

**LEWIS A. KAPLAN United  
States District Judge United  
States Courthouse  
500 Pearl Street  
New York, NY 10007**

**COMMUNICATIONS**

For questions concerning general calendar matters, call the Deputy Clerk, Mr. Andrew Mohan at (212) 805-0104.

*Counsel are not to communicate with Chambers by phone except in case of emergency. Counsel are not to communicate with chambers via facsimile without prior approval. Copies of correspondence between counsel should not be sent to the Court.*

Except as otherwise provided herein, the Court's procedures are governed by the Local Rules of this Court and the Federal Rules of Civil Procedure. *Counsel should not call the Judge's law clerks with respect to procedural questions.*

**LETTERS**

Letter motions enumerated in Section 13.1 of the ECF Rules and Instructions may be filed electronically. Other letters shall be mailed or sent by commercial courier to the undersigned or delivered to the court security officers at the Worth Street entrance, 200 Worth Street. ***Letters, other than enumerated letter motions, shall not be filed on the CM/ECF system.***

**CONFERENCES**

*The attorney who will serve as principal trial counsel must appear at all conferences with the Court.*

Unless the parties are otherwise notified, a pending motion to dismiss the entire action cancels any previously scheduled initial scheduling conference.

**MOTION RULES AT A GLANCE**

Pre-motion **Not required.**

conference:

Motion returnable:

**Motions are to be filed without a return date.**

Courtesy Copies:

Two courtesy copies should be addressed to Judge Kaplan and delivered to the court security officers at the Worth Street entrance, 200 Worth

Street, no later than one business day after the originals are filed.

## **MOTION RULES AND PROCEDURES**

### **Discovery Disputes**

Discovery disputes shall be raised with the Court by motion filed electronically. The motion shall not exceed four (4) pages in length, including affidavits and declarations, but exclusive of exhibits. In addition, counsel filing such motions electronically shall send a letter to the Court stating that such a motion has been filed electronically. The party opposing the relief sought may respond within two (2) business days electronically, briefly describing why the relief sought should not be granted.

• \* \*

Counsel should be prepared to discuss with the Court the matters raised by such letters or motions, as the case may be, as the Court may seek to resolve discovery disputes quickly, often by telephone conference call and sometimes in advance of receiving answering papers.

Discovery disputes should be raised with the Court promptly once it is clear that the issues cannot be resolved by agreement.

### **Return Dates and Special Filing Rules**

All motions, unless brought on by an Order to Show Cause, should be made without a return date. Two (2) courtesy copies for the use of Chambers should be delivered to the court security officers at the Worth Street entrance, 200 Worth Street (at the time the originals are filed).

### **Orders to Show Cause and TROs**

Unless otherwise ordered in a specific case, all applications for orders to show cause and temporary restraining orders first shall be brought to the Orders and Appeals Clerk for approval and then to Chambers. **Applications for temporary restraining orders will be entertained *only* after notice to the adversary absent a persuasive showing that the giving of notice itself is likely to result in immediate and irreparable injury.**

### **Briefs and Motion Papers**

Citations to United States Supreme Court cases shall contain citations to the official reports and parallel cites to the Supreme Court Reporter, respectively. Citations to unreported cases not available on WESTLAW should be accompanied by a copy of the case cited.

Memoranda of law in support of or in opposition to motions may not exceed thirty-five (35) pages, double spaced, in length and, if in excess of ten (10) pages, should contain tables of contents and authorities. Reply memoranda may not exceed ten (10) pages, double spaced, in length. All exhibits to memoranda and other papers should be tabbed and indexed. A copy of the complaint should accompany the moving papers. Requests to file memoranda exceeding the page limits set forth herein must be made five (5) days prior to the due date except with respect to reply briefs, in which case the time is the day prior to the due date.

*Answering and reply papers*, if any, are to be served within the time specified in S.D.N.Y. Civ. R. 6.1.

After answering papers are received, the Court will notify counsel of the time and place for oral argument if the Court regards oral argument as likely to be helpful. The Court will have reviewed the papers prior to argument.

### **Reports, Recommendations and Orders of Magistrate Judges**

Objections to reports and recommendations, and appeals from orders of, Magistrate Judges shall not exceed twenty pages in length.

### **Adjournments/Extensions**

All requests for extensions of time or adjournment of motions, pretrial conferences, and other matters must be made with copies to all counsel and received in chambers not less than two business days before the scheduled time. Such requests must include the number and disposition of any prior requests for similar extensions and state whether opposing counsel consents to the extension or adjournment. If the extension request is made with the consent of all parties, a stipulation should be submitted as provided in the ECF Rules and Procedures and shall set out the schedule to which counsel have agreed; a request for an extension without the consent of all counsel may be made by letter to the Court. Requests to adjourn the date for oral argument made less than one week prior to the scheduled date will be granted only under the most compelling circumstances.

*The Court will **not** advise the parties by telephone or mail of the disposition of requests for extensions and adjournments. Counsel are responsible for checking the docket sheet in the Clerk's office in person, by use of a service, or through use of the Court's ECF system.*

### **Notice of Rulings**

Counsel are responsible for knowledge of all rulings and other papers regardless of whether they receive electronic or written notice thereof. The docket sheet and electronic copies of papers are available online through the CM/ECF system.

## ECF FILING PRACTICES: FILINGS UNDER SEAL IN CIVIL AND MISCELLANEOUS CASES

- 1. 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. Such sensitive information includes: Social Security numbers; names of minor children; dates of birth; and financial account numbers.

Other information that should be treated with caution and may warrant a motion for approval of sealed or redacted filing includes: personal identifying numbers (PIN numbers); medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; home addresses; and information regarding an individual's cooperation with the government.

Sensitive information and information requiring caution must not be included in any document filed with the Court unless such inclusion is necessary and relevant to the case. If such information must be included, personal identifiers must be partially redacted in accordance with the above-cited rules and policies in order to protect any privacy interest.

- 2. 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](#).

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. 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 redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543(JMF), 2015 WL 4750774, at \*4 (S.D.N.Y. Aug. 11, 2015).

The party seeking leave to file sealed or redacted materials should meet and confer with any opposing parties (or third parties seeking confidential treatment of the information, if any) in advance to narrow the scope of the request. When a party seeks leave to file sealed or redacted materials on the ground that an opposing party or third party has requested it, that party shall notify the opposing party or third party that it must file, within three days, a letter explaining the need to seal or redact the materials.

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.

## **PRETRIAL AND TRIAL RULES AND PROCEDURES**

### **Discovery Schedule**

Notices inviting the parties to stipulate to a discovery schedule will be sent to plaintiff's counsel (or, in the case of removed actions, defendant's counsel) shortly after the filing of the action. If the parties can agree upon a schedule providing for prompt completion of pretrial proceedings, the Court ordinarily will incorporate the agreement in a Scheduling Order.

Counsel are responsible for being aware of the contents of the formal Scheduling Order and any amendments thereto irrespective of whether they are sent to counsel by the Clerk of the Court.

### **Copies of Pleadings**

The parties are to provide a courtesy copy of the complaint, answer and any reply (but not discovery requests, discovery responses, stipulations, correspondence or other papers) to chambers promptly after service.

### **Pretrial Order**

Counsel are to submit a *joint* pretrial order, with two (2) courtesy copies addressed to chambers, on or before the date set by the Court. The pretrial order shall be prepared in accordance with the outline attached as Annex A. Failure to submit the pretrial order may result in dismissal or a default judgment, as appropriate. *The filing of a motion for summary judgment does not excuse or extend the time for filing the pretrial order unless the Court otherwise directs. Such applications are disfavored.*

### **Ready for Trial**

Counsel must be prepared to proceed to trial on twenty four (24) hours telephone notice once the pretrial order has been filed. Any party with a scheduling problem should bring it to the Court's attention by letter at the time the pretrial order is filed.

### **Bench Trials**

In bench trials, counsel shall prepare and exchange, at least one week before trial, statements containing the direct testimony of each witness they intend to call except as noted below. Statements shall be confined to assertions as to which the witness is competent to testify, shall lay any necessary foundation for receipt of the statements contained therein, and shall not include argument or argumentative material.

These witness statements, copies of which are to be addressed to chambers and delivered to the court security officers with copies of all exhibits at least one week before trial, shall be used at trial in accordance with the following procedure.

### **Form of Statement**

Unless otherwise ordered and as provided below, a declaration or affidavit containing the direct testimony of each witness stated in narrative, rather than question and answer, form shall be provided shall be provided for each witness that a party intends to call on

its case in chief. The declaration or affidavit shall contain all of the relevant facts to which the witness would testify. It shall demonstrate that the witness has personal knowledge of the facts asserted and is competent to testify. It shall be free of argument.

### **Use of Statements**

At the trial, each witness whose direct testimony previously has been submitted in affidavit or declaration form shall take the stand and under oath shall reaffirm the affidavit or declaration is true and correct. The party offering that witness then shall offer the affidavit or declaration as an exhibit, subject to appropriate objections by the opposing party on which the court will then rule. For good cause shown, the witness then may be allowed to supplement his or her statement by any additional live direct testimony considered necessary by counsel.

Thereafter cross-examination and any redirect shall proceed in the ordinary course.

### **Exceptions to Use of Written Direct Testimony**

Submission of direct testimony in affidavit or declaration form will be required of the parties and other witnesses under their control. They are not to be used for adverse parties or for persons whose attendance must be compelled by subpoena.

### **Exhibits**

Documents to be offered as exhibits shall not be attached to witness statements but shall be pre-marked and exchanged along with other proposed exhibits in the usual fashion.

### **Jury Selection**

Juries ordinarily will be selected by the struck panel method.

## **BANKRUPTCY APPEALS**

Counsel shall provide chambers with two courtesy copies of their briefs, and counsel for appellant shall provide it with one courtesy copy of the record, immediately upon the filing of the originals with the Clerk of Court. The page limits applicable to memoranda of law on motions apply to briefs on bankruptcy appeals.

## **CRIMINAL CASES**

Upon the assignment of a criminal case to Judge Kaplan, the Assistant United States

Attorney immediately shall provide a copy of the indictment to chambers and arrange with the Deputy Clerk for a prompt conference at which the defendant and defense counsel will be present in order to set a discovery and motion schedule and a trial date and, if necessary, to arraign the defendant and set bail.

Unless otherwise ordered, proposed *voir dire* questions, requests to charge, and *in limine* motions shall be served, filed and delivered to chambers no later than ten (10) days prior to the scheduled commencement of trial.

Any written sentencing submissions on behalf of the defendant shall be submitted no less than fourteen (14) days prior to sentencing. Any written submissions by the government shall be submitted no later than seven (7) days prior to sentencing.

### **ELECTRONIC DEVICES**

Electronic devices – including cellular telephones, iPads, and laptops – are not permitted in Judge Kaplan’s courtroom, robing room or chambers.

Revised 4.18.2020



**Annex A -- Form of Pretrial Order**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

XX Civ. XXXX  
(LAK)

[caption]

The parties having conferred among themselves and with the Court pursuant to Fed. R. Civ. P. 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.

### I. NATURE OF THE CASE

[Set forth a brief statement of the general nature of the action and the relief sought by each party.]

### II. JURY/NON-JURY

[State whether a jury is claimed, whether there is any dispute as to whether the action should be tried to a jury, and the estimated length of the trial.]

### III. STIPULATED

FACTS [Set forth any stipulated facts.]

### IV. EXHIBITS

No exhibit not listed below may be used at trial except (a) for cross-examination purposes, (b) by plaintiff on rebuttal, or (c) if good cause for its exclusion from the pretrial order is shown.

[Each side shall list individually each exhibit it intends to offer on its case in chief. The list shall include an unambiguous, clear description of each exhibit which shall include its date and, where applicable, the names of the author and addressee. All exhibits shall be premarked.

[In cases likely to involve substantial numbers of deposition exhibits, the parties are encouraged to agree at the outset of discovery to assign a unique exhibit number or letter to each exhibit marked at any deposition so that exhibit designations used in deposition transcripts may be used without change at trial. Absent use of such a system, plaintiff's trial exhibits shall be identified by Arabic numerals and defendant's by letters (e.g., PX 1, DX 1, D-Jones A, D-Smith C).]

#### IV-A. PLAINTIFF'S EXHIBITS

## IV-B. DEFENDANT'S EXHIBITS

V. GENERAL PROVISIONS, STIPULATIONS AND  
OBJECTIONS WITH RESPECT TO EXHIBITS

Any objections not set forth herein will be considered waived absent good cause shown.

[The parties shall set forth any stipulations with respect to the authenticity and admissibility of exhibits and indicate all objections to exhibits and the grounds therefor.]

## VI. PLAINTIFF'S WITNESS LIST

## VII. DEFENDANT'S WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

[Each party shall list the witnesses it intends to call on its case in chief and, if a witness's testimony will be offered by deposition, shall designate by page and line numbers the portions of the deposition transcript it intends to offer. Each party shall set forth any objections it has to deposition testimony designated by the other and the basis therefor.]

## XI. RELIEF SOUGHT

[The plaintiff shall set forth the precise relief sought. If the plaintiff seeks an injunction, the proposed form of injunction shall be set forth or attached.]

Dated:

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U.S.D.J.

[Signatures of counsel]