Attachment 1

TRIAL PROCEDURES OF UNITED STATES DISTRICT JUDGE VICTOR MARRERO SOUTHERN DISTRICT OF NEW YORK

Effective September 1, 2010

Counsel with either jury or bench trials scheduled before Judge Marrero are to comply with the following practices.

I. PRETRIAL SUBMISSIONS

A. Civil Cases. 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 following pretrial submissions:

1. A joint pretrial order which shall include:

(a) The full caption of the action;

(b) The name (including firm name), address, telephone number, and fax number of trial counsel;

(c) A brief summary by each party of the claims and defenses which that party has asserted and which remain to be tried, without recital of evidentiary matters, but including citations to all statutes upon which the party relies. Such summaries shall identify all claims and defenses previously asserted which are not to be tried;

(d) 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; and the number of jurors requested and whether the jury vote is to be unanimous;

(e) A statement as to whether all parties have consented to trial before the designated magistrate judge;

(f) Any stipulations or agreed statements of fact or law;

(g) A list by each party of all witnesses whose testimony is to be offered in its case in chief (including the qualifications of any expert witnesses) indicating the likely order of appearance and whether such witnesses will testify in person or by deposition and briefly summarizing the testimony of each witness and its relevance to the issues on trial;

(h) A designation by each party of deposition testimony to be offered in its case

in chief, with any cross-designations and objections (with ground(s)) by any other party; and

(I) A list by each party of exhibits to be offered in its case in chief, marked with one star indicating the exhibits to which there is any objection. The ground(s) for each objection should be listed. The exhibits to which no party objects should be listed with no stars. Prior to the submission of exhibits to be offered in evidence and any demonstrative materials summarizing evidence, the parties shall confer and agree upon exhibits and other materials as to which there is no objection to their admission into evidence or publication to the jury. Such exhibits or demonstrative materials should be inserted in the respective party's trial binders. Any exhibit or material as to which legal objection exists and whose introduction is to be challenged should be separately identified and arranged by each side for review and argument before the Court at the appropriate occasion during the trial. To the maximum extent possible, the parties should also endeavor to stipulate to the authenticity of documents, chain of custody, copies in lieu of originals, and other related routine or technical evidentiary matters, so as to minimize the need to present special witnesses through whom to introduce such exhibits.

Unless otherwise ordered by the Court, all pretrial submissions shall be submitted in hardcopy and on a CD-Rom, formatted in Microsoft Word or a compatible word processing program.

2. All motions in limine. Opposition briefs shall be due one week after such motions are served. Reply memoranda, if any, shall be due within three days of the service of opposition motions. All motions in limine shall be fully briefed at least two weeks before trial.

3. For jury trials, each party is required to submit at the time the joint pretrial order is filed: (a) a pretrial memorandum no longer than 10 pages limited to a brief discussion of the issues to be tried and authorities relied upon; (b) joint proposed *voir dire* questions drafted with the other parties; (c) joint proposed requests to charge drafted with the other parties citing the authority for each proposed charge; and (d) a joint list of individuals, companies and other entities that may appear as witnesses, or otherwise be referred to during the trial, including a brief recitation of what matters each witness is expected to address. If parties disagree on requests to charge, the disagreement should be addressed by each party stating its proposed requested charge, followed by a succinct statement of the authority in support of each party's position.

4. For bench trials, unless otherwise instructed by the Court, each party is required to submit at the time the final joint pretrial order is filed: (a) a pretrial memorandum no longer than 15 pages limited to a discussion of the issues to be tried and authorities relied upon; (b) proposed findings of fact and conclusions of law; and (c) a joint list of individuals, companies and other entities that may appear as witnesses, or otherwise be referred to during the trial, including a brief recitation of what

matters each witness is expected to address.

B. Criminal Cases. 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 following pretrial submissions:

1. All motions in limine. Opposition briefs shall be due one week after such motions are served. Reply memoranda, if any, shall be due within three days of the service of opposition motions. All motions in limine shall be fully briefed at least two weeks before trial.

2. For jury trials: (a) joint proposed requests to charge, citing the authority for each proposed charge; (b) joint proposed *voir dire* questions drafted with the other parties; and © to the extent known, a joint list of individuals, companies and other entities that may appear as witnesses, or otherwise be referred to during the trial, including a brief recitation of what matters each witness is expected to address. If parties disagree on requests to charge, this disagreement should be addressed by each party stating its proposed requested charge, followed by a succinct statement of the authority in support of the respective party's position.

3. For bench trials: to the extent known, a joint list of individuals, companies, and other entities that may appear as witnesses, or otherwise be referred to during the trial, including a brief recitation of what matters each witness is expected to address.

II. FINAL PRETRIAL CONFERENCE

The Court will schedule a final pretrial conference approximately two weeks before trial. Counsel who will try the case must attend. In civil cases, the Court may use the occasion as an opportunity to explore the prospects of settlement. Counsel must be prepared to engage in meaningful settlement discussions.

III. TRIAL DATES AND TIMES

All trials will be scheduled to commence on firm dates. Counsel should notify the Court in person at any conference or in writing of any potential scheduling conflicts that would prevent a trial at a particular time. Counsel should notify the Court and other counsel in writing, at the earliest possible time, of any particular scheduling problems involving witnesses.

Unless otherwise decided by the Court, trials will be conducted Monday through Friday from 9:00 a.m. to 5:00 p.m. with a lunch break from about 12:45 p.m. to about 2:00 p.m. In jury trials, in order to keep distractions during the trial to a minimum, upon request by the Court counsel must be present prior to 9:00 a.m. and after 5:00 p.m. to discuss scheduling for the day and any disputed matters that may arise during the day's proceedings. One ten or fifteen-minute break will take place

in the morning and one will take place in the afternoon. This break may also be used to address disputes that arise during the trial.

IV. COURTROOM TECHNOLOGY

Unless otherwise decided by the Court, trials will be conducted in the Daniel Patrick Moynihan United States Courthouse (the "Courthouse"), Courtroom 20B (the "Courtroom"). For information about technology available in the Courtroom, or for information about installation of additional technology in the Courtroom for the purposes of a trial or other proceeding, please contact the Courthouse's Office of Courtroom Technology/AV Services at (212) 805-0134.

Parties seeking to bring laptops and other General Purpose Computing Devices ("GPCDs") into the Courthouse for a trial or other proceeding must request authorization from the Court. Such requests shall be submitted by letter at least ten calendar days prior to the trial or proceeding, and should detail each device for which the party seeks authorization, the attorney responsible for bringing each device into the Courthouse, and the dates on which the device(s) will be needed in the Courthouse. Upon receipt of a request for authorization, and determination that the technology requested is permissible and appropriate for the proceeding indicated, the Court will issue an Order to be presented by the attorney(s) when entering the Courthouse with the device(s). Standing Order M-10-468 (the "Standing Order"), issued on February 17, 2010 by Chief Judge Loretta Preska adopts a presumptive limit of three laptops or other GPCDs for each separately represented party or group of parties. Any party seeking a variance from the presumptive limit of three must include the justification for the variance in its letter-request to the Court.

The Standing Order also governs the bringing of cell phones, Blackberries, and other Personal Communications Devices ("PCDs") into the Courthouse and the Courtroom. The Standing Order does not allow cell phones and other PCDs into the building unless the person bringing the PCD is an AUSA, a Federal Defender, or a member of the Southern District of New York Bar with a valid service pass ("Service Pass") issued by the District Executive's Office. If an individual does not have a Service Pass, or is otherwise not entitled to bring a PCD into the Courthouse pursuant to the Standing Order, an order issued by the Court is ineffective to permit him or her to do so.

The parties' bringing equipment into the building constitutes a certification by them that the electronic device(s) lack (a) the capacity to make or record images or sounds or to send or receive wireless transmissions, and (b) one or more infrared ports or, alternatively, that any such capability or ports have been disabled. Unless authorized by the Court, the parties shall not use or permit the use of such equipment to make or record images or sounds, as provided for in Local Civil Rule 1.8, or to send or receive wireless transmissions.

V. COURTROOM DECORUM

1. Counsel and parties are to stand as the Court is opened, recessed and adjourned.

2. Counsel and parties are to be on time for each court session. If counsel have matters in other courtrooms when a trial is scheduled, arrange in advance to have a colleague handle appearances for you.

3. Counsel shall stand at the table or lectern when addressing the Court or jury, including when making objections and for opening and closing statements. Counsel unable to stand on account of physical disabilities will be excused from this requirement. Counsel should not stand when opposing counsel is addressing the Court.

4. Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination. Unless otherwise permitted by the Court, only one attorney for each party will be recognized for purposes of any sidebar conferences.

5. In making an objection, counsel should be brief and direct, and, if so requested by the Court, state the legal ground and appropriate authority for the objection. Counsel should not argue the objection in the presence of the jury or argue with the ruling of the Court in the presence of the jury. Counsel should not make any motion (e.g., a motion for a mistrial) or make references to rulings reserved for appeal in the presence of the jury. Such matters may be raised at the next recess.

6. Counsel should stand at the lectern when questioning witnesses. Counsel unable to stand on account of physical disabilities will be excused from this requirement. When questioning a witness, counsel should not pace about the courtroom or face or otherwise appear to address the jurors.

7. Counsel should address all remarks to the Court, not to opposing counsel, and should stand a respectful distance from the jury at all times.

8. Counsel should refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.

9. Counsel should request permission before approaching the bench or any witness. Any document counsel wishes to have the Court examine should be handed to the clerk.

10. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.

11. Persons at counsel tables shall not make gestures, facial expressions, audible comments or the like as manifestations of approval or disapproval at any time during trial.

12. Counsel intending to question a witness about a group of documents should have all documents prepared at the beginning of the examination.

VI. BENCH TRIALS

1. Opening statements and closing arguments will be allowed with the Court's permission.

2. Direct testimony may be offered by affidavit or deposition transcripts with permission of

the Court.

3. Counsel for each party shall submit a list of all affiants, if any, intended to be cross-examined at trial at least five business days prior to trial.

4. Proffering counsel shall mark the portions of each deposition transcript that will be offered in evidence and supply one copy to the Court. Only the relevant, evidentiary portions of the transcript should be marked and included.

VII. JURY TRIALS

1. Proffering counsel shall mark the portions of each deposition transcript that will be offered in evidence and supply one copy to the Court. Only the relevant, evidentiary portions of the transcript should be marked and included.

2. Counsel shall have all necessary witnesses on hand on the particular day designated to commence and continue the trial.

3. Sidebar conferences will be kept to a minimum.

4. Opening Statement: Parties are directed to summarize the evidence they intend to present and not to discuss the law. Parties are asked to provide a concise summary of the important facts. Do not describe in detail what particular witnesses will say, and do not express personal knowledge or opinion concerning any matter in issue. Unless the case is unusually complex, each party's opening statement will be limited to not more than 15 minutes.

5. Closing Argument: In a closing argument, based on the Court's rulings at the charge conference and draft instructions approved by the Court, counsel may tell the jury what they believe the substance of the Court's instruction on a particular subject may be, but may not read or quote any instruction or refer to any instruction the Court has not approved. Unless the parties agree otherwise, the party with the burden of proof closes last. In a civil matter, the closing argument of the defendant(s) is heard first, and plaintiff's closing follows thereafter without rebuttal argument. In a criminal case, it is the Court's practice to permit the Government to present closing arguments first, the defense to offer its summation thereafter and then the Government to offer any rebuttal. Whatever the sequence, both sides would be allowed the same total amount of time for closing.

VIII. EXHIBITS

Counsel should stipulate to the foundation for all exhibits whose authenticity is not questioned. Trial time should not be wasted on unnecessary foundation testimony, such as belabored development of a witness's academic and professional background or charity work. All exhibits should be marked prior to introduction. No trial time will be used for this purpose.

At the beginning of the trial, two complete sets of documentary exhibits in trial binders should be handed to the Judge's clerk for use by the Judge and his staff during trial. At trial, sufficient copies of pre-marked exhibits are to be made available for the Court and counsel by the proponent of the exhibits. Upon application, the Court may excuse a party from these requirements where they would be burdensome.

In trial binders and on each document offered in evidence, plaintiffs are to pre-mark their exhibits using numerals preceded by "P. Ex. ___"; Defendants are to use letters preceded by "D. Ex. ___". If counsel are not familiar with the procedure for marking exhibits or have any questions regarding marking exhibits for identification, they should contact the clerk assigned to the case at (212) 805-6374.

IX. JURIES AND JURY SELECTION

The Court uses the struck panel method, a description of which follows.

The Court allows jurors to take notes and will supply the jurors with notepads and pens. Jurors who take notes will be required to leave them in the court room or the jury room at all times. After the trial, the Court will dispose of the notes. Under appropriate circumstances, the Court may allow jurors to submit in writing questions the jurors request the Court to ask of witnesses or parties. Where this discretion is exercised, the Court will advise counsel of any question(s) and will provide the jurors strict guidelines defining the circumstances and the type of questions that may be permitted.

INSTRUCTIONS TO COUNSEL CONCERNING JURY SELECTION

The following is a description of the struck panel method by which the jury will be selected in all trial proceedings before Judge Marrero.

The Court will conduct a *voir dire* of a number of panelists computed by totaling the following: the number of jurors to be selected; the number of alternates to be selected in a criminal case (generally 2); and the number of peremptory challenges. Thus, in a single defendant criminal case in which the defendant has 10 and the government has 6 peremptory challenges, plus one challenge each with respect to alternates, the *voir dire* will encompass 32 panelists.

In a civil case, the number of peremptory challenges allowed each side varies with the number of panelists to be selected. Thus, in a civil case, the following panel sizes apply:

# JURORS	# PEREMPTORY CHALLENGES	PANEL SIZE
6	3 per side	12

8	4 per side	16
10	4 per side	18

After the *voir dire* of the requisite panelists, and dismissal of those for whom clear grounds for disqualification for cause have been found, the Court and counsel will adjourn to the robing room to determine whether there is legitimate basis for any additional challenges for cause. If valid reasons are found for further challenges for cause, any panelist then removed will be replaced by one of those remaining in the pool, so that there is a full panel before any peremptory challenges are exercised. Accordingly, all remaining panelists will be available to challenge at all rounds, even if passed over on an earlier round by the same party.

In a civil case, plaintiff exercises the first challenge, followed by the defendant's first challenge. The parties proceed in that fashion until all the peremptories are exhausted. In a single defendant criminal case, the defendant exercises 2 challenges, the Government 1 for four rounds; then each side exercises 1 challenge for two rounds, making a total of 10 and 6.

A party may waive its right to challenge, but may not reserve, by, for example, passing a round and taking two the next round. Challenges may be made to any of the panelists regardless of where that panelist appears in the array.

When each side has exhausted its peremptory challenges, the first 12 unchallenged names constitute the jury in a criminal case and the first 6, 8, or 10 persons in the order in which they are seated shall constitute the jury in a civil case. The juror seated in the chair closest to the judge's bench is automatically designated to be the foreperson of the jury.

In a criminal case, after the 12-person jury is selected, each side has 1 additional challenge which may be exercised only with respect to the alternates, who are selected from the last four remaining unchallenged panelists after the 12 regular jurors have been selected. There are no alternates in a civil case.

In a multi-party case, each side will be allocated the number of peremptories corresponding to it, to be distributed among the multiple parties in accordance with their own equitable arrangement to be approved by the Court.