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INDIVIDUAL TRIAL RULES AND PROCEDURES

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For any case that settles after the final pretrial conference, costs will be assessed for obtaining a jury panel and seating a jury.

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I. PRETRIAL PROCEDURES AND RELATED FILINGS

The following pretrial procedures rules apply in all civil cases that will be tried to a jury. The same procedures apply to bench trials, except for § I.A.2. regarding *in limine* motions, § I.A.3 regarding joint proposed *voir dire*, jury instructions and verdict sheet, and § I.B.1 regarding the jury charge.

In criminal cases, the Court will set deadlines for the parties to submit some but not all of the pretrial materials listed below, including motions *in limine* and joint proposed *voir dire*, requests to charge and verdict sheet.

A. Filings in Anticipation of Trial

1. Trial-related Dates

   The Court usually will set the dates for trial and all pre-trial submissions, as detailed below, after discovery is complete and dispositive motions have been decided.

2. *In Limine* Motions

   In jury cases only, the parties shall file and serve motions addressing any evidentiary issues or other matters to be resolved *in limine.* Any party may respond within one week after the filing of an *in limine* motion. Memoranda of law in connection with a motion *in limine* are limited to five pages. No reply briefs shall be filed.

3. Joint Proposed *Voir Dire*, Jury Instructions and Verdict Sheet

   In all jury cases, the parties shall file joint proposed **case specific** requests to charge (in plain English), a joint verdict sheet and joint **case specific** proposed *voir dire* questions. The parties each shall file a one paragraph statement describing their own claims and/or defenses to be read during *voir dire* and the preliminary charge before opening statements. The parties should not submit generalized jury instructions or generalized *voir dire* questions.

   For any instruction or question about which the parties disagree, each party shall clearly state its proposed instruction or question and may state, in a footnote, the grounds on which the Court shall use that charge or question and citations to case law sufficient to enable the Court to render a decision.

   The parties shall provide the Court with a courtesy digital copy of both the proposed *voir dire* and requests to charge in Word format by email to Chambers.

4. Final Pretrial Memorandum of Law

If a party believes it would be useful to the Court, the party may file and serve a pretrial memorandum of law. Any party may respond within one week after the filing of a pretrial memorandum of law. The pretrial memoranda and response each shall not exceed 25 pages.

5. Joint Final Pretrial Order – Civil Cases Only

The parties shall file on ECF a proposed joint final pretrial order, including the following:

(a) The full caption of the action;

(b) The names, law firms, addresses, telephone numbers and email addresses of trial counsel;

(c) A brief statement (by each party to the extent their positions differ) of the factual and legal basis for subject matter jurisdiction, including citations to statutes and relevant facts as to citizenship and amount in controversy;

(d) A brief summary (by each party to the extent their positions differ) of the claims and defenses that remain to be tried, including citations to any relevant statute; and a brief summary of claims and defenses previously asserted that are not to be tried. The summaries shall not cite any evidentiary matter and shall not be argumentative;

(e) The number of trial days requested and whether the case is to be tried with or without a jury;

(f) A statement whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;

(g) A list of trial witnesses each party genuinely intends to call in its case in chief, and a separate list "identifying those whom the party may call if the need arises" (Fed. R. Civ. P. 26(a)(3)), including a short description and estimate of the length of each witness's testimony, and whether the witness will be called live or by prior testimony. In general, the Court expects testimony to be elicited live for any witness who appears live at trial, and that admissible prior testimony will be used only to supplement;

(h) Admissions, interrogatory answers or other written discovery responses the parties intend to offer into evidence, together with any objections to these materials;

(i) A list of *in limine* motions;

(j) A list of all proposed exhibits for each party's case in chief to facilitate the pre-admission of exhibits. The list shall (1) mark each exhibit with one star for no authenticity objection and two stars for no objections at all, (2) for exhibits with objections other than authenticity, state the nature of any objection or the Federal Rule of Evidence that is the basis for the objection and (3) state whether an outstanding motion *in limine* will resolve the objection. Any objections not made shall be deemed waived, and any exhibits not objected to shall be deemed admissible at trial;

(k) Stipulations of uncontested facts;

(l) A statement of each element of damages and, except for intangible damages (*e.g.*, pain and suffering, mental anguish or loss of consortium), the dollar amount, including prejudgment interest, punitive damages and attorneys' fees;

(m) Other requested relief;

(n) A statement whether the parties consent to less than a unanimous verdict. Typically, the Court seats 10 jurors for a civil trial.

B. **Matters to be Addressed at the Final Pretrial Conference and During Trial**

1. *Voir Dire*, Jury Instructions and Verdict Sheet

In most cases, prior to the final pretrial conference, the Court will distribute to the parties a draft *voir dire* and a draft preliminary jury charge that the Court will deliver prior to opening statements. At the final pretrial conference, the parties shall be prepared to address any objections or proposed changes to these materials.

A charging conference will be scheduled before the close of the evidence at trial. Prior to that conference, the Court will distribute to the parties a draft final jury charge that the Court will deliver prior to summations and a draft verdict sheet. The parties shall be prepared to address any objections or proposed changes to those materials at that conference.

2. Trial Exhibits and Demonstrative Aids

At least one week before the final pretrial conference, the parties shall provide the Court with a digital copy of exhibits and demonstrative aids that they intend to use in their case in chief at trial, and an index. The parties shall email Schofield_NYSDChambers@nysd.uscourts.gov requesting a link to upload these materials. In criminal and civil cases, the index shall be marked as specified in paragraph I.A.5.j above.

Prior to the final pretrial conference, the parties shall confer in an effort to resolve any objections to the demonstrative aids. Any objections that are not

resolved shall be identified in a letter filed at least two business days in advance of the final pretrial conference.

At the final pretrial conference, the parties shall be prepared to address each exhibit with a previously identified objection. If there are too many such exhibits to make a discussion of each one practical, the party opposing admission, one week prior to the final pretrial conference, shall file a letter grouping objections into no more than five categories with representative samples of each category, and explain the nature of the objection.

For cases with more than 15 exhibits, the index shall be on an Excel spreadsheet in native format, with hyperlinks to the exhibits if possible. The index shall include all of the information detailed above that is required on the exhibit list for the Final Pretrial Order, and shall state the date, if any, on which such exhibit was admitted into evidence.

Concurrent with their summations, the parties shall provide the Court with a digital copy for the jury of the exhibits admitted into evidence and an updated index with hyperlinks, omitting all information except the exhibit number and description of the exhibit.

3. Deposition Designations

The parties shall submit to the Court designations and counter-designations of deposition testimony they seek to offer at trial two trial days before the designating party intends to offer the testimony at trial. The designations or counter-designations shall be made by highlighting in different colors for each party the relevant parts of the transcript. The opposing party shall object in the margin by noting the basis for objection (e.g., FRE 801, 802 or hearsay). Any objections not made are waived. Such deposition testimony shall be submitted as a flattened PDF and may be submitted on the condensed (four pages to a page) version of the transcript. In a bench trial, for all deposition excerpts that will be offered as substantive evidence, the offering party shall submit a brief synopsis of the excerpts, not to exceed one page for each deposition, including page citations to the deposition transcript.

II. **TRIAL PROCEDURES**

The Court adopts the following trial guidelines to increase efficiency, promote juror understanding, preserve juror time, avoid surprises and advance respect between and among the parties.

A. **Efficiency and Time Management**

1. Schedule

(a) Trial dates and times. Unless otherwise decided by the Court, the Court will hear **five hours of testimony each day beginning at 10:00 A.M. with a one-hour lunch break and two fifteen-minute breaks. The trial generally will adjourn at approximately 4:45 P.M., but will go later if necessary**. In all events, the jury will be seated promptly at 10:00 A.M. When the jury is not seated -- before 10:00 A.M., during breaks and after the jury is excused for the day -- the parties may raise issues for rulings that may arise during the trial. In jury trials, in order to keep distractions during the trial to a minimum, counsel shall be present by 9:30 A.M. and available after 4:45 P.M. to discuss scheduling and any disputed matters that may arise.

Jurors will be informed of the trial schedule and any necessary changes to the schedule at the earliest possible time.

(b) Time keeping. In civil trials, the Court will impose and enforce time limits on the trial to promote attorney efficiency, preserve scarce judicial resources and reduce repetition and redundancy.

The Court will establish time limits before or at the final pretrial conference based on, e.g., input from the parties, the number and complexity of issues and the nature of proof to be offered. The Court will hold the parties to the time limits.

Time will be kept by the Courtroom Deputy and reported on the record periodically and at the close of evidence on each trial day. Time will accrue when counsel is standing in the presence of the jury and during the presentation of a party's designated deposition testimony.

2. Maximizing the Court and the Jury's Time

(a) Minimizing delay. The Court will eliminate unnecessary trial delay and disruption. When delay is unavoidable, if the case is being tried to a jury, the Court will explain the reason for the delay to the jury.

(b) Sidebars. Sidebars during jury trials are not permitted under any circumstance, and during bench trials, generally will not be permitted. The Court will use conferences before and after the trial day and, if

necessary, during breaks, to consider and resolve any objections and other issues.

Counsel shall anticipate evidentiary and legal issues and raise them well in advance of the relevant testimony, outside the presence of the jury.

(c) Conferring with opposing party. A party shall first raise any issue with the opposing party before raising the issue with the Court, including anticipated evidentiary and legal issues that require argument.

(d) Witness availability. The parties are expected to present witnesses throughout the entire trial day. Unless good cause is shown, if a party does not have another witness available on a given day, that party will be deemed to have rested. Counsel shall notify the Court and other counsel in writing, at the earliest possible time, of any particular scheduling problems involving witnesses so that other arrangements can be made to fill the trial day.

(e) Exhibits. Court time may not be used for marking exhibits. Exhibits shall be pre-marked, and if possible, pre-admitted in advance of the court session.

In civil cases, no later than three business days before trial, and in criminal cases on the first day of trial, the parties shall email the Court the current witness list and exhibit list. The exhibit list shall be in Excel Format and shall include a column indicating when an exhibit was admitted -- or for the first day of trial, that an exhibit is to be admitted at the opening of trial (based on absence of objection or *in limine* rulings), and another column to indicate exhibits that are excluded from evidence or withdrawn. The exhibit list may, but need not, include documents to be used only for cross-examination or impeachment. Prior to the first day of trial, the Court will admit exhibits as to which there are no objections or as to which any objections have been resolved.

In criminal cases, on the first day of trial, the Government shall provide the Court with one hard copy of Section 3500 material so that the Court can easily refer to the exhibits during trial. The Government also may provide these materials in electronic form by requesting a link from the Courtroom Deputy.

On the first day of trial and every trial day thereafter, by 8:30 A.M., the parties shall email the Court with an updated exhibit list and updated witness list, indicating which, if any, exhibits are new. At the end of each trial day, counsel shall advise the Court of any exhibits to be offered into evidence the following day and inform the Court of any objections that the parties have not been able to resolve. The Court will then admit exhibits

as to which there are no objections, and to the extent possible will rule on the admissibility of any exhibits as to which there are objections.

B. **Promoting Juror Understanding**

1. Jury Instructions

(a) General Matters. All instructions to the jury will be in plain language that is as understandable as possible to non-lawyers.

(b) Preliminary Instructions. The Court will give preliminary instructions on the law at the beginning of the trial, before the parties' opening statements. The preliminary instructions will explain the jury's role, trial procedures, the nature of evidence and its evaluation, basic relevant legal principles, including definitions of unfamiliar legal terms, the parties' claims and defenses, what the parties need to prove in order to sustain their claims and defenses, burden of proof and any pertinent instructions.[1]

Preliminary instructions will facilitate better decision-making by jurors as well as their greater understanding of their duty in the decision-making process. Jurors' ability to recall relevant evidence and apply the law to the facts will improve if they understand in advance the context in which they will be required to evaluate or analyze the evidence presented during the trial.

(c) Supplemental Instructions. The Court will give supplemental instructions during the course of the trial, as necessary, to assist the jury in understanding the facts and law.

(d) Final Instructions. The Court will give final instructions on the law at the end of the presentation of evidence, before the parties' closing statements. The Court will communicate clearly to the jury that the instructions given at the end of the trial will control deliberations. Each juror will be provided with a written copy of the final instructions for use while the jury is being instructed and during deliberations.

2. Other Tools to Promote Juror Understanding

(a) Juror Questions. In civil cases, jurors ordinarily will be permitted to submit written questions for witnesses.[2]

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[1] *See, e.g.*, *United States v. Stein*, 429 F. Supp. 2d 648, 649 (S.D.N.Y. 2006) ("It is only common sense to think that it would be helpful to the jurors to know at the outset of a long trial what they are going to be asked to decide at the end."); *see also* Fed. R. Civ. P. 51(b)(3) ("The court may instruct the jury at any time before the jury is discharged.").

[2] *United States v. Bush*, 47 F.3d 511, 514 (2d Cir. 1995), citing *United States v. Witt*, 215 F.2d 580, 584 (2d Cir. 1954) ("[D]irect questioning by jurors is a 'matter within the judge's discretion, like witness-questioning by the judge himself.'").

When appropriate, the Court will instruct the jury during the preliminary instructions and prior to the opening statements that they may submit clarifying questions in writing at the end of a witness's testimony, that the rules of evidence govern the questioning and that they should draw no conclusions or inferences if a question is not asked or is modified.

Upon receipt of a written question, the Court will make the question part of the Court record. Outside the hearing of the jury, the Court will disclose the question to the parties, and hear objections and proposed modifications. If the Court determines that the question is permissible, the Court will pose the question to the witness.

(b) Juror Note Taking. Jurors will be permitted but not required to take notes during the trial. Jurors will be instructed that the notes are to aid their memory of the evidence and are not to substitute for their recollection of the evidence in the case.[3] Counsel shall confer and arrange to provide each juror with a notebook or paper and pens. The notes will be collected and destroyed at the conclusion of the trial.

(c) Other. The Court is open to techniques to enhance juror comprehension including alternating the sequencing of experts, deposition summaries and other aids.

3. Juror Deliberations

(a) Exhibits. The Court ordinarily will provide all exhibits admitted into evidence to the jurors for use in the jury room for use during deliberations. Immediately before the jury deliberates, the parties shall provide the court with digital copies of the admitted exhibits as set forth in Section B.2 above.

(b) Juror questions. When jurors submit a question during deliberations, the Court, in consultation with the parties, will supply a prompt, complete, and responsive answer or will explain to the jurors why it cannot do so.

(c) Impasse. The Court will endeavor to assist a jury that advises the Court that it has reached an impasse in its deliberations, including directing that further proceedings occur if appropriate.

[3] Sample jury instruction: "If you took notes during the course of the trial, you shall not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to be used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror. Finally, your notes are not to substitute for your recollection of the evidence in the case. If you have any doubt as to any testimony, you may request that the testimony be read back to you as I mentioned earlier."

C. **Courtroom Decorum and Other Matters**

1. Counsel are advised to review the most recent standing orders regarding the SDNY COVID-19 procedures on the court website. Only those individuals who meet the Court's entry requirements will be permitted entry.

2. Counsel shall consult the most recent standing order on the Court's website for the current policy concerning electronic devices.

3. Any request for a witness to testify remotely, i.e. live, but by videoconference, shall be made as early as possible and at least three business days in advance of the witness being called.

4. All witnesses shall wear civilian clothes -- no uniforms or badges.

5. Counsel and parties are to stand as the Court is opened, recessed and adjourned, and when the jury enters or leaves the courtroom.

6. Counsel and parties are to be on time for each court session. If counsel have matters in other courtrooms when a trial is scheduled, they shall arrange in advance to have a colleague handle the other appearance.

7. Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross-examination.

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

9. Redirect testimony generally will be limited to no more than five minutes.

10. In making an objection, counsel shall be brief and direct. (For example, "Objection, hearsay.") In jury trials, counsel shall not argue the objection in the presence of the jury or argue with the ruling of the Court in the presence of the jury.

11. Offers of, or requests for, a stipulation shall be made in private (not within the hearing of the jury).

12. During jury trials, counsel shall not make any motion (e.g., for a mistrial) in the presence of the jury. Such matters may be raised during a recess.

13. Counsel shall address all remarks to the Court, not to opposing counsel.

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

15. Counsel shall refrain from approaching the bench or any witness. Any document counsel wishes to have the Court examine ordinarily shall be provided to the Court electronically.

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

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

18. Fact witnesses shall not be in the courtroom until after they have testified, except that one corporate representative per side may be present in the courtroom or remotely for the duration of the trial.

19. Counsel may not confer with a witness who is being cross-examined, including during breaks and overnight.

20. Counsel shall not move to "qualify" a witness as an expert.