

INDIVIDUAL PRACTICES IN CIVIL CASES
Valerie Caproni, United States District Judge

Chambers

United States District Court
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Unless otherwise ordered, these Individual Practices apply to all civil matters before Judge Caproni, except for civil *pro se* cases (see *Individual Practices in Civil Pro Se Cases*, at <http://nysd.uscourts.gov/judge/Caproni>). In cases designated to be part of the Section 1983 Plan, the Section 1983 Plan's procedures shall govern to the extent that they are inconsistent with these Individual Practices.

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court should be by letter. Letters should be filed electronically on ECF unless there is a request to file a letter under seal or a letter contains sensitive or confidential information (see Rule 4A, below). Copies of correspondence between counsel shall not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document). In all correspondence with the Court making a request, the requesting party must indicate whether the adversary consents to that request.
- B. Telephone Calls.** For docketing, scheduling, and discovery matters, call Chambers at (212) 805-6350. Otherwise, telephone calls to Chambers are permitted only for urgent matters.
- C. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made by letter and must state: (1) the reason for the proposed adjournment or extension; (2) the original due date; (3) the number of previous requests for adjournment or extension of time; (4) whether the other party or parties consent and, if not, the reason given for refusing to consent; and (5) proposed alternative dates. Absent an emergency, the request shall be made at least 48 hours prior to the original due date.
- D. Docketing of Letters.** Absent a request to file a letter under seal, any substantive letter will be docketed by the Court.
- E. Proposed Orders and Stipulations.** All proposed orders, stipulations, and judgments must be submitted as attachments or exhibits to a letter to the Court

filed on ECF explaining the purpose of the proposed order, stipulation, or judgment. The parties must also email a Microsoft Word version to the Court at CaproniNYSDCChambers@nysd.uscourts.gov.

- i. Copies of all proposed stipulations and orders dismissing a case or dismissing parties from a case must also be delivered to the Orders Clerk (500 Pearl Street, Clerk's Office). Judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk's Office). Alternatively, counsel may email any such proposed orders or judgments to ordersandjudgments@nysd.uscourts.gov.

F. Urgent Communications. Materials filed via ECF are not necessarily reviewed the same day they are filed. If a submission requires immediate attention, please notify Chambers by telephone after filing on ECF.

2. Conferences

A. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16 conference on a Friday approximately one month from the filing of the Complaint. Plaintiff's counsel (or, in a matter removed from state court, defendant's counsel) is responsible for distributing copies of the Notice of Initial Pretrial Conference to all parties. The Notice will direct the parties to submit to the Court, approximately one week prior to the conference date, a joint proposed Case Management Plan and Scheduling Order and a joint letter. Requests for adjournments of the initial pretrial conference must be made in accordance with Rule 1C of these Individual Practices and must include proposed alternative dates that fall on Fridays.

- i. All parties should be prepared to discuss at the initial pretrial conference any pending or anticipated motions as well as the basis for subject matter jurisdiction.
- ii. In cases invoking the Court's diversity jurisdiction, the parties' joint letter should address:
 - a. if any party is a corporation, that party's place of incorporation and the principal place of business, as defined in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010).
 - b. if any party is a partnership, limited partnership, limited liability company, or trust, the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

B. Discovery Disputes. In the case of discovery disputes, the parties should follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court must first meet and confer in good faith

with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this process fails and the Court's intervention is required, the parties must jointly call Chambers to schedule a joint teleconference with the Court for prompt resolution of the dispute. The Court will determine during the teleconference whether additional submissions will be required. Parties should not make written submissions regarding discovery disputes absent Court permission.

3. Motions

- A. **Pre-Motion Submissions.** Pre-motion submissions are not required for any motion.
- B. **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 must contain a table of contents and a table of authorities, which do not count toward the page limit.
- C. **Courtesy Copies.** At the time the reply is served or as soon thereafter as practicable, the movant must mail or hand-deliver to the Court one courtesy copy of all papers relevant to the motion, including those opposing the motion. Exhibits should be organized in a tabbed 3-ring binder. Unless doing so would be unduly burdensome, the movant must also provide the Court with a CD containing electronic, text-searchable copies of any hearing or deposition transcripts, as well as any other item on which the parties rely that cannot be submitted as a single file on ECF (e.g., videos or very long documents).
- D. **Oral Argument on Motions.** Parties may request oral argument by letter or directly on the cover of the briefs when they file their moving, opposing, or reply papers. The Court will determine whether argument will be heard and may order oral argument *sua sponte*.
- E. **Motions to Dismiss:**
 - i. **Amending the Complaint or Cross- or Counterclaims.** If a motion to dismiss is filed, the Plaintiff (or cross- or counter-claimant) 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 (or cross- or counter-claimant) elects to 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 via ECF, copying the Plaintiff (or cross- or counter-claimant), stating that it wishes to rely upon its previously-filed motion to dismiss. If the Plaintiff (or cross- or counter-claimant) amends its pleadings, the Court will dismiss the original motion to dismiss as moot without notice to the parties.

- ii. **Briefing Schedule.** If the Plaintiff (or cross- or counter-claimant) elects not to amend its pleading, the motion will proceed in the normal course pursuant to the briefing schedule set by the Court (or, in the absence of a specific order, by Local Rule 6.1(b)). In that situation, subsequent leave to amend the complaint to address the deficiencies that were identified in the motion to dismiss will not be granted. Filing a response to the motion will be treated as an election not to amend the pleading.

- F. **Motions to Exclude the Testimony of Experts.** Motions to exclude the testimony of experts should not be treated as motions *in limine*. If the parties anticipate that there will be a dispute over the admissibility of expert testimony, the issue must be raised at the status conference following the close of fact discovery so that the Court may set an appropriate briefing schedule. If such a dispute arises after that status conference, the party disputing the admissibility of the expert’s testimony must promptly notify the Court so that an appropriate briefing schedule may be set.

- G. **Motions for Summary Judgment:**
 - i. **Generally Not Available in Non-Jury Cases.** Absent good cause, the Court generally will not consider summary judgment motions in non-jury cases. If a party wishes to move for summary judgment in a non-jury case, that party should raise the issue in the parties’ joint letter submitted before the status conference following the close of fact discovery.

 - ii. **Local Rule 56.1 Statements.** Pursuant to Local Civil Rule 56.1, a movant for summary judgment must file a statement of material undisputed facts (“56.1 Statement”) and the opposing party must respond.
 - a. **Organization of 56.1 Statements.** The 56.1 Statement must be organized into numbered paragraphs and each numbered paragraph must contain only one factual assertion. Each factual assertion must be supported by a citation to the portion(s) of the evidentiary record relied upon.

 - b. **Responses to 56.1 Statements.** Opposing parties must reproduce each entry in the moving party’s 56.1 Statement and set out the opposing party’s response directly beneath it. The response must state specifically what is admitted and what is disputed, as well as the basis for any dispute and citations to specific portions of the evidentiary record that supports the existence of a genuinely-disputed fact. The response may make additional factual allegations in paragraphs numbered consecutively to those of the moving party (i.e., do not begin re-numbering at 1). If additional factual allegations are made by the opposing party, the moving

party must file its own responsive 56.1 Statement addressing the additional assertions.

- c. **Multiple Parties Must Coordinate Statements.** If multiple parties are submitting 56.1 Statements in support of or opposition to the same motion, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.
- d. **Statements of Facts.** 56.1 Statements may not serve as a substitute for a statement of facts in a memorandum of law. If a party incorporates a 56.1 Statement in place of a statement of facts, the Court may order the party to amend its memorandum to include facts and will not provide additional pages in which to do so.

H. Motions for Default Judgment. A party seeking a default judgment must proceed by way of an Order to Show Cause pursuant to the procedure set forth in Attachment A.

4. Other Pretrial Guidance

A. Redactions and Filing Under Seal. Any party wishing to file any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, in redacted form or under seal must request permission to do so. The request must explain why sealing is appropriate in light of the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). The party must (1) file that request on ECF, if possible, and otherwise by email; and (2) email chambers (CaproniNYSDCchambers@nysd.uscourts.gov) both an unredacted copy of the document and a copy of the document highlighting the information it seeks permission to redact or the information that necessitates filing the entire document under seal. At the same time, the party should file the redacted document on ECF. If the application for redaction or sealing is approved, the party should file an unredacted copy of the document under seal with the Sealed Records Department.

If a request to file a redacted document is based on another party's designation of information as confidential, the parties shall confer and jointly submit the request to file the material in redacted form.

B. Applications for a Temporary Restraining Order. A party must confer with his or her adversary before making an application for a temporary restraining order unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party decides to seek a temporary restraining order, he or she must call Chambers at (212) 805-6350 to schedule a time to present its application to the Court and state

clearly whether (1) he or she has notified the adversary, and whether the adversary consents to temporary injunctive relief; or (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is required. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable to the party and its adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.

5. Settlements.

- A. Maintaining Jurisdiction.** Absent extraordinary circumstances, the Court will not retain jurisdiction to enforce a confidential settlement agreement. If the parties would like the Court to retain jurisdiction to enforce their settlement agreement, the parties must either publicly file the terms of that agreement or submit a request to file the agreement under seal in accordance with Rule 4A. The Court will determine whether to retain jurisdiction after the settlement agreement is filed.
- B. Approval of Class Action Settlements:**
- i. Attorneys Receiving Fees.** Counsel seeking preliminary approval of a class action settlement that includes payment of attorneys' fees must specify all attorneys with whom counsel intends to share the fees, regardless of whether those attorneys have filed a Notice of Appearance. Counsel should also provide a fair approximation of the number of hours the attorneys have devoted to the case and their regular billing rates.
 - ii. Factors to Address.** Any motion for preliminary approval of a class action settlement must provide sufficient information regarding: (i) the complexity, expense, and likely duration of the litigation; (ii) the litigation risk, including the risks of establishing liability and damages; (iii) the damages class members allegedly suffered; (iv) the range of reasonableness of the settlement in light of the best possible recovery and the attendant risks of litigation; and (v) the rationale for any discount from the "best case" damages calculation, so that the Court can make a preliminary finding as to whether the proposed settlement is procedurally and substantively fair pursuant to Federal Rule of Civil Procedure 23(e). *See Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).
 - iii. Certification of a Settlement Class.** Motions for conditional certification of a class action settlement must establish that the requirements of Federal Rule of Civil Procedure 23 are met. The motion must show that the requirements of Rule 23(a) and (b) are satisfied, as well as provide facts that would support a preliminary conclusion that the settlement is procedurally and substantively fair pursuant to Rule 23(e).

6. Trial Procedures.

- A. Joint Pretrial Order.** Unless otherwise ordered by the Court, no later than two weeks prior to trial the parties shall submit to the Court on ECF a proposed joint pretrial order. The parties must also email a Microsoft Word version to CaproniNYSDCChambers@nysd.uscourts.gov. In addition to the materials required in Fed. R. Civ. P. 26(a)(3), the joint pretrial order shall include the following:
- i. The full caption of the action;
 - ii. The names, law firms, addresses, and telephone numbers of trial counsel;
 - iii. 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;
 - iv. 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 should not recite any evidentiary matter;
 - v. A statement as to the number of trial days needed and whether the case is to be tried with or without a jury;
 - vi. A statement as to whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
 - vii. Any stipulations or agreed statements of fact or law to which all parties consent;
 - viii. 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;
 - ix. A statement of whether the parties consent to less than a unanimous verdict;
 - x. A list of all trial witnesses that indicates whether the witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
 - xi. In jury cases, joint proposed requests to charge, joint proposed *voir dire* questions, and joint proposed verdict sheets. Proposed requests to charge

may not be submitted after the due date for the joint pretrial order unless they meet the requirements of Fed. R. Civ. P. 51(a)(2)(A). Proposed requests to charge must include citations to supporting legal authority;

- xii.** A list by each party of exhibits to be offered in its case in chief, any objections by the opposing party and the grounds there for, and responses, if any, to those objections. Exhibit lists must take the following form:

Plaintiff’s Exhibits

| <u>Ex.</u> | <u>Description</u> | <u>Objection</u> | <u>Response</u> |
|------------|---------------------------------|----------------------------|---|
| P-1 | May 4, 2012 photos of operation | FRE 403 – unfair prejudice | Prejudice does not substantially outweigh probative value |

Defendant’s Exhibits

| <u>Ex.</u> | <u>Description</u> | <u>Objection</u> | <u>Response</u> |
|------------|--------------------|------------------|-----------------|
| D-1 | -- | -- | -- |

- xiii.** With respect to any deponent who will not be testifying in person at trial, a designation by each party of deposition testimony to be offered in its case in chief and any counter-designations, the grounds for any objections, and any responses to those objections. Deposition designations must be organized chronologically by witness and must take the following form:

John Doe

| <u>Designating Party</u> | <u>Page Range</u> | <u>Objection</u> | <u>Response</u> |
|--------------------------|-------------------|------------------|-----------------|
| Plaintiff | 6:21–8:2 | -- | -- |
| Defendant | 8:10–16 | -- | -- |
| Plaintiff | 10:17–11:16 | -- | -- |

- xiv.** Full transcripts of any depositions for which designations have been made pursuant to subsection (xiii) above, with designated testimony highlighted in yellow if there is no objection and in pink if there is an objection. Transcripts must be attached as exhibits to the joint pretrial order and also submitted in a text-searchable format, either on ECF or by email.
- xv.** To the extent a party intends to introduce, for impeachment purposes, a deposition transcript of any witness who will be testifying in person at trial, the full transcript of the appropriate deposition must also be attached as an exhibit to the joint pretrial order and submitted to the Court in a text-searchable format either on ECF or by email.

- B. Motions *in limine*.** In both jury and non-jury cases, the parties shall file any motions that address evidentiary issues or other matters that should be resolved *in limine* no later than three weeks before trial. Responses to motions *in limine* shall be filed no later than two weeks before trial. Unless instructed otherwise, the parties are not to file reply briefs in support of motions *in limine*.
- C. Required Pretrial Filings.** Each party shall file on ECF and serve with the joint pretrial order:
- i.** In all cases where the parties believe it would be useful to the Court, a pretrial memorandum of law and any opposition;
 - ii.** In non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered evidence as there may be no opportunity for post-trial submissions. The parties must also email Microsoft Word versions of these items to CaproniNYSChambers@nysd.uscourts.gov.
- D. Trial Exhibits.** No later than two weeks before trial, each party shall submit to the Court a tabbed and indexed binder containing one copy of each documentary exhibit sought to be admitted with pre-marked exhibit numbers and an exhibit list formatted in four columns titled: Exhibit Number; Short Description of Exhibit; Identified; Admitted.
- E. Courtesy Copies.** With the exception of trial exhibits, two courtesy copies of all documents identified in this Section must be mailed or hand-delivered to Chambers on the date on which they are to be served or filed. Only one courtesy copy of trial exhibits is necessary. Voluminous material should be organized in tabbed binders unless doing so is unduly burdensome to the parties.

7. Policy on the Use of Electronic Devices

- A. Pre-Approved Personal Electronic Devices.** Attorneys' use of mobile phones, Blackberries, and other such personal electronic devices within the Courthouse and its environs is governed by Revised Standing Order M10-468. Subject to security screening, any attorney who is a member of this Court's Bar, obtains the necessary service pass from the District Executive's Office, and shows the service pass upon entering the Courthouse may bring some personal electronic devices into the Courthouse. Mobile phones are permitted inside the Courtroom, but they must be kept turned off at all times. Non-compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.
- B. Other Electronic Devices.** Prior court order is required for an attorney to bring into the Courthouse any general purpose computing device, such as a laptop or tablet, or any other electronic equipment that does not qualify as a "personal electronic device" pursuant to Revised Standing Order M10-468 (available at

<http://www.nysd.uscourts.gov/file/forms/standing-order-electronic-devices>). In addition, prior court order is required for any attorney who has not obtained service pass from the District Executive's Office and wishes to bring a personal electronic device into the Courthouse. Any attorney seeking to bring such equipment into the Courthouse should e-mail a proposed order pursuant to M10-468 to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. A fillable version of the order is available at <http://nysd.uscourts.gov/file/forms/standing-order-electronic-devices-form>. If the request is granted, Chambers will file the Order and coordinate with the District Executive's Office. The Order must be shown upon bringing the equipment into the Courthouse.

DEFAULT JUDGMENT PROCEDURE

1. Prepare a proposed Order to Show Cause for default judgment.
2. Provide the following supporting papers with the proposed Order.
 - 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 basis for subject matter jurisdiction, setting forth the citizenship of each party if the Court's jurisdiction is based upon diversity;
 - iii. the procedural history beyond service of the Summons and Complaint, if any;
 - iv. 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;
 - v. the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - vi. legal authority why an inquest into damages is unnecessary (if that is the movant's position).
 - b. A proposed default judgment.
 - c. A copy of the Affidavit of Service of the pleadings to which the lack of response forms the basis for the default.
 - d. If failure to answer is the basis for the default, a certificate of default signed by the Clerk of Court pursuant to Local Civil Rule 55.1.
3. Submit 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 has approved the Order to Show Cause, promptly contact Chambers at (212) 805-6350 to arrange for delivery of the papers to Chambers for the Judge's review. Provide a courtesy copy of the supporting papers for Chambers.
5. If the Judge signs the Order to Show Cause, serve a conformed copy of it and supporting papers on the defendant. Chambers will docket and retain the original signed Order. The Order to Show Cause will inform the parties when to appear for a show cause hearing.

6. Prior to the show cause hearing, file on ECF: (1) an Affidavit of Service, reflecting that the defaulting party was served with a conformed copy of the Order and supporting papers; and (2) the supporting papers.
7. Prior to the show cause hearing, submit the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for the Clerk's approval and email a Microsoft Word version to CaproniNYSChambers@nysd.uscourts.gov. The Clerk must approve the proposed judgment, including all damage and interest calculations, prior to submission for the Judge's signature. If there is a hearing, bring the proposed judgment to the hearing. If there is not a hearing, file the proposed judgment on ECF.
8. The Court will determine whether to enter the default judgment and docket any judgment on ECF.