INDIVIDUAL PRACTICE RULES OF MAGISTRATE JUDGE LEE G. DUNST

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I. GENERAL GOVERNING RULES

A. Expectation Of Familiarity With Federal Court Practices And Rules

1. Attorneys are expected to be familiar with the rules and practices of the United States District Court, including, but not limited to, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. *See* Local Civil Rule 1.3(c)(6)(A)-(F).

2. Attorneys of record are expected to be familiar with the Local Rules of the United States District Court for the Eastern District of New York, as well as individual rules of Magistrate Judge Dunst and the assigned District Judge. *See* Local Civil Rules 1.3(c)(6)(E), 1.3(c)(7). *Compliance with these rules will be strictly enforced. See Fields v. Bayerische Motoren Werke Aktiengesellshaft*, 594 F. Supp. 3d 530, 533 (E.D.N.Y. 2022) (rejecting court filings due to the parties' failure to comply with court orders and rules).

3. In civil cases pending before Judge Dunst, the parties are reminded of their obligations under Rule 1 of the Federal Rules of Civil Procedure that these rules should be applied "to secure the just, speedy, and inexpensive determination of every action and proceeding."

4. Any and all submissions to Judge Dunst must comply with Local Rule Civil Rule 7.1(b) regarding typeface, margins and spacing, *except* that any letters may be single-spaced.

B. Good Faith And Professional Conduct

1. Attorneys of record shall conduct themselves at all times consistent with the New York State Rules of Professional Conduct and failure to do so may be grounds for discipline or other relief. *See* Local Civil Rules 1.3(c)(6)(F) & 1.5(b)(5); Federal Rule of Civil Procedure 11.

2. Consistent with representing the interests of their clients, attorneys of record are expected to act professionally and cooperate with each other in all phases of discovery and be courteous in their dealings with each of other. *See* Local Civil Rule 26.4. Furthermore, "[a]s officers of the court, all attorneys conducting discovery owe the court a heightened duty of candor." *New Falls Corp. v. Soni*, No. 16-CV-6805 (HG) (LGD), 2022 WL 17811448, at *10 (E.D.N.Y. Dec. 19, 2022) (internal quotations and citations omitted).

3. While not mandatory under the applicable professional rules, Judge Dunst suggests that counsel consider the guidance issued by the American College of Trial Lawyers in the *Code of Pretrial and Trial*

Conduct (2009),[12] which "looks beyond the minimum ethical requirements that every lawyer must follow and instead identifies those practices that elevate the profession and contribute to fairness in the administration of justice." *Id.* The parties are encouraged to consider many provisions of the Code. *See, e.g.*, *id.* at 4 ("A lawyer should be straightforward and courteous with colleagues. A lawyer should be cooperative with other counsel while zealously representing the client."); 5 ("A lawyer has an obligation to promote the resolution of cases with fairness, efficiency, courtesy, and justice."); 6 ("Zealous representation of the client is not inconsistent with a collegial relationship with opposing counsel in service to the court . . . The absence of respect, cooperation, and collegiality displayed by one lawyer toward another too often breeds more of the same in a downward spiral.").

4. The parties are cautioned to ensure that any use of Artificial Intelligence resources in connection with their submissions to the Court still comply with their professional obligations to the Court. *See* *Benjamin v. Costco Wholesale Corp.*, 779 F. Supp. 3d 341 (E.D.N.Y. 2025)

C. Expectations For Court Appearances (In Person, Telephone And Video)

1. Counsel shall appear promptly for all conferences. Counsel appearing before the Court must be prepared and authorized to discuss (a) the parties' progress in the case; (b) scheduling of further proceedings; and (c) the possibility of settlement and status of any settlement discussions. All attorneys must file a Notice of Appearance *prior* to appearing in court.

2. As a general matter, court appearances before Judge Dunst are conducted in person under normal circumstances. However, in light of the potential burden on litigants and the volume of cases pending before the Court, some appearances before Judge Dunst may be conducted by video or telephone. The Court will designate the method of conferring in applicable scheduling orders, as well as in the public calendar posted on the docket. All remote conferences (except for settlement conferences) are public proceedings; nonparties are welcome to attend. Nonparties may contact Judge Dunst's chambers to receive a telephone invitation to remote conferences.

[1] A copy of the code can be found at https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/codes_of_pretrial_and_trial_conduct_09_web_permission.pdf

3. **In Person**. If the Court conferences in person, the parties are directed to arrive *at least ten (10) minutes* prior to the designated start time and check in with the Courtroom Deputy.

4. **Video**. If the Court conferences by video, the Court will email a Zoom link to the email addresses of all counsel listed on the docket. The parties are directed to connect *at least five (5) minutes* before the scheduled time for the video conference.

5. **Telephone**. If the Court conferences by telephone, the Court will email an invitation to the email addresses for all counsel listed on the docket. The parties are directed to dial in *at least five (5) minutes* before the scheduled time for the telephonic conference.

6. **Protocol for Remote Appearances**. The Court expects the parties to demonstrate the same professionalism by video and telephone as they would for in-person appearances. This includes ensuring ahead of time that the technology for the appearance is sufficient and functioning properly so that the Court may hear and/or see those appearing. There are many publicly-available resources that the parties can consult regarding best practices for a successful remote court appearance. *See, e.g.*, Steven C. Dupré & Sylvia H. Walbolt, *Mastering "Zoom Advocacy,"* AMERICAN COLLEGE OF TRIAL LAWYERS (2020), https://www.actl.com/docs/default- source/task-force-on-advocacy-in-the-21st-century/2020---mastering-zoom-advocacy.pdf?sfvrsn=599d3969_2.

D. Opportunities For Less Experienced/Junior Attorneys And Law Students

Judge Dunst strongly encourages litigants to permit more junior and less experienced members of the litigation team to appear for oral argument before the Court and to examine witnesses at trial and hearings. Indeed, in those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a more junior lawyer may weigh in favor of holding oral argument. In addition, under circumstances where the more junior attorney is permitted to present the argument, the Court will entertain reasonable requests for the more senior attorney to supplement any argument that is made. Additionally, requests for leave for law students to appear and argue in court (when accompanied by an attorney of record) will be freely granted if this creates an opportunity for junior attorneys to participate.

E. "Of Counsel" Appearances Prohibited

Only a party's counsel of record or an attorney personally authorized to appear by the party (and not simply by the party's counsel of record) may appear on behalf

of a party. If a law firm has appeared as counsel of record for a party, any attorney actually employed by that law firm may appear. An attorney acting "of counsel" for a party's counsel of record may not appear without the represented party's explicit authorization, because an attorney has no authority to make binding representations on behalf of any party. *See* N.Y. Rules of Pro. Conduct 1.2(c), 22 N.Y.C.R.R. § 1200 (requiring client to give "informed consent" before an attorney may make a limited appearance on the client's behalf).

F. Interpreter Services In Civil Cases

Interpreter services are not provided by the Court in civil cases. If a party speaks a language other than English, the party must arrange to conduct the case in English. If a non-English speaking party represented by an attorney is ordered to appear for a court conference, that party must bring a professional interpreter if translation services are needed. A *pro se* party may bring an English-speaking friend or family member to court conferences. However, persons acting as interpreters must translate exactly what is said and may not advocate for the party.

II. COMMUNICATIONS WITH CHAMBERS

A. Telephone Calls

Telephone calls to Chambers are ***GENERALLY PROHIBITED*** and permitted only in ***EMERGENCY*** situations requiring ***IMMEDIATE*** attention in civil cases, or as otherwise ordered by the Court. Any telephone requests for (1) assistance during the course of a deposition, or (2) adjournment requests in extraordinary circumstances must comply with the specific rules set forth below. Additionally, it is the Court's strong preference that counsel for all parties in civil cases be on the line for any calls to Chambers. Parties appearing *pro se* should not call Chambers, but rather should call the Court's *Pro Se* Office at (631) 712-6060 with any questions. Telephone calls regarding criminal matters are permitted and should be directed to the Courtroom Deputy at (631) 712-5765.

B. Faxes

Faxes to Chambers are not permitted.

C. Emails

Emails to Chambers are ***GENERALLY PROHIBITED*** and permitted ***ONLY*** (1) to notify Chambers of the matters described in Rule II.F set forth below, (2) to submit *ex parte* settlement statements consistent with Rule V.C. set forth below, or (3) as otherwise specifically directed by the Court.

D. Letters

All letters sent to the Court must be filed via ECF (as set forth below), unless otherwise directed by the Court. Copies of correspondence between the parties should not be sent to the Court or filed via ECF if unrelated to a motion for relief.

E. Requests For Adjournments Or Extensions Of Time

1. Requests for adjournments or extensions of time may be in letter format but must be filed electronically as "Motions" on ECF, not as "Letters."

2. All requests for adjournments of a court appearance or extensions of time (including any court-ordered deadlines), absent an emergency, shall be made in writing at least *three (3) business days* prior to the scheduled appearance or deadline. Adjournment requests may not be made telephonically absent extraordinary circumstances. *Furthermore, the Court expects the parties to make any requests for extensions in a timely manner and strongly disfavors untimely requests to retroactively modify court-ordered deadlines that have already expired*.

3. Prior to seeking any adjournment, the parties shall meet and confer and grant each other the professional courtesy of agreeing to reasonable requests, especially for the first request for any adjournment.

4. All requests for adjournments or extensions of time must state:

    a. the appearance date(s) or deadline(s) you wish to adjourn or extend;

    b. the reason for the request. The parties are reminded that "counsels' busy litigation schedule" is an insufficient excuse for excessive extensions and delays. *See generally Zdunski v. Erie 2-Chautauqua-Cattaraugus Boces*, No. 19-CV-940, 2021 WL 1239868, at *2 (W.D.N.Y. Apr. 2, 2021) ("Plaintiff's counsel's excuse for Plaintiff's noncompliance is essentially that she was 'too busy,' which courts generally hold to not excuse noncompliance with the court's discovery orders. . . . [A]lthough Plaintiffs' counsel may have been busy, this does not permit them to delay discovery and squander party and court resources in a case they have initiated.") (citations omitted);

    c. the number of previous requests for adjournment or extension (by you or anyone else);

d. whether those previous requests were granted or denied;

e. whether the other party or parties consent (including any reasons given for withholding consent); or, if the other parties could not be reached for input, efforts made to reach those parties; and

f. whether the request affects any other scheduled Court appearance or deadline.

5. To the extent a party seeks to adjourn a Court conference, if appropriate, the party shall propose mutually convenient date(s) for the re-scheduled conference.

6. If the requested adjournment or extension affects any other Court appearance or deadline, the parties should include with the request proposed revisions to the previously-approved schedule.

F. Required Notification To Chambers

A party or the parties should notify chambers by email if any of the following events occur:

1. the parties have reached a settlement; or

2. any party has reason to believe that that there may be grounds that Judge Dunst should be recused from any pending civil or criminal matter due to (a) his direct or indirect involvement in the matter, or (b) for any other reason that has come to a party's attention. *See* 28 U.S.C. § 455 (judicial recusal statute); Local Civil Rule 7.1.1 (per the Committee Note, the disclosure obligation imposed on the parties in this rule is designed "to serve a useful purpose in helping to ensure that Judges will be given prompt notice of changes that might require consideration of possible recusal").

III. ELECTRONIC CASE FILING (ECF)

A. General Rules

Regardless of the District Judge assigned, all documents directed to Magistrate Judge Dunst in civil actions must be filed electronically, with the exceptions stated below. ECF procedures are available on the Court's website (http://www.nyed.uscourts.gov).

B. Exceptions

The following documents are exempt from electronic filing: (1) documents filed subject to a court-ordered confidentiality agreement; and (2) *ex parte* settlement or mediation statements submitted directly to Judge Dunst in accordance with the rules set forth below.

C. *Pro Se* Litigants

1. Litigants proceeding *pro se* are exempt from ECF requirements, but may request permission to file documents and receive notices electronically.

2. Parties represented by counsel, however, must file documents electronically, even in *pro se* cases. Counsel also must provide copies of any electronically filed documents to *pro se* litigants, and file proof of notice of service on ECF.

3. *Pro se* litigants are directed to make any filings via hand delivery or U.S. mail to the designated "*Pro Se* Clerk" in the Clerk's office, to the attention of Magistrate Judge Dunst and the appropriate District Judge, and by delivering a copy to the attorney for the opposing party.

4. Court orders will be provided to *pro se* litigants by U.S. mail at the current address listed on the docket sheet. *Pro se* litigants must keep current contact information on file with the Court, or risk dismissal of claims or other sanctions. All *pro se* litigants and represented parties opposing *pro se* litigants are directed to the relevant Local Civil Rules, including 12.1, 33.2, and 56.2.

5. Questions and assistance regarding *pro se* litigation may be addressed to the *Pro Se* Legal Assistance Program, located at the Central Islip courthouse in Room 124B, offered by Hofstra University's Maurice A. Deane School of Law at (631) 297-2575 or through email at PSLAP@hofstra.edu. Additional information for *pro se* litigants also can be found through the Program's website (https://proseprogram.law.hofstra.edu/about/). The Hofstra Program is not part of, nor run by, the United States District Court. The Hofstra Program staff work for Hofstra University.

D. Courtesy Copies

Courtesy copies and hard copies should only be provided upon the request of the Court. No courtesy copies of dispositive motions made to the assigned District Judge need to be provided to Magistrate Judge Dunst, unless specifically requested by Magistrate Judge Dunst.

E. Sealing

Motions for leave to file documents under seal must be filed via ECF in accordance with the Court's instructions for electronically filing sealed documents. The proposed sealed documents must be attached to the motion for leave to file under seal. Instructions for filing sealed documents on the Court's website (https://www.nyed.uscourts.gov). In filing such a motion, the parties are urged to consider the current jurisprudence regarding the legal standards relating to public access to documents filed with the Court. *See, e.g.*, *Brown v. Maxwell*, 929 F.3d 41 (2d Cir. 2019) ("[T]he Supreme Court has recognized a qualified right 'to inspect and copy judicial records and documents.'") (citation omitted).

IV. DISCOVERY

A. Initial Conferences (Required Submission And Preliminary Discovery)

1. **Proposed Discovery Plan/Scheduling Order**. Rule 26(f) of the Federal Rules of Civil Procedure requires that the parties meet and confer prior to the Initial Conference to discuss the nature and basis of their claims and defenses, the possibilities for a prompt settlement, and a proposed discovery plan (structured in two phases as discussed below, unless otherwise directed by the Court). At least *five (5) business days* before the Initial Conference, the parties must file on ECF a joint Proposed Discovery Plan/Scheduling Order that includes proposed deadlines for the following items: (a) exchange of initial disclosures, if not already completed; (b) amendment to pleadings; (c) joinder of parties; (d) completion of fact discovery (divided into two phases as discussed below); (e) settlement conference or mediation; (f) completion of expert discovery, if applicable; and (g) commencement of dispositive motion practice, if any (subject to the rules of the presiding District Judge). In the event the parties are unable to reach agreement on any of the deadlines, the parties should note any areas of disagreement in the joint submission. The parties also should indicate whether they consent to Judge Dunst's jurisdiction for all purposes in accordance with 28 U.S.C. § 636(c)(1). To help guide the parties (and depending on the facts and circumstances of each case), a form Proposed Discovery Plan/Scheduling Order can be found on the Court's website.

2. **Discovery Prior To An Initial Conference**. Once a case been filed, there is no automatic stay of discovery, unless authorized by statute or so ordered by the Court per a motion to stay discovery. *The Court expects the parties to begin the discovery process before the Initial Conference.* For example, Rule 26(a)(1)(C) requires parties to make initial disclosures at or within 14 days after the parties' Rule 26(f)

conference. And a Rule 26(f) conference must be held at least 21 days before the Initial Conference or before the Court's Rule 16(b) order is due. Separately, parties may serve document requests prior to the Rule 26(f) conference, and the requests are deemed served on the date of the conference. *See* Fed. R. Civ. P. 26(d)(2), 34(b)(2)(A).

3. **Initial Conference**. At the Initial Conference, the parties must be prepared to provide an overview of the facts and issues of the case, discuss the Proposed Discovery Plan/Scheduling Order, outline the anticipated discovery (as well as the initial discovery conducted to date), and the possibilities of an early settlement. *Counsel with knowledge of the case must attend the Initial Conference.* The parties should discuss their discovery needs thoroughly and realistically in advance of the Initial Conference so that the Court may adopt a realistic schedule in conjunction with the assigned District Judge's rules. Once a Scheduling Order has been entered with the parties' input, the discovery deadlines will be enforced and amended only upon a showing of good cause, consistent with Rule II.E.

B. Phased Discovery

1. Because most civil cases are referred to Judge Dunst for the purposes of supervision of discovery and exploring potential resolution, discovery may be structured into two phases (unless otherwise directed by the Court) so as to minimize the expense and burden to the parties and to facilitate the earliest possible settlement or trial. *See* Fed. R. Civ P. 26(b)(1) (scope of discovery should be "proportional to the needs of the case"). These two discovery phases should be addressed in the joint Proposed Discovery Plan/Scheduling Order submitted to the Court prior to the Initial Conference.

2. **Phase One Discovery** consists of the exchange of initial disclosures and any other readily available documentary evidence supporting claims or defenses (including, for example, the existence of personal and federal subject matter jurisdiction and venue). Counsel shall confer to consider the scope of such initial discovery and should carefully tailor such discovery to avoid unnecessary expense and delay. The scope of Phase One Discovery must be discussed prior to the Initial Conference and the parties should appear at the conference ready to enter into agreement as to the scope of such discovery. This phase of discovery will presumptively be completed no more than 60 days after the Initial Conference (and, as discussed above, the parties should begin preliminary discovery *before* the Initial Conference).

3. At the conclusion of Phase One Discovery, the parties should be in a position to enter into meaningful settlement discussions or be able to

identify additional limited discovery necessary to put the matter into a meaningful settlement posture. A settlement conference and/or status conference may be scheduled following the completion of such discovery.

4. **Phase Two Discovery** represents the balance of discovery required to prepare for dispositive motion practice and/or trial. This phase of discovery will only be undertaken if the parties are unable to reach an agreement at the settlement conference.

5. In addition, the parties should reach an agreement as early as practicable relating to whether there will be production of electronically-stored information ("ESI") at any point in time, and if so, the procedures to be used and the forms and procedures in and by which such ESI discovery is to be produced. *See* Fed. R. Civ. P. 26(f)(3)(C).

C. Meet And Confer Obligations

Pursuant to Local Civil Rule 26.4(a), "[c]ounsel are expected to cooperate with each other, consistent with the interests of their clients, in all phases of the discovery process and to be courteous in their dealings with each other, including in matters relating to scheduling and timing of various discovery procedures." Additionally, *prior* to bringing any discovery dispute before the Court, the parties *must* first meet and confer amongst themselves. *See* Fed. R. Civ. P. 37(a)(1). To properly meet and confer to resolve a disagreement about discovery, the opposing party should be made aware of the issue, and the parties must actually speak and communicate substantively *by telephone, video conference, or in person* to satisfy the meet and confer obligation. Only if significant time has elapsed with no response from the opposing party will the Court deem the attempt to confer as futile. Finally, Rule 37(a)(1) requires that a certification be provided that "the movant has in good faith conferred . . . in an effort to obtain [the discovery] without court action."

The Court enforces these meet and confer obligations strictly.

D. Mandatory Submission Of Joint Letter Regarding Any Discovery Disputes

1. If the parties are unable to resolve their discovery dispute (including, but not limited to, any potential stay of discovery) through the mandatory meet and confer process set forth above, the parties are directed to file a *joint* letter that briefly describes the disputed issue. Each party's portion of the joint submission shall be limited to *three*

(3) pages.[3] The parties shall describe their substantive meet and confer efforts in their submission. The joint letter must be filed via ECF as a "Motion." If the parties' dispute relates to a specific discovery request or requests, the parties should attach the request or requests to their joint submission. *The Court expects the parties to exercise their reasonable judgment as to the number and length of any attachments to the joint letter. See* Local Rule 7.1(a)(3) (limiting supporting exhibits to only those "necessary for the decision of the motion").

2. After submission of the joint letter, the Court may issue a ruling on the basis of the joint submission or schedule a conference to discuss the dispute. If the dispute cannot be resolved during the conference, the Court may order the parties to make supplemental submissions.

E. Disputes During Ongoing Depositions

If material problems arise during the course of a deposition, the parties are strongly encouraged to first make a good faith attempt to resolve the dispute among themselves. If a resolution cannot be achieved (and the parties believe in good faith that there is a need for immediate court intervention), the parties are directed to contact Chambers immediately by telephone with counsel for the parties and the court reporter on the line. The Court will either resolve the issue during the deposition or reserve the issue and possibly require additional submissions after the deposition. If the deposition is being conducted virtually, the Court may request the parties to forward a link to join. In the event the Court is unable to join the call, then the parties shall have the court reporter mark the transcript where the dispute arose, and the parties shall continue the deposition and move on to further topics. Under no circumstances may the parties discontinue the deposition without first attempting to contact the Court.

F. Protective Order

If a party deems it necessary, the Court will entertain a request to issue an appropriate order to protect the confidentiality of information exchanged in discovery. To assist the parties, the Court has provided a form confidentiality order that the parties may submit to the Court for approval, which can be found on the Court's website. This standardized confidentiality order should be sufficient in most cases and should be followed by the parties. However, if necessary and the parties deem appropriate, the parties may submit to the Court both a redlined version identifying the proposed changes, the reason for the changes, and a clean version of the proposed confidentiality order for the Court to adopt.

[3] In the highly unlikely event that the parties are unable to agree upon a single joint letter, the parties may submit separate letters, but must demonstrate good cause why they were unable to submit a joint letter.

V. SETTLEMENTS

Rule 1 of the Federal Rules of Civil Procedure requires that disputes be resolved in a manner that is "just, speedy, and inexpensive." As such, the Court has an affirmative obligation to vigorously explore efforts to reduce litigation costs through settlement. *See In re Tobacco Litig.*, 192 F.R.D. 90, 95 (E.D.N.Y. 2000) (describing the Court's "duty to take affirmative action assisting the parties in all possible settlement options"); *In re BitTorrent*, 2012 WL 1570765 (E.D.N.Y. 2012) (same). The financial and incidental costs, risks, delays, distraction, and anguish associated with litigation often make settlement a preferable choice for litigants.

A. Request For A Settlement Conference

Judge Dunst is available to conduct settlement conferences at *any* stage of the case. If the parties want a settlement conference, they shall submit a joint letter requesting a settlement conference and proposing several dates when all counsel *and* party representatives with *full* settlement authority are available. The parties are encouraged to only request a settlement conference before Judge Dunst when both parties believe that a settlement conference will be productive, so as to not waste the parties' and the Court's time. Additionally, the parties may request referral to the Court's Mediation program, which is described on the Court's website at https://www.nyed.uscourts.gov. Finally, subject to the circumstances of each case, Judge Dunst *sua sponte* may order the parties to engage in mediation and/or settlement discussions.

B. Mandatory Pre-Conference Exchange Of A Formal Demand And An Offer

A settlement conference is more likely to be productive if, before the conference with the Court, the parties exchange formal settlement proposals. The parties should determine the proper form of communicating their views on settlement (either in writing, by telephone, or in-person), including, for example, plaintiff's itemization of damages and settlement demand with an explanation of why such a settlement is appropriate, and defendant's specific response to that offer with a brief explanation of whether such a settlement is appropriate. In order to ensure that this process is productive, the parties must engage in these mandatory settlement discussions (including exchange of a formal demand and offer) sufficiently in advance of their submission of *ex parte* settlement statements to the Court (as discussed below). Prior exchanges of settlement proposals that occurred prior to the scheduling of the settlement conference are insufficient—that is, any formal demand and offer *must* be made after the scheduling of the settlement conference. ***The Court strictly enforces this requirement.***

C. Confidential Settlement Statements

At least *seven (7) business days* prior to the settlement conference, the parties shall submit to chambers by email (dunst_chambers@nyed.uscourts.gov) *ex parte* settlement letters that address the following: (1) the history and current status of settlement discussions; (2) the most recent demand and offer made, indicating the dates that the demand and offer were made; (3) a frank assessment of the strengths and weakness of their case; and (4) any other information that may assist the Court in helping the parties resolve the matter (including what is important to the client and any potential barriers to settlement). The *ex parte* letters shall be limited to five (5) pages, excluding attachments (but the Court expects the parties to exercise their reasonable judgment as to the number and length of any exhibits to their *ex parte* letters). These statements are confidential and subject to the protections of Federal Rule of Evidence 408. These statements should not be filed on ECF and will not be shared with the adversary. After review of the statements, the Court may hold a pre-settlement conference call (separately and/or jointly) with the parties in advance of the settlement conference and/or order supplemental submissions from the parties.

D. Settlement Conference

All settlement conferences generally will be held in person under normal circumstances. *See supra* p. 5 (Rule I.C.2). As noted above, counsel with *full* settlement authority shall attend the conference. The clients are strongly encouraged to attend the settlement conference (however, the presence of clients is not mandatory, unless the Court orders otherwise). The Court expects the parties to be frank and open with each other (as well as with the Court) during the settlement conference, as well as addressing each other with courtesy and respect. *See, e.g.*, *Palaghita v. Alkor Cap. Corp.*, No. 19-CV-1504, 2021 WL 4464121, at *5 (E.D.N.Y. Aug. 20, 2021) ("The Court cannot require a party to settle; however, all parties must participate in court proceedings, including settlement conferences, in good faith." (citation omitted)), *report and recommendation adopted*, 2021 WL 4463483 (E.D.N.Y. Sept. 29, 2021).

VI. MOTIONS

A. Non-Dispositive Letter Motions Unrelated To Discovery

1. For *non-dispositive, non-discovery* pretrial disputes, the parties must first make good faith efforts to resolve the disputes in person or by telephone/video *before* seeking the Court's intervention. Any subsequent motion must confirm compliance with this rule, stating whether the non-moving parties consent to the motion or, if the other

parties could not be reached for input, the moving party's efforts to reach them.

2. If the above efforts to resolve the dispute are unsuccessful, the parties are directed to make non-dispositive, non-discovery motions by letter motion as permitted by Local Civil Rules 7.1(d), as applicable, and to be filed electronically as a "Motion" on ECF. No pre-motion conference with the Court is required before making non-dispositive, non-discovery letter motions.

3. Letter motions may not exceed five (5) pages in length, exclusive of attachments. A response in opposition may not exceed five (5) pages in length, exclusive of attachments, and must be filed within ten (10) business days after the motion is filed. Reply briefs are only permitted upon obtaining leave of the Court and are otherwise prohibited. *The Court expects the parties to exercise their reasonable judgment as to the number and length of any attachments to the letter motion and opposition. See* Local Rule 7.1(a)(3) (limiting supporting exhibits to only those "necessary for the decision of the motion").

4. After submission of the letter motion and opposition, the Court may issue a ruling on the basis of the submissions or schedule a conference to discuss the dispute. If necessary, after submission of the letter motion, the Court may advise the moving party to make supplemental submissions and/or file a formal motion pursuant to Local Civil Rules 6.1 and 7.1.

B. Dispositive Motions

Dispositive motions, such as motions to dismiss and motions for summary judgment, must be made to the presiding District Judge, pursuant to his or her individual rules, *unless* the parties have consented to Magistrate Judge Dunst's jurisdiction for all purposes in accordance with 28 U.S.C. § 636(c)(1). When the parties have so consented, the following rules apply (unless otherwise modified by Magistrate Judge Dunst):

1. **Pre-Motion Conference**. A letter motion (not to exceed three (3) pages) requesting a pre-motion conference is required *before* any dispositive motion may be filed. The letter motion must include a brief summary of the proposed dispositive motion and shall be filed on ECF as a "Motion" seeking a court conference.[4] Letter responses are

[4] For any dispositive motion that is to be made before Judge Dunst — either for a Report and Recommendation or for all purposes in a consent case — service of the pre-motion letter within the time requirements of Fed. R. Civ. P. Rules 12 or 56 shall constitute timely service of a motion made pursuant to those provisions.

limited to three (3) pages and must be filed within five (5) business days of the request. Affidavits and exhibits to the letter motion and responses are not permitted. Replies are not permitted. If either party seeks oral argument on the proposed dispositive motion, they should so indicate in the letter motion or response. A briefing schedule for the dispositive motion will be set at the pre-motion conference, if necessary.

2. **Service and filing**. No motion papers shall be filed on ECF until the motion has been fully briefed. That is, the parties shall serve each other with moving papers, opposition papers and reply, if any. Once the motion is fully briefed (all papers served), then each party must file its own papers on ECF on the date the last paper was served. Each party shall be responsible for filing its own motion papers via ECF on the date the reply brief is scheduled to be filed or any return date stated in the approved briefing schedule. Parties are to confer to ensure that all papers are being filed on the same day.

3. **Memoranda of Law**. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions on notice are limited to twenty (20) pages, and reply memoranda are limited to eight (8) pages. All memoranda shall contain both a table of contents and a table of authorities. The page limitations are exclusive of tables of contents and authorities. Case citations must contain pinpoint cites. All memoranda of law shall comply with Local Rule Civil Rule 11.1(b) regarding typeface, margins and spacing. Legal arguments must be set forth in a memorandum of law; affidavits or declarations containing legal argument will be rejected. *See* Local Civil Rule 7.1. Any memoranda, affidavits, or declarations not complying with the requirements set forth herein will be rejected. Courtesy copies are not required unless specifically requested by the Court. *The Court expects the parties to exercise their reasonable judgment as to the number and length of any attachments to the affidavits or declarations. See* Local Rule 7.1(a)(3) (limiting supporting exhibits to only those "necessary for the decision of the motion").

4. **Pro Se Depositions**. A counseled party moving for summary judgment against a *pro se* party must attach the *pro se* party's complete deposition transcript to its declaration.

C. Motions Implicating Fed. R. App. P. 4(a)(4)(A) or Similar Time Limiting Rules

If any party concludes in good faith that delaying the filing of a motion, in order to comply with any aspect of these rules, will deprive the party of a substantive right,

the party may file the 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.

D. Motions for Admission *Pro Hac Vice*

A motion for admission *pro hac vice*, together with a proposed order admitting the attorney *pro hac vice*, shall be served and filed electronically at least seven (7) business days prior to the return date designated in the notice of motion. Although there is no need to file a memorandum of law, this motion must comply with Local Civil Rule 1.3. These motions will be on submission. If any party objects to the motion, opposition papers must be served and filed at least two (2) business days prior to the return date. No reply papers are permitted. Failure to comply with this or Local Civil Rule 1.3 will result in denial of the motion.

VII. PRETRIAL PROCEDURES IN CASES ASSIGNED TO JUDGE DUNST

A. Joint Pretrial Orders

The parties shall submit a joint pretrial order seven (7) business days prior to the pre-trial conference, unless otherwise specified in the scheduling order, which includes the following:

1. the full caption of the action;

2. the names (including firm names), addresses telephone (office and cell) and email addresses of trial counsel;

3. 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;

4. a brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes on which the party is relying. The parties shall also list all claims and defenses previously asserted that are not to be tried;

5. 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;

6. a description of whether the parties intend to utilize electronic presentation of evidence or exhibits;

7. any stipulations or statement of facts that have been agreed to by all parties (which the Court *strongly* encourages);

8. a witness list identifying all percipient or fact witnesses and expert witnesses whose testimony is to be offered in its case in chief and briefly describing the expected content of their testimony, with an indication of whether such witnesses will testify in person, remotely or by deposition. Only listed witnesses will be permitted to testify except for good cause shown;

9. 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; and,

10. a list of exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties who will be offering them. The parties must 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 attempt to resolve before trial all evidentiary issues. Only the exhibits listed will be received in evidence except for good cause shown. All exhibits must be pre-marked for the trial and exchanged with the other parties at least ten (10) business days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.

B. Filings Prior to Trial

Unless otherwise ordered by the Court, each party shall electronically file the following items prior to the commencement date of trial as set forth below:

1. **For Jury Trials**. The following shall be filed with the Court ten (10) business days prior to trial: proposed *voir dire* questions; proposed jury charges; final witness lists; exhibit lists, including demonstratives; any stipulations of fact; and a short joint summary of the case to be read to the jury.

2. **For Non-Jury Bench Trials**. The following shall be filed with the Court ten (10) business days prior to trial: pre-trial memoranda of law (including the legal authority relied upon in support of the claims and defenses to be tried); final witness lists; exhibit lists, including demonstratives; marked pleadings; and any stipulations of fact;

3. **Motions in Limine**. All motions addressing any evidentiary or other issue which should be resolved in limine are to be filed twenty (20)

business days prior to trial, with a courtesy copy to Chambers. Opposition, if any, shall be filed ten (10) business days prior to trial, with a courtesy copy to Chambers. Replies, if any, should be made in the same manner five (5) days prior to trial. The form of papers in support of and opposing in limine motions shall be made by letter motion in accordance with Rule VI.A above. *See supra* p. 16.