

**Judge Orelia E. Merchant**

United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201  
Courtroom: 6C South

Chambers Telephone: (718) 613-2460  
Facsimile: (718) 613-2466

Courtroom Deputy: Tasheana Lubin  
Telephone: (718) 613-2465

**INDIVIDUAL PRACTICES AND RULES**

Unless otherwise ordered by the Court in a specific case, matters before Judge Merchant shall be conducted in accordance with the following practices:

**I. COMMUNICATIONS WITH CHAMBERS**

**A. Written Communications with Chambers**

1. All communications with chambers shall be in writing and filed on ECF, with copies simultaneously delivered to all parties who do not receive automatic notification through ECF. Copies of correspondence between counsel shall not be sent to the Court.
2. All correspondence shall identify on whose behalf counsel is writing and must include the case, name, docket number, and initials of the judge(s) assigned to the case.

**B. Telephone Calls**

Telephone calls to chambers are permitted, but parties seeking clarification of these Individual Rules or case-specific action should docket their request in a letter to ECF. Please thoroughly review this document and the Local Rules before calling chambers with questions.

When calling chambers, please state the full case name and docket number.

**C. Docketing, Scheduling, and Calendar Matters**

For docketing, scheduling, or calendar matters, call Tasheana Lubin at (718) 613-2465. Attorneys should review the ECF docket prior to inquiring as to the scheduling of conferences and other questions regarding the docket.

#### **D. Emails and Faxes**

Except as provided in these Rules, emails and faxes to chambers are permitted only if prior authorization is obtained. All faxes should be simultaneously provided to all counsel and followed with an electronic filing.

#### **E. Deposition Disputes**

If parties encounter problems at a deposition, they should first make every effort to resolve the dispute. If a satisfactory resolution cannot be achieved, the parties are directed to refer to the assigned magistrate judge's individual practices.

### **II. CASE FILINGS**

#### **A. Electronic Case Filing (ECF)**

1. Pursuant to Administrative Order 2004-08, all case documents must be filed electronically via ECF for all civil cases other than pro se cases as well as for all criminal cases.
2. Parties are advised not to contact chambers with questions regarding ECF registration, filing, or other technical issues. The Eastern District's User Guide for ECF, which includes contact information for questions regarding ECF, is available at: <https://www.nyed.uscourts.gov/sites/default/files/uploads/ecf-usermanual.pdf>.
3. Video/Audio Exhibits: Video/audio exhibits that are too large to file on ECF *may not* be submitted via email, USB, or CD. The filing party should follow the instructions for submitting video/audio material on the court's webpage: <https://evidence.nyed.uscourts.gov>. The party must also file a cover letter on ECF describing the video/audio evidence submitted to the Court. This applies to video/audio submissions only. All other evidence, including images must be PDF'd and efiled.
4. Parties represented by counsel in pro se cases must file documents via ECF and serve copies on the pro se litigants.

#### **B. Filing Submissions Under Seal**

Motions for leave to file documents under seal should be filed via ECF in accordance with the EDNY's instructions for filing sealed documents. The motion should include a cover letter explaining the reason(s) for sealing, restricting access to, or filing a redacted version of the document, along with the document that is requested to be sealed/restricted/redacted. When seeking to file a redacted document, the filing party must submit either: (a) the unredacted and redacted versions of the document together; or (b) the unredacted version with the proposed redactions highlighted such that the text to be redacted is still visible.

If granted, the document must be re-filed using the correct ECF filing event. If denied, counsel must file the letter publicly or not file it at all.

- Instructions for filing sealed documents in civil cases are at: <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCV.pdf>.
- Instructions for filing sealed documents in criminal cases are at: <https://img.nyed.uscourts.gov/files/forms/EfilingSealedCR.pdf>.

For help e-filing under seal, contact the ECF help desk at (718) 613-2610.

### C. Court's Review of ECF Submissions

As a general matter, materials filed via ECF are reviewed by chambers the first business day after submission. If your submission requires immediate attention, please notify chambers by telephone after you file via ECF.

### D. Courtesy Copies

1. Parties shall deliver to chambers two (2) courtesy copies of the following submissions:
  - a. All written submissions filed on ECF that are 25 pages in length or more (inclusive of any exhibits or attachments); and
  - b. Regardless of page length, all (i) motions to dismiss, (ii) motions for summary judgment, (iii) motions to compel arbitration, and (iv) motions to remand to state court.
2. Preferably, the courtesy copies will be reproductions of the document as filed on ECF, with the ECF stamp appearing at the top of the page. If not, the courtesy copies should be prominently labeled "*Courtesy Copy - Original was electronically filed and assigned document number X.*"
3. Courtesy copies must additionally comply with the following requirements:
  - a. Parties shall use double-sided printing and bind submissions on the left side.
  - b. **For submissions 50 pages in length or more**, all documents comprising a submission (i.e.: memorandum, declarations, exhibits, etc.) must be submitted together, in a **single three-ring binder with appropriately labeled tabs**. For example, all exhibits must be identified and separated by corresponding numbered or lettered tabs. Binders must be appropriately sized for their contents—0.5, 1, 1.5, or 2 inches—but must not exceed 2 inches. Binder covers and spines must identify the case name, docket number, and the binder's contents.

- c. Parties proceeding pro se are exempt from these requirements but should make every effort to clearly mark exhibits and present *well-organized* papers.

**E. Word-Processing Files of Certain Submissions**

Proposed orders, jury instructions, and other such writings a party wishes the Court to adopt should be submitted to chambers in Microsoft Word format as well as filed on ECF in PDF format. However, parties need not submit word-processing files of stipulations of dismissal or settlement unless specifically requested to do so. Counsel may send the files to: [Merchant\\_Chambers@nyed.uscourts.gov](mailto:Merchant_Chambers@nyed.uscourts.gov).

**F. Text-Searchable Submissions**

All written submissions and supporting materials, to the extent practicable, must be text-searchable.

**G. Requests for Adjournments or Enlargement of Time**

1. All requests for adjournments or enlargement of time must be in writing and submitted on ECF and state:
  - a. The original date;
  - b. The reason for the request;
  - c. The number of previous requests for adjournment or enlargement;
  - d. Whether these previous requests were granted or denied; and
  - e. Whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent.
2. If the requested adjournment or enlargement of time affects any other scheduled dates, proposed revised dates must be provided.
3. Absent an emergency, all requests for adjournment or enlargement of time shall be made **at least two (2) business days prior to the scheduled deadline or appearance**. Any adjournment of a court appearance being requested within 48 hours of the appearance shall be accompanied by a telephone call to chambers advising the Court of the request.
4. Requests for adjournments in pre-conviction criminal cases must also state:
  - a. whether the parties have agreed on a new date or period of availability; and

- b. whether the parties move, either jointly or separately, to exclude time under the Speedy Trial Act. If moving separately, the requesting party must indicate whether the non-requesting party opposes the motion, and if so, the reason given for such opposition.

#### **H. State Court Records in Habeas Corpus Cases**

1. The respondent shall electronically file the state court record. Each item should be filed individually on ECF, and labeled so that the document is readily identifiable – for example, “Exhibit A – Suppression Hearing Transcript,” and not “Exhibit A State Court Record.” Submissions should be made text-searchable to the extent possible.
2. The state court record shall include copies of:
  - a. Transcripts of pretrial, trial, sentencing, or post-conviction proceedings, if available and relevant;
  - b. Briefs filed by either party in connection with the trial, and related orders, if relevant;
  - c. All briefs and supporting papers filed by either party in all posttrial proceedings, including direct appeal and post-conviction collateral challenges; and
  - d. Any orders disposing of motions in all post-trial proceedings.
3. If the respondent is unable to submit any of these documents, the respondent shall identify the missing documents and provide a sworn, detailed statement as to why those documents were not submitted.
4. The respondent is not required to furnish the state court record to the petitioner except to the following extent:
  - a. If the petitioner requests any portion of the state court record, the respondent shall furnish the requested portion to the petitioner within fourteen days.
  - b. The respondent’s answer shall attach excerpts of any transcripts that the respondent considers relevant, including any context needed for a full and fair understanding of those excerpts. *See* Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts.
  - c. If the petitioner challenges the sufficiency of the evidence adduced to support the state court’s determination of a factual issue, the respondent shall furnish the pertinent parts of the record with the answer. *See* 28 U.S.C. § 2254(f).

### **III. CIVIL MOTIONS**

**Motions Returnable:** Set by the Court. The Court will schedule oral argument if necessary in a specific case.

**A. Discovery or Other Non-Dispositive Motions in Civil Cases**

1. For discovery motions, follow Local Civil Rules 37.3 and 6.4.
2. Discovery and other non-dispositive motions (excluding motions in limine and motions for pre-motion conferences as provided in Section III, Part B) shall be addressed to the assigned magistrate judge and made in accordance with that magistrate judge's individual practices. Motions addressed to the magistrate judge shall include, without limitation: (i) requests for extensions of time to serve, answer, or file amended pleadings; (ii) motions to withdraw or substitute counsel; (iii) motions for admission *pro hac vice*; (iv) motions to quash subpoenas; and (v) applications to "so order" stipulations amending pleadings, transferring venue, and confidentiality/protective orders.

**B. Pre-motion Conference Requests in Civil Cases**

1. For motions other than discovery motions, in all cases in which the proposed movant is represented by counsel (except habeas corpus/prisoner petitions, Social Security appeals, and bankruptcy appeals), a pre-motion conference with the Court must be requested before making:
  - a. any motion pursuant to Fed. R. Civ. P. 12 or 56;
  - b. any motion for a change of venue;
  - c. any motion to compel arbitration; or
  - d. any motion to remand a removed case to state court.
2. To request a pre-motion conference, the moving party shall file and serve a letter not to exceed three (3) pages in length setting forth the basis for the anticipated motion. All parties served shall serve and file a letter response, not to exceed three (3) pages within seven (7) days from service of the notification letter.
3. For motions for summary judgment, the timing of all responses to pre-motion letters in connection with motions for summary judgment shall be governed by timing set forth at Section III, Part C(1), *infra*. That is, responsive letters should be filed with the serving of the Counter 56.1 Statement. No reply letters are allowed.
4. The purpose of pre-motion letters is to aid the Court by providing a synopsis of the arguments to be set forth in any motion or opposition. Pre-motion letters and responses must contain sufficient legal authority to serve this purpose.

5. The movant shall request a pre-motion conference under the “Motion for a Pre-Motion Conference” event in ECF and not the “Letter” event. Failure to request a pre-motion conference under the accurate ECF event may result in a denial of the pre-motion conference request without prejudice to refile.
6. Responding parties should file a response using the ECF “Letter” event and **not** the “Motion for a Pre-Motion Conference” event.
7. Service of the letter motion within the time requirements of Fed. R. Civ. P. 12 or 56, or any other applicable filing or service deadline, shall constitute timely service of a motion made pursuant to those provisions.
8. In some cases, it will be apparent from the letter requesting a pre-motion conference that such a conference will not be a useful expenditure of the parties’ time, and a motion schedule will be set without a pre-motion conference. In other cases, the usefulness of a pre-motion conference will be clear based on the request. Counsel are informed that such decisions may be made before the time for filing response letters has expired, but any such decisions are revisited upon the filing of a timely response letter.
9. Note that these provisions **do not apply** to motions other than those specifically enumerated. For example, letters requesting pre-motion conferences are not required for motions pursuant to Fed. R. Civ. P. 50, 59 and 60, and counsel should be aware that the Court of Appeals will not accept an argument that compliance with district court motion rules should excuse noncompliance with Fed. R. App. P. 4.

**C. Motions for Summary Judgment**

1. Except for pro se parties, pre-motion conference requests regarding an intended motion for summary judgment must be accompanied by a statement pursuant to Local Civil Rule 56.1, also known as the 56.1 Statement. Non-moving parties shall have 15 business days from service of a pre-motion letter and accompanying 56.1 Statement to respond to each. parties shall have 10 business days from receipt of a 56.1 Counter Statement to file a 56.1 Reply Statement. No reply letter shall be permitted.
2. As well as filing on ECF, parties requesting a pre-motion conference for a summary judgment motion must send **two bound courtesy copies** (in compliance with Section II, Part D) of all pre-motion conference papers and exhibits to chambers, via overnight mail or courier within two business days of filing. Emailing chambers or providing a hard drive of such courtesy copies is not acceptable.
3. A party’s 56.1 Counter Statement to a 56.1 Statement must quote, verbatim, the 56.1 Statement, including all citations, and respond to the moving party’s statements of fact immediately beneath each statement. If an opposing party chooses to include additional material facts alleged to be in dispute in their 56.1 Counter Statement, they must do so in a separately titled section, with each of the paragraph numbers consecutively following the

response paragraphs. A moving party's 56.1 Reply Statement must quote, verbatim, the opposing party's 56.1 Counter Statement, including all citations. A moving party's 56.1 Reply Statement may only respond to the opposing party's Counter Statement of additional material facts and must do so by stating the moving party's response immediately beneath each statement of additional material fact. 56.1 Reply Statements may not introduce any new material facts.

4. Each paragraph in a 56.1 Statement must contain an assertion of a material undisputed fact, not a description of evidence. For example, "John Smith testified at deposition that he crossed the street" is not a statement of fact. The statement of fact is "John Smith crossed the street. (Citation to Deposition.)"
5. No statement of fact should be included in a 56.1 Statement unless it can be established by direct admissible evidence. Factual contentions that parties believe are undisputed by circumstantial evidence should be argued in memoranda.
6. Any evidence cited in a party's 56.1 Statement, Counter Statement, or Reply Statement must be attached as an exhibit to a declaration and filed along with a party's 56.1 Statement.
7. No procedural history should be included in a 56.1 Statement unless relevant to the motion (for example, if the motion raises a statute of limitations issue).
8. The 56.1 Statements submitted in connection with the pre-motion conference may be relied upon by the Court in considering any motion for summary judgment. Parties must file 56.1 Statements when filing their summary judgment papers, even if those statements are duplicative of their 56.1 Statements from the pre-motion conference briefing. Accordingly, material facts in any pre-motion letter or memorandum of law in connection with a motion for summary judgment must cite to relevant paragraphs of 56.1 Statements.
9. Supplements to a 56.1 Statement are not permitted absent leave of the Court and a showing of good cause.

#### **D. Motions for a Temporary Restraining Order and/or Preliminary Injunction**

1. As soon as a party decides to seek a temporary restraining order, that party must file a letter on ECF (under seal if proceeding ex parte) and state clearly: (1) whether and how it has notified its adversary and whether the adversary consents to temporary injunctive relief; or (2) why the requirements of Federal Rule of Civil Procedure 65(b)(1) are satisfied and no notice is necessary.
2. The moving party must email Chambers giving notice of the filing and the time frame requested for Court action. The moving party should then file a Motion for a Temporary Restraining Order, supporting documents, and a

proposed order on ECF in accordance with ECF procedures. Where the motion is made on notice to the other parties, the moving party should simultaneously serve the documents on any party that will not receive electronic service via ECF. The moving party must deliver a courtesy copy immediately after filing where applicable under Individual Rule 1.3.

3. If the matter is time sensitive and Chambers does not respond within three (3) hours, the movant may call Chambers before the end of the business day. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must identify a time mutually agreeable to it and the adversary in which the Court may hear the application, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary in-junctive relief

#### **E. Briefing Schedule**

The parties are to work together to set their own briefing schedule and submit it to the Court for approval. Approval may be given at the pre-motion conference or by subsequent order. No changes to the briefing schedule may be made without Court approval.

#### **F. Memoranda of Law**

Unless prior permission has been granted, memoranda of law in support of or in opposition to motions are limited to 25 pages, double spaced, and reply memoranda are limited to 10 pages, double spaced. These page limits are exclusive of tables of contents, tables of authorities, appendices, and attachments. Parties should use Times New Roman 12-point font and one-inch margins. Memoranda of 10 pages or more shall contain a table of contents and table of authorities. Memoranda in support of or in opposition to motions for reconsideration, however, are limited to ten (10) pages.

1. Memoranda must set forth the points and authorities relied upon in support of or in opposition to the motion, and must be divided, under appropriate headings, into as many parts as there are points to be determined. Case citations must contain pinpoint cites to specific page references. No letter briefs shall be permitted.
2. Requests to file memoranda exceeding the page limits set forth herein must clearly state the basis for the request and will only be granted for good cause shown. Any such requests must be made in writing at least five (5) business days prior to the relevant memorandum's due date, except with respect to reply briefs, in which case the request must be made at least one (1) day prior to the due date.
3. Any memoranda of law not complying with the requirements set forth herein may be returned.

#### **G. Filing of Motion Papers**

1. **As a courtesy to the Court, the Court requests that the parties refrain from filing motion papers until the motion has been fully briefed.** If the parties elect to file their motion only once it is fully briefed, the notice of motion and all supporting papers are to be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served. Only a copy of the cover letter shall be electronically filed in advance of the fully-briefed motion, and it must be filed as a letter, not as a motion.
2. On the day the motion is fully briefed, each party shall electronically file its moving papers. In addition, the moving party (unless pro se) shall furnish chambers with a full set of courtesy copies of the motion papers (in compliance with Section II, Part D of these Rules), together with a letter specifying each document in the package. Any exhibit should be filed individually on ECF, as an attachment to the primary document to which the exhibit related. Exhibits should be labeled so that the document is readily identifiable – for example, “Exhibit A - Deposition of John Doe.” A copy of the cover letter shall be sent to the assigned magistrate judge and to opposing counsel and shall also be electronically filed.

Parties moving pursuant to rules Fed. R. Civ. P. 50, 59 and 60 should be aware that the Court of Appeals will not accept compliance with this rule as an excuse for noncompliance with the time limits set forth in Fed. R. App. P. 4.

#### **H. Motions Implicating Fed. R. App. P. 4(a)(4)(A) or Similar Time-Limiting Rules**

As indicated above, these practices do not require a pre-motion conference or that a motion be fully briefed before it is filed when strictly enforced time limits must be met to preserve rights. Regardless, if any party concludes in good faith that delaying the filing of a motion, in order to comply with any aspect of these individual practices, will deprive the party of a substantive right, the party may file a motion within the time required by the Federal Rules of Civil and/or Appellate Procedure, together with an explanation of the basis for the conclusion.

#### **I. Stipulations of Fact for Social Security Cases**

1. Parties seeking or opposing judgment on the pleadings in social security cases shall confer and prepare a stipulation of fact with a chronology of medical treatment.
2. The stipulation shall be filed on ECF when the motion is fully briefed and shall set forth all relevant facts in the administrative record, including information contained in the treatment and medical records, in chronological order and with citations to the record.

3. If a dispute of fact exists, the parties should include the disputed fact in the chronology, along with a footnote briefly describing the dispute (without argument) and the relevant record citation(s).

#### **IV. CRIMINAL MOTIONS**

##### **A. Scheduling and Filing of Motions**

1. Counsel shall advise the Court of any motions they want to file at a status conference scheduled by the Court. If no status conference has been scheduled, counsel shall request a pre-motion conference in writing and briefly state the grounds for such motion.
2. The Court will order briefing schedules for motions. Parties may not serve motion papers before the Court enters a briefing schedule. No changes in a briefing schedule may be made without the Court's approval.
3. Except as provided above in Section IV, Part A(1), no pre-motion conference is required for a criminal motion.

##### **B. Memoranda of Law**

Parties in criminal cases shall follow the rules for memoranda of law in civil motions, as set forth in Section III, Part E of these Rules, unless otherwise directed by the Court. Parties should also label exhibits according to Section III, Part F(2) of these Rules.

##### **C. Appeals of a Magistrate Judge's Order of Release or Order of Detention**

Any party appealing a magistrate judge's Order of Release or Order of Detention shall include a copy of the transcript before the magistrate judge with their motion, if the transcript is available.

#### **V. CIVIL PRETRIAL PROCEDURES**

##### **A. Appeals of Discovery Determinations by Magistrate Judges**

1. Timing: Unless otherwise ordered by the Court, any appeal of a magistrate judge's discovery determination must be served upon all parties and filed with the Court within 14 days of the challenged determination. Any party opposing such an appeal shall file its opposition, if any, within 14 days of service of any appeal. Parties are not permitted a reply as of right. Should the Court desire a reply letter or additional briefing, the Court shall inform the parties.
2. Format: Any appeal of a magistrate judge's discovery determination must be in the form of a letter not exceeding three (3) pages in length. Such letter must set forth the specific aspects of the magistrate judge's determination that are being challenged.

**B. Joint Pretrial Orders in Civil Cases**

1. Timing of Joint Pretrial Order: Unless otherwise ordered by the Court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court a proposed pretrial order.
2. Word Copies: A clean version of the proposed joint pretrial order shall be sent to Chambers email concurrently with the version filed on ECF.
3. Supervision of Magistrate Judge: The pretrial order shall be prepared under the supervision of the assigned magistrate judge in accordance with the schedule set by the magistrate judge. The parties are directed to cooperate with each other in the preparation of the joint pretrial order.
4. Contents of the Joint Pretrial Order: Joint pretrial orders must be double spaced with one-inch margins, using Times New Roman 12-point font, and must include the following information:
  - a. Caption: The full caption of the action
  - b. Parties and Counsel: The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
  - c. Jurisdiction: 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 and legal doctrines relied on and relevant facts as to citizenship and jurisdictional amount.
  - d. Claims and Defenses: A brief summary by each party of the elements of the claims and defenses that party has asserted which remain to be tried, including citations to all statutes relied on.
  - e. Jury or Bench Trial: 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.
  - f. Witnesses: A list of names and addresses by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.
  - g. Deposition Testimony: A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
  - h. Stipulations: A statement of stipulated facts, if any.

- i. Motions in Limine: A list of motions in limine each party intends to file with a brief description of the nature of such motion.
- j. Exhibits: A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. Plaintiff's exhibits shall be identified by numbers, defendant's exhibits shall be identified by letters. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, chain of custody and related grounds. Only exhibits listed will be received in evidence except for good cause shown.

The parties shall list and briefly describe the basis for any objections to the admissibility of exhibits to be offered by any other party and the proponent's response to those objections. Descriptions need not be longer than several sentences, but they should include more than the rules upon which objections are based, similar to the following tabular format:

**Plaintiff's Exhibits**

P's Exs.	Description	D's objections/bases	P's response/ bases
Ex. 1			

**Defendant's Exhibits**

D's Exs.	Description	P's objections/bases	D's response/ bases
Ex. A			

**C. Exchange of Exhibits**

All exhibits must be pre-marked for the trial and exchanged with the other parties at least 15 days before trial. Where exhibits are voluminous, they should be placed in binders with tabs. The parties shall then confer and attempt to resolve disputes relating to exhibits in advance of the final pretrial conference. Where the parties have not resolved their objections to exhibits, they shall be prepared to address them with the Court at the final pretrial conference.

#### **D. Filings Prior to Trial in Civil Cases**

1. The parties shall propose their own briefing schedule on any motions addressing evidentiary or other issues that should be resolved in limine, provided that all such motions are filed at least 30 days before the commencement of jury selection. Any responses are due 14 days after the motions are filed.
2. If a party seeks to introduce evidence through cross-examination or otherwise under either Federal Rule of Evidence 608(b) or 609, the party must file a motion in limine outlining why its intended exhibit(s) and/or area(s) of cross-examination are admissible under the relevant rule.
3. Motions to exclude or limit the testimony of experts pursuant to Rules 702–705 of the Federal Rules of Evidence, including but not limited to motions to exclude scientific or technical evidence under the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) line of cases, shall be filed at least 45 days before the commencement of jury selection. Responses are due 14 days after the motion is filed.

Unless otherwise ordered by the Court, jury instructions, proposed verdict sheets, and proposed *voir dire* questions in jury cases should be submitted directly to the Chambers' inbox in not later than 15 days before trial in word-processor format. The parties shall submit a joint letter on ECF certifying that these items have been transmitted. Verdict sheets must include formulae for the calculation of damages where applicable. Jury instructions should be limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the Court. The parties should endeavor to agree upon *voir dire* questions, jury instructions and verdict sheet to the extent possible. Where no agreement is reached, the parties shall set out their respective positions, objections, and proposed language using the comment function in the word-processor.

4. The parties shall provide the Court with three copies of tabbed binders containing all exhibits, with the case caption on the spine and front cover of each binder, at least 10 days before trial, unless otherwise ordered by the Court.
  - a. The plaintiff's exhibits must be pre-marked with numbers. The defendant's exhibits must be pre-marked with letters.
  - b. Any document to be offered in evidence that contains multiple pages shall be paginated by counsel before trial, but any existing Bates stamping or other pagination may suffice. For example, if Exhibit C starts with Defendants' 000200 and contains consecutive Bates stamp numbers, that exhibit would not need to be separately paginated, but if Exhibit C does not have any pagination, it should be paginated starting at Exhibit C, page 1.

- c. When counsel anticipates that a witness will refer to documentary evidence during the witness' direct testimony, counsel shall have (i) two copies of each document for the Court, and (ii) at least one copy each for the court reporter and counsel for each opposing party who is present.
5. Each party shall email Merchant\_Chambers@nyed.uscourts.gov with a PDF file of each exhibit at least 10 days before trial. If the exhibit list is voluminous or unwieldy to send over email due to the size of exhibits, a link to a password-protected secure file-transfer protocol (FTP) site is also acceptable.
6. Unless otherwise ordered by the Court, each party shall file the following 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:
  - a. By claim, a detailed statement regarding damages and other relief sought; and
  - b. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element.

## **VI. CRIMINAL PRETRIAL PROCEDURES**

### **A. Initial Matters**

1. Pretrial Conference in Criminal Cases: Assistant United States Attorneys are responsible for informing chambers by calling Case Manager Tasheana Lubin at (718) 613-2465 when a new case has been assigned to Judge Merchant. Upon such notification, an initial pretrial conference will be scheduled.
2. The Government should file a Rule 12.4 disclosure statement before the first appearance, when applicable.

### **B. Pretrial Filings in Criminal Cases**

All pretrial filings in criminal cases shall be made in accordance with a criminal pretrial scheduling order issued by the Court.

### **C. Filings Prior to Trial in Criminal Cases**

1. In a multi-defendant case, all filings must designate the specific defendant or defendants as to who the filing pertains.
2. Motions in limine addressing evidentiary or other trial management issues in dispute must be filed no later than 30 days before the date fixed for commencement of jury selection. Responses, if any, are due 10 days after

the date the motion is filed, unless otherwise ordered. Oral arguments will be scheduled at the convenience of the Court.

3. Unless otherwise ordered by the Court, requests to charge and proposed *voir dire* questions in jury cases should be submitted no later than 10 business days before trial. The parties should follow the rules for civil filings, as set forth in Section II, Part E, where applicable.
4. All exhibits to be used at trial shall be pre-marked and exchanged with the other parties at least 10 days before trial.
5. The parties shall provide the Court with three tabbed binders containing copies of all exhibits no later than the Friday before trial, unless otherwise ordered by the Court. The binder should also include an exhibit list and a witness list. The exhibit list should list every exhibit in the binder(s) and contain a brief description of each exhibit, no longer than one sentence. If in the judgment of the parties the volume of exhibits makes this requirement impracticable, please call chambers at least 10 business days before trial for instructions on how to submit courtesy copies of the exhibits.
6. Where counsel anticipates that a witness will refer to documentary evidence in the course of his or her direct testimony, counsel shall have copies of the document(s) available for opposing counsel, the court reporter, and two copies for the Court.

## VII. TRIAL PROCEDURES

### A. Voir Dire

Unless otherwise notified, the Court will conduct all *voir dire*.

### B. Witnesses

No later than the end of each trial day, counsel must notify each other and the Court of witnesses to be called the following trial day.

### C. Use of Electronic Equipment

Any party wishing to present marked exhibits to the jury in digital form who has not previously used the Court's electronic equipment is directed to meet with the Chief Deputy Clerk for Automation Services and Tasheana Lubin at least 20 days prior to the commencement of the trial to review the available equipment for the presentation of digital evidence. Counsel should be accompanied by the audio-visual personnel who will be operating any equipment that will be used at trial. Following such meeting, **such party shall file a confirmation in writing via ECF** that this meeting has occurred.

### D. Sidebars

Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to be respectful of the jurors' time.

## **VIII. POST-TRIAL PROCEDURES FOR BENCH TRIALS**

For non-jury trials, parties shall file proposed findings of fact and conclusions of law no later than 10 days after the conclusion of trial, unless the Court sets a different filing deadline. Responses to such submissions are not permitted.

## **IX. SENTENCING**

### **A. Adjournments**

Applications regarding sentencing adjournments shall be made in writing at least 10 business days prior to the date of sentencing. The response, if any, shall be made in writing at least six (6) business days before the date of sentencing.

### **B. Sentencing Submissions**

1. Defendant's sentencing submissions, if any, are due 10 business days prior to the date of sentencing. The Government's sentencing submissions are due one week prior to sentencing, except that if the Government is moving for a departure from the Sentencing Guidelines (upward or downward), that motion shall be made 14 days prior to sentencing.
2. Any objections to presentence reports, by either party, must comply with the requirements in Fed. R. Crim. P. Rule 32(f). Objections should be filed under seal on ECF and served upon opposing counsel and the Probation Department. Any objecting party must identify the specific language and paragraph numbers of the presentence report to which it objects.
3. The Government should advise the Court at least two (2) days in advance if a victim will be making a victim impact statement at sentencing.
4. Sentencing submissions should affirmatively address the applicability of restitution and forfeiture in addition to incarceration, probation, and supervised release. If no restitution is being sought, the Government should say so explicitly in its sentencing memorandum.
5. The preliminary order of forfeiture, if any is to be submitted, is due seven (7) days prior to sentencing in routine forfeiture cases. If forfeiture is contested, the Government should submit a preliminary order at least 14 days prior to the sentencing date.
6. The Government's response, if any, shall be made in writing at least six (6) business days before the date of sentencing.

**C. Violation of Supervised Release**

The Court requires at least two (2) days' notice of a guilty plea on a violation of supervised release. The notice must specify the violations as to which the defendant intends to plead guilty.

**X. PRONOUNS AND HONORIFICS**

The parties and counsel are encouraged to advise the Court by speaking to the courtroom deputy if they would like to be addressed with a particular pronoun and/or honorific — such as Ms., Mx., or Mr. — so that the Court may do so in writing and when appearing for conferences, hearings, or trials. Attorneys are encouraged— but not required— to identify their preferred pronouns in their signature lines when submitting documents for filing. All parties and counsel shall address each other in all written documents and court proceedings by the pronouns and/or honorifics previously identified.

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