

**JUSTICE SALIANN SCARPULLA**

**PART 39 - PRACTICES AND PROCEDURES**

**Supreme Court of the State of New York  
Commercial Division  
60 Centre Street, Courtroom 208  
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-3275  
Chambers Phone: 646-386-3690  
Fax: 212-401-9154**

Principal Law Clerks: Ms. Ariella Zarfati, Esq. and Ms. Danielle Mazzini-Daly, Esq.  
Commercial Division Law Clerk: Ms. Alexis Marquez, Esq.  
Assistant Law Clerk: Mr. Michael Busiashvili, Esq.  
Part Clerk: Ms. Sharon Hill

**Oral Argument on Motions:** Tuesdays, Wednesdays, and Thursdays (as scheduled by the Court)

**Pre-Trial Conferences:** As scheduled by the Court

**Preliminary, Compliance, and Status Conferences:** Wednesdays at 2:15 p.m.

**GENERAL**

1. All parties or their counsel must familiarize themselves with these Practice Rules and the Rules of the Commercial Division, 22 NYCRR 202.70.<sup>1</sup>
2. Counsel and litigants (represented or self-represented) are advised that Justice Scarpulla, her Law Clerks and Part Clerk will not engage in any *ex parte* communications.
3. The Part Clerk is unable to accept deliveries between 1:00 and 2:00 p.m. or after 4:30pm.
4. Counsel must notify the Court, as soon as practicable, by conference call or letter, of any settlement or resolution of active cases or pending motions, so as to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved.

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<sup>1</sup> The Commercial Division Rules are available at: <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>.

## COMMUNICATIONS TO PART 39

1. **Justice Scarpulla does NOT accept any letters, documents, or papers by e-filing, mail, or facsimile unless expressly permitted by these Practice Rules, Commercial Division Rules 2 and 18, or by prior approval of the Court.**
2. Justice Scarpulla's Law Clerks will only accept phone calls between 3pm and 5pm with all parties on the line. There will be no *ex parte* communication with the Court.
3. Part 39 is a pure e-filing part. Justice Scarpulla **does NOT accept** working copies of motions/documents. **Please do not send courtesy copies of any documents that were e-filed,** with the following exceptions:
  - a. **Documents requiring Justice Scarpulla's signature, including proposed orders and stipulations, must be e-filed, AND sent to Justice Scarpulla by either mail or facsimile** (e.g., proposed/settled orders, stipulations, or transcripts to be so-ordered); and
  - b. Proposed orders to show cause.
  - c. Documents that are filed under seal. Please deliver such documents to our courtroom after the motion has been fully briefed and submitted to Room 130.

## ADJOURNMENTS

1. All adjournments (motions, conferences, trials) require prior court approval. *Ex parte* applications for adjournments will **not** be considered.
2. Requests to **adjourn a conference,** in the first instance, shall be directed to the Part Clerk at 646-386-3275. Conferences will only be adjourned **by stipulation.** The parties must first consult with the Part Clerk before selecting a new date for the conference. Applications to adjourn a conference shall be made **at least 24 hours** in advance of the scheduled conference.
3. Parties may adjourn a conference no more than two times, and for no more than a total of three (3) months.
4. Requests to **adjourn a motion that is scheduled for oral argument,** in the first instance, shall be directed to the Part Clerk at 646-386-3275. Motions will only be adjourned **by stipulation.** If adjourning by stipulation, parties must first consult with the Part Clerk before selecting a new date for oral argument. Please make applications to adjourn a motion **at least 48 hours** in advance of the oral argument.

5. To **adjourn a motion that is in the Submissions Part** (Room 130):
  - a. If the parties wish to adjourn the motion for less than sixty (60) days the parties may adjourn **by stipulation** without an order from the Court. The stipulation must be electronically filed and filed in the Submissions Part on the return date of the motion.
  - b. If the parties wish to adjourn the motion for more than sixty (60) days from the original return date, then the parties must submit a stipulation of adjournment to the Court for approval.
    - i. Parties must deliver the proposed stipulation to the Court **by electronic filing**.
    - ii. If approved, the So-Ordered version of the stipulation will be electronically filed, so that the parties may retrieve the signed order from the electronic filing system and present it to the Submissions Part on the return date.
6. To **adjourn a hearing or trial**, the parties must contact the Part Clerk at 646-386-3275 on a **conference call with all parties** on the line. Applications for adjournments shall be made **at least 48 hours** in advance of the scheduled hearing or trial.
7. All Court approved stipulations to adjourn must be electronically filed by the parties.

## **CONFERENCES AND DISCOVERY DISPUTES**

1. Only attorneys thoroughly familiar with the case may appear for a conference. The attorneys should bring signed copies of all prior decisions, orders and stipulations (both substantive and discovery-related) to the conference.
2. **Counsel and litigants must follow the directions below when appearing for a preliminary, compliance, or status conference.**
  - a. Counsel for all parties must consult prior to a preliminary or compliance conference about: (i) the resolution of the case, (ii) discovery and any other issues to be discussed at the conference, and (iii) the use of alternative dispute resolution to resolve all or some of the issues of the litigation. (Commercial Division Rule 8).
  - b. Counsel must fill out the appropriate conference form (preliminary conference order, or compliance conference order/stipulation form) **prior to** arriving in the courtroom for the conference. Any disputes will be resolved at the conference.
    - i. On the conference form, please write legibly. Indicate the names, addresses, and telephone numbers of all counsel appearing at the conference. Number the pages (e.g., 1 of 3, 2 of 3). At the top of page 1 of the Compliance Conference Order, please indicate whether this is the 1<sup>st</sup>,

2<sup>nd</sup>, or 3<sup>rd</sup> compliance conference. Use specific cut-off dates (e.g. “on or before December 31, 2015”). Do not use open-ended dates (e.g. “within 45 days,” etc.).

- c. After filling out the appropriate form, counsel must check-in with the Part Clerk. At check-in, please hand in your conference form to the Part Clerk. The Park Clerk will then call your case when the Court is ready for your conference.
3. Conference calls are scheduled by the Court as needed. Parties wishing to schedule a conference call with the Court should do so by contacting Chambers between 3pm and 5pm at 646-386-3690 to arrange a mutually convenient time and date. If the parties would like to speak by telephone with one of the law clerks, ALL parties must be on the phone before placing the call to Chambers.

### **MOTION PRACTICE**

1. Substantive motions with opposition will be scheduled for oral argument for a Tuesday, Wednesday, or Thursday after the final appearance in the Submission Part (Room 130). **All papers must be e-filed at least three (3) business days prior to the oral argument date.**
2. Summary judgment motions must be filed **within sixty (60) days** of filing the note of issue. Each party must comply with Commercial Division Rule 19-a by submitting a separate statement of material facts.
3. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of an action, will generally not be heard *ex parte*. See 22 NYCRR 202.7(f); 22 NYCRR 202.70, Rule 20.
4. Except for discovery motions, no prior permission is required before making a motion. **Judge Scarpulla does not accept Commercial Division Rule 24 letters, unless expressly requested.** Discovery-related motions are strongly discouraged. Prior to making a discovery motion, parties must call Chambers between 3pm and 5pm at 646-386-3690 to arrange a mutually convenient time and date for a conference call. All discovery-related motions will be heard on Wednesdays at 2:15 p.m.
5. Requests for *pro hac vice* admission should be made by stipulation, if possible.
6. Similarly, requests for Commissions should be made by stipulation, if possible.
7. Page limits specified in Commercial Division Rule 17 will be strictly enforced, unless permission to expand the page limits is granted in advance of the filing of the papers.
8. All memoranda of law **must** include a Table of Contents and Table of Authorities.

9. Each exhibit must be e-filed under its own document number and include a short label identifying the nature of the exhibit (e.g., Complaint, Contract dated 1/1/15, etc.).

### **ELECTRONIC FILING & E-TRACK**

1. All cases in Part 39 are required to be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Attorneys are expected to familiarize themselves with NYSCEF procedures at <http://iapps.courts.state.ny.us/nyscef/Login>. For more information on e-filing rules, parties may also visit: <http://www.nycourts.gov/courts/1jd/suptctmanh/e-filing.shtml>
2. All e-filed documents must be text-searchable. All electronically-submitted memorandum of law must contain bookmarks, pursuant to Commercial Division Rule 6. The submission of documents containing hyperlinks is strongly encouraged.<sup>2</sup>
3. “eTrack” is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances. **All parties or their counsel must be registered for the eTrack service for all Part 39 cases.** To register or log-in please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.

### **ALTERNATIVE DISPUTE RESOLUTION**

1. If, at any point, the parties decide that they would benefit from the Commercial Division ADR program, they should write a joint letter to the Court asking to be referred to ADR. In that letter, they should state whether they prefer discovery be stayed or continue during the mediation process.
2. The Court may also order parties to the Commercial Division ADR program without the parties’ request or consent.
3. For more information regarding the ADR program please visit: [http://www.nycourts.gov/courts/comdiv/ny/ADR\\_overview.shtml](http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml)

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<sup>2</sup> See Statement of Procedures Governing Memoranda of Law and Certain Other Documents in Hyperlinked and Bookmarked Format in Electronically Filed Cases, available on page 13-15, <http://www.nycourts.gov/courts/1jd/suptctmanh/EF-Protocol-8114.pdf>.

## CONFIDENTIALITY ORDER/SEALING DOCUMENTS

1. Any order regarding the confidential exchange of information shall be based on the Proposed Stipulation and Order for the Production and Exchange of Confidential Information (“the Model Form”), which is attached as Exhibit A to these Practice Rules.
2. If the parties believe there is good cause to depart from the Model Form, they must submit their proposed stipulation and order, along with a red-lined version, indicating any departures from the Model Form.
3. Applications to seal documents shall include the nature of the document, reason for the sealing request and “good cause” therefor (22 NYCRR 216.1). The Court will consider the application to seal documents only by order to show cause or notice of motion.
4. To e-file documents under seal, please follow the procedures set forth by the County Clerk, <http://www.nycourts.gov/courts/1jd/supctmanh/EF-Protocol-30916.pdf>.

## TRIALS/EVIDENTIARY HEARINGS

1. Prior to the start of trial, please supply the Court with the following:
  - a. Marked pleadings.
  - b. All **prior decisions** in the case.
  - c. Any notices to admit, with responses.
  - d. Copies of transcripts of **depositions** intended for use at trial.
  - e. In the case of a jury trial, proposed **jury verdict sheet**.
  - f. A list of *all* requested **PJI sections** from the most current volume to be included in the final charge to the jury. You may list the section by number only, if it does not call for any characterization of the evidence or the contentions of the parties. *If the section does call for a characterization or description of the evidence or contentions of the parties, you must supply such description of evidence or contention in writing. If you are requesting other language, not based on the PJI, you must provide the proposed language in writing, along with the appropriate citations. Please provide copies of any cases upon which you rely for charge language.*

- g. A short (one or two lines) **summary** of your party's claims to be used by the Court as part of the preliminary instructions given to the jury before opening statements.
  - h. Copies of **cases** and **authorities** upon which you will be relying on for *in limine* or other applications.
  - i. Copies of any **statutes, coded** or **rules and regulations** which are pertinent to the case.
  - j. A list of **proposed witnesses**. If a witness needs an **interpreter**, please indicate the language and any dialect.
2. Please stipulate to all facts and documents not in dispute prior to trial. Have agreed-upon documents, photographs and other exhibits pre-marked into evidence by the court reporter while the jury is not present.
  3. It is the duty of counsel, not court personnel, to make sure all subpoenaed documents have arrived in the subpoenaed records room at 60 Centre Street. Court personnel may only retrieve records from 60 Centre when not needed in the Courtroom.
  4. Pre-trial memoranda of law, pre-trial orders and motions *in limine* are to be submitted at least seven (7) calendar days prior to the date of trial, unless otherwise advised by the Court.
  5. All requests to set up audiovisual equipment in the Courtroom shall be directed to the Part Clerk in Part 39 at 646-386-3275.

# **EXHIBIT A**



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\_\_\_\_\_ ,

Plaintiff,

-against-

\_\_\_\_\_ ,

Defendant.

:  
: Index No. \_\_\_\_\_

:  
:  
: **STIPULATION AND ORDER**  
: **FOR THE PRODUCTION AND**  
: **EXCHANGE OF**  
: **CONFIDENTIAL**  
: **INFORMATION**

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This matter having come before the Court by stipulation of plaintiff \_\_\_\_\_ and defendant \_\_\_\_\_ (individually “Party” and collectively “Parties”)<sup>1</sup> for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced in the course of discovery in this matter to the extent set forth below; and the Parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that merits confidential treatment (hereinafter the **“Documents”** or **“Testimony”**).
2. Any party may designate Documents produced, or Testimony given, in connection with this action as “confidential,” either by notation on each page of the Document so

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<sup>1</sup> Party and Parties are signatories to this Stipulation and Order for the Production and Exchange of Confidential Information, and party and parties are any individuals or entities obligated to produce documents or give testimony in connection with this action.

designated, statement on the record of the deposition, or written advice to the respective counsel for all affected parties, or by other appropriate means.

3. As used herein:

(a) “Confidential Information” shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of the party designating the material as confidential, be detrimental to the conduct of that party’s business or the business of any of that party’s customers or clients.

(b) “Producing Party” shall mean the party producing “Confidential Information” in connection with depositions, document production or otherwise, or the party asserting the confidentiality privilege, as the case may be.

(c) “Receiving Party” shall mean the party receiving “Confidential Information” in connection with depositions, document production or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party in writing that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written notification, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Information. If the motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules

otherwise. On such a motion, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

- a. personnel of plaintiff or defendant actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;
- b. counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;
- c. expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;
- d. the Court and court personnel;
- e. an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;

- f. trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof; and
  - g. any other person agreed to by the Producing Party.
6. Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes.
  7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party shall provide the expert's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.
  8. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of the deposition is received by counsel for each of the parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.
  9. Should the need arise for any party to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.
  10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as

“Confidential Information” under the terms hereof. Any deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other parties to the action. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness’s compliance with the Stipulation.

11. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party asserting the confidentiality privilege. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.
12. (a) A Receiving Party who seeks to file a motion with the Court using Documents or Testimony which have previously been designated as comprising or containing

Confidential Information, and/or any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information, shall, twenty-one (21) days prior to filing any motion, provide the parties with written notice of its intent to file such material with the Court, so that the Producing Party may file by Order to Show Cause a motion to seal such Confidential Information. A party seeking to file a motion with the Court using any Documents or Testimony that it has designated as confidential must also move to seal such Confidential Information. The motion to seal the Confidential Information must be filed fourteen (14) days prior to filing the motion, and the Confidential Information shall not be filed until the Court renders a decision on the motion to seal.

(b) If the motion to seal is granted, the filing party shall ensure that all documents that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system.

(c) All pleadings, briefs or memoranda which reproduces, paraphrases or discloses any documents which have previously been designated by a party as comprising or containing Confidential Information, shall identify such documents by the production number ascribed to them at the time of production.

13. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof.
14. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its "confidential" nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving

Party identifying the document or information as “confidential” within a reasonable time following the discovery that the document or information has been produced without such designation.

15. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.
16. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party’s right to object to the production or disclosure of other information in this action or in any other action.
17. This Stipulation shall continue to be binding after the conclusion of this litigation except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of any part of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of both parties, continue to be binding after the conclusion of this action.
18. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.
19. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof, shall be returned to the Producing Party or shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this

litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation, or other entity adverse to any party or their affiliate(s) in connection with any other matters.

20. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

[FIRM]  
By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
New York, New York \_\_\_\_\_  
Tel.: \_\_\_\_\_

Attorneys for Plaintiff

[FIRM]  
By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
New York, New York \_\_\_\_\_  
Tel.: \_\_\_\_\_

Attorneys for Defendant

Dated: \_\_\_\_\_

SO ORDERED \_\_\_\_\_

J.S.C.



EXHIBIT "A"  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

\_\_\_\_\_,  
Plaintiff,

-against-

\_\_\_\_\_,  
Defendant.

:  
: Index No. \_\_\_\_\_  
:

:  
: **AGREEMENT TO RESPECT**  
: **CONFIDENTIAL MATERIAL**  
:

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I, \_\_\_\_\_, state that:

1. My address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the "**Stipulation**") entered in the above-entitled action on \_\_\_\_\_.
5. I have carefully read and understand the provisions of the Stipulation.
6. I will comply with all of the provisions of the Stipulation.
7. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information that is disclosed to me.
8. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information.

9. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: \_\_\_\_\_