INDIVIDUAL PRACTICES OF
UNITED STATES DISTRICT JUDGE VICTOR MARRERO
SOUTHERN DISTRICT OF NEW YORK

Effective February 3, 2020

Chambers
Suite 1610
United States Courthouse
500 Pearl Street
New York, New York 10007
T: (212) 805-6374
F: (212) 805-6382

Courtroom
Courtroom 15B
United States Courthouse
500 Pearl Street
New York, New York 10007

I. COMMUNICATIONS WITH CHAMBERS

A. Letters. Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all parties. Letters or letter-briefs may be filed on the District's electronic document filing system ("ECF") or delivered by electronic mail. If less than five pages, letters may be sent by fax as indicated below in Paragraph I.C. Otherwise, they should be delivered by hand or by mail. Letters must identify the name and docket number of the case, contain the writer's business address and telephone number, be signed by the party or authorized counsel responsible for the matter, and show the method of delivery (e.g., "By Hand" or "By Fax"). Unless the Court has otherwise requested, copies of correspondence between the parties shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph I.D. below, telephone calls to Chambers regarding any pending matter will be accepted only in urgent situations requiring immediate attention. In such situations only, call Chambers at (212) 805-6374 with all parties on the line, unless there are compelling reasons why all parties cannot be joined. Parties should not call the Judge's law clerks with substantive or procedural questions, or with questions regarding docketing on ECF. For questions about docketing on ECF, parties should call the ECF help desk at (212) 805-0800.

C. Faxes. Faxes to Chambers are permitted only if the letter or document is no longer than five pages and if a copy is simultaneously delivered to all parties through counsel or to litigants proceeding pro se. The direct fax number to Chambers is (212) 805-6382. Any faxed letter or document exceeding five pages will not be accepted unless prior authorization has been granted. Do not follow faxed letters with hard copy.

D. Docketing, Scheduling, and Calendar Matters. For routine inquiries concerning scheduling or calendar matters, call Chambers between 9:00 a.m. and 5:00 p.m. at (212) 805-6374 and ask for the law clerk responsible for the case.

E. Courtesy Copies. One courtesy hard copy of all motion papers, and one courtesy copy of all other filings (including pleadings, stipulations, and all submissions to the Orders and

Judgments Clerk), marked as such, shall be submitted to Chambers at the time the papers are served or filed, in accordance with the Southern District of New York's policies regarding mail deliveries. In any expedited proceeding, parties shall ensure that courtesy copies are delivered in a manner that enables their timely consideration by the Court (e.g., by hand delivery or fax to Chambers).

F. Extensions/Adjournments. A request for an extension of time within which to make a submission to the Court or for an adjournment of a conference or to excuse an appearance with the Court must be made in writing and received in Chambers not less than two business days before the scheduled time. Each request must include the number and disposition of any prior request(s) for an extension or adjournment and state whether opposing counsel consents to the extension or adjournment. If opposing counsel does not consent, the reason(s) must be provided. If the requested extension or adjournment affects any other scheduled dates set forth in a Court-approved Case Management Plan or Scheduling Order, a proposed Revised Case Management Plan or revised Scheduling Order must be attached for the Court's review and approval. The party requesting an extension or adjournment shall be responsible for notifying all other parties of the Court's disposition of the request.

II. MOTIONS

A. Pre-Motion Conferences in Civil Cases. 1. In the event that a substantive, procedural, or evidentiary dispute arises during pretrial proceedings that the parties, after good faith communication, are unable to resolve, they are encouraged, before resorting to motion practice, to bring the matter to the Court's attention by letter not to exceed three pages seeking a ruling. A conference must be requested before filing any motion, except: motions brought by order to show cause based on a legitimate emergency; motions required by the Federal Rules of Appellate Procedure to be made within a specified time; motions made by a pro se litigant in custody; motions for default judgment, pro hac vice admission, reargument, remand, or attorney's fees or sanctions; motions to affirm or vacate an arbitration award; and objections to a Magistrate Judge's ruling. The attorney who will serve as principal trial counsel must appear at all conferences with the Court with regard to scheduling and motions.

2. A party wishing to make a motion not excepted above should send a letter to the Court concisely describing the basis for the proposed motion and requesting a pre-motion conference. Any party opposing the motion must submit a reply letter within two business days of receiving the pre-motion letter indicating whether the proposed motion will be opposed, and if so, the basis for the opposition. Pre-motion letters and responses shall not exceed three pages single-spaced, with one-inch margins all around. The pre-motion letter may provide a detailed description of the matter to be decided and request that it to be deemed and filed as a formal motion. Where the circumstances warrant and the pre-motion letter contains a sufficient factual and legal statement of the matter at issue, the Court, upon request or on its own motion, may treat such letter as constituting a motion for the relief request and direct that it be filed as such and that the parties respond and reply by letter-briefs of specified lengths.

B. Motions to Dismiss. 1. With respect to motions to dismiss, including those contemplated in lieu of an answer, prior to filing such a motion 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, with a copy to the Court, either seeking a more definite statement, or setting forth the specific absence of particulars, insufficient notice, or other pleading deficiencies in the complaint and other reasons or controlling authorities that defendant contends would warrant dismissal and that, if properly rectified, could avoid the filing of the motion. The plaintiff shall respond by similar letter within seven calendar days, with a copy to the Court, 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 else stating the reasons and controlling authority that support the pleadings as filed. Plaintiff may seek leave to amend the complaint to address identified deficiencies if the time to do so as of right has expired. Under these circumstances, the Court will liberally grant plaintiff leave to amend, and 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. For example, without limitation, these include: 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; failure to plead the particulars of a fraud claim under Rule 9(b) of the Federal Rules of Civil Procedure; and a premature claim seeking punitive damages.)

2. In the event that at the conclusion of this informal procedure the parties fail to resolve a dispute over the appropriateness of the filing of a motion to dismiss, the defendant shall so notify the Court in writing, indicating why a motion to dismiss remains warranted even after plaintiff has agreed to any amendments to cure specified deficiencies, and transmit copies of the correspondence exchanged by the parties in this regard. Promptly thereafter the Court will schedule a conference, by telephone or in person, to provide any appropriate preliminary guidance or rulings.

3. In the event that the Court, upon review of the parties' exchange of correspondence described above, issues preliminary guidance in writing indicating that a formal motion if filed is likely to be denied in whole or in part and the defendant nonetheless proceeds with such motion filed, and the Court's formal ruling does deny the motion in whole or in part, the Court may deem the circumstances as grounds supporting an application for appropriate sanctions against the defendant, including an award of related attorney's fees and costs.

4. Conversely, in the event that the Court issues preliminary guidance in writing indicating that a formal motion if filed is likely to be granted in whole or in part and the plaintiff nonetheless proceeds with the complaint as originally filed, and the Court's formal ruling does grant the motion in whole or in part, the Court may deem the circumstances as grounds supporting an application for appropriate sanctions against the plaintiff, including an award of related attorney's fees and costs.

C. Motions: Expedited Procedure. In the event that a discrete issue of law arises in a case that may be dispositive of a particular claim or defense, or of the entire action, upon agreement on motion by the parties, or as ordered by the Court, the issue presented may be

resolved by the Court on the basis of submissions of letter-briefs not to exceed five pages for each party without necessity for any further documentation, unless the Court so requests or grants leave therefor. The Court will endeavor to decide such motion within fourteen days of the date of full submission or of any hearing the Court holds thereon.

D. Memoranda of Law. 1. All formal motions and cross-motions must be accompanied by a memorandum of law. Memoranda of law in support of and in opposition to motions shall be limited to 25 pages, and reply memoranda shall not exceed 10 pages. Memoranda should be double-spaced and in 12-point font with 1-inch margins. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities. The Court will entertain written requests for exceptions to these page limitations only in rare cases where the facts and issues are particularly complex. The Court will not consider new matters raised in replies for the first time. Sur-reply memoranda will not be accepted without prior permission of the Court and then only in the rare instances in which new controlling law is promulgated after the filing of the reply papers.

2. Any memorandum that does not comply with these requirements will not be accepted and will be returned, and counsel may not be provided with additional time to submit a complying memorandum if any such additional extension may cause substantial prejudice to other parties in the case.

E. Documentation. 1. Affidavits accompanying any motion should contain concise statements attested to by the affiant on the basis of personal involvement or knowledge of pertinent facts. Affidavits shall not be used as a vehicle for counsel to describe factual background or legal issues involved in the case, to alter the pleadings or introduce facts not set forth in the complaint, to assert matters not within their personal knowledge, or for supplemental argumentation of legal issues that would serve to evade the page limitation set forth in the Court's Individual Practices. Such submissions will not be considered.

2. In connection with documents exhibits such as contracts, public filings, and deposition testimony that parties submit as exhibits accompanying any motion, the whole document may be filed and entered into the public record of the action only if all of its contents are integral to and bear directly on the particular issue(s) to be decided on the motion. Otherwise, the parties may submit as an exhibit only those portions or pages of such document that have direct relevance to the matter at issue. When submitting only relevant portions of a document, the parties arguing the motion shall file, accompanying such motion papers, a stipulation attesting: (1) that they are familiar with the full contents of such document; (2) that they possess and each will maintain a copy of such entire document in their respective case files until after a final court disposition of the action; and (3) that the excerpt filed with the motion papers is an authentic copy of the relevant portion of the document.

The following example may be helpful in illustrating how this practice would operate: In an action relating to accounting malpractice, only three pages of a 150-page spreadsheet and five pages of a 100-page deposition contain information relevant to an issue litigated on a motion for summary judgment. The parties should submit only those relevant pages of the spreadsheet and

deposition in connection with the motion exhibits filed, instead of submitting the entire spreadsheet and deposition transcript.

3. In connection with motions for summary judgment, Local Rule 56.1 Statements shall be "short and concise," and shall not be used for argumentation of legal issues or recitation of case law, or extensive recitation of deposition testimony or repetition of conclusory pleadings.

F. Service. Notices of motions, affidavits, and memoranda of law shall be served in accordance with the dates set by the Court during the pre-motion conference or by memo-endorsed orders. If a pre-motion conference is not required (Paragraph II.A., supra), counsel should follow Local Civil Rule 6.1, unless otherwise ordered by the Court. Any party seeking dismissal of a complaint or summary judgment in whole or in part against a pro se litigant must plainly advise that litigant of the nature of the motion, of the possible consequence of failing to respond, and that the Court will deem true the statements contained in a Local Rule 56.1 statement unless controverted. Failure to comply with this requirement may result in a sua sponte denial of the motion. In connection with motions for summary judgment, where the Court may deem it appropriate, the parties may be directed to serve their Local Rule 56.1 statements for the Court's review prior to proceeding with service of the fully-prepared motion.

G. Filing. All motion papers shall be filed in the Clerk's Office or via ECF promptly after service.

H. Sealing/Redaction Requiring Court Approval. Motions or letter motions for approval of sealed or redacted filings in civil and miscellaneous cases, and the subject documents, including the proposed sealed document(s), must be filed either by hard copy or electronically through the court's ECF system in conformity with standing order 19-mc-00583 and ECF Rules & Instructions, section 6. Hard copy letter motions for approval of sealed or redacted filings may be faxed to Chambers if no more than five pages in total and must be mailed or hand delivered to the Court if greater than five pages. The party requesting approval of a sealed or redacted filing must identify all parties and/or other case participants that the party believes should be granted access to the sealed or unredacted versions of the proposed filings.

I. Oral Argument. Motions will be decided on the papers after all moving papers have been submitted, unless the Court determines that oral argument will be necessary. If oral argument is scheduled, the Court will advise the parties of the date and time for argument and whether it will be limited to specific issues. Counsel should expect that the Court will have reviewed motion papers prior to oral argument and will be familiar with the issues presented therein, and therefore counsel should not use oral argument to repeat factual recitations or legal arguments adequately addressed in the motion papers.

III. DISCOVERY DISPUTES

In the event that a discovery dispute arises that the parties are unable to resolve among themselves, they shall confer and submit to the Court a joint letter setting forth the matters that remain unresolved following such conference. The letter shall describe concisely the issue(s) in dispute and the respective position of each party and cite applicable authority which the

respective parties claim for support. The Court will rule upon the written submission, or refer the dispute to the designated Magistrate Judge for resolution, particularly where the circumstances indicate that the parties' discovery disputes are continuous or chronic.

IV. PRETRIAL PROCEDURES: CIVIL CASES

A. Pretrial Conferences. 1. The Court will endeavor to schedule an initial case management conference within 45 days of the filing of the answer(s). Upon receipt of the Notice of Initial Conference, the parties shall confer if they have not yet done so in accordance with Federal Rule of Civil Procedure 26(f) and exchange the initial disclosures prescribed by Rule 26(a). Following such conference, the parties shall jointly prepare a status letter setting forth: (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (2) confirmation that the parties have conferred and exchanged initial disclosures -- or agreed on a plan and schedule for such disclosure -- identifying the names and locations of individuals, documents, and things possessing or pertaining to material information used to support the parties' claims or defenses; (3) a concise statement of any discrete threshold or dispositive issues that the pleadings present, such as personal or subject matter jurisdiction, venue, or statute of limitations, that in the interest of justice and judicial economy warrant resolution first and potentially warrant a stay on further discovery; (4) any contemplated motions; (5) the prospects for settlement; and in view thereof the parties belief that a brief stay of the litigation would be warranted to enable them to pursue resolution through their own discussions or through Court facilitated settlement or private mediation; (6) whether the parties consent to proceed for all purposes before the Magistrate Judge designated for this action; (7) whether the parties may be amendable to proceeding to trial on the merits of the dispute in accordance with the expedited trial procedure provided for in Part VI.A. of these Individual Practices; and (8) a proposed Case Management Plan in the form available on Judge Marrero's page on the Southern District website. The status letter must be received by the Court at least five business days before the initial case management conference.

2. The completed proposed Case Management Plan shall be brought to the initial case management conference for approval and endorsement by the Court. The Case Management Plan shall indicate whether the parties have reached agreement on discovery concerning: (1) the number, duration, and matters to be examined, and the individuals to be deposed; and (2) limitations on the length or scope of requests for admissions and interrogatories. If the discovery plan contemplates that any party conduct more than five depositions, or any particular deposition requiring more than three hours to complete, or any request for admissions or interrogatories exceeding seven single-spaced pages, that circumstance shall be stated in the Case Management Plan, and leave of Court therefor sought at the initial conference.

3. Principal trial counsel -- or, upon written notice to the Court, another attorney so designated who is closely familiar with the litigation -- must appear at all conferences. Ordinarily, at the initial conference and any future conference the primary purpose of which is to review scheduling, appearance by more than one attorney for a party should not be necessary. **Appearances by telephone will not be permitted without express prior permission of the Court.**

4. At the initial conference, in the event such issues arise, the parties should be prepared to address adequately the basis for venue and subject matter jurisdiction, and whether or not all of the jurisdictional prerequisites have been satisfied in the case. Where appropriate, such discussions shall include citations to all statutes relied on and relevant facts regarding citizenship and jurisdictional amount. The parties should further be prepared and authorized to discuss the factual and legal bases for their claims, any contemplated motions, and prospects for settlement through assistance of the Court, mediation services or other dispute resolution methods. The parties should also address the option of proceeding to resolution of the dispute for all purposes or of dispositive motions by the designated Magistrate Judge pursuant to 28 U.S.C. § 636(c) or by Court-appointed mediation.

B. Filings Prior to Trial. Unless otherwise ordered by the Court, not less than 30 days prior to a firm date scheduled for the trial, the parties shall submit to the Court the pretrial submissions described in Attachment 1 to these Individual Practices.

V. PRETRIAL PROCEDURES: CRIMINAL CASES

A. Initial Pretrial Conference. The Assistant United States Attorney ("AUSA") assigned to the case shall contact Chambers as soon as possible after the case is assigned to the Court for prompt scheduling of a conference at which the defendant will be present in order to set a discovery and motion schedule. The Court refers all arraignments, initial bail applications, and guilty pleas to the Magistrate Court in the first instance, unless there is good cause to proceed directly before the Court. The AUSA shall provide a courtesy copy of all charging documents to Chambers as soon as practicable, and should submit a letter confirming the date and time of any initial conference scheduled before Judge Marrero by the Magistrate Judge. Any conference scheduled by a Magistrate Judge will not be entered on the Chambers calendar until such a confirmation letter is received. The AUSA shall arrange for appropriate exclusion of time for Speedy Trial Act purposes to the date of the defendant's initial appearance before Judge Marrero.

B. Pleas. The plea agreement or Pimentel letter must be provided to Chambers at least two business days before the time set for the conference at which the disposition is to be addressed. Defense counsel are expected to have reviewed with the defendant -- with foreign language interpretation where appropriate, prior to the time set for the conference with the Court -- any plea or cooperation agreement, or any other arrangements relating to the defendant's plea.

C. Sentencing. 1. Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than two business days before the date at issue, and shall be submitted to Chambers by fax after counsel has discussed a new date and time with the law clerk assigned to the case (see I.C. and I.D., supra). Such requests should state whether opposing counsel consents.

2. All submissions and applications with respect to a sentencing and all responses thereto shall be served and submitted to the Court in sufficient time to ensure that the Court has received all such papers by no later than five business days prior to the sentencing.

3. In the event a sentencing control date is scheduled for a defendant, the AUSA shall notify the Court as soon as practicable if the parties later intend for that date to be the date of sentencing. Such notification allows for the Court to order a Pre-Sentence Investigation Report from the United States Probation Office in a timely manner.

D. Filings Prior to Trial. Unless otherwise ordered by the Court, not less than 30 days prior to a firm date scheduled for the trial, the parties shall submit to the Court the pretrial submissions described in Attachment 1 to these Individual Practices.

VI. TRIAL PROCEDURES

A. Expedited Trial in Civil Cases. Upon request, the Court may schedule a fixed early date for a trial on the merits of a dispute if by stipulation the parties agree to proceed in accordance with a litigation plan that substantially limits or dispenses with categories of discovery and dispositive motions, or provides for the conclusion of such proceedings on an expedited basis approved by the Court.

B. All Trials. Counsel with either jury or bench trials scheduled before the Court are to comply with the Court's trial procedures set forth in Attachment 1.

VII. MISCELLANEOUS

A. Default Judgment Procedures. A party who wishes to obtain a default judgment must proceed by way of the procedure set forth in Attachment 2.

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

C. Court Reporters. The Court will order a court reporter for all criminal proceedings and all civil conferences with pro se litigants. In addition, the Court will order a reporter for hearings in a civil proceeding scheduled pursuant to Paragraph II.H. Parties seeking transcription of any other proceeding shall notify Chambers of such a request by letter.

D. Orders to Show Cause or Motions for Injunctive Relief. Except in the most extraordinary circumstances, litigants filing an order to show cause or motion for injunctive relief must provide notice to opposing counsel before doing so. Following conferral with opposing counsel, the party filing the order or motion shall submit to the Court an agreed-upon proposed briefing schedule.

E. Part One / Miscellaneous Docket. Litigants must file all documents assigned a Miscellaneous Docket number with the Clerk's Office in accordance with the current procedures of the Clerk of Court. Litigants should send a courtesy copy of all filings to Chambers (see I.E, supra) and deliver a copy to all parties through counsel or to litigants proceeding pro se.