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Amended: February 9, 2023

INDIVIDUAL PRACTICES IN CIVIL CASES
JUDGE P. KEVIN CASTEL, United States District Judge

Chambers	**Courtroom**
United States District Court Southern District of New York 500 Pearl Street New York, New York 10007 CastelNYSDChambers@nysd.uscourts.gov	Courtroom 11D 500 Pearl Street Florence Nacanther, Courtroom Deputy (212) 805-0131

Unless otherwise ordered, all civil actions and miscellaneous matters before Judge Castel shall be conducted in accordance with the following practices.

1. Communications

A. Letters.

i. Communications with the Court shall be by letter and filed on ECF. Absent a specific direction from the Court, the text of an email transmitted to Chambers does not qualify as a letter and its contents will not be addressed by the Court or Chambers' Staff.

ii. All letters must contain the docket number of the action, as well as the docket number of any related action before the Judge (e.g. 17 cv 3456(PKC) [rel. 17 cv 3457(PKC)]).

iii. The first paragraph of all letters must set forth the date of the next conference before the Court.

B. Telephone Calls. For scheduling matters, please call the Courtroom Deputy Florence Nacanther at (212) 805-0131 between 9:00 a.m. and 5:00 p.m. Telephone calls to Chambers, (212) 805-0262, are reserved for situations requiring immediate attention. Questions or requests on matters of substance or procedure should be presented by letter. (See 1.A.)

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time shall be made by letter filed on ECF. The letter should state:

i. the date sought to be adjourned or extended;

ii. the reasons for the request;

iii. whether any adjournment or extension of the date was previously sought and whether it was granted;

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iv. whether the adversary consents to the request and, if not, the reasons given by the adversary for declining to consent; and

v. the information in 1.A. ii & iii above.

If the requested adjournment or extension affects any other scheduled dates, the request shall attach a proposed Revised Case Management Plan and Scheduling Order (reflecting actual dates which are business days). A request for an adjournment of time to answer a complaint should include a request to adjourn the initial conference to a date at least 14 days after the answer would be due. A request for an extension of fact discovery should include a request to adjourn the next conference to a date at least 14 days after any new date for the close of fact discovery.

D. Courtesy Copies. If, but only if, they exceed 40 pages in length, courtesy copies of all pleadings (complaint, answer, counterclaim, etc.) shall be sent to Chambers within five days of filing.

2. Case Management Plans. For all civil cases, the parties shall confer and prepare a proposed Case Management Plan and Scheduling Order (a model Plan and Order is found under Judge Castel's name on the Court website) and the agreed upon Plan and Order (together with any alternate proposal) shall be brought to or sent before the Initial Pretrial Conference.

3. Motions

A. Pre-Motion Letter in Civil Cases

i. The filing of a Pre-Motion letter to the Court is required prior to the filing of **all** motions, **except** the following:

a Discovery motions, which are governed by 4.B. below;
b Motions brought by order to show cause;
c Motions by incarcerated pro se litigants;
d Motions for a default judgment;
e Motions for appointment of lead counsel under the PSLRA;
f Motions for admission pro hac vice;
g Motions to withdraw as counsel;
h Motions for reconsideration;
i Motions to seal or unseal (see 5.B below);
j Any motion described in Rule 6(b)(2), Fed. R. Civ. P., Rule 4(a)(4)(A), Fed. R. App., or section 1447 of title 28.

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ii. The letter shall set forth in detail the legal and factual basis for the anticipated motion and a proposed schedule for the motion.

iii. A response to the letter shall be filed within four business days.

iv. If a Pre-Motion Letter seeks to file a motion to dismiss, the party responding shall unambiguously state whether he, she or it seeks 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.

v. Among other purposes, the Pre-Motion Letter and response enables the Court to set an appropriate briefing schedule and to explore whether the motion may be (a) obviated by an amendment to the pleadings or consent to the relief; or (b) deferred to a different juncture in the case.

vi. The Pre-Motion Letter shall state in the first paragraph the date of any conference scheduled before the Court.

B. **Discovery Disputes.** Discovery Disputes shall be brought on by letter and the parties shall comply with Local Civil Rule 37.2 unless otherwise ordered. A Discovery Dispute Letter to the Court shall contain the certification required under Rule 37(a)(1), Fed. R. Civ. P., and the full text of any a discovery request and response or objection thereto, together with any case law support and any affidavits required to adjudicate the issue. The party from whom discovery is sought shall respond within four business days and shall include any case law support and any affidavits required to adjudicate the issue.

C. **Motion Response Time.** Unless otherwise ordered, the time for a response or reply to a motion is as set forth in Local Civil Rule 6.1. (The response time to a Pre-Motion Letter or Discovery Dispute Letter are as set forth in 4.A.iii and 4.B.)

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. A memorandum of 10 pages or more shall contain a table of contents.

E. **Courtesy Copies.** Courtesy copies of all motion papers shall be submitted in hard copy to Chambers within four days of filing.

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F. **Oral Argument on Motions.** Parties may request oral argument by letter. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

G. **Summary Judgment.**

i. A summary judgment movant shall provide the opposing party with a copy of its Local Rule 56.1(a)(1) Statement in Microsoft Word format within four days of filing.

ii. The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement of the movant immediately preceding its response thereto.

H. **Default Judgment**. A party seeking a default judgment must proceed by filing a motion for default judgment on ECF pursuant to Rule 55(b)(2), Fed. R. Civ. P. and Local Civil Rule 55.2(b). A party seeking a default judgment should **not** proceed by order to show cause. The motion must be supported by the following papers:

i. an attorney's affidavit or declaration setting forth:

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

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

(c) 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;

(d) the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and

(e) an explanation why an inquest into damages would be necessary or not.

ii. a proposed default judgment;

iii. a copy of the affidavit of service of the summons and complaint; and

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

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The Court for a motion for default judgment shall be served on the party against whom default judgment is sought. The time for a response and reply are as set forth in Local Civil Rule 6.1.

4. **Confidentiality Orders.** Any proposed Confidentiality Order shall contain the following language:

> *Notwithstanding any other provision, no document may be filed with the Clerk under seal without a further Order of this Court addressing the specific documents or portions of documents to be sealed. Any application to seal shall be accompanied by an affidavit or affidavits and a memorandum of law, demonstrating that the standards for sealing have been met and specifically addressing the applicability of Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-120 (2d Cir. 2006) and any other controlling authority. Unless otherwise ordered, a party seeking to file an opposing party's confidential information shall so advise the opposing party fourteen (14) days in advance specifying the precise portion of the information the party seeks to use, the general purpose thereof and any redactions to which the party does not object. Within seven (7) days thereafter, the party whose confidential information is sought to be used may make an application to seal in accordance with the first paragraph of this Order, indicating the portion or portions of the information it seeks to have sealed. Nothing herein is intended to alter or modify the applicability of Rule 5.2, Fed. R. Civ. P., to this case. The redactions expressly authorized by Rule 5.2 may be made without further application to the Court.*

5. **Sealing in Civil and Miscellaneous Cases: ECF Requirements**

A. **Sealing/Redactions Not Requiring Court Approval.** Rule 5.2, Fed. R. Civ. P., describes sensitive information that must be redacted from public court filings and such redactions shall be made without seeking prior permission from the Court.

B. **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 electronically through the court's ECF system in conformity with the Court's Standing Order, 19-mc-00583, and ECF Rules & Instructions, section 6. Specifically, the following procedures must be followed:

i 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

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confidential information sought to be filed under seal. 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.

ii. 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.

iii. 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.

iv. 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.

6. **Final Pretrial Submissions.** Unless otherwise ordered by the Court, no later than 45 days following the scheduled date for completion of fact and expert discovery, the parties shall submit to the Court and electronically file:

A. A proposed **Joint Pre-Trial Order** that includes **the information required by Rule 26(a)(3), Fed. R. Civ. P., and also the following**:

i. The names, addresses, mobile phone numbers and email addresses of all counsel participating in the trial.

ii. Stipulations of fact and testimony, including a certification by lead trial counsel for all parties that they have met face-to-face for the purpose of endeavoring to reach agreement upon stipulations of fact and stipulations of testimony and the content of their stipulations.

iii. A statement of the claims and defenses that remain to be tried. Any claim or defense not so identified is deemed withdrawn.

iv. 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.

v. A page and line designation of deposition testimony to be offered by each party on the party's case-in-chief, with any cross-designations and objections by any other party.

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vi. A list by each party of exhibits to be offered in the party's case-in-chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. Unless otherwise ordered, any motions in limine shall be filed within 21 days following the scheduled date for completion of fact and expert discovery and responded to within 14 days of service.

C. In addition to A and B above, in any action to be tried **to a jury**, the following shall be submitted:

i. proposed voir dire;

ii. proposed jury instructions; and

iii. proposed verdict form.

Unless otherwise ordered, plaintiff shall file (i), (ii), and (iii) 21 days following the scheduled date for completion of fact and expert discovery and defendant's response (including areas of agreement) and counterproposals on (i), (ii) and (iii) shall be filed 14 days thereafter. These submissions must be filed on ECF with a copy in Microsoft Word submitted to Chambers electronically within four days.

D. In addition to A and B above, in any action to be tried **to the Court without a jury**, the following procedures shall govern, unless otherwise ordered:

i. The direct testimony of each witness under the control of a party (i.e. excluding adverse witnesses and witnesses whose appearance must be compelled by subpoena) shall be presented in the form of an affidavit or declaration setting forth the narrative of their testimony in numbered paragraphs.

ii. The direct testimony of the plaintiff's witnesses shall be filed 21 days following the scheduled date for completion of fact and expert discovery and the direct of the defendant's direct testimony shall be filed 14 days thereafter. The direct testimony of each witness shall be delivered to

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Chambers within four days of filing in both hard copy and Microsoft Word.

iii. At trial, each witness whose direct testimony previously has been submitted in affidavit or declaration form shall appear and under oath shall reaffirm that the affidavit or declaration is true and correct. The party offering the witness then shall offer the affidavit or declaration as an exhibit, subject to appropriate objections by the opposing party. For good cause shown, the witness then may be allowed to supplement his or her statement by additional direct testimony. Thereafter, cross-examination and any redirect shall proceed in the ordinary course.

iv. The parties may by agreement waive the appearance and cross-examination of any witness.

7. Trials and Hearings

A. Exhibits. Unless otherwise ordered, all trial or hearing exhibits shall be pre-marked with exhibit letters for the plaintiff (e.g. PX A, PX B, etc.) and numbers for the defendant (e.g. DX 1, DX 2, etc.) A party shall have two hard copies of all trial exhibits in the Courtroom to be handed up if and when requested by the Court. Unless otherwise ordered, at the commencement of trial, an electronic set of trial exhibits shall be presented to the Court and to opposing counsel. At the close of evidence in a jury trial, a set of all admitted exhibits in electronic form, together with an index, shall be prepared by the parties for the jury's use during deliberation. Counsel for each side is responsible for maintaining custody of the side's own exhibits at the conclusion of trial.

B. Witnesses. Ordinarily, trials and hearings continue from day to day until completed. The Court will advise if a trial or hearing will be held on a Friday (which is often reserved for motions and hearings in other actions). A party is expected to have their next witness at the Courthouse ready to testify immediately upon completion of a prior witness's testimony.