

INDIVIDUAL RULES OF PRACTICE IN CIVIL CASES
Mary Kay Vyskocil, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 2230
New York, NY 10007
(212) 805-0200
VyskocilNYSDCChambers@nysd.uscourts.gov

Courtroom

500 Pearl Street, Courtroom 18C
Roseanne Dempsey,
Courtroom Deputy
(212) 805-0174

Pro Se Intake Office

United States District Court
Southern District of New York
40 Foley Square, Room 105
New York, NY 10007
(212) 805-0175

1. Procedural Rules

- A. Generally.** The Court’s procedures are governed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), and the Individual Practices set forth below. Unless otherwise ordered, these Individual Practices apply to all civil matters before Judge Vyskocil.
- B. Pilot Projects and Plans.** If a case is designated by Order of the Court to be part of one of the *Court’s* pilot projects or plans (including the protocols set forth in Local Civil Rule 83.10), the procedures in such project or plan shall govern to the extent that they are inconsistent with these Individual Practices.

2. Communications with the Court

- A. ECF.** In accordance with the Electronic Case Filing (“ECF”) Rules and Instructions, counsel are required to register as ECF filers and to enter a notice of appearance in the case promptly. Instructions are available on the Court website, at <https://nysd.uscourts.gov/electronic-case-filing>. Counsel are responsible for updating their contact information on ECF as needed, and counsel remain responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.
- B. Letters.** Except as otherwise provided below, communications with the Court should be by letter not to exceed three pages in length. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should

be filed electronically on ECF, with copies simultaneously delivered to all counsel.

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).

- i. By a *Pro Se* Party.** All communications with the Court by a *pro se* party must be sent to the Pro Se Intake Office. You may contact the Pro Se Intake Office at (212) 805-0175 during normal business hours, 8:30am - 5:00pm, Monday – Friday. No documents or filings should be sent directly to Chambers. Copies of correspondence between a *pro se* party and counsel should not be sent to the Court.
- C. Urgent Communications.** Materials filed via ECF are generally reviewed within one business day of filing. If a given submission requires immediate attention, please notify Chambers by telephone after it is filed by ECF.
- D. Telephone Calls.** For docketing, scheduling, and calendar matters, call the Courtroom Deputy Roseanne Dempsey at (212) 805-0174 between 9:00AM and 4:30PM. Otherwise, telephone calls to Chambers are permitted only for urgent matters.
 - i. By a *Pro Se* Party.** *Pro se* parties are not permitted to telephone Chambers. *Pro se* parties are directed to contact the Pro Se Intake Office at (212) 805-0175.
- E. Faxes.** Faxes to Chambers are not permitted (unless specifically directed by the Court).
- F. Hand Deliveries.** Where requested by the Court, hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse at 500 Pearl Street, New York, NY 10007, and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then taken to Chambers. If the hand-delivered letter is urgent and requires the Court’s immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- G. Requests for Adjournments or Extensions of Time.** Letter motions for adjournments or extensions of time should state: (i) the original due date; (ii) the number of previous requests for

adjournment or extension of time; (iii) whether these previous requests were granted or denied; (iv) the reason for the current request; and (v) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. All requests for adjournments or extensions of time, including requests on consent, must be made at least 72 hours prior to the scheduled appearance. Absent good cause, failure to comply with this deadline will result in denial of the request.

- i. **By a *Pro Se* Party.** Requests for extensions by *pro se* parties should be submitted to the Pro Se Office, and shall include the information specified in Rule 2(D), except that a *pro se* party may, but is not required to, submit a proposed Revised Scheduling Order.

H. Proposed Orders and Stipulations. All stipulations and proposed orders — with the exception of emergency applications, including temporary restraining orders and preliminary injunctions — should be filed electronically using the Court’s ECF system. Emergency applications should be filed with the Orders and Judgments Clerk, in person at 40 Foley Square, Room 105. Courtesy copies need not be sent to Chambers. For further information, parties are directed to consult the SDNY Electronic Case Filing Rules & Instructions, available at <https://nysd.uscourts.gov/electronic-case-filing>.

I. Related Cases. After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing as well as the docket number of the case to which it is related (e.g., 19 Civ. 1234 [rel. 18 Civ. 4321]).

J. Cases Removed from State Court. Counsel for the removing party or parties must, in addition to providing a copy of all process, pleadings, and papers served upon the defendants pursuant to 28 U.S.C. § 1446(a), provide the Court with a courtesy copy of any pleading filed or served while the case remained in state court. Counsel for all parties must file notices of appearance in this Court promptly upon removal.

3. Conferences

A. Attendance by Principal Trial Counsel. The attorney who will serve as principal trial counsel must appear at all conferences with the Court.

- B. Participation by Junior Attorneys:** The Court encourages the participation of less experienced attorneys in all proceedings — including pretrial conferences, hearings on discovery disputes, oral arguments, and examinations of witnesses at trial — particularly where that attorney played a substantial role in drafting the underlying filing or in preparing the relevant witness. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. Nevertheless, all attorneys appearing before the Court must have authority to bind the party they represent consistent with the proceedings (for example, by agreeing to a discovery or briefing schedule), and should be prepared to address any matters likely to arise at the proceeding. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.
- C. Initial Case Management Conference.** The Court will generally schedule a conference pursuant to Federal Rule of Civil Procedure 16(c) to take place within one month of the filing of an Answer to the Complaint. The Notice of Initial Pretrial Conference will be filed on ECF. Plaintiff’s counsel is responsible for distributing the Notice of Initial Pretrial Conference to all parties. Pursuant to the Notice, the parties are required to file on ECF and submit via e-mail (VyskocilNYSDChambers@nysd.uscourts.gov) a joint letter and Proposed Civil Case Management Plan and Scheduling Order (https://nysd.uscourts.gov/sites/default/files/practice_documents/MKV%20Vyskocil%20Case%20Management%20Plan.pdf) in PDF and Microsoft Word format one week prior to the Initial Pretrial Conference. In addition, initial disclosures pursuant to Rule 26(a)(1) shall be promptly exchanged prior to the Initial Pretrial Conference. Fed. R. Civ. P. 26(a)(1).
- D. Discovery Disputes.** The parties are to follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may file on ECF a **joint** letter, no longer than four pages, explaining the nature of the dispute and setting forth the position of each party with respect to the disputed issue, and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. After reviewing the joint letter, the Court may schedule a conference with the parties or ask for additional submissions in order to resolve the dispute.

Counsel should seek relief in accordance with these procedures in a timely fashion. Specifically, parties should seek relief with respect to discovery in sufficient time to obtain a ruling and any further discovery that is ordered in advance of the discovery cutoff. If a party waits until near the close of discovery to raise an issue that could have been raised earlier, the party is unlikely to be granted the relief that it seeks, let alone more time for discovery.

- E. Post-Discovery Conference.** In the Case Management Plan, the Court will schedule a Post-Discovery Conference to occur after all discovery has closed. In advance of the Post-Discovery Conference, the parties must submit a joint status letter, as described in the Case Management Plan and Scheduling Order. Any pre-motion filings for post-discovery dispositive motions will be addressed at the Post-Discovery Conference. Pre-motion letters and related filings (as described in ¶4(A)(i) below) must be submitted to the Court at least seven days before the Post-Discovery Conference. Deadlines for briefing dispositive motions and submission of pretrial materials (see ¶7) will be set at the conference.

4. Motions

A. General Rules

- i. Pre-Motion Submissions in Civil Cases.** Parties wishing to file a motion to dismiss, a motion for summary judgment, a motion for judgment on the pleadings, a motion for sanctions, and any motions concerning discovery should, prior to filing any motion, request a pre-motion conference with the Court. Motions concerning discovery are discussed in Section 3(D) above.

Pre-motion conferences are **not** required with respect to:

- Motions by incarcerated *pro se* litigants;
- Applications for temporary restraining orders;
- Applications for injunctions;
- Motions to remand;
- Motions for reargument;
- Motions described in Federal Rules of Appellate Procedure 4(a)(4)(A);
- Applications for attorney's fees;

- Motions for reduction of sentences;
- Objections to a Magistrate Judge's ruling;
- Motions brought on by order to show cause;
- Motions for admission *pro hac vice*;

To request a pre-motion conference, the party wishing to make a motion shall file a letter, not to exceed three pages, briefly describing the motion that is contemplated and summarizing the grounds for the proposed motion, and whether the motion is on consent of all parties. If the motion is not on consent, any opposing party should file a letter setting forth its position, not to exceed three pages, within three business days after the request is filed. The Court will then determine whether to hold a pre-motion conference in the matter. Courtesy copies are not necessary unless otherwise directed by the Court.

If a case has been referred to a magistrate judge for any reason that does not include dispositive motions, the parties should address pre-motion letters about dispositive motions to Judge Vyskocil, and Judge Vyskocil will hold any pre-motion conference and control the briefing schedule for the motion.

If the contemplated motion is for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, the pre-motion conference letter must be accompanied by a copy of the movant's Rule 56.1 statement and any letter in opposition must attach the non-movant's Rule 56.1 Counter-Statement. See 5(C) below. The supporting exhibits need not be filed with the Court until the parties submit their actual motion (or opposition) and supporting memoranda. Pre-motion letters concerning a motion for summary judgment must be filed one week in advance of the Post-Discovery Conference (see ¶ 3E).

The submission of a pre-motion letter does not stay any future deadlines, except that submission of a pre-motion letter concerning a motion to dismiss will stay a defendant's time to answer or otherwise move with respect to the Complaint.

- ii. **By a Pro Se Party.** Pre-motion submissions are not required from *pro se* parties. If the *pro se* party's adversary files a pre-motion submission, the *pro se* party may, but is not required to, file a response to the pre-motion submission. Any such

response shall be due three business days after the pre-motion submission is received by the *pro se* party.

- iii. Memoranda of Law in Civil Cases.** The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. 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. All memoranda of law shall be in 12-point font or larger, double-spaced, and text-searchable. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be indexed.
 - iv. Filing of Motion Papers.** Motion papers shall be filed with the Clerk's Office promptly after service.
 - v. Motion Schedule** – Unless otherwise stipulated by the Court, the schedule for responses and replies to civil motions shall be that established by Local Civil Rule 6.1.
 - vi. Courtesy Copies.** Courtesy copies are not necessary unless otherwise directed by the Court. Upon request, courtesy copies of motion papers, marked as such and including the ECF header (See Section 2(B) above), shall be mailed or hand-delivered to the Court by the party making the filing. All courtesy copies should be double-sided, three-hole-punched, tabbed, and placed in binders.
 - vii. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. After reviewing the motion papers, the Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- B. Letter Motions.** Letter motions with respect to administrative matters may be filed via ECF if they comply with the Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions. All requests for adjournments, extensions, and pre-motion conferences should be filed as letter motions. If the letter motion is not on consent, any opposing party should submit a letter setting forth its position, within three business days after the initial letter motion is received.
- C. Motions to Dismiss.** When a motion to dismiss is filed, the non-moving party must, within fourteen (14) days of filing of the

motion, notify the Court and its adversary in writing whether (i) it intends to file an amended pleading and when it shall do so, or (ii) it will rely on the pleading being attacked. This Rule does not alter the time to file a response provided by the Federal and Local Rules. If plaintiff amends its pleading, the defendant must, within fourteen days of service of the amended complaint: (i) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court and the plaintiff stating that it relies on the previously filed motion to dismiss.

- D. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Section 7(C) below.
- E. Motions to Exclude the Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the line of cases beginning with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- F. Pro Se Notices.** Parties who file a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment must provide the *pro se* party with a copy of the notices required under Local Civil Rules 12.1 or 56.2.
- G. Default Judgments.** A plaintiff seeking a default judgment must proceed by way of a motion, and NOT by Order to Show Cause, pursuant to the procedure set forth in Attachment A.

5. Special Rules for Summary Judgment Motions.

- A. Generally Not Available in Non-Jury Cases.** Absent good cause, the Court will not have summary judgment practice in a non-jury case.
- B. Courtesy Copy of Deposition Transcript.** Except in *pro se* cases, the parties shall provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. Parties should provide these materials on a CD or memory stick and not by e-mail. Where parties rely on deposition testimony, they may quote excerpts of deposition transcripts, but must include (only once) the entire deposition transcript as an exhibit.

C. Local Rule 56.1 Statements. Pursuant to Local Civil Rule 56.1, a movant for summary judgment shall file a statement of material undisputed facts and the opposing party shall respond.

- i. Electronic Copy to Other Parties.** Except in *pro se* cases, the moving party should provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1.
- ii. 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 followed by a citation to the portion(s) of the evidentiary record relied upon.

Except in *pro se* cases, 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, and the basis for any dispute, citing specific portions of the evidentiary record relied upon. The response may go on to make additional factual allegations in paragraphs numbered consecutively to those of the moving party (*i.e.*, they 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.

- iii. Multiple Parties Must Coordinate Statements.** If multiple parties are submitting 56.1 Statements, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.
- iv. Statement of Facts.** Each memoranda of law must include a statement of facts and may not simply incorporate by reference the entirety of a party's 56.1 Statement.

6. Other Pretrial Guidance

- A. Notice of Orders and Judgments.** The Court will provide notice of entry of any order or judgment through the Electronic Filing System for all ECF cases. The Court will not send facsimile copies of orders of judgments, except in cases which are not ECF cases and in extraordinary circumstances. It remains the duty of counsel for a party to review regularly the docket sheet of a case.
- 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) 805-0200 and state clearly whether (i) he or she has notified the adversary, and whether the adversary consents to temporary injunctive relief; or (ii) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. 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.

- C. Voluntary Dismissals, Settlement Agreements, and Requests To Retain Jurisdiction.** The Court does not endorse stipulations of voluntary dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. The Court does not endorse the terms of private settlement agreements. The Court also generally will not retain jurisdiction to enforce settlement agreements. If the parties believe that exceptional and compelling circumstances justify requesting that the Court retain jurisdiction to enforce a particular settlement agreement, the parties must file a motion containing that request and the reasons for retaining jurisdiction and attaching a copy of the settlement agreement on the public docket (or explaining why the settlement agreement cannot be made public at the time of the motion). Upon receipt of the motion, the Court will decide whether to retain jurisdiction.
- D. Bankruptcy Appeals.** The briefing schedule and format and length specifications set forth in the applicable provisions of Federal Rules of Bankruptcy Procedure shall govern unless otherwise ordered by the Court. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due.

7. Trial Procedures

- A. Joint Pretrial Order.** The parties shall file on ECF, and e-mail to the Court, within thirty (30) days of the Post-Discovery Conference, unless otherwise ordered by the Court, a proposed joint pretrial order, which shall include the following:
- i.** The full caption of the action;
 - ii.** The names, law firms, addresses, telephone (including mobile phone) and fax numbers, and email addresses 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. Any claim or defense not so identified will be deemed withdrawn. 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 whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- vi.** 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;
- vii.** A joint statement summarizing the nature of the case, to be read to potential jurors during jury selection;
- viii.** A list of people, places, and institutions that are likely to be mentioned during the course of the trial, to be read to potential jurors during jury selection;
- ix.** Any stipulations or agreed statements of fact or law to which all parties consent, including a certification by lead trial counsel for all parties that they have met face-to-face for the purpose of endeavoring to reach agreement upon stipulations of fact and stipulations of testimony and the content of their stipulations;
- x.** A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
- xi.** A designation (page and line) of deposition testimony to be offered by each party in its case in chief and any counter-designations and objections by any other party;
- xii.** A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground. If there are objections, the objecting party must include a brief statement that makes

clear the basis for its objection and provide any necessary supporting authority;

- xiii.** 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; and
 - xiv.** A statement of whether the parties consent to less than a unanimous verdict.
- B. Required Pretrial Filings.** Each party shall file and serve with the joint pretrial order:
- i.** In both jury and non-jury cases, motions addressing any evidentiary issues or other matters that should be resolved *in limine*. **Opposition papers shall be filed within seven days thereafter, and reply papers, if any, shall be filed within four days of any opposition;
 - ii.** In all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
 - iii.** In jury cases, **joint** proposed *voir dire* questions, verdict form and requests to charge. These joint submissions shall consist of single documents, jointly composed, noting any areas of disagreement between the parties. The *voir dire* questions and jury instructions shall include both the text of any requested questions or instructions as well as a citation, if available, to the authority from which it derives. These documents should also be submitted by e mail to Chambers in Microsoft Word format;
 - iv.** Submit to the Court and serve on opposing counsel, but NOT file on ECF, all documentary exhibits; and
 - v.** 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 trial testimony and exhibits, as there may be no opportunity for post-trial submissions. These documents should also be submitted to Chambers by e mail in Microsoft Word format.
- C. Additional Submissions in Non-Jury Cases.** At the time the joint pretrial order is filed, each party shall e-mail to the Court and serve on opposing counsel, but not file on ECF, the following:

(i) a statement of the facts the *pro se* party hopes to prove at trial; (ii) a list of all documents or other physical objects that the *pro se* party plans to put into evidence at trial; and (iii) a list of the names and addresses of all witnesses the *pro se* party intends to have testify at trial. The Statement must be sworn by the *pro se* party to be true and accurate based on the facts known by the *pro se* party. The *pro se* party shall file an original of this Statement with the Pro Se Intake Office. Two weeks after service of the *pro se* party's Statement, counsel for any represented party must file and serve a similar Statement containing the same categories of information.

ii. Pretrial Filings. The *pro se* party may also file either proposed findings of fact and conclusions of law or a proposed jury charge, but is not required to do so. Counsel for any represented party is directed to follow Rule 7(B)-(D).

9. Electronic Filing Under Seal in Civil and Miscellaneous Cases

A. Redactions Not Requiring Court Approval. Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior permission from the Court. The parties are also referred to the E-Government Act of 2002 and the Southern District's ECF Privacy Policy and Notice Regarding Privacy and Public Access to Electronic Civil and Criminal Case Files (together "Privacy Policy").

B. Sealing/Redactions Requiring Court Approval. Except for redactions permitted by the previous paragraph, all redactions or sealing of public court filings require Court approval. To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

i. Procedures for Filing Documents with Redactions. Motions or Letter Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s), must be filed electronically through the Court's ECF system in conformity

with the Court's Standing Order 19-mc-00583 and ECF Rules & Instructions Section 6, available at <https://nysd.uscourts.gov/rules/ecf-related-instructions>.

The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal (including why the redactions are consistent with the standards discussed in Paragraph 9(B) above), and should not include the confidential information sought to be filed under seal or redacted. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be redacted.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the proposed redactions highlighted. Both documents must be electronically filed on ECF and related to the motion.

Any party unable to comply with the requirements for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

- ii. **E-mailing of Documents to Chambers.** At the same time, the party should e-mail to Chambers (VyskocilNYSChambers@nysd.uscourts.gov) (i) a clean (i.e., unredacted) copy of the document and (ii) a copy of the document highlighting the information that has been redacted in the ECF filing.

10. Policy on the Use of Electronic Devices

Attorneys' use of electronic devices (including mobile telephones, personal electronic devices, computers, and printers) within the Courthouse and its environs is governed by the Court's Standing Order M10-468, available at

<https://nysd.uscourts.gov/sites/default/files/pdf/standing-order-electronic-devices.pdf>. If required by the Standing Order, counsel seeking to bring a device into the Courthouse shall submit a copy of the Electronic Devices General Purpose Form, available at <https://nysd.uscourts.gov/node/766>, to the Court by e-mail at least 24 hours prior to the relevant trial or hearing. Untimely requests may be denied on that basis alone. If permitted by the Standing Order, mobile telephones 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.

ATTACHMENT A

DEFAULT JUDGMENT PROCEDURE

- 1.** Before proceeding with a motion, a plaintiff seeking a default judgment must obtain a Certificate of Default for each defaulting defendant from the Clerk's Office pursuant to Federal Rule of Civil Procedure 55(a) and Local Rule 55.1.
- 2.** After receiving the certificate of default, the plaintiff must file on ECF a motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Civil Rule 55.1 and 55.2. A plaintiff seeking a default judgment should NOT proceed by order to show cause.
- 3.** The motion for default judgment must be accompanied by a proposed form of judgment and be supported by the following papers (which must be filed on ECF):
 - a. An attorney's affidavit setting forth:
 - i. A brief description of the nature of the claim(s);
 - ii. A description of the legal and factual basis for the Court's subject matter jurisdiction;
 - iii. A description of the legal and factual basis for the assertion of personal jurisdiction over the defendant against whom default judgment is sought;
 - iv. A statement that the defendant is not an infant or incompetent;
 - v. the basis for entering a default judgment, including:
 - a description of the method and date of service of the Summons and Complaint;
 - the procedural history beyond service of the Summons and Complaint, if any;
 - 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;
 - the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and

- the legal authority for why an inquest into damages would be unnecessary.
- b. A proposed order to show cause.
 - c. A proposed default judgment.
 - d. A copy of the Affidavit of Service of the Summons and Complaint.
 - e. A Certificate of Default from the Clerk of Court.
- 4. Relief.** If a party seeks an award of damages or attorney's fees and expenses, the moving party must also include:
- a. A request for an amount equal to or less than the principal amount demanded in the Complaint;
 - b. Definitive information and documentation such that the amount provided for in the proposed judgment can be readily calculated. (If this requirement cannot be satisfied, a default judgment may be granted as to liability, and damages will be determined by an inquest.);
 - c. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
 - d. Any request for interest on the principal amount may not exceed 9% simple interest, unless a legal or factual basis is demonstrated for a different rate;
 - e. An affidavit setting forth the legal and factual basis for any claim of attorneys' fees and expenses, the hours spent by each attorney, the reasonable hourly rate for each attorney, a description of services and the dates on which the services were rendered and a description of the expenses; and
 - f. The calculations made in arriving at the proposed judgment amount.
- 5.** The Court will review the motion for default judgment and, if appropriate, issue an order setting a date and time for a default judgment hearing.
- 6.** If the Court issues an Order, plaintiff should promptly serve on the defendant (a) a conforming copy of the motion and supporting papers and (b) the Court's Order setting the date and time for the default judgment hearing.

- 7.** Prior to the hearing date, Plaintiff must file on ECF proof of service in the manner and by the date specified by the Court's Order setting the default judgment hearing.

- 8.** Prior to the return date, Plaintiff must take the proposed judgment, separately backed, to the Orders and Judgments Clerk for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.