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INDIVIDUAL PRACTICES OF JUDGE HAROLD BAER, JR.

Unless otherwise ordered, matters before Judge Baer shall be conducted in accordance with the following practices:

1. Communications with Chambers

As of September 3, 2013, all written communications with the Court—with the exception of letters to be filed under seal or containing sensitive or confidential information—must be filed on ECF pursuant to Section 13.1 of the ECF Rules. Unless otherwise directed by the Court or these rules, the parties should not communicate by fax or email. More general questions about how to proceed can first be raised by telephone call. Any problems with ECF filing should be directed to the Clerk of Court at 212-805-0136 or the ECF Help Desk at 212-805-0800.

**A. Letters.** Correspondence should be kept to a minimum. Copies of all correspondence to Chambers shall simultaneously be delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court. As a general matter, the Court reviews materials filed via ECF one business day after filing. If a submission requires immediate attention, the submitting party should notify Chambers by telephone after filing via ECF.

Letters to be filed under seal or containing sensitive or confidential information should be filed on ECF in redacted form and should also be delivered to the Court by fax or by mail. The Court will review requests to file under seal carefully and skeptically in accordance with Section 5(K), infra.

**B. Courtesy Copies of Letters.** Unless a letter is longer than 10 pages, courtesy copies of letters are not required. If

correspondence is longer than 10 pages (including any exhibits), courtesy copies must be submitted to the Court in addition to filing on ECF. The courtesy copy of any letter filed on ECF must be a copy of the filed version of the letter and must include the automatically-generated ECF header (i.e., the text appearing at the top of each page of a document on the ECF system and indicating the case number and document number).

**C. Telephone Calls.** Telephone calls to Chambers are permitted. For scheduling civil matters and all other questions related to civil cases other than those that concern docketing or electronic filing, call Chambers at 212-805-0184. For scheduling or other questions that concern criminal matters, contact Mr. Bill Donald at 212-805-0088. For matters relating to docketing or electronic filing, contact the office of the Clerk of Court at 212-805-0136 or the ECF Help Desk at 212-805-0800.

**D. Requests for Adjournments or Extensions of Time.** Any requests for adjournments or extensions of time (including requests for adjournments in criminal matters) must be in writing and must state whether the adversary consents. If the request is for an adjournment of a court appearance, including a Rule 16(b) pretrial conference, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

**E. Stipulations.** Any stipulated orders that are filed with the orders and judgments clerk should also be attached to a brief cover letter that explains the reason for the application and filed via ECF.

## **2. Complaint, Amendment, Answer and 7.1 Statement**

Courtesy copies of the complaint, answer, and Local Rule 7.1 Statements (if applicable), marked as such, shall be submitted to Chambers as soon as practicable after filing.

If a plaintiff wishes to amend its complaint once prior to the defendant's answer, it may do so without first seeking leave from the Court. The plaintiff may also amend following a motion to dismiss, pursuant to Section 5(G), infra. Additional amendments require an Order of the Court.

### **3. Pretrial Conferences**

After the complaint is filed, the plaintiff will receive a letter from Chambers that provides the date for the Rule 16 pretrial conference, a copy of these Individual Practices and a Pretrial Scheduling Order ("PTSO") form. Copies of both documents are also available on the SDNY website. It is the plaintiff's responsibility to notify the defendant(s) of the date of the conference and confer about the PTSO. Unless otherwise directed, pretrial conferences will occur in Chambers and not in the courtroom.

Parties should attempt to complete a copy of the form PTSO prior to attending the Rule 16(b) conference. At the conference, parties should be prepared to discuss scheduling matters, and, if applicable, issues with respect to disclosure and discovery of electronically stored information, privilege concerns related to that information and any other relevant concern. The parties should both come prepared to discuss the facts of the case.

If a party joins another party to the case, the new party shall be bound by the deadlines included in the original Pretrial Scheduling Order. The original party shall forward to the new party a copy of the Pretrial Scheduling Order and provide the new party with access to all previously taken discovery. Should compliance with the agreed upon timetable pose a seemingly insurmountable problem, call Chambers.

### **4. Discovery**

Discovery will not be stayed absent statutory command (e.g., the PSLRA), or upon order of this Court based on a showing of exceptional circumstances. See also Section 5(G), infra. The parties are expected to conduct discovery in a timely fashion, and no extensions to the pretrial schedule will be granted based on unnecessary delay.

Parties are expected to work out discovery disputes without court intervention and in accordance with the Federal Rules. If the dispute truly cannot be resolved, it should be raised with the Court without delay. Deadlines will likely not be extended based on a discovery dispute. The largess of granting adjournments to your adversary may well backfire, and you should be aware that the earlier you come to the Court, the more likely

you will keep in line with the PTSO.

## 5. Motion Practice

**A. Notice to the Court.** Upon filing notice of a motion to dismiss or for summary judgment, the moving party shall advise the Court by letter filed via ECF (1) that the motion has been filed (since Chambers only receives fully briefed motions); (2) the nature of the motion in a sentence or two; and (3) the date on which it is expected to be fully briefed. Motion papers are to be filed and served in accordance with the applicable Local and/or Federal Rules unless otherwise ordered by the Court. Any problems with ECF filing should be directed to the Clerk or ECF Help Desk.

**B. Briefing Schedule.** Motions should be briefed consistent with applicable Local and/or Federal Rules. The parties may alter the briefing schedule (e.g., the number of days each party has to submit its opposition or reply) without leave of Court if it does not affect the last day to file fully-briefed motions. Extensions of the fully-briefed motion date may be granted by the Court upon request and with the consent of all parties, but absent extraordinary circumstances will not be granted if it exceeds the PTSO deadline for fully briefed dispositive motions.

**C. 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. Memoranda of 10 pages or more shall contain a table of contents and table of authorities, which shall not count against the total number of pages.

**D. Courtesy Copies.** Courtesy copies, marked as such, of all motions should be submitted to Chambers only after the motion has been fully briefed, (i.e., moving, opposition, and reply papers have been filed and served). It is the movant's responsibility to submit one courtesy copy of the entire set of papers directly to Chambers. Courtesy copies should be served within one business day of the filing of the reply papers, or as soon thereafter as practicable. If Chambers does not receive the courtesy copies and the date for service comes and goes, parties should not expect more time, since Pretrial Scheduling Orders are rarely altered. This rule is for the Court's convenience and does not alter the parties' obligation to file their papers with the Clerk of Court or electronically, and to serve adverse parties in the time provided by the Local and/or Federal Rules or on the dates otherwise agreed to by the parties or ordered by the Court.

**E. Oral Argument.** Either party may request oral argument, and the Court will schedule one if time permits. Parties must request oral argument by letter or directly on the cover of the briefs provided to Chambers by courtesy copy.

**F. Pre-Motion Conferences in Civil Cases.** For motions other than discovery motions, pre-motion conferences are not required. For discovery disputes, a one page letter to the Court will suffice.

**G. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within 10 days of receipt of the motion, notify the Court and its adversary in writing whether: 1) it intends to file an amended pleading and when it will do so; or 2) it will rely on the pleading being attacked. If the non-moving party elects not to amend its complaint, no further opportunities to amend will be granted and the motion to dismiss will proceed in the regular course. This provision shall not stay or extend the time permitted by the Federal and/or Local Rules to respond to the pending motion to dismiss. If the party amends, the opposing party may then (1) file an answer (2) file a new motion to dismiss or (3) submit a letter stating that they will rely on the initially filed motion to dismiss.

With the exception of cases subject to the Private Securities Litigation Reform Act, or absent a showing of unique and exceptional circumstances, a pending motion to dismiss will not stay discovery or any other deadlines provided in the pretrial scheduling order.

**H. Habeas Petitions.** If filed by counsel, a courtesy copy of a habeas petition should be sent to Chambers.

**I. Unopposed Motion or No Reply.** If not served with opposition papers within the time provided, or within 48 hours thereafter, the moving party must submit a courtesy copy of its moving papers to the Court and indicate in the transmittal letter that no opposition was timely filed. If an opposition is filed and the moving party elects not to submit a reply brief, the moving party must submit to the Court courtesy copies of the moving papers and the opposition thereto and indicate in the transmittal letter that no reply brief will be filed and that the papers submitted constitute a fully briefed motion.

**J. Pro Se Opponent.** If the non-moving party is a *pro se* litigant, the moving party must indicate compliance with Local Rules 7.1(c) and 56.2 (if applicable) in its letter to the Court that encloses the courtesy copy of the fully briefed motion.

**K. Filing Under Seal.** Courts have long recognized the importance of public access to judicial documents, and filing such documents under seal is an exceptional procedure. I will carefully and skeptically review requests and stipulations to file documents under seal. In order to ensure the existence of a genuine need to seal a document, a party should be ready to demonstrate that a clearly defined and serious injury would result from disclosure. Sealed documents may be opened by order of the Court upon notice to the parties.

## 6. Pretrial and Trial Procedures

**A. Trial Date & Notification.** The Court maintains a trailing trial calendar wherein the parties, with some oversight from the Court, select their own trial month. Absent extraordinary circumstances, this trial month is set in stone. Approximately 45 days before the commencement of the Trailing Trial Month, the Court will send a Trial Notification to the parties, setting the date the trial will commence. In cases where the deadline for fully-briefed dispositive motions falls close to the Trailing Trial Month, the Court will endeavor to resolve any dispositive motions within sixty (60) days. The Trailing Trial Month must therefore be at least 60 days after the fully briefed motion deadline. Where the fully briefed dispositive motions are not in Chambers 60 days before the first day of the trial month, the Court may not reach and decide them and the case is likely to proceed to trial without a decision.

**B. Joint Pretrial Order and other trial materials.** The date on which the Joint Pretrial Order and other trial materials must be submitted to the Court will be set forth in the Trial Notification, and will generally be around two weeks prior to trial. The Trial Notification will state the form and content for the trial materials that must be submitted, and will vary with the type of trial. In general, however, the Joint Pretrial Order shall include the following:

1. The full caption of the action.
2. The names, addresses (including firm names), telephone numbers, email addresses and fax numbers of trial counsel.
3. Any stipulations of fact or law that have been agreed to by all parties.
4. A list by each party of all witnesses whose testimony will be offered in that party's case-in-chief and an indication as to whether such testimony will be in person or by deposition. Wherever possible the Court encourages live testimony. Where there is a question as to the availability of a witness, the parties must consult Chambers.

5. A brief statement of the case stipulated to by the Government and the defense.

6. In civil trials, a brief summary by each party of the claims and defenses that party has asserted which remain to be tried, including citations to all relied-upon statutes, but without recital of evidentiary matters. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried.

**C. Witness Testimony & Depositions.** Except as provided under the subsection below titled "Non-Jury Trials", the Court requires live testimony when witnesses are available. Deposition testimony may only be used when witnesses are unavailable and, in all cases, for cross-examination. Witnesses will only be called once during the course of trial, even if both parties intend to call the same witness. If, pursuant to Rule 32, this creates a problem, the Court will hear argument.

**D. Non-Jury Trials.** In bench trials, all direct examination is conducted via declarations (i.e., there is no live testimony on direct). All witnesses must, however, be available and present for live cross-examination.

**E. Exhibits and Evidence.** Trial exhibits will only be admitted into evidence if they are utilized on the record and/or referred to in the course of examination of a witness, and this is so notwithstanding any rulings the Court makes as to their admissibility at the outset of the trial. Before submitting exhibits to the Court in advance of trial, the parties must first identify any exhibits that more than one party intends to offer on its case-in-chief. If admissible, the Court will admit the exhibit into evidence only once, and the exhibit should appear only on the exhibit list of the party intending to introduce the exhibit first.

It should be noted that in all cases, any evidentiary or other issues will be resolved via in limine motions, prior to trial.

## 7. Procedure to Obtain Default Judgment

Applications for default judgments must comply with Federal Rule 55 and Local Rules 55.1 and 55.2, and must provide reasonable notice to the party against whom default shall be entered.



**Step 1:** Party must prepare an Order to Show Cause ("OTSC") for default judgment and attach supporting papers. Necessary attachments include:

1. An attorney's affidavit, including: (1) a statement of subject matter jurisdiction, (2) a statement of personal jurisdiction over the defendant; (3) a statement that the defendant is not an infant or incompetent; (4) the proposed damages and the basis for each element of damages including interest, attorney's fees, and costs; and (5) where appropriate, legal authority for why a damages inquest or hearing is unnecessary;
2. The proposed default judgment;
3. A copy of all the pleadings (including a copy of the affidavit of service of the summons and complaint); and
4. A Certificate of Default that the Clerk has signed and stamped.

**Step 2:** Party must bring the OTSC and supporting papers to the Orders and Judgments Clerk for initial review and approval.

**Step 3:** After approval, the party must bring the OTSC and supporting papers to Chambers. The Judge will sign the OTSC and set a date for the hearing. It is the moving party's responsibility to see that the supporting papers are filed on ECF. If the Judge is unavailable, he will review and sign the OTSC at a later date. The judge may decide that an inquest or hearing is necessary to determine whether to issue a default judgment or to determine damages.

**Step 4:** Prior to the return date set in the OTSC, the party must serve the defendant with notice of the pending default judgment. The party must also file through the CM/ECF system:

1. An affidavit of service of the default and supporting papers on the defendant
2. The aforementioned supporting papers. (The signed OTSC will be scanned and docketed by Chambers.)

**Step 5:** Prior to the hearing date, the party must take the proposed judgment, separately backed, to the Clerk for approval. The Clerk must approve the proposed judgment, including damages and interest calculations.

**Step 6:** Party must attend the hearing, where the Judge will issue his decision.

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If for any reason you are unclear with respect to any of the above, please call Chambers and let us clarify and resolve your concerns. Failing to do so will permit the Court to presume you understand all of it and are acting in accordance therewith.