the District Executive's Office, and shall show the service pass upon entering the Courthouse.

2. Computers, Printers and 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. A form order is available at https://nysd.uscourts.gov/forms. Parties shall complete the fillable .PDF form and email it to our chambers at least 10 days prior to the requested date of authorization.

II. DISCOVERY

A. Electronic Discovery

1. Requests for Production of Documents.

Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom electronically-stored information (ESI) has been requested shall not be required to search for responsive ESI:

(a) From more than 10 key custodians;

(b) That was created more than five years before the filing of the lawsuit;

(c) From sources that are not reasonably accessible without undue burden or cost; or

(d) For more than 160 hours, inclusive of time spent identifying potentially responsive ESI, collecting ESI, searching that ESI (whether using properly validated keywords, Boolean searches, computer-assisted or other search methodologies) and reviewing that ESI for responsiveness, confidentiality and for privilege or work product protection. The producing party shall be able to demonstrate that the search was effectively designed and efficiently conducted. A party from whom ESI has been requested shall maintain detailed time records to demonstrate what was done and the time spent doing it, for review by an adversary and the Court, if requested.

2. Non-Waiver Agreements.

As part of their duty to cooperate during discovery, the parties are expected to discuss whether the costs and burdens of discovery, especially discovery of ESI, may be reduced by entering into a non-waiver agreement pursuant to Fed. R. Evid. 502(e).

In accordance with Fed. R. Evid. 502(d), at the request of the parties and upon submission of a proposed order pursuant to Section I.C.2, the Court will

enter an order providing that, except when a party intentionally waives attorney-client privilege or work product protection by disclosing such information to an adverse party as provided in Fed. R. Evid. 502(a), the disclosure of attorney-client privileged or work product protected information pursuant to a non-waiver agreement entered into under Fed. R. Evid. 502(e) does not constitute a waiver in this proceeding, or in any other federal or state proceeding. Further, the provisions of Fed. R. Evid. 502(b)(2) are inapplicable to the production of ESI pursuant to an agreement entered into between the parties under Fed. R. Evid. 502(e).

A party that produces attorney-client privileged or work product protected information to an adverse party under a Rule 502(e) agreement without intending to waive the privilege or protection shall promptly notify the adversary that it did not intend a waiver by its disclosure. Any dispute regarding whether the disclosing party has asserted properly the attorney-client privilege or work product protection will be brought promptly to the Court, if the parties are not themselves able to resolve it.

3. Use of Computer Assisted Technology.

Parties requesting ESI discovery and parties responding to such requests are expected to cooperate in the development of search methodology and criteria to achieve proportionality in ESI discovery, including appropriate use of computer-assisted search methodology.

The parties also shall discuss whether to use computer-assisted search methodology to facilitate pre-production review of ESI to identify information that is beyond the scope of discovery because it is attorney-client privileged or work product protected.

4. Duty to Preserve Electronically-Stored Information.

In resolving any issue regarding whether a party has complied with its duty to preserve evidence, including ESI, the Court shall consider all relevant factors, including:

(a) Whether the party under a duty to preserve took measures to comply with the duty to preserve that were both reasonable and proportional to what was at issue in known or reasonably anticipated litigation, taking into consideration the factors listed in Fed. R. Civ. P. 26(b)(2)(C);

(b) Whether the failure to preserve evidence was the result of culpable conduct, and if so, the degree of such culpability;

(c) The relevance of the information that was not preserved;

(d) The prejudice that the failure to preserve the evidence caused to the requesting party;

(e) Whether the requesting party and producing party cooperated with each other regarding the scope of the duty to preserve and the manner in which it was to be accomplished; and

(f) Whether the requesting party and producing party sought prompt resolution.

B. **Discovery Disputes**

1. Oral Applications During a Deposition.

Notwithstanding the provisions of Section I.B above, and provided the parties have made their best efforts to resolve their differences without intervention, the parties may telephone Chambers during a deposition for immediate resolution of a dispute.

2. Discovery Motions.

Parties shall follow Section III.C.3 below and Local Rule 37.2 before making any discovery motion.

III. MOTION RULES AND PROCEDURES

A. Pre-Motion Conference

1. Pre-Motion Conference Generally Required.

Before bringing any motion (*except* certain specific motions listed below), a party shall file a letter motion on ECF requesting a pre-motion conference. This letter shall be filed at least 10 business days before the proposed conference date and shall identify all of the issues in dispute and explain the legal and other grounds for the motion. No later than five business days after receipt of the letter, subject to any superseding deadline ordered by the Court, an adversary wishing to oppose the motion shall file on ECF a written response. Each party shall file a single letter not to exceed three single-spaced pages, including any attached exhibits, for each pre-motion conference.

2. Subject of Pre-Motion Conference.

Motions will be resolved at the pre-motion conference to the extent possible. If briefing is found to be necessary, the issues to be considered will be defined and a briefing schedule and return date set.

3. Motions Not Requiring a Pre-Motion Conference.

A pre-motion conference is not required for the following motions:

– Motions to dismiss in lieu of an answer (see Section III.C.2)
– Motions to transfer case
– Habeas corpus petitions
– All motions in Social Security cases
– Motions for admission *pro hac vice* (see Section III.C.1)
– Applications for a temporary restraining order or preliminary injunction (see also below)
– Motions for reargument or reconsideration (parties shall not submit opposition to a motion for reconsideration unless directed to do so by the Court)
– *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 emergency relief
– Motions to object to a Magistrate Judge's ruling

While a pre-motion conference also is ***not*** required for the following motions, the movant shall communicate with the opposing party by letter not exceeding three single-spaced pages, citing the controlling authorities that the movant contends would warrant granting the motion. The opposing party shall respond by similar letter within seven calendar days indicating the extent, if any, to which the opposing party concurs with movant's objections and the amendments, if any, to be made to address them, or the reasons and controlling authority that support the pleadings as filed.

– Motions for a more definite statement
– Motions to remand a removed case
– Motions to confirm or compel arbitration

B. **Motion Submissions and Argument**

1. Memoranda of Law.

All written motions and cross-motions shall be accompanied by a memorandum of law. Local Rule 11.1 specifies the requirements for motion papers, including typeface (12-point font or larger), margins (1 inch or more) and spacing (double spaced). 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 include a table of contents and a table of authorities, neither of which shall count toward the page limit. These page limits do not

apply to memoranda in support of or opposition to a motion for reargument or reconsideration, which shall not exceed 10 pages; memoranda in support of or opposition to *in limine* motions, which shall not exceed five pages; or objections or responses to objections to a Magistrate Judge's Report and Recommendation, which shall not exceed 10 pages. These page limits do not apply to Bankruptcy Appeals. The briefing schedule, format and length specifications set forth in Rule 8015 of the Federal Rules of Bankruptcy Procedure shall govern unless otherwise ordered by the Court.

2. Unpublished Cases.

   If a party cites a case not available in an official reporter, the party need not provide a copy of the case to Chambers if the case is available on Westlaw.

3. Affidavits and Exhibits.

   In support of or in opposition to a motion, each party is limited to a total of five affidavits/declarations (each not to exceed 10 double-spaced pages). Each party is limited to a total of 15 exhibits (each not to exceed 15 pages), including exhibits attached to an affidavit/declaration. The exhibits shall be excerpted to include only relevant material. All exhibits shall be clearly labeled, tabbed and indexed. For excerpts of any hearing or deposition transcript, or any expert report submitted, the parties shall provide the Court with an electronic, text-searchable courtesy copy of the entire document, if such copy is available, unless doing so would be unduly burdensome. (Parties shall provide these materials on a CD only, not on a DVD or memory stick, and not by email.)

   Although the Court does not ordinarily grant such requests, any application to exceed the limitations of exhibits and/or affidavits shall be by letter to the Court filed on ECF and shall contain: (i) a detailed request for relief specifying the additional documents or pages that the party seeks to file, and (ii) an explanation as to why the relief is necessary.

4. Briefing Schedule.

   Unless the Court already has set a schedule, the parties shall propose a briefing schedule by filing on ECF a letter to the Court with a proposed scheduling order. The schedule should not exceed 60 days from the time of filing. The proposed order need not be sent first to Orders and Judgments. The parties may change the briefing schedule without consulting or advising the Court, as long as the "fully submit" date previously established by the Court is unchanged. The Court shall be notified only if: (1) the parties cannot agree on dates to serve one another; or (2) the parties wish to change the final submission date set by the Court for the motion.

If the parties do not file a proposed briefing schedule and scheduling order, any opposition or reply memoranda of law shall be filed in accordance with Local Rule 6.1.

5. Paper Courtesy Copies.

One printed courtesy copy of ***all parties' motion papers***, including exhibits, marked "Courtesy Copy," shall be submitted to Chambers ***by the movant at the time the reply is served***. If both parties are filing related motions (e.g., cross-motions for summary judgment), the party filing the last brief shall submit the courtesy copy. The non-moving party shall provide the movant with an unbound set of its opposition and any cross-motion papers, double-sided and three-hole punched. Courtesy copies shall not be submitted to Chambers at the time of filing. All motion papers shall be doubled-sided, three-hole punched, tabbed, include the ECF stamp containing the date and docket number and placed in binders in the order that they were filed. If the parties have redacted or filed under seal any portion of the motion papers in compliance with Section I.C.3 above, courtesy copies are to be unredacted, but the portions redacted from public filings shall be highlighted and identified, so that the Court will know to refrain from quoting those passages in opinions and orders.

6. Oral Argument.

The parties may request oral argument by filing on ECF a letter to Chambers no later than the date the last brief is filed in connection with the motion. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date. The Court ordinarily does not hear oral argument. A request for oral argument is more likely to be granted if counsel identifies a lawyer out of law school for five years or less who will argue the motion and references this rule in the request. Counsel shall assume that the Court is familiar with the motion papers.

C. **Particular Matters and Motions**

1. *Pro Hac Vice* Admission.

Counsel seeking a *pro hac vice* admission shall first seek consent from opposing counsel and state opposing counsel's position in the motion papers. The proposed order of admission shall include the applicant's email address, mailing address and phone number in accordance with the district's procedures set forth at https://nysd.uscourts.gov/attorney/prohac. Parties are reminded that a $200 fee shall be paid to the Cashier's Office with each *pro hac vice* admission.

2. Motions to Dismiss.

   Although a pre-motion conference is not required for a motion to dismiss, the movant must file a pre-motion letter with the Court in the manner provided in Rule III.A.1. The letter shall include a proposed briefing schedule for the motion. Among other purposes, the pre-motion letter and response enable the Court to set an appropriate briefing schedule and explore whether the motion may be: (i) obviated by an amendment to the pleadings or consent to the relief; or (ii) deferred to a different juncture in the case. The party responding shall unambiguously state any intention to seek leave to amend. The pre-motion letter and response will be taken into account in deciding whether further leave to amend will be granted in the event the motion to dismiss is granted. The transmittal of a pre-motion letter for a proposed motion under Rule 12(b), Fed. R. Civ. P., stays the time to answer or move until further order of the Court. Absent extraordinary circumstances, the Court does not stay discovery or any other case management deadlines during the pendency of a motion to dismiss.

3. Discovery Motions.

   Parties shall follow Local Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court first shall confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this process does not resolve the dispute, the party shall file on ECF a letter motion for a pre-motion discovery conference with the Court, as provided in Section III.A.1 above. The Court will seek to resolve the discovery dispute quickly and likely will convene a telephone conference on short notice.

4. Applications for Temporary Restraining Order and Orders to Show Cause.

   A party shall confer with the party's adversary before making an application for a temporary restraining order unless the requirements of Federal Rule of Civil Procedure 65(b) are met. As soon as a party decides to seek a temporary restraining order, the party shall call Chambers and state clearly whether: (1) the party has notified its 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 shall 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.

5. Class Actions.

   Any party moving for preliminary approval of a class action settlement must disclose the proposed plan of allocation and provide a spreadsheet or other document detailing the amount of (a) the total settlement fund, (b) the Claims Administrator's fee, costs and expenses, (c) proposed attorneys' fees, costs and expenses, (e) the named Plaintiffs' proposed service fee, (f) any other deduction from the settlement fund before payment to class members, and (g) the anticipated recovery in dollars and as a percentage of the plaintiff's estimated damages for the class and any subclass in the aggregate and per class member, including any assumptions used in calculating these amounts. The party moving for preliminary approval shall also file a proposed schedule for settlement, including dates for proposed class notice, submission of objections and exclusion requests and a fairness hearing.

   In accordance with Local Rule 23.1, a party seeking preliminary approval of a class action settlement must disclose any fee sharing agreement with any attorney or other person. The disclosure shall include the names and addresses of the applicants for such fees and the amounts requested, respectively.

6. Summary Judgment Motions.

   Absent good cause, the Court ordinarily will not have summary judgment practice in a non-jury case. Pursuant to Local Rule 56.1, a movant for summary judgment shall file a statement of material undisputed facts and the opponent shall respond. The statement shall identify key issues and include only those facts that the movant genuinely believes to be both material and undisputed. The Rule 56.1 statement shall not exceed 25 double-spaced pages unless leave of the Court to file a longer document has been obtained at least one week before the motion and statement are due to be filed. The movant shall provide all other parties with an electronic copy, in Microsoft Word format, of its Rule 56.1 statement. Opposing parties shall reproduce each entry in the moving party's Rule 56.1 Statement, with a response directly beneath it. An opposing party shall not deny each statement as a matter of course, but only those statements that it genuinely believes to be in dispute. No exhibits may be annexed to a Rule 56.1 statement or response.

7. Default Judgment Procedures.

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

IV. PRETRIAL PROCEDURES AND RELATED FILINGS

A. Pretrial Conferences and Related Filings

1. Attendance by Principal Trial Counsel.

   The attorney who will serve as principal trial counsel shall appear at all conferences with the Court. Any attorney appearing before the Court shall enter a notice of appearance.

2. Initial Case Management Conference and Plan.

   The Court generally will schedule a Federal Rule of Civil Procedure 16(c) conference within two months of the filing of the complaint. The Notice of Initial Pretrial Conference will be docketed on ECF and will direct the parties, *inter alia*, to file a joint letter and a joint proposed Civil Case Management Plan and Scheduling Order at least one week before the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (https://nysd.uscourts.gov/hon-lorna-g-schofield).

   After the Initial Pretrial Conference, the Court will issue a scheduling order, adopting and/or modifying the dates the parties set forth in their Proposed Case Management Plan. Any status letter ordered by the Court shall include the following details:

   (a) What discovery has taken place, specifically
      (1) What discovery requests have been propounded, who propounded each request and on what date,
      (2) What responses were made, who made each response and on what date,
      (3) The volume of documents produced, who produced the documents and when;

   (b) The procedural history of the case to date, specifically
      (1) What pleadings have been filed, who filed each pleading and on what date,
      (2) What motions, if any, have been filed, who filed each motion and on what date each motion was filed,
      (3) What motions, if any, are currently pending and, for each pending motion, the date it was or is scheduled to be fully briefed; and

   (c) The parties' plans to ensure that they meet the Court ordered discovery deadlines.

3. Diversity Jurisdiction Cases.

   In any action for 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 state in the initial joint letter submitted to the Court before the Initial Pretrial Conference, or shall file on ECF within 60 days of invoking diversity jurisdiction, a letter to the Court explaining the factual and legal basis for such jurisdiction, including: (i) in the case of a corporation, the principal place of business and place of incorporation, (ii) in the case of a partnership, limited liability company or trust, the citizenship of each of the entity's members, shareholders, partners and/or trustees.

4. Interim Pretrial Conferences.

   Pretrial status conferences may be suggested in writing by the parties or called by the Court at any time.

5. Jury Cases that Settle After the Final Pre-Trial Conference.

   For any case that settles after the pre-trial conference, **costs will be assessed** for obtaining a jury panel and seating a jury.

B. **Filings in Anticipation of Trial**

1. Trial-related Dates.

   The Court will set the dates for trial and all pre-trial submissions, as detailed below, at a final case management conference.

2. Joint Final Pretrial Order.

   The parties shall file on ECF a proposed joint final pretrial order, including the following:

   (a) The full caption of the action;

   (b) The names, law firms, addresses, telephone numbers and email addresses of trial counsel;

   (c) A brief statement (by each party to the extent their positions differ) of the factual and legal basis for subject matter jurisdiction, including citations to statutes and relevant facts as to citizenship and amount in controversy;

   (d) A brief summary (by each party to the extent their positions differ) of the claims and defenses that remain to be tried, including citations to any relevant statute. A brief summary of claims and defenses previously asserted that are not to be tried. The summaries shall not cite any evidentiary matter and shall not be argumentative;

(e) The number of trial days needed and whether the case is to be tried with or without a jury;

(f) A statement whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;

A list of trial witnesses each party genuinely intends to call in its case in chief, and a separate list "identifying those whom the party may call if the need arises" (Fed. R. Civ. P. 26(a)(3)), including a short description and estimate of the length of each witness's testimony;

(g) Designations of all deposition testimony the parties anticipate offering as part of their respective cases in chief, (ii) counter-designations of deposition testimony and (iii) objections to an opponent's designated testimony, with objections not being made waived. For any deposition with disputed designations, the parties shall submit for a ruling the relevant parts of the transcript marked to show the dispute (e.g., designations and counter designations highlighted in different colors), with the basis for the objection noted in the margin (e.g., Fed. R. Evid. 801, 802 or hearsay). A party will be permitted to introduce deposition testimony during its case in chief only if the deponent is unavailable to testify. In a bench trial, for all deposition excerpts that will be offered as substantive evidence, the offering party shall submit a brief synopsis of the excerpts, not to exceed one page for each deposition, including page citations to the deposition transcript;

(h) A list of all proposed exhibits and demonstrative aids for each party's case in chief, marked with one star for no authenticity objection and two stars for no objections at all;

(i) For exhibits with objections other than authenticity, a statement of the nature of the objection and the Federal Rule of Evidence that is the basis for the objection. Any objections not made shall be deemed waived, and any exhibits not objected to shall be deemed admissible at trial;

(j) Admissions, interrogatory answers or other written discovery responses the parties intend to offer into evidence, together with any objections to these materials;

(k) A list of *in limine* motions;

(l) Stipulations of uncontested facts;

(m) A statement of each element of damages and, except for intangible damages (*e.g.*, pain and suffering, mental anguish or loss of consortium), the dollar amount, including prejudgment interest, punitive damages and attorneys' fees;

(n) Other requested relief;

(o) A statement whether the parties consent to less than a unanimous verdict.

3. *In Limine* Motions.

The parties shall file and serve motions addressing any evidentiary issues or other matters to be resolved *in limine.* Any party may respond within one week after the filing of an *in limine* motion. As stated above, memoranda of law in connection with a motion *in limine* are limited to five pages. No reply briefs shall be filed. The movant shall provide the Court with a courtesy paper copy as provided in Rule III.B.5 above.

4. Final Pretrial Memorandum of Law.

If a party believes it would be useful to the Court, the party may file and serve a pretrial memorandum of law. Any party may respond within one week after the filing of a pretrial memorandum of law. The pretrial memoranda and response each shall not exceed 25 pages.

5. Joint Proposed *Voir Dire*, Joint Jury Instructions and Joint Verdict Sheet.

In all jury cases, the parties shall file joint proposed **case specific** requests to charge (in plain English), a joint verdict sheet and joint **case specific** proposed *voir dire* questions. The parties also shall file a joint one or two paragraph statement describing the case to be read to the prospective jurors at the beginning of *voir dire*. Parties need not submit generalized jury instructions or *voir dire* instructions.

To the extent the parties cannot agree, each party shall clearly state its proposed instruction or question, the grounds on which the Court shall use that charge or question and citations to case law sufficient to enable the Court to render a decision.

The parties shall provide the Court with a courtesy digital copy of both the proposed *voir dire* and requests to charge in Word format either by email to Chambers or on a CD hand delivered or sent by overnight mail to the Court.

6. Trial Exhibits.

At the final pretrial conference, the parties shall provide the Court with a trial exhibit binder, to include only those exhibits or demonstratives that they intend to use in their case in chief at trial, and an index. Each exhibit shall have a numbered or lettered tab corresponding to the index. Objections shall be noted on the index, along with the rule pursuant to which the objection is made. Where there is no authenticity objection, a star shall be placed next to

the exhibit number on the index. Where there are no objections of any kind, two stars shall be placed next to the exhibit number on the index.

7. Trial Procedures.

   Counsel should refer to the Court's Trial Procedures and Jury Selection Procedures, which will be made available before the trial.

Attachment A

Default Judgment Procedure

1. Prepare a Proposed Order to Show Cause for Default Judgment. Leave blank the date and time of the show cause hearing. Judge Schofield will set the date and time when she signs the Order.

2. File the Proposed Order to Show Cause and the following supporting papers on ECF:

   (a) An attorney's affidavit setting forth:

      (i) a description of the nature of the claim;

      (ii) the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;

      (iii) the procedural history beyond service of the summons and complaint, if any;

      (iv) 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; and

      (v) if the plaintiff seeks an award of damages: (1) a request for an amount equal to or less than the principal amount demanded in the complaint; (2) the proposed damages and the bases for each element of damages, including interest, attorneys' fees, and costs if sought; (3) documentation to support the damages claims (if this requirement is not satisfied, the Court may grant default judgment as to liability and refer the case to a magistrate judge for an inquest on damages); and (4) a representation that no part of the judgment sought has been paid, other than as indicated in the motion.

   (b) Copies of all pleadings;

   (c) A copy of the affidavit of service of the summons and complaint;

   (d) 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. File a Proposed Order of Default Judgment on ECF as a separate docket entry. Approval of the Proposed Order of Default Judgment must be obtained by the Clerk of Court prior to the show cause hearing.

4. Submit a courtesy copy of the Proposed Order to Show Cause, the supporting papers and the Proposed Order of Default Judgment to Chambers.

5. After the Judge signs and files the Order to Show Cause, serve a conforming copy of the Order to Show Cause, the supporting papers and the Proposed Order of Default Judgment on the defendant.

6. At least seven days prior to the show cause hearing, file on ECF an affidavit of service, reflecting that the defendant was served with the conforming copy of the Order to Show Cause, the supporting papers, and the Proposed Order of Default Judgment.