

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

JONES, ET AL.

Plaintiffs,

v.

VARSITY BRANDS, LLC, ET AL.,

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

**DEFENDANTS' MOTION TO REQUIRE ADHERENCE WITH FORMATTING
REQUIREMENTS OF LOCAL RULE 7.1**

Local Rule 7.1 requires that, in papers presented for filing, “[l]ines must be double-spaced, except that quotations may be indented and single-spaced and headings and footnotes may be single-spaced.” LR 7.1(b). All widely-used word processing programs, including Microsoft Word, Google Documents, and Apple Pages, use 28 “points” of spacing when set to double-space lines.

In the process of preparing replies in support of Defendants’ motion for summary judgment, Defendants discovered that Plaintiffs have with regularity overrode the standard double-space setting and instead spaced lines 24 points apart. This has enabled Plaintiffs to have approximately 27 lines on each page, rather than the approximately 23 lines per page that would result from formatting using standard double spacing. By doing so, Plaintiffs gained approximately 7 and a half additional pages for their statement of additional facts and approximately 17 additional pages for their legal memoranda opposing summary judgment.¹

¹ These calculations are based on approximately four additional lines per page for Plaintiffs’ 49-page statement of additional material fact (effectively rendering it a 57-and-a-half page statement) and 99 pages of legal memoranda (effectively rendering those memoranda 116 pages long).

This was not in accordance with the rules requiring double-spacing. *See, e.g., P.G. ex rel. D.G. v. City Sch. Dist. of New York*, No. 14 CIV. 1207 KPF, 2015 WL 787008, at *1 (S.D.N.Y. Feb. 25, 2015) (“Plaintiffs’ counsel abused the page limit and violated the Local Rules by reducing the line spacing to slightly less than double-spaced. This meant that rather than having 23 lines per page, Plaintiffs had 27 lines per page.”); *Doubleday Acquisitions LLC v. Envirotainer AB*, No. 1:21-CV-03749-SCJ, 2022 WL 18777366, at *3 (N.D. Ga. July 1, 2022) (surveying cases and concluding that the court’s local rules, which required text to be “double-spaced between lines,” required “parties to use a word processor’s default double-spacing option rather than exact spacing”).

There do not appear to be any cases in this district pertaining to this issue. During the meet and confer process relating to this motion, Plaintiffs pointed to cases from districts in the Ninth Circuit to the effect that 24-point spacing complies with those courts’ local rules, in particular *Andrich v. Glynn*, No. CV-21-00047-TUC-RM, 2023 WL 4847592, at *3 (D. Ariz. July 28, 2023) and *Sameer v. Khera*, No. 117CV01748DADEPG, 2018 WL 3472557, at *1 (E.D. Cal. July 18, 2018). At least one of those districts has local rules expressly allowing documents with up to 28 lines per page; this district does not. *See Andrich*, at *3.²

To ensure a level playing field going forward, Defendants request that the Court issue an order requiring the default spacing of Microsoft Word, Google Docs, and Apple Pages (28 points between lines for double spacing, 14 points between lines for single spacing) for filings subject to Local Rule 7.1.

² *See* Local Rule 7.1(b)(1), available at https://www.azd.uscourts.gov/sites/azd/files/local-rules/LRCiv_2021.pdf.

Dated: October 19, 2023

Respectfully submitted,

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CERTIFICATE OF CONSULTATION UNDER LOCAL RULE 7.2(a)(1)(B)

I hereby certify that on September 28, 2023, I notified Plaintiffs' counsel via email of Defendants' position that Plaintiffs' use of 24-point spacing did not comply with Local Rule 7.1(b). Plaintiffs indicated via email on September 28, 2023, that they disagreed with Defendants' interpretation of the rule. Defendants notified Plaintiffs of Defendants' intent to seek the relief requested in this motion via telephone on October 18, 2023, after which Defendants sought an agreed resolution of the issue via email consultation. Plaintiffs indicated via email on October 19 that they continued to disagree with Defendants' interpretation of LR 7.1(b) and would not agree to use Microsoft Word's double spacing, necessitating this motion.

s/ Matthew S. Mulqueen

Matthew S. Mulqueen

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REQUIRE
ADHERENCE WITH FORMATTING REQUIREMENTS OF LOCAL RULE 7.1**

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INTRODUCTION

Defendants’ Motion to “Require Adherence with Formatting Requirements of Local Rule 7.1” (“Motion”) accuses Plaintiffs of engaging in formatting mischief. Defendants say they were surprised to discover that Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment contained “approximately 27 lines on each page.” Defendants cry foul, because they say that when they used Microsoft Word’s automatic “double” line setting feature, Word provided Defendants with only 23 lines per page. They thus ask the Court to hold that the Local Rules’ double-spacing requirement must be interpreted differently than that term has been understood and used by writers, printers, and typographers for generations. Instead, Defendants insist that term should be used to mean the settings determined by what the software programmers at Microsoft or other word-processing programs decide to use for their “double” line setting and regardless of how those programmers arbitrarily change those settings over time. But as Plaintiffs’ typography expert explains, “double spacing” has an objective meaning, derived from the historical precedent of the typewriter: it means line spacing that is double the size of the typeface font. That interpretation makes common sense, finds historical support, and does not require litigants to purchase a license to specific commercial word-processing products or to be subject to the vagaries of the software over time. Plaintiffs’ Opposition brief employed 12-point font and 24-point line spacing. That is double-spacing. Plaintiffs complied with the rule requirement as that requirement is widely and broadly understood.¹

Defendants’ interpretation, which Defendants put forward without any principled basis, is flawed for numerous reasons. It ignores the details and techniques of typography and historical practice. Microsoft’s automatic “double” line setting feature was chosen to be more than twice the size of the font (roughly 233%) and is subject to the arbitrary decisions of Microsoft. Indeed,

¹ Plaintiffs submit that it is likely that many people assume that Microsoft Word’s “double” line spacing setting provides precise double-spacing. Plaintiffs submit that many people would be surprised to learn that Microsoft Word’s “double” line setting was actually intentionally designed to provide more line space than double-spacing.

it was changed to provide more space before its 2007 version release. Nor is it even consistent between fonts. Following Defendants’ strained interpretation of the Local Rules leads to absurd results and is not objectively applicable. Perhaps that is why Defendants do not put forward any principled reason why their interpretation of “double-spacing” is the correct interpretation.

Moreover, Defendants’ motion insinuates that Plaintiffs have engaged in some form of formatting gamesmanship. But the facts prove just the opposite. Defendants never objected to Plaintiffs’ use of 24-point spacing previously, which has been used throughout the duration of this case. In fact, the very first document ever filed in this case was filed in 24-point spacing, with up to 28 lines per page. *See* ECF No. 1 (Pls’ Compl.). And Defendants conveniently omit from their paper that Defendants themselves have filed documents with the Court in 24-point spacing. *See* ECF No. 207.

Although courts in different jurisdictions have come to different conclusions about what their Local Rules’ “double-spacing” means, the courts that have held that double-spacing means spacing that is twice the size of the font are far more persuasive. The courts that have required parties to use Microsoft Word’s proprietary “double” line setting are not persuasive and do real damage to interpreting rules in a common-sense, objective, and fair manner. Courts should not interpret their Local Rules to require the use of Microsoft Word or other commercial products, particularly where the term “double-spacing” long predates word-processing software and has an objective meaning. Plaintiffs submit that the energy of the parties, and the Court, is far better spent on other endeavors.

ARGUMENT

I. PLAINTIFFS’ SUMMARY JUDGEMENT OPPOSITION IS DOUBLE-SPACED

A. Double-Spacing Means Line Spacing that Is Twice the Size of the Font.

The Local Rules require that all papers filed with the Court be “double-spaced.” *See* L.R. 7.1(b). Double-spacing means line spacing that is twice the size of the font. *See* M. Butterick, *Typography for Lawyers* at 137 (2d ed., 2015) (*available at*

<https://typographyforlawyers.com/line-spacing.html>) (excerpts of which are attached as Exhibit A); *see also* Decl. of M. Butterick ¶¶ 10, 18. Thus, because the Local Rules require papers to use 12-point font, double-spacing means line-spacing that is 24-points. *Id.* Plaintiffs’ Opposition to all of Defendants’ Motions for Summary Judgment, ECF Nos. 477-485, 488-1, used exactly 24-point spacing. *See* Decl. of D. Seidel ¶ 10. Thus, there is no dispute that Plaintiffs’ filing was double-spaced in compliance with Local Rule 7.1(b). Matthew Butterick, the author of *Typography for Lawyers*, has measured one of Plaintiffs’ Opposition filings with a pica-scale Schaedler Precision ruler. Decl. of M. Butterick ¶¶ 11–12. He found Plaintiffs’ filing to be double-spaced. *Id.* at 12.

The reason that double-spacing means twice the size of the font originates from the typewriter. “Most courts adopted their line-spacing standards in the typewriter era.” *Typography for Lawyers* at 137. That’s why most courts’ local rules call for double-spaced lines. “On a typewriter, each line is the height of the font,” and, with each carriage return, a typewriter could only move the paper in increments of one line at a time. *Id.*; *see also* Decl. of M. Butterick at 18. “[T]hus double spacing means twice the font size.” *Typography for Lawyers* at 137. “So if you’re required to use a 12-point font, double line spacing means 24 points.” *Id.*

Several courts that have considered this issue are in accord. *See, e.g., Sameer v. Khera*, No. 1:17-CV-01748-DAD-EPG, 2018 WL 3472557, at *1 (E.D.Cal. 2018) (“This means that the font of documents filed with the Court in this case must be drafted using Times New Roman with a minimum font size of 12-point, with footnotes a minimum of 11-point, and that line spacing of such documents . . . must be double-spaced meaning, at minimum, 24-point line spacing.”); *Swenson v. Amtrak*, No. 2:14-CV-02629-KJM-CMK, 2015 WL 6447493, at *6 (E.D. Cal. 2015) (“An amended complaint shall be filed within twenty-one days. In the interest of an efficient resolution of this matter, it must be printed in typeface no smaller than twelve-point Times New Roman with a spacing twenty-four points or greater, i.e., double spacing.”). Indeed, in addition to being consistent with the meaning of the term through decades of practice, it is common sense that double-spacing means line spacing that is “double” the font size. There is no other

reasonable interpretation of “double-spaced” in this context because there is nothing other than the font size—which determines the height of the lines of text—to be doubled. Thus, arguing that Plaintiffs failed to double-space their brief despite acknowledging that Plaintiffs’ line spacing is precisely double the font size is frivolous. At least one court has granted sanctions against a party for raising such an argument. *See Focally LLC v. Win Elements, LLC*, No. EDCV 21-2105 JGB (KKx), 2022 WL 19827474, at *6-8 (C.D. Cal. 2022) (holding that a defendant’s motion to strike a plaintiffs’ opposition for using 24-pt spacing rather than Microsoft Word’s proprietary “double” line setting was subject to sanctions, because not only was it “objectively baseless” since 24-pt spacing is double-spacing, but also because “the real problem with Defendants’ filing is . . . the sheer audacity of advancing such a meritless argument”).

Interpreting the term “double-spaced” to mean line spacing that is double the font size is the common-sense interpretation, and comports with what it has always meant, dating to the era of the typewriter. It is also the superior interpretation from a practical perspective because it is objective, not subject to change or dispute, is readily verifiable, and does not require the use of any specific word-processing software.

B. Defendants’ Interpretation Is Flawed.

Defendants’ vague interpretation of what “double-spaced” means is flawed for numerous reasons. Defendants contend that “double-spaced” does not actually mean anything is doubled, but instead means using the arbitrary “double” line setting found in Microsoft Word, Google Docs, or Apple Pages, or, in the alternative, that it means using exactly 28-point spacing for 12-

point fonts.² There is no principled reason to adopt either interpretation and Defendants provide none. Requiring conformity with the arbitrary settings on specific word-processing software (1) is not objective; (2) would create real formatting mischief; and (3) would improperly require the use of specific commercial software for access to the courts.

First, interpreting the term “double-spaced” in the Local Rules to mean conforming to Microsoft Word or other commercial word-processing programs’ proprietary “double” line setting is not objective. Microsoft Word and other commercial products have arbitrarily chosen to make their own “double” line setting to be roughly 233% line spacing, contrary to what its name suggests. *See* Ex. A, *Typography for Lawyers* at 138. In fact, Microsoft changed what its “single” and “double” line settings did around 2006. *See* Ex. B (Microsoft blog post). At the time, Microsoft stated that they decided to add “a bit of space between each line within the paragraph” because it looked better, increasing each “line” to roughly 115% of the font size (that’s why the current “double” setting in Word is roughly 230%). And in that article, Microsoft acknowledged that they were not following what “double-spacing” actually meant, saying that “double-spaced would be 200%.” *Id.* There is thus no dispute that Microsoft’s “double” line setting is arbitrarily chosen by Microsoft, is greater than double-spacing, and can be changed by Microsoft at any time.

Moreover, Microsoft’s “double” line setting is not even consistent from font to font. Although Microsoft’s “double” line setting provides roughly 233% line spacing, the formula that Microsoft uses is partially dependent on metadata within each specific font, not just the font size.

² Of course, there is no reasonable interpretation of “double-spaced” to mean 28-point spacing with 12-point font. Defendants do not even make clear whether they believe “double-spacing” under the rules requires that a litigant must use the “double” line setting in Microsoft Word, Google Docs, or Apple Pages, or whether it actually means using exactly 28-point spacing, which is, of course, more than double spacing. Indeed, despite Defendants’ un-cited assertions to the contrary, Defendants cannot dispute that MS Word’s “double” line setting is close to, but is not the same as 28-point spacing. Thus, to ask the Court to hold that the Local Rules require exactly 28-point spacing, when that neither comports with the historical interpretation nor with MS Words’ more complex “double” line setting formula finds no support at all. It also demonstrates why resorting to MS Word to interpret the Local Rules is highly problematic.

See Decl. of M. Butterick at ¶ 21. Thus, in Microsoft Word, two fonts set to 12-point size, both set to “double” line spacing, might still end up with different line spacing on the page. *Id.* And Microsoft may adjust its “double” line spacing formula without Courts and users even being aware of the change.

The same appears to be true of other word-processing programs. For example, the two other programs mentioned by Defendants—Google Docs and Apple Pages—do not even use the identical formula in setting the line spacing under their own proprietary “double” line spacing. For example, in Apple Pages, a document set to 1-inch margins, 12-point Times New Roman font, with Apple Pages’ “double” line setting yields 22 lines per page. The identical settings in Microsoft Word, using Word’s “double” line setting will yield 23 lines per page. *See* Decl. of D. Seidel ¶¶ 6–7; *Compare* Exs. E and F. Thus, Defendants are simply incorrect when they claim without citation that “all widely-used word processing programs, including Microsoft Word, Google Documents, and Apple Pages, use 28 ‘points’ of spacing when set to double-space lines.” *See* Defs’ Mot., ECF No. 509 at 1. Not only are those three programs’ “double” spacing settings not the same as exactly 28-point spacing, but they are not even the same with respect to each other.

Second, Defendants’ interpretation of the rule would provide for significant formatting gamesmanship, because there are numerous word-processing programs, and each may (and often do) apply a different “double” line spacing formula.³ If the rule were that litigants must use the “double” line spacing setting of whichever word-processing program they prefer, litigants could simply choose the word-processing program with the tightest “double” line spacing. Indeed, under such an interpretation, new word processing programs could be designed such that their own proprietary “double” spacing setting is less than 200%, perhaps specifically for lawyers to get more lines per page. And whether a litigant was in compliance or not would hinge merely on

³ *See, e.g.*, Stacy Fischer, 12 Best Free Alternatives to MS Word (Feb. 2, 2023) (available at <https://www.lifewire.com/free-word-processors-1356338>).

whether they could supply a declaration stating that they used the “double” spacing setting on their word-processor of choice.

Third, and perhaps most fundamentally, the Local Rules of courts should not require the use of any specific commercial product, such as Microsoft Word.⁴ Access to courts is a fundamental right. And access to courts should never be conditioned on using a particular commercial product. If courts mandated line-spacing based on the behavior of any specific word-processing program, access to courts would be conditioned on purchasing a license to that program. Fortunately, the Local Rules do not require the use of Microsoft Word or any other specific program. Nor do the Local Rules state that “double-spacing” is defined by the behavior and arbitrary choices made by specific word-processing programs. The Local Rules simply state that papers filed with the Court must be “double-spaced.” L.R. 7.1(b). Defendants invite the Court to issue an order holding that “double-spacing” under the Local Rules does not mean what it has always meant in plain English and must instead be interpreted consistent with the proprietary behavior of Microsoft Word or other programs. Defendants’ invitation should be rejected.

C. The Cases that Defendants Cite Are Not Persuasive.

Defendants put forward no principled reason why their opportunistic interpretation should be adopted. Rather, Defendants merely cite several cases, which wrongly required the use of Microsoft Word in order to submit filings to the Court. But notably, Defendants do not put forward any rationale for why those courts were correct. Considering the above analysis, this Court should simply find those cases unpersuasive.

In the case that Defendants cite first, *P.G. ex rel. D.G. v. City Sch. Dist. of New York*, No. 14 CIV. 1207(KPF), 2015 WL 787008, at *1 (S.D.N.Y. Feb. 25, 2015), the Court held:

⁴ Indeed, the Local Rules do not require the use of any commercial word processing software at all. Under the Local Rules, parties may submit typewritten materials. If a lawyer desires to submit typewritten papers, it would be impossible for them to use a commercial word-processing software’s “double” line setting. They could only employ true “double-spacing,” which would be exactly 24-point line spacing. Defendants’ strained position does not take this into account at all.

“Plaintiffs’ counsel abused the page limit and violated the Local Rules by reducing the line spacing to slightly less than double-spaced.” The Court did not state what spacing the Plaintiffs used. The court only held that it was “less than double-spaced.” Thus, it is reasonable to assume that the plaintiffs in that case may have used line-spacing less than 24-point spacing.⁵ Moreover, to the extent the Court in that case meant to hold, without any explanation or analysis, that “double-spaced” briefs requires litigants to use the “double” line spacing setting in Microsoft Word, the Court simply got it wrong. *See Ex. A, Typography for Lawyers* at 137–39. Notably, the court provided no analysis of the issues.

In *Doubleday Acquisitions*, however, the Northern District of Georgia court did perform an analysis of the relevant issues. *See Doubleday Acquisitions LLC v. Envirotainer AB*, No. 1:21-CV-03749-SCJ, 2022 WL 18777366, at *1–4 (N.D. Ga. July 1, 2022). But unfortunately, the court in *Doubleday* came to the wrong conclusion, ultimately holding that “[A] common sense understanding of ‘double spaced’ in the context of word processing along with the practical application of that understanding . . . quickly leads to the conclusion that ‘double spaced’ refers to the standard ‘double’ setting for spacing in [Word] rather than ‘[28] Point’ spacing.” *Id.* at *3 (quoting *Duke Energy Carolinas, LLC*, 2022 WL 1081850, at *2.). Thus, the Northern District of Georgia held that its Local Rules “require parties to use a word processor’s default double-spacing option rather than exact spacing.” *Id.*

But for the reasons explained above, that ruling is not persuasive and should not be followed. First, the court in *Doubleday* misunderstood the defendants’ argument, believing that defendants were arguing that “[Microsoft] Word’s default double spacing is an obsolete relic of the typewriter era.” *Id.* at *2. The court got it exactly backwards. *See supra* Section I.A. Because with each carriage return typewriters advance the sheet of paper one line at a time, which was equivalent to the size of the font, double-spacing has historically always meant line spacing that is exactly twice the font size. The Court believed the opposite was true.

⁵ The local rules in that case required, just like in this jurisdiction, that briefs be filed in 12-point font and be “double-spaced.” *See* NY R USDCTS&ED Civ Rule 11.1(b).

Second, the court in *Doubleday* had ample reason to believe that the defendant in that case was not being genuine with the court, because the defendant had consistently used Microsoft Words’ double line spacing setting until a brief in which its request for additional pages was denied. *See Doubleday*, 2022 WL 18777366, at *2. Although that should have been irrelevant—since the only question was whether the brief complied with the local rules—upon questioning, the lawyer apologized for his or her conduct rather than maintaining the principled interpretation of “double-spacing.” *Id.* Here, Plaintiffs have been consistent, and in fact, Defendants themselves have submitted papers which Defendants now contend violated the Local Rules. *See infra* Section II.

Third, the *Doubleday* court simply failed to appreciate the perils of holding that its local rules should be interpreted to require litigants to use Microsoft Word or other word-processing software’s proprietary “double” line spacing settings. To be sure, the Court was correctly concerned with interpreting the Local Rules in a manner that would “establish uniformity,” and “fairness.” *Id.* at *3. But the court mistakenly came to the conclusion that would do the opposite. As explained above, holding that litigants must use the “double” setting of any word-processing program (as the Court in *Doubleday* ultimately held) destroys uniformity, because each word-processing program may use a different “double” setting formula, and may change its “single” and “double” line setting formulas from one version to the next, just as Microsoft did in 2006. *See Ex C.*

Similarly, requiring that litigants use Microsoft Word, or any specific word-processing program does not promote fairness because litigants should not have to acquire a license to any specific program for access to the courts. In order to promote uniformity and fairness, the court in *Doubleday* should have interpreted its local rules in a common sense and objective way: that double-spacing has long meant line-spacing twice the font size. That would have been the interpretation that ensures uniformity and fairness.

II. DEFENDANTS' MOTION APPEARS TO BE IMPROPERLY MOTIVATED

Defendants' motion states that Defendants first discovered Plaintiffs' use of 24-point spacing in the "process of preparing replies in support of Defendants' motion for summary judgment." *See* Defs' Mot. at 1. But Plaintiffs have been using 24-point line spacing for many if not most of the filings in this case. *See, e.g.*, ECF Nos. 375, 384-1, 394-1, 424, 426, 428, 430, 433, 454. In fact, the very first document ever filed in this case was filed with 24-point line spacing. *See* ECF No. 1 (Pls' Compl.). It contained up to 28 lines per page.⁶

Moreover, Defendants themselves have filed documents with this Court in 24-point line spacing. *See, e.g.*, ECF No. 207 (filed by Webb's counsel, Locke Lorde LLP).⁷ Similarly, Defendants have drafted numerous joint filings with Plaintiffs using 24-point line spacing. *See, e.g.*, ECF Nos. 82, 91, 92, 93, 96, 209.

Defendants should have been well aware that Plaintiffs have used 24-point line spacing since the very beginning of this case.⁸ But Defendants only raised the issue for the first time after Plaintiffs' opposed Defendants' motion for summary judgment. Plaintiffs' opposition provided Defendants with a particularly opportunistic filing, because, since Defendants had requested and were granted up to 100 pages of briefing, the parties' briefing on summary judgment was voluminous. It therefore provided Defendants with the opportunity to insinuate that Plaintiffs had unethically gained a substantial and unfair advantage over Defendants. But it was Defendants

⁶ A page with 1-inch margins using 12-point font and 24-point line spacing should produce a document with at most 27 lines per page. *See* decl. of M. Butterick at ¶ 15. Plaintiffs' complaint has some but not all pages with 28 lines per page due to what appears to be margins that were less than 1-inch on all sides, and widow/orphan control engaged.

⁷ ECF No. 207 employs 24-point spacing for the first half of the document's text (until the line that begins "Wherefore" in bold text). The second half of the document employs line spacing that is more widely spaced than 24-point spacing.

⁸ Plaintiffs have filed some documents using the "double" setting in Microsoft word, as a result of different drafters and litigation support personnel using different formatting options. But Plaintiffs' counsel has consistently maintained that 24-point line spacing with 12-point font documents is double-spacing and in full compliance with the Local Rules. Since Microsoft Word's "double" line setting is more than 24-point spacing, it too complies with the rules. *See* Decl. of D. Seidel at ¶¶ 9, 12, 13.

that sought to use the alleged line-spacing issue to receive an unfair advantage. Before filing their Summary Judgment Reply, Defendants raised Plaintiffs' use of 24-point spacing for the first time, and asked that Plaintiffs agree to jointly file a motion with Defendants that would have (1) forced Plaintiffs to refile their oppositions using Microsoft Word's "double" line spacing setting; and (2) would have given Defendants significantly more time to file their Reply. *See* Ex. D (Email from Defendants' counsel). Defendants threatened moving to strike Plaintiffs' opposition for allegedly not being properly double-spaced unless Plaintiffs agreed to refile and give Defendants significantly more time to reply. *Id.* It certainly appears to Plaintiffs' counsel that Defendants waited until they could use Plaintiffs' 24-point line spacing opportunistically and to try to extract more time to reply.

III. DEFENDANTS' MOTION IS PETTIFOGGERY

This is an important and complex case which raises many issues of civil procedure and substantive law. It implicates matters of broad social concern. Yet Plaintiffs are compelled to devote energy to petty quarrels drawing the parties' energy and attention from a resolution on the merits. Defendants cry foul because Plaintiffs used objective double-spacing, i.e., 24-point spacing, and had approximately 27 lines per page. Defendants on the other hand, relied on Microsoft Word to automatically format their papers using Word's "double" line setting, giving them approximately 23 lines per page.⁹ But the Local Rules' formatting requirements do not mandate a certain number of lines per page. The Local Rules in fact allow some choices in formatting that necessarily alter the number of lines and words per page. Defendants' argument is premised on the idea that Defendants' 23-lines per page is somehow required under the local rules. Not so. For example, the Local Rules have no font requirement, as some jurisdictions do. But different fonts have different sizes even at the same 12-point size. And because Microsoft Word's "double" line setting is a formula that takes meta data from the font into account,

⁹ Although Defendants assert that 23-lines per page is the required amount, even Defendants' briefing contains 24-lines per page. *See, e.g.,* Defs' Joint Motion For Summary Judgment, ECF No. 471 at 4.

different fonts will increase or decrease the number of lines and words per page. For example, had Defendants used Ariel narrow as their font and “double” as their line setting, they would have been able to fit far more text into their 100 pages of briefing. Similarly, whether a drafter employs widow and orphan control will also affect the number of lines of text per page.

The Local Rules provide requirements that must be followed. The Local Rules do not, however, mandate the number of lines per page, or the number of words per page. And the Local Rules allow for some limited leeway in how litigants format their briefs that will ultimately have some effect on the total number of words allowed. The only question here is whether Plaintiffs’ Opposition and other filings from the very beginning of this case using 24-point spacing complied with the Local Rules. As explained above, they did. Defendants’ motion is pure pettifoggery. They cry foul at the slightest perceived injustice. If Defendants are truly so concerned with cramming every last word into their filings, they are free to use fonts, in compliance with the Local Rules, that maximize their briefing real estate. Plaintiffs will have no complaints.

CONCLUSION

For the reasons stated above, the Court should deny Defendants’ motion and hold that “double-spaced” in the Local Rules means line spacing that is at least double the font size. Under that interpretation, any line spacing that is at least 200% the font size would comply with the Local Rules, including Plaintiffs’ 24-point spacing (200%) and Defendants’ Microsoft Word “double” setting (approximately 233%).

Dated: November 2, 2023

Respectfully submitted,

By: /s/ Joseph R. Saveri
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**DECLARATION OF DAVID H. SEIDEL IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO REQUIRE ADHERENCE WITH
FORMATTING REQUIREMENTS OF LOCAL RULE 7.1**

Case No. 2:20-cv-02892-SHL-tmp

**DECLARATION OF DAVID H. SEIDEL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO REQUIRE ADHERENCE WITH FORMATTING REQUIREMENTS OF
LOCAL RULE 7.1**

I, David H. Seidel, declare the following under penalty of perjury:

1. I am an associate attorney at the Joseph Saveri Law Firm, LLP, counsel for Plaintiffs Jessica Jones and Christina Lorenzen (“Plaintiffs”) in *Jones v. Bain Capital Private Equity*, case no. 2:20-cv-02892-SHL-tmp. I am a member in good standing of the State Bar of California and have been admitted *pro hac vice* in the United States District Court for the Western District of Tennessee, Western Division. I am over 18 years of age and have personal knowledge of the facts stated in this Declaration. If called as a witness, I could and would testify competently to them. I write this declaration in support of Indirect Purchaser Plaintiffs’ Opposition to Defendants’ Motion to Require Adherence with Formatting Requirements of Local Rule 7.1.

2. Attached as **Exhibit A** are the relevant sections related to line spacing from the book *Typography for Lawyers*, 2nd ed., written by Matthew Butterick, which can also be accessed at <https://typographyforlawyers.com/line-spacing.html>.

3. Attached as **Exhibit B** is a photograph of page 1 of Plaintiffs’ Opposition¹ to Defendants’ Joint Motion for Summary Judgment (ECF No. 485), with a pica-scale ruler next to the text.

4. Attached as **Exhibit C** is a true and correct copy of a blog post titled, “The new document look” from the Microsoft Website, https://learn.microsoft.com/en-us/archive/blogs/joe_friend/the-new-document-look dated May 22, 2006 (last visited October 29, 2023).

5. Attached as **Exhibit D** is a true and correct copy of an email from Matthew Mulqueen to Plaintiffs’ counsel dated September 28, 2023.

6. Attached as **Exhibit E** is a sample document drafted using Microsoft Word with 1-inch margins, 12-pont Times New Roman Font, and Word’s “double” line setting.

¹ Plaintiffs filed an errata to their Opposition which corrected several typographical and other errors. See ECF Nos. 488 and 488-1.

7. Attached as **Exhibit F** is a sample document drafted on an Apple computer using Apple Pages with 1-inch margins, 12-pont Times New Roman Font, and Apple Pages' "double" line setting.

8. In formatting briefs, letters, and other documents, the Joseph Saveri Law firm relies on *Typography for Lawyers*, and generally follows the book's guidance on formatting questions. Each new lawyer that begins at the firm is given a copy of *Typography for Lawyers*.

9. Since joining the firm in April 2022, I have become aware that our firm has used 12-point font with 24-point double spacing for many of the filings in this case. I have drafted many motions and briefs using 24-point spacing, and I have instructed other lawyers and litigation support personnel to use 24-point spacing when double spacing is required.

10. In drafting our Opposition briefs to all of Defendants' summary judgment motions, we used 12-point Times New Roman font, and 24-point line spacing using Microsoft Word. We achieved this line spacing by not selecting the "double" line spacing option, but instead selecting the "exactly" option and setting the line spacing to 24-points.

11. In other jurisdictions where numbered pleading lines are present, Microsoft Word's "double" spacing setting produces text that does not line up with the numbered pleading lines. By using 24-point spacing with 12-point font, each line of text lines up with the numbered pleading lines.

12. I also understand that Plaintiffs have filed some documents with Microsoft Word's "double" line settings. I understand that this stems from the fact that some other drafters and litigation support personnel in our office were accustomed to using Microsoft Word's "double" spacing rather than 24-point spacing. In those instances, they may have used the "double" line setting without considering more nuanced document formatting.

13. Because Microsoft Word's "double" line setting provides more space between lines than exactly double-spaced lines, I consider both 24-point line spacing and Microsoft Word's "double" line setting to both comply with Local Rule 7.1(b)'s double-spacing

requirement. For any paper drafted in 12-point font, I consider any line spacing less than 24-point spacing to be less than double-spaced and not in compliance with Local Rule 7.1(b).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of November, 2023 at San Francisco, California.

/s/ David H. Seidel

David H. Seidel

EXHIBIT A

MATTHEW BUTTERICK
TYPOGRAPHY FOR LAWYERS

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This book is not legal advice.

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*To Jessica—
my best friend, my favorite lawyer,
and a very patient typographer's wife.*

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FOREWORD BY BRYAN A. GARNER

IF MATTHEW BUTTERICK DIDN'T EXIST, IT WOULD BE necessary to invent him. What's unusual about the tour de force you're now holding is that not only is it bold and fresh and original, but also it's fully developed: it reads like a fifth edition. It's smartly reasoned, it's backed up by years of cultivated expertise, and it's well written.

Here's how to use this book if you're a supervising lawyer (Sarah) dealing with an associate (Ralph):

"Ralph, thanks for the memo. I'm looking forward to reading it. But ..."

"Is there a problem?"

"Well yes. Frankly, I don't want to read it. You're underlining case names, you're putting two spaces after periods, and the font is just ghastly. I could spend 30 minutes making it presentable, but I want the associates who work with me to do that in the first place. Do you own Butterick?"

“Huh?”

“Butterick. *Typography for Lawyers*. Here, take my copy home tonight. I’ll need it back tomorrow. Learn this stuff, please. I want all your writing for me to comply with Butterick. Got that?”

“Sure, Sarah. Thanks. I’ll see you tomorrow.”

Tomorrow will be a very new day.

Here’s how to proceed if you’re an associate (Leslie) dealing with a supervisor (Russell):

“Leslie, I don’t like the formatting of this memo. I want double-spaced Courier. And two spaces after a period!”

[Smiling pleasantly.] “You’re kidding!”

“No, that’s the way I want documents formatted.”

[Smiling pleasantly but incredulously.] “Is that just for editing purposes? I mean, we’re about to send this off to the client!”

“That’s the final format for transmitting it to the client.” [He would say *transmitting*, wouldn’t he?]

“Russ, bear with me. You’re the partner here, but haven’t you read Butterick? I really think we should follow Butterick. It makes the firm look better.”

“Who the hell is Butterick?”

“You know, *Typography for Lawyers*. He’s the guy who sets the standards for document design in law offices. He makes a good case that most lawyers are completely in the dark about typography. Here, have a look at it.”

Russell demurs.

“Really, Russ, I was shocked to learn that there should be only one space after a period. He makes an irrefutable case. Here, read just page 41.” [Be sure to say /ir-ref-yə-tə-bəl/, for credibility’s sake.]

[Russell reads.] “I don’t care. I want double-spaced Courier. And two spaces after a period.”

“OK, Russ.” [Beaming enthusiastically.] “But I’m telling you, you’ve got to read Butterick.”

Here’s how to proceed if you’re on a committee that will be producing a report. At the tail end of the first meeting, as people are packing up, you say: “Can we make everyone’s life easier with just one ground rule? We will follow Butterick in all our drafts and in the final report. OK?”

“Butterick?”

“Sure. *Typography for Lawyers*. It’ll make our committee work so much more pleasant when we’re exchanging drafts. You don’t know Butterick? I’ll get you a copy. Believe me: it’ll change your life. You’ll wonder how you ever did without it.”

“You’re kidding.”

“Absolutely not. You’d do well to learn Butterick!”

Please remember these bits of dialogue. Adapt them. Use them. Often.

Is Butterick infallible? No: on page 106 he recommends three-level decimals. But otherwise he’s assuredly infallible.

—BRYAN A. GARNER

BY THE WAY

- ➔ Is space before a paragraph equivalent to space after? Sometimes. In word processors, the space between two paragraphs is the *larger* of the space after the first paragraph and the space before the second paragraph. Thus, if every paragraph has 12 points of space after, you'll get 12 points of space between each pair. But if each paragraph has 6 points of space before and 6 points after, the space between will only be 6 points. To avoid surprises, I prefer to rely on space after, and use space before in special circumstances. For instance, a BLOCK QUOTATION may need space before and after to look vertically aligned.
- ➔ Space between paragraphs is a poor choice for court filings with LINE NUMBERS. The only way to preserve the vertical alignment is to make the space between paragraphs equal to a whole line space. This leaves a lot of big gaps in the page and eats up your page limits. It can work with HEADINGS, however, because a document contains fewer of them.

Line spacing is the vertical distance between lines of text. Most lawyers use either double- or single-spaced lines—nothing in between.

These are obsolete TYPEWRITER HABITS. Originally, a typewriter's platen could only move the paper vertically in units of a single line. Therefore, line-spacing choices were limited to one, two, or more lines at a time. Single-spaced typewritten text is dense and hard to read. But double-spacing is still looser than optimal.

Most courts adopted their line-spacing standards in the typewriter era. That's why court rules usually call for double-spaced lines. On a typewriter, each line is the height of the font, thus double spacing means twice the font size. So if you're required to use a 12-point font, double line spacing means 24 points.

line spacing

*120–145% of
the point size*

The traditional term for line spacing is **leading** (rhymes with **bedding**), so named because traditional print shops put strips of lead between lines of type to increase vertical space.

Curiously, the so-called “double” line-spacing option in your word processor doesn’t produce true double line spacing. Microsoft Word’s “double” spacing, for instance, is about 15% looser, and it varies depending on the font. To get accurate spacing, you should always set it yourself, exactly.

For most text, the optimal line spacing is between 120% and 145% of the point size. So if you’re working with an 11-point font, use roughly 13–16 points of line spacing. (The text in this paragraph is 11.5 point with 12 points of line spacing. It’s too tight.)

For most text, the optimal line spacing is between 120% and 145% of the point size. So if you’re working with an 11-point font, use roughly 13–16 points of line spacing. (The text in this paragraph is 11.5 point with 15 points of line spacing. It’s fine.)

For most text, the optimal line spacing is between 120% and 145% of the point size. So if you’re working with an 11-point font, use roughly 13–16 points of line spacing. (The text in this paragraph is 11.5 point with 18 points of line spacing. It’s too loose.)

Word processors have a bewildering number of ways to set line spacing. Don’t panic—it all amounts to the same thing.

HOW TO SET LINE SPACING

If you prefer setting line height in inches rather than points, divide the point measurement by 72 (there are 72 points to an inch).

WORD | *Right-click in the text and select <Paragraph> from the menu. Go to the menu under <Line spacing>. <Exactly> is best—enter a fixed measurement. <Single>, <1.5 lines>, and <Double> are equivalent to about 117%, 175%, and 233% line spacing, contrary to what their names suggest. Don’t use these—they miss the target zone of 120–145%. <Multiple> is also acceptable—enter line spacing as a decimal. To get line spacing in the 120–145% range, use a <Multiple> value of 1.03–1.24. (Not 1.20–1.45—as noted above, Word uses peculiar line-spacing math.) Never use <At least>, because that gives Word permission to adjust your line spacing unpredictably.*

WORDPERFECT | <Format> ➔ <Line> ➔ <Height> and <Spacing>. Line spacing in WordPerfect is the <Height> value multiplied by the <Spacing> value. (The benefit of this complication may be appreciated by WordPerfect fans. It is lost on me.) I recommend always leaving <Spacing> at 1.0 and just setting your line spacing with <Height>. Selecting <Height> lets you choose from <Fixed> or <At Least>. Use <Fixed>—enter a measurement in the 120–145% range. Don’t use <At Least>.

BY THE WAY

- ➔ Recall that different fonts set at the same point size may not appear the same size on the page. (See POINT SIZE for why.) A side effect is that fonts that run small will need less line spacing, and vice versa.
- ➔ Line spacing affects the length of a document more than point size. If you need to fit a document onto a certain number of pages, try adjusting the line spacing first.
- ➔ Some lawyers have suggested to me that courts should adopt Microsoft Word’s interpretation of line spacing as the standard. I disagree, for a simple but serious reason. Access to the courts is a fundamental right. Interpreting line spacing according to the quiddities of a commercial software program would imply that parties have to buy a license to that program to comply with the rules and thereby gain access to the courts. But double line spacing in its traditional sense can be implemented with any typesetting program.

I would make the same argument against court rules that demand specific fonts, like Times New Roman or Arial, because they’re also commercially licensed software.

- ④ If the rules allow you to use either a serif or a sans serif font (see page 81) for BODY TEXT, I recommend a serif font. Most books, newspapers, and magazines use serif fonts for body text. It's the traditional choice and still the best choice.
- ⑤ If the rules call for a proportionally spaced font, use your discretion. Just about every font is proportionally spaced, so this kind of rule doesn't create a meaningful limitation. A tasteful serif font, like those shown in FONT RECOMMENDATIONS, is the best bet.
- ⑥ If the rules set a minimum point size, use the minimum. For instance, many courts require that text be set at 12 point or larger. As you know from POINT SIZE, 12 point is already pretty big. No need to go bigger. (I've only found a handful of courts that permit 11 point, and none that permit 10 point.)

Courts sometimes allow a smaller point size for monospaced fonts. I assume this is because these fonts fit fewer words per page, and the point-size adjustment is meant to account for this. It is not, however, a reason to prefer a monospaced font.

PAGE LAYOUT

- ① The rules may allow PAGE MARGINS that result in over-size LINE LENGTHS. Feel free to widen the page margins to get a more reasonable line length. For instance, Calif. Rule of Court 2.107 requires margins "at least one inch from the left edge ... [and] at least ½ inch from the right edge." At maximum, this creates seven-inch lines, which will be too long for most 12-point fonts. The "at least" qualifier is a signal that you needn't fill up every square inch.
- ② Likewise, the rules may allow you to fit a certain number of lines per page. You may want to use fewer if it makes for a more legible and appealing layout. Remember the ninth MAXIM OF PAGE LAYOUT—*don't fear white space*.
- ③ LINE SPACING rules should be interpreted arithmetically, not as word-processor lingo. If a rule calls for double-spaced lines, set your line spacing to exactly twice the point size of the body

text. Don't rely on the "Double" line-spacing option in your word processor, which may not be equivalent. For instance, in Word, "Double" line spacing is about 15% larger than true double spacing. This reduces the number of lines per page.

- ④ Avoid putting RULES AND BORDERS within or around the page that aren't explicitly required. It clutters the page. For example, in Los Angeles courts, almost every litigator puts two vertical lines on the left edge of the page and one vertical line on the right. But this practice is not required by any rule. In state court, the line on the left is optional—you can use a solid single or double line, but you can also use a "vertical column of space at least ½ inch wide." (Calif. Rule of Court 2.108(4).) Nothing is required on the right side. Meanwhile, our federal court requires no vertical lines on either side. Follow the rules, not the crowd.
- ⑤ If a court rule explicitly requires vertical lines, make them no more than half a point thick. This will keep them relatively unobtrusive.

ELECTRONIC FILING AND PDFS

The tips above apply equally to PDFs. PDFs preserve your formatting exactly, including fonts, so you don't have to worry that readers will see something different from what you intended. (Though make sure you know HOW TO MAKE A PDF correctly.)

But if you have to file certain documents (e.g., proposed orders) as Word or WordPerfect files, be careful. Word-processor file formats require the recipient to have the same fonts installed. Therefore, to be safe, set these documents in Times New Roman or another standard SYSTEM FONT to ensure they display accurately.

EXHIBIT B

INTRODUCTION

This case is about classic monopolists operating in a unique market. Defendants have intentionally and successfully implemented an illegal anticompetitive scheme to acquire and exercise monopoly power over one of America's iconic endeavors: cheerleading. Defendants did so through the Varsity Cheer ecosystem, foreclosing and harming competition in the markets for competitions, camps, and apparel. The record Plaintiffs have developed shows Defendants charged supra-competitive prices in all three markets throughout the Class Period, extracting hundreds of millions of dollars of ill-gotten profits from cheer athletes and their families through the anticompetitive scheme.

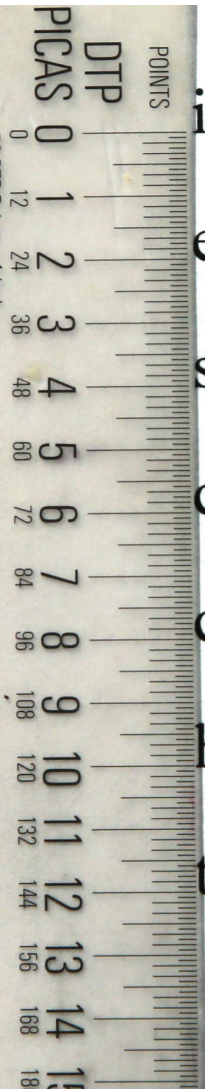
For all the below reasons, Defendants' Joint Motion for Summary Judgment must be denied.

BACKGROUND FACTS AND CLAIMS¹

Varsity's own internal documentation shows their market share for cheer competitions increased from roughly 42% in 2013 to over 80% in 2018 for All Star competitions that cater to All Start gym teams, while achieving 100% of the Varsity cheer competitions for school teams throughout the Class Period. Ex. 1 [Netz report] at pg. 52; Ex. 2 [Netz Rebuttal] at ¶11. This was the selling point for both Bain and Charlesbank when they each acquired control of Varsity from its founder, Defendant Webb, and infused it with private equity capital. *See e.g.* Ex. 93 at -6023.

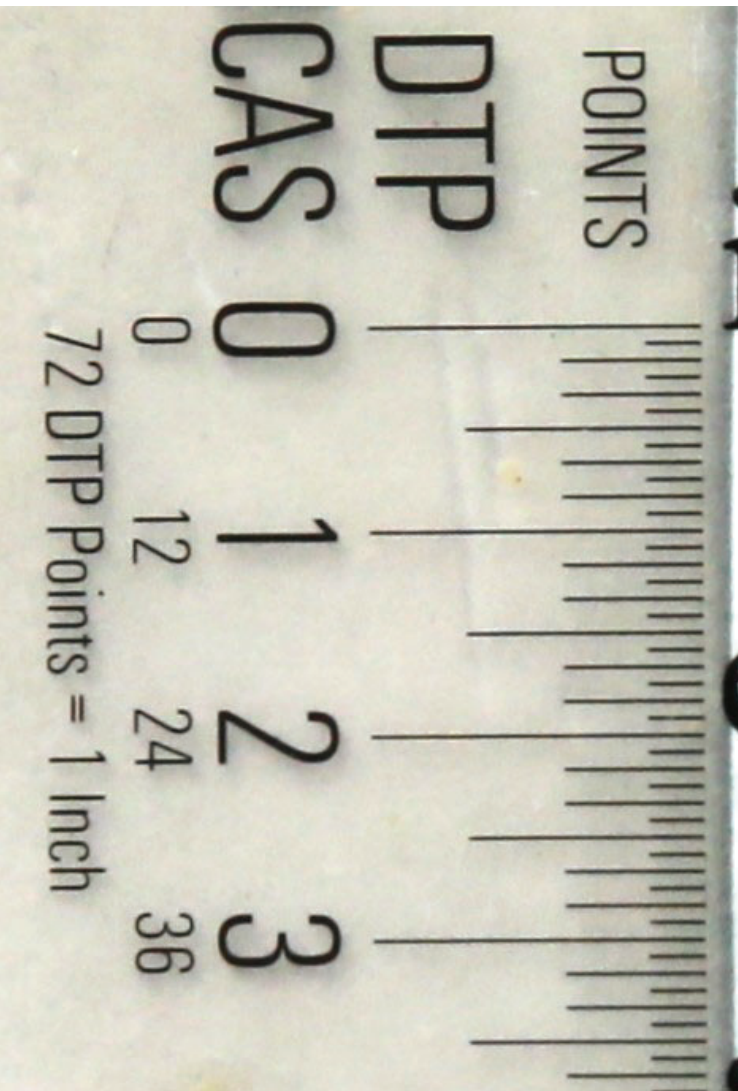
This market share alone demonstrates monopoly power. Generally, proof of more than 60% of market share creates presumptive monopoly power. *See United States v. Grinnell Corp.*, 384 U.S. 563, 571, (1966); *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946) (over two-thirds of market constitutes a monopoly); *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1443 (6th Cir.1990) ("There is substantial merit in a presumption that market

¹ As cited herein, "PSOF" refers to Plaintiffs' Additional Statement of Facts, filed herewith, and "RDSOF" refers to Plaintiffs' Response to Defendants' Statement of Facts, filed herewith. Unless otherwise noted, all citations to exhibits herein ("Ex. __") are citations to the exhibits attached to the Declaration of Joseph R. Saveri, filed herewith.



intentionally and successfully implemented an illegal anticompetitive scheme to exercise monopoly power over one of America's iconic sports, cheerleading, so through the Varsity Cheer ecosystem, foreclosing and stifling competition in competitions, camps, and apparel. The record Plaintiffs have shown that Defendants charged supra-competitive prices in all three markets through which they received hundreds of millions of dollars of ill-gotten profits from the anticompetitive scheme.

For all the below reasons, Defendants' Joint Motion



intentionally

exercise mo

so through

EXHIBIT C

The new document look

Article 05/22/2006

The Word team is lucky to have a whole host of very talented people working on it. This is the first of many guest posts where you'll be getting details on the features from the mouths of the feature designers.

Stuart J Stuple is a program manager on the Microsoft Office Word team who focuses on the formatting and editing experience of long or complex documents. His background is in book publishing and education.

One of the things that we hope you notice as soon as you start working with Word 2007 is that the new font, new line spacing, and space between paragraphs give your documents a fresh, more professional look. And when you insert content such as charts, diagrams, or material copied from other documents, that content shares the same fonts and colors as already in use in your document.



[The new Word 2007 document look](#)

As described previously, the [new fonts used in Word](#) are based on the [ClearType](#) technology that provides a crisper, more easily read display of the fonts on most modern monitors. ClearType is a feature of the operating system and has been available since Windows XP; however, these are the first fonts from Microsoft designed to take advantage of this technology. The [new font collection](#) includes six fonts: Calibri, Cambria, Consolas, Candara, Corbel, and Constantia. Calibri was selected as the default font for Word because of its modern look and its appropriateness for onscreen documents. To complement the look of Calibri, Cambria was selected for use in headings.

For more information on fonts and typography see the team's [fontblog](#),

The new spacing also contributes to the readability of your document. This new spacing comes from a combination of three things. The new font chosen is more "open" than Times New Roman, the font previously used. We also added a bit of space between each line within the paragraph. Though some folks have described this as "double-spaced," it is actually 115% of the line height (double-spaced would be 200%). You could call this one-and-about-a-sixth spacing if you'd like. Finally, we added space after each paragraph. That means that rather than having to press Enter twice at the end of a paragraph in order to

make the start of the paragraph noticeable, you simply press Enter once and we add the space for you.

While most documents look better with this new spacing, some documents require a "tighter" look and some people simply prefer less space within the paragraphs or are so used to pressing Enter between paragraphs, that they'd prefer the old spacing. If your preference is for the spacing used in previous versions, you will be able to easily obtain that by selecting the "Classic" look from the Style Set gallery on the Change Styles control of the Home tab. Style Sets not only change the appearance of the standard paragraph but also any text that has been formatted with the styles from the Styles gallery.

(NOTE: I'm sad to report that there's a bug in the Beta 2 release that prevents the "Classic" look from working. For now, to get a document with the classic spacing, use the New command from the Office menu, select Installed templates at the left, and then double-click on the Office Word 2003 Look template.)

Comments

- **Mauricio DIAZ ORLICH**

May 22, 2006

It's funny how my documents already look like Word 2007's new default style :) Except that I like serif fonts for my document's text and sans-serif for the headings (find it easier to read on print.)

I'm glad this change in style is being done, because, although I have my templates I use to get similar results, most people simply don't know how to create presentable Word documents... Even though it's as simple as Format > Paragraph.

I'll admit that the meaning of the settings in a lot of dialogs might not be obvious for many Word users out there, but I do think that Word should force everyone to take a "Using Styles" tutorial before the first use...

I really look forward to installing the Office Beta to get to test all these new features I keep reading about in your blogs...

- **Francis**

May 22, 2006

To my eyes, that text looks a little too over-antialiased (verging on blurry.) It's much easier to read the Verdana of this blog.

• **A User**

May 23, 2006

I agree the spacing is a better default for people who will never grapple with styles.

The font itself looks awful, although that may be an artifact of rendering it into a picture. See Francis comment on anti-aliasing. Not only is it definitely blurry, it is thickened and horizontally crowded.

• **Blog-a-Styx**

May 23, 2006

Et voilà; mon premier post en utilisant Word 2007 Beta 2... Chose assez surprenante ; désormais, les retours-chariots...

• **Keith Bertelsen**

May 25, 2006

The new fonts and things look shiny and all, but have the math fonts been updated? Has anything been done with the Equation Editor, yet?

• **Anonymous**

May 25, 2006

The comment has been removed

• **paulbridges02**

June 1, 2006

This is a blogging comment, but i could no longer post a topic on the blogging topics.

I am using moveable type from sixapart and host my own blog and my own pictures so I have run into a few problems and wanted to know if they had been looked at yet.

1) I upload with FTP so I eed to be able to supply a username and password along with the destination folder for my image uploads to work.

2) When I type html code into the post it is twisting it around a bit. I type this: and I get this: in the post if i go online to edit it.

EXHIBIT D

Amara Getzell

From: Mulqueen, Matt <mmulqueen@bakerdonelson.com>
Sent: Thursday, September 28, 2023 8:59 AM
To: David Seidel; Joseph Saveri; Ronnie Spiegel
Cc: Kaiser, Steven J.; Haynes, Savannah; Riccio, Nicole; Brendan Gaffney (bgaffney@lockelord.com)
Subject: RE: Jones et al. v. Varsity Brands et al., 2:20-cv-02892-SHL-tmp

External (mmulqueen@bakerdonelson.com)

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Counsel,

It has come to our attention that Plaintiffs' summary judgment response filings do not use double spacing in compliance with Local Rule 7.1(b). Double spacing with Times New Roman Font Size 12 would result in a document with approximately 23 lines per page. Plaintiffs' submissions instead contain approximately 27 lines per page, adding a substantial amount of content that exceeds the page limits allowed for Plaintiffs' submissions under the Court's prior order.

Please advise if you will agree to a joint motion seeking an order allowing Plaintiffs to refile their summary judgment papers in full compliance with Local Rule 7.1(b), extending Defendants' reply deadline to two weeks after Plaintiffs' resubmission, and allowing Defendants 50 pages to allocate across their reply briefs. If we cannot agree, Defendants intend to file a motion to strike Plaintiffs' summary judgment submissions seeking the same relief extending Defendants' time to respond to resubmitted filings and allocating 50 pages across the reply briefs.

Given the upcoming reply deadline, we need to move quickly to resolve this issue. If opposed, we intend to file a motion early tomorrow seeking an expedited response deadline of next Wednesday, October 4th. Therefore, please provide your response today. We of course are hopeful we can reach agreement on this issue. I am generally available today to discuss via phone today as needed.

Matt

Matthew S. Mulqueen

Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
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165 Madison Avenue, Suite 2000
Memphis, TN 38103
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www.bakerdonelson.com

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Texas, Virginia, and Washington, D.C.

From: Mulqueen, Matt
Sent: Monday, September 25, 2023 9:44 AM
To: David Seidel <dseidel@saverilawfirm.com>; Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>
Cc: Kaiser, Steven J. <skaiser@cgsh.com>; Haynes, Savannah <shaynes@cgsh.com>; Riccio, Nicole

<NRiccio@bakerdonelson.com>; Brendan Gaffney (bgaffney@lockelord.com) <bgaffney@lockelord.com>

Subject: Jones et al. v. Varsity Brands et al., 2:20-cv-02892-SHL-tmp

Counsel,

Defendants will be filing a motion seeking permission to allocate a total of 50 pages across Defendants' reply briefs in support of summary judgment. Please let us know Plaintiffs' position on the request so we can note it in our certificate of consultation. I am available for a call to discuss if needed. Please let us know your position by noon central tomorrow.

Matt

Matthew S. Mulqueen

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3) I also cannot select the category for my post currently
(assuming this has to do with the blogging software I am using).

Thanks for the help!

- **The Microsoft Office Word Team's Blog**

September 26, 2006

In an effort to live up to this blog's 'All things Microsoft Office Word...' subtitle, here are some...

- **Word 2007's new look for documents & MogBlog**

September 27, 2006

PingBack from <http://dancmorgan.wordpress.com/2006/09/27/word-2007s-new-look-for-documents/> ↗

- **E-Bitz - SBS MVP the Official Blog of the SBS "Diva"**

July 17, 2007

<http://www.mydigitallife.info/2006/12/11/switch-and-change-back-to-office-2003-default-font-and-style> ↗

EXHIBIT E

This is Microsoft Word document with the following settings:

1-inch margins, 12-point Times New Roman font, and “double” line spacing

AAAAAAA

BBBBBBB

CCCCCCC

DDDDDDD

EEEEEEE

FFFFFFF

GGGGGGG

HHHHHHH

IIIIII

JJJJJJ

KKKKKKK

LLLLLL

MMMMMMM

NNNNNNN

OOOOOOO

PPPPPPP

QQQQQQQ

RRRRRRR

SSSSSSS

TTTTTTT

UUUUUUU

VVVVVVV

WWWWWWW

XXXXXXXX

YYYYYYY

ZZZZZZZ

EXHIBIT F

This is an APPLE PAGES document with the following settings:

1-inch margins, 12-point Times New Roman font, and “double” line spacing

AAAAAAA

BBBBBBB

CCCCCCC

DDDDDDD

EEEEEEE

FFFFFFF

GGGGGGG

HHHHHHH

IIIIII

JJJJJJ

KKKKKKK

LLLLLL

MMMMMMM

NNNNNNN

OOOOOOO

PPPPPPP

QQQQQQQ

RRRRRRR

SSSSSSS

TTTTTTT

UUUUUUU

VVVVVVV

WWWWWWW

XXXXXXXX

YYYYYYY

ZZZZZZZ

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**DECLARATION OF MATTHEW BUTTERICK IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REQUIRE
ADHERENCE WITH FORMATTING REQUIREMENTS OF LOCAL
RULE 7.1**

Case No. 2:20-cv-02892-SHL-tmp

**DECLARATION OF MATTHEW BUTTERICK IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO REQUIRE ADHERENCE WITH
FORMATTING REQUIREMENTS OF LOCAL RULE 7.1**

I, Matthew Butterick, declare as follows:

1. I'm a typographer and attorney in Los Angeles. In 1992, I graduated *magna cum laude* from Harvard University with a degree in Visual & Environmental Studies, focusing on typography and design. In 2007, I got my J.D. from the UCLA School of Law. Since then I've been a member of the California State Bar. I currently practice civil litigation.

2. I've been working professionally in typography since 1991. I started my career as a designer of digital fonts. I remain active in this area. This declaration is set in Equity, a font I designed for legal documents. It is used by lawyers and courts worldwide, including the United States Court of Appeals for the Fifth Circuit. A portfolio of my recent font-design work is available at *mbtype.com*.

3. I'm also the author of the book *Typography for Lawyers*, first published in 2010. My book received the Legal Writing Institute's 2012 Golden Pen Award. The full text of the book is available at *typographyforlawyers.com*. I released the second edition in 2015.

4. The relevant pages of *Typography for Lawyers* are attached as **Exhibit A** to the Declaration of David Seidel.

5. I understand that Defendants have filed a motion accusing Plaintiffs of failing to abide by this Court's local rule requiring that lines in briefs be double-spaced. ECF No. 509. In their motion, Defendants ask the Court to "issue an order requiring the default spacing of Microsoft Word, Google Docs, and Apple Pages . . . for filings subject to Local Rule 7.1." ECF No. 509 at 2.

6. I have reviewed the local rules of the Western District of Tennessee. Local Rule 7.1(b) states that in papers presented for filing with the Court, "[l]ines must be double-spaced," and that the font size "shall be no smaller than 12 point."

7. I have also reviewed Plaintiffs' Opposition to Defendants' Joint Motion for Summary Judgment (ECF No. 485) to determine whether the Plaintiffs' brief complies with the local rules.

8. The lines in the Plaintiffs' brief are definitely double-spaced.

9. In my book, I have a section on this very topic. In that section, I explain what "double" line spacing means, and that formatting rules about line spacing "should be interpreted arithmetically, not as word-processor lingo." *Typography for Lawyers*, 2nd ed., at 221 (hereinafter "*TFL*").

10. Thus, "[i]f a rule calls for double-spaced lines, set your line spacing to exactly twice the point size of the body text." *TFL* at 221–22. In particular, "if you're required to use a 12-point font, double line spacing means 24 points." *TFL* at 137.

11. Attached to the declaration of David Seidel as **Exhibit B** is a photograph of page 1 of Plaintiffs' Opposition to Defendants' Joint Motion for Summary Judgment, with a pica-scale ruler next to the text. A pica is a typographic measure equal to 12 points; two picas equal 24 points.

12. Exhibit B plainly shows that each line of text in the Plaintiffs' motion is two picas — 24 points—below the previous. Therefore, the lines of the Plaintiffs' motion are indisputably and correctly double-spaced.

13. According to the Declaration of David Seidel, Plaintiffs utilize Microsoft Word to type briefs and other papers. Plaintiffs achieved this spacing within Microsoft Word by "selecting 'exactly'" in the line-spacing options and then "setting the line spacing to 24 points." (Declaration of D. Seidel at ¶ 10.)

14. This is the technique that I recommend in *TFL* for setting accurate line spacing in Microsoft Word. *TFL* at 138 (discussing how to set the line spacing to exactly 24-points in both Microsoft Word and WordPerfect)

15. On "8-1/2 by 11 inch" paper with "one-inch margins on all sides" (as required by LR 7.1(a)), a properly double-spaced document will fit 27 lines per page. Deducting a one-inch margin from the top and bottom leaves 9 vertical inches for the text. Since there are 72 points to an inch, that's 9 inches × 72 points per inch = 648 points. Since each line occupies 24 points of

vertical space before the next line of text begins, that means the page can fit $648 \text{ points} \div 24 \text{ points per line} = 27 \text{ lines}$.

16. Line spacing is often a source of confusion for lawyers. As a typographer and lawyer, this doesn't surprise me, because word processors—including Microsoft Word—typically don't implement “double” line spacing in a manner consistent with its plain arithmetic meaning. This is why, in the section of *Typography for Lawyers* about interpreting formatting rules, I warn lawyers: “Don't rely on the ‘Double’ line-spacing option in your word processor, which may not be equivalent [to true double spacing]. For instance, in [Microsoft] Word, ‘Double’ line spacing is about 15% larger than true double spacing.” *TFL* at 222.

17. To understand why the arithmetic meaning of double line spacing is the only reliable interpretation—and why Microsoft Word's interpretation is wrong—we have to go back to the source of these line-spacing terms: the typewriter.

18. On a typewriter, every line is 12 points high. When the typist returns the carriage to the beginning of the line, the platen rotates upward by a certain number of lines. If the line spacing is set to single, the platen rotates upward by one line (= 12 points). If the line spacing is set to double, then the platen rotates upward by two lines (= 24 points).

19. Microsoft Word's interpretation of double line spacing cannot be treated as a line-spacing standard because a standard of measurement has to be objective and consistent. Microsoft Word's interpretation of “double” line spacing is neither.

20. First, what Microsoft Word calls “double” line spacing isn't consistent among all versions of Word. For instance, Microsoft enlarged “double” spacing when it released Word 2007. Microsoft makes no promises that it won't change the meaning again in a future version.

21. Second, what Microsoft Word calls “double” line spacing isn't even consistent from font to font, because it's partially derived from extra metadata within each font. Thus, in

Microsoft Word, two fonts at the same point size, both set to “double” line spacing, might still end up with different line spacing on the page.

22. Thus, relying on Microsoft Word—or any other commercial word-processing software—as the line-spacing standard is fatally flawed. Word’s notion of “double” line spacing partially depends on the font, is arbitrarily defined by Microsoft, and could be changed by Microsoft at any time. It is therefore no standard at all.

23. By contrast, the traditional arithmetic meaning of line spacing derived from the typewriter is fixed, consistent, and permanent.

24. Here, what the formatting rule says is unambiguous—“double-spaced”—and so is the traditional arithmetic meaning of that term. The issue cannot and should not be resolved by resort to how Microsoft Word or other commercial word-processing programs define their own “double” line-spacing setting.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of November, 2023 at Los Angeles, California.

/s/ Matthew Butterick
Matthew Butterick

SIGNATURE ATTESTATION

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/s/) within this e-filed document.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 2, 2023 in San Francisco, California.

By: /s/ Joseph R. Saveri
Joseph R. Saveri

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES and CHRISTINA
LORENZEN on Behalf of Themselves
and All Others Similarly Situated,
Plaintiffs,

V.

VARSAITY BRANDS, LLC, et al.,
Defendants.

No. 2:20-cv-02892-SHL-tmp

ORDER DENYING DEFENDANTS' MOTION TO REQUIRE ADHERENCE WITH FORMATTING REQUIREMENTS OF LOCAL RULE 7.1

Before the Court is Defendants' Motion to Require Adherence with Formatting Requirements of Local Rule 7.1, filed October 19, 2023. (ECF No. 509.) Defendants assert that Plaintiffs filings are not in compliance with Local Rule 7.1, which sets forth the formatting requirements for pleadings and motions filed with the Court. The Rule states, "[l]ines must be double-spaced, except that quotations may be indented and single-spaced and headings and footnotes may be single-spaced." L.R. 7.1(b).

According to Defendants, “[a]ll widely-used word processing programs, including Microsoft Word, Google Documents, and Apple Pages, use 28 ‘points’ of spacing when set to double-space lines,” but, Plaintiffs have been using twenty-four points between each line. (ECF No. 509 at 32301.) Defendants contend that the spacing of Plaintiffs’ documents has allowed them to include approximately twenty-seven lines on each page, rather than the twenty-three lines per page that results from “standard double spacing.” (*Id.*) Defendants request that Plaintiffs be ordered to use the default spacing for Microsoft Word, Google Docs, and Apple Pages “to ensure a level playing field going forward[.]” (*Id.* at PageID 32302.)

Plaintiffs responded on November 2, 2023. (ECF No. 524.) They argue that the traditional definition of double-spacing is “line spacing that is twice the size of the font.” (Id. at PageID 32903) (citing M. Butterick, Typography for Lawyers at 137 (2d ed., 2015)). In support, they include an affidavit from Typography expert Matthew Butterick, author of Typography for Lawyers. (ECF No. 524-8.) Butterick explains that “formatting rules about line spacing ‘should be interpreted arithmetically, not as word-processor lingo.’” (ECF No. 524-8 at PageID 32954) (quoting Butterick, supra at 221). Plaintiffs also point out that they have been using this spacing for “many if not most of the filings in this case.”¹ (ECF No. 524 at PageID 32911.)

Courts have taken different approaches to this issue. See Sameer v. Khera, No. 1:17-CV-01748-DAD-EPG, 2018 WL 3472557, at *1 (E.D. Cal. 2018) (“[T]his means that the font of documents filed with the Court in this case must be drafted using Times New Roman with a minimum font size of 12-point, with footnotes a minimum of 11-point, and that line spacing of such documents . . . must be double-spaced meaning, at minimum, 24-point line spacing.”); but see Doubleday Acquisitions LLC v. Envirotainer AB, No. 1:21- CV-03749-SCJ, 2022 WL

¹ Reading between the slightly larger spaced lines, it appears that Defendants initially raised this issue in an attempt to extend their time to file a reply in support of their Motion for Summary Judgment. On September 28, 2023, counsel for Defendants sent an email to Plaintiffs’ counsel pointing out the spacing issue and stating,

Please advise if you will agree to a joint motion seeking an order allowing Plaintiffs to refile their summary judgment papers in full compliance with Local Rule 7.1(b), extending Defendants’ reply deadline to two weeks after Plaintiffs’ resubmission, and allowing Defendants 50 pages to allocate across their reply briefs. If we cannot agree, Defendants intend to file a motion to strike Plaintiffs’ summary judgment submissions seeking the same relief extending Defendants’ time to respond to resubmitted filings and allocating 50 pages across the reply briefs.

(ECF No. 524-5 at PageID 32944.)

18777366, at *1–4 (N.D. Ga. July 1, 2022) (“[A] common sense understanding of ‘double spaced’ in the context of word processing along with the practical application of that understanding . . . quickly leads to the conclusion that ‘double spaced’ refers to the standard ‘double’ setting for spacing in [Word].”).

As Defendants point out, the issue of what constitutes a double space has not been raised in this district. (ECF No. 509.) The Local Rules themselves do not take a position on the definition of “double spaced.” Therefore, the Court finds that Plaintiffs’ use of twenty-four-point spacing does not violate Local Rule 7.1 and **DENIES** the Motion. However, in so finding, the Court does not take a position on the correct definition of “double spaced.”

The Court further notes that the last thing any party needs is more words on a page.² The length of an argument is no guarantee of its success, and indeed could result in more confusion, not clarity. Moving forward, the Parties are encouraged to spend their valuable time focusing on the merits of this case, and certainly not figuring out how many sometimes-useless words will fit on a page.

IT IS SO ORDERED, this 14th day of November, 2023.

s/ Sheryl H. Lipman

SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

² Indeed, Plaintiffs’ twelve pages worth of prose, two declarations, and multiple other exhibits filed in opposition to this Motion, while interesting, displays both sides’ tendency toward overkill.