

Revised: September 4, 2013

INDIVIDUAL PRACTICES IN CIVIL CASES
ANALISA TORRES, UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET
NEW YORK, NEW YORK 10007

Unless otherwise ordered by Judge Torres, these Individual Practices apply to all civil matters except for civil *pro se* cases (see Individual Practices in Civil *Pro Se* Cases, at <http://nysd.uscourts.gov/judge/Torres>).

I. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court shall be by letter. Unless there is a request to file a letter under seal, letters shall be filed electronically on ECF, with a courtesy copy, clearly marked as such, delivered to the Court by e-mail to Torres_NYSDChambers@nysd.uscourts.gov. See paragraph I.F below. Letters to be filed under seal shall be e-mailed to the Court. Letters solely between parties or their counsel or otherwise not addressed to the Court shall not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document).
- B. Telephone Calls.** For docketing, scheduling and calendar matters, call Courtroom Deputy Marilyn Ong at (212) 805-0167. Telephone calls to chambers are permitted only in situations requiring immediate attention. The chambers phone number is (212) 805-0292.
- C. Faxes.** Faxes to chambers are permitted only with prior authorization. Faxed submissions shall identify the individual in chambers who authorized the fax. Copies shall be simultaneously faxed, e-mailed or hand delivered to all counsel. The fax number is (212) 805-7922.
- D. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be made in writing and filed on ECF as letter-motions, with a courtesy copy, clearly marked as such, e-mailed to the Court. The letter-motion shall 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 shall be included. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

- E. Letter-Motions.** Letter-motions may be filed via ECF if they comply with the S.D.N.Y. Local Rules and Electronic Case Filing Rules and Instructions. In particular, all requests for adjournments, extensions, and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) shall be filed as letter-motions. A courtesy copy shall be e-mailed to the Court.
- F. Courtesy Copies.** The courtesy copy of any letter filed on ECF shall be a copy of the filed version of the letter and shall include the automatically generated ECF header (that is, the text — *e.g.*, “Case 1:13-cv-01234-ABC Document 100 Filed 09/3/13 Page 1 of 1” — appearing at the top of each page of a document on the ECF system).
- G. Urgent Communications.** As a general matter, materials filed via ECF are reviewed by the Court the business day after they have been filed. If your submission requires immediate attention, please notify chambers by telephone after you file via ECF.
- H. Related Cases.** After an action has been accepted as related to a prior filing, all future court papers and correspondence shall contain the docket number of the new filing and the docket number of the case to which it is related (*e.g.*, 13 Civ. 1234 [rel. 12 Civ. 4321]).
- I. ECF.** In accordance with the Electronic Case Filing Rules & Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. Instructions are available on the Court website at http://www.nysd.uscourts.gov/ecf_filing.php.
- J. Docketing of Letters.** Absent a request to file a letter under seal, the parties shall assume that any substantive letter will be docketed by the Court.

II. Conferences

- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel shall appear at all conferences.
- B. Initial Case Management Conference.** The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference, within two months after the filing of the complaint. The Notice of Initial Pretrial Conference will be docketed on ECF and plaintiff’s counsel (or, in a matter removed from state court, defense counsel) is directed to promptly distribute copies to all parties. The Notice will direct the parties to submit to the Court, one week prior to the conference date, a joint letter and a proposed Case Management Plan and Scheduling Order. If an initial pretrial conference has not been scheduled within two months after the filing of the complaint or notice of removal, counsel shall send a letter to alert the Court.

C. Discovery Disputes. Follow Local Civil Rule 37.2 with the following modifications. A party wishing to raise a discovery dispute with the Court shall 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 succeed, the parties shall describe the dispute in a single joint letter to the Court, normally not exceeding six pages. The joint letter shall include a representation that the meet-and-confer process occurred, identifying the time, place and duration and naming the counsel involved in the discussion.

III. Motions

A. Pre-Motion Conferences in Civil Cases.

- i. A pre-motion conference is required prior to the filing of any motion, except discovery motions, motions with a jurisdictional time limit as provided by the Federal Rules of Appellate Procedure, post-judgment motions, motions brought on by order to show cause, motions for reargument or reconsideration, motions by incarcerated *pro se* litigants, motions for admission *pro hac vice*, motions for attorneys' fees, motions for remand, motions to appoint lead plaintiff and lead defense counsel in securities class actions, objections to magistrate judges' rulings, motions for sanctions, motions for reduction of sentence, *in forma pauperis* motions, and petitions to confirm or compel arbitration.
- ii. To arrange a pre-motion conference, the movant shall e-mail a letter to the Court, normally not exceeding five pages, setting forth the basis for the anticipated motion. Opposition letters, normally not exceeding five pages, shall be submitted within five business days after receipt of the movant's letter. Thereafter, the Court will notify the parties of the conference date.
- iii. Transmittal of a pre-motion letter for a proposed motion under Federal Rule of Civil Procedure 12(b) stays the time to answer or move to dismiss until further order of the Court.

B. Special Rules for Motions to Dismiss.

- i. Prior to requesting a conference in connection with 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 shall not submit copies of these letters to the Court, but a moving defendant shall state in its request for a pre-motion conference 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 within twenty-one days, pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. 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 by the Court. If the plaintiff does amend its pleading, the moving party shall, 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 wishing to move 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 shall reproduce each entry in the moving party's Rule 56.1 Statement and set out the opposing party's response directly beneath it.

- iii. The prospective movant shall e-mail a letter to chambers (Torres_NYSDChambers@nysd.uscourts.gov) informing the Court of its wish to file a motion for summary judgment and attaching the opposing party's response to the Statement of Material Facts. The Court will inform the parties whether a motion for summary judgment is warranted.
- iv. 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 shall be included if it is available.
- v. 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 shall provide these materials on a CD only, not on a DVD or memory stick and not by e-mail.)

D. Memoranda of Law. A memorandum of law shall accompany motion and opposition papers. The typeface, margins and spacing of motion papers shall conform to Local Civil Rule 11.1. Memoranda of more than 10 pages shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. A memorandum of law shall not incorporate by reference any accompanying declarations or affidavits. Instead, the memorandum shall contain a fact section that sets forth all facts relevant to the motion and, for each factual statement, provides one or more citations to the declarations, affidavits or other evidence in the record. Factual statements contained in other sections of a memorandum shall also be followed by a citation to record evidence. Judge Torres does not impose page limitations.

E. Exhibits. All exhibits shall be tabbed and indexed.

F. Format. Motion papers shall be double-spaced, shall use 12-point font or larger (including footnotes) and shall have one-inch margins on all sides. Footnotes are discouraged.

G. Courtesy Copies. The movant shall mail or hand deliver to chambers one courtesy copy of all motion papers, marked as such, at the time of filing. Courtesy copies may not be submitted through the ECF system.

H. Filing Motion Papers. Motion papers shall be filed promptly after service.

I. Oral Argument of Motions. Parties may request oral argument by letter e-mailed to the Court at the time their moving, opposing or reply papers are filed. The Court will notify counsel if oral argument is required. Oral argument ordinarily will be held on a Friday.

- J. Failure of the Court to Schedule Argument or Decide a Motion.** If the Court has not decided a motion or scheduled argument within 60 days of the date that the motion is fully briefed, counsel for the movant shall send a letter to alert the Court.
- 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 shall be made by the deadline for dispositive motions and shall not be treated as motions *in limine*.
- L. Proposed Stipulations and Orders.** Except as otherwise provided herein, parties shall 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. A courtesy copy shall be sent to chambers.
- M. Default Judgments.** A plaintiff seeking a default judgment shall proceed by way of order to show cause, pursuant to the procedure set forth in Attachment A.

IV. 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 e-mail a letter to the Court, citing case law and providing a factual explanation that justifies the proposed sealing. 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 review the proposed redactions. The Court will notify the party of its decision and the party may then, to the extent permitted by the Court, file the redacted documents on ECF and the full, unredacted documents under seal in accordance with this district's procedures, set forth at: http://nysd.uscourts.gov/cases_records.php?records=sealed_records. 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.
- B. Applications for a Temporary Restraining Order.** A party shall confer with his or her adversary before making an application for a temporary restraining order, unless the requirements of Rule 65(b) of the Federal Rules of Civil Procedure are met. As soon as a party decides to seek a temporary restraining order, he or she shall call chambers at (212) 805-0292 and state whether: (1) he or she has notified the adversary and whether the adversary consents to temporary

injunctive relief, or (2) the requirements of Rule 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.

- C. 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 shall place the terms of their settlement 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 agreement in their stipulation of settlement and dismissal.
- D. 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, e-mail to the Court a letter no longer than two pages explaining the basis for that party's assertion 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.
- E. Bankruptcy Appeals.** Briefs shall 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 copy of the briefs and the bankruptcy record on appeal, marked as such, shall be submitted to chambers by the appellant at the time the reply is due.

V. Trial Procedures

- A. Pretrial Disclosure.** The parties are reminded of their obligation to make certain disclosures regarding expert testimony pursuant to Federal Rule of Civil Procedure 26(a)(2) and to make disclosure regarding evidence that may be presented at trial pursuant to Federal Rule of Civil Procedure 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.
- B. Joint Pretrial Order.** Unless otherwise ordered by the Court, within 30 days after the date for the completion of discovery, or within 30 days after the Court's decision on a dispositive motion, if any, the parties shall e-mail to the Court (Torres_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 work, cellular and fax numbers of trial counsel;
- iii. 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;
- iv. 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;
- v. 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 shall not recite any evidentiary matters;
- vi. A statement as to the number of trial days needed and whether the case is to be tried with or without a jury;
- 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. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For any exhibit as to which there is an objection, the party objecting shall briefly specify, next to the listing of that exhibit, the nature of the party's objection. Where a party objects to an exhibit on any ground other than authenticity, the objection shall cite the Federal Rule of Evidence that is the basis of the objection. Any objection not listed shall be deemed waived;

- 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.

C. 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 shall 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, requests to charge (including citation to authority) and proposed *voir dire* questions;
- iv. In non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact shall be detailed and shall 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 shall also submit copies of these documents to the Court by e-mail (Torres_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.

D. 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 shall also submit copies of these documents to the Court by e-mail (Torres_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 shall clearly set forth its proposed charge or question and briefly state why the Court shall use its proposed charge or question, with citations to supporting authority.

E. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall mail or hand deliver 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 a 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. 1

F. 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.

G. Courtesy Copies. Two courtesy copies of all documents identified in paragraphs V(B), (C), (D)(i-iv), (D), (E) and (F) above shall be mailed or hand delivered 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.

H. Trial Schedule. Trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:15 p.m. with a break from 11:15 to 11:45 a.m.

VI. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones 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 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. Mobile phones are permitted inside the Courtroom, but they **SHALL** 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 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 shall 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 Torres in Courtroom 15D. Leave blank the date and time of the conference. Judge Torres 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, attorneys' 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 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 (500 Pearl Street) for Judge Torres' signature. Also bring a courtesy copy of the supporting papers to leave with chambers.
5. After Judge Torres 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, shall be approved by the Clerk prior to the conference and then brought to the conference for Judge Torres' signature.