

JUSTICE ANDREW BORROK

PART 53 – PRACTICES AND PROCEDURES

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 238
New York, NY 10007**

**Part Clerk / Courtroom Phone: 646-386-3304
Chambers Phone: 646-386-4203
Email: SFC-Part53@nycourts.gov**

Part Clerk: Therese Spillane
Principal Law Clerk: Anna Mikhaleva, Esq.
Assistant Law Clerk: Laura Tsang, Esq.
Commercial Division Law Clerk: Michael Lieberman, Esq.

Oral Argument on Motions: Mornings, Monday through Thursday, as scheduled by the Court

Conferences: Monday through Friday at 11:30, as scheduled by the Court.

GENERAL

1. All parties or their counsel must familiarize themselves with the Part 53 Rules and the Rules of the Commercial Division, 22 NYCRR 202.70.¹
2. Counsel and litigants (represented or self-represented) are advised that Justice Borrok, his Law Clerks, and Part Clerk will not engage in any *ex parte* communications.
3. The Court strongly encourages substantive participation in court proceedings by women, lawyers of diverse backgrounds and less experienced attorneys, who have historically not been afforded opportunities to participate in the Commercial Division.

¹ The Commercial Division Rules are available at: ww2.nycourts.gov/rules/trialcourts/202.shtml#70

4. The Part Clerk is unable to accept deliveries or answer phone calls between 1:00 and 2:15 P.M. or after 4:30 P.M.
5. 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 to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved.
6. Part 53 is a paperless part. Except for proposed Orders to Show Cause, working copies of motions and related documents are not accepted. However, counsel may bring working copies to appearances.
7. The use of demonstrative evidence, including charts, graphs, and large contract language, video depositions, and electronic media devices require prior approval from the Court. Requests for the use of demonstrative evidence shall be made one week before the scheduled appearance date.

ELECTRONIC FILING

1. All cases in Part 53 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/supctmanh/e-filing.shtml>.
2. All e-filed documents must be text-searchable. All electronically-submitted memoranda of law must contain bookmarks, pursuant to Commercial Division Rule 6. The submission of documents containing hyperlinks is strongly encouraged.
3. “eTrack” is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances. Parties and/or their counsel must be registered for the eTrack service for all Part 53 cases. To register or log-in, please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.
4. Please do not send copies of any documents that were e-filed, with the following exceptions:
 - a. Documents requiring Justice Borrok’s signature, including proposed orders and stipulations, must be e-filed and sent to Justice Borrok by e-mail (*e.g.*, proposed/settled orders, stipulations, or transcripts to be so-ordered); and
 - b. Proposed Orders to Show Cause, which must be brought in hard copy for processing in the Commercial Division Support Office and then brought up to Part 53.

COMMUNICATIONS TO PART 53

1. Justice Borrok does not accept any letters, documents, or papers by e-filing, mail, or facsimile unless expressly permitted by these Practice Rules, Commercial Division Rule 2, or by prior approval of the Court. To the extent that the parties seek a phone conference, they may make such request by email to Part 53, briefly stating the reason for such conference, which the court may grant if appropriate.
2. Please do not telephone Chambers unless authorized in advance or as permitted by the Part Rules. All inquiries concerning scheduling, appearances, adjournments, and case status shall be directed to the Part Clerk in the first instance. Please have the index number available when you call.
3. In an effort to minimize the time and expense of litigation, Part 53 encourages the use of email where appropriate to make a joint submission in lieu of an appearance for an in-court status conference following a preliminary conference where all discovery deadlines are being met and only either (i) for submission of a deposition schedule or (ii) to request an adjournment of an appearance to correspond with oral argument on motion.

ADJOURNMENTS

1. All adjournments (motions, conferences, trials) require prior Court approval. *Ex parte* applications for adjournments will not be considered.
2. Requests to adjourn an appearance (conference or oral argument) must be directed to the Part Clerk in the first instance. Conferences and motions will only be adjourned by stipulation. The parties must first consult with the Part Clerk before selecting a new date for the appearance. Applications for adjournment must be made at least 48 hours in advance of the scheduled appearance.
3. To adjourn a motion that is in the Submissions Part (Room 130):
 - a. If the parties wish to adjourn a motion the first time the motion is on the Calendar in the Submissions Part, for less than 30 days, the parties may do so 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. The stipulation must clearly indicate the relevant motion sequence number.
 - b. If the parties wish to adjourn a motion, other than the first time the motion is on the calendar in the Submissions Part or for more than 30 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.
4. To adjourn a hearing or trial, the parties must contact the Part Clerk on a conference call with all parties on the line. Applications for adjournments shall be made at least one week in advance of the scheduled hearing or trial.

CONFERENCES AND DISCOVERY DISPUTES

1. Only attorneys who are thoroughly familiar with the case may appear for a conference. 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 may fill out the appropriate form (preliminary conference order, or compliance conference/stipulation form) prior to arriving in the courtroom for the conference. Any disputes will be resolved at the conference.
 - i. Counsel must use the kiosk located near the courtroom entrance. Please enter the case index number and select the appropriate conference form (preliminary conference order or stipulation). The kiosk will then print the selected form.
 - ii. 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 1st, 2nd, or 3rd compliance conference. Use specific cut-off dates (*e.g.*, “on or before December 31, 2018”). 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 Part Clerk will then call your case when the Court is ready for your conference.
3. Counsel must meet and confer to resolve any discovery disputes, as discussed below.

MOTION PRACTICE

1. All substantive motions with opposition will be scheduled for oral argument. All papers must be e-filed at least five (5) business days prior to the oral argument date.
2. Summary judgment motions must be filed within 60 days of the filing of the note of issue. Rule 19-A statements will not be accepted on summary judgment motions unless it is a Joint Statement of Undisputed Facts; if there are no facts to which the parties agree, the parties should not submit a Rule 19-A statement.
3. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of the 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 prior to making a motion. Justice Borrok does not accept Commercial Division Rule 24 letters unless expressly requested. Discovery-related motions are strongly discouraged. Prior to making any such motion, the parties must meet and confer in good faith to try to resolve their dispute. In the event the dispute is not resolved by the meet and confer, the parties may email Part 53 a request to make a discovery motion and/or for a phone or in-person conference to resolve the dispute. Any permitted discovery motion shall be brought by Order to Show Cause.
5. *Pro hac vice* motions shall be made by Order to Show Cause and must include a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant and a recent certificate of good standing from the applicant. The affidavit of the applicant must advise the Court as to how many times the applicant has been admitted in New York *pro hac vice*, whether that admission *pro hac vice* has been vacated, and whether the applicant has ever been or is presently subject to a disciplinary proceeding (see exhibit A, annexed to these Part Rules, for the form of the proposed order for *pro hac vice* applications). If there is no opposition to the motion, the movant should include a stipulation indicating as much.
6. Requests for commissions shall be made by Order to Show Cause.

7. Word limits specified in Commercial Division Rule 17 shall be strictly enforced, unless permission to expand the word 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 must include a short label identifying the nature of the exhibit (*e.g.*, Exhibit A, Affidavit of John Doe; Exhibit B, Employment Agreement between A & B, dated XX/XX/XXXX).

ALTERNATIVE DISPUTE RESOLUTION

1. The parties are encouraged to identify as early as possible any case where ADR would be appropriate. In addition, and 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 to be stayed or continued 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.

CONFIDENTIALITY ORDER / SEALING DOCUMENTS

1. In the interest of reducing unnecessary litigation costs, any order regarding the confidential exchange of information must adhere to the Proposed Stipulation and Order for the Production and Exchange of Confidential Information (“the Model Form”), which is attached as Exhibit B to these Practice Rules.
2. Justice Borrok is mindful that minor additions/deletions/edits to the Model Form will only drive up litigation costs. Therefore, if the parties believe there is good cause to depart from the Model Form, they must submit the following:
 - a. The proposed stipulation and order;
 - b. A red-lined version of the proposed stipulation and order, indicating any departures from the Model Form; and

- c. A party affirmation establishing good cause for any proposed departures from the Model Form.

Amended Model Forms that are not accompanied by the red-lined version and affidavit will not be approved.

3. Applications to seal documents shall include the nature of the document, the reason for the sealing request and state the “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, not by stipulation.
4. To e-file documents under seal, please follow the procedures set forth by the County Clerk, <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf>

TRIALS / EVIDENTIARY HEARINGS

1. All trial documents, whether used for evidentiary hearings or during trial, must be provided electronically via flash drive to the court **no less than 10 business days prior to the hearing or start of trial**, and a copy of the flash drive should be served on all other parties. The flash drive should include 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. All trial exhibits, indexed (if the number of exhibits is too voluminous, the exhibits may be placed on a separate flash drive).
 - f. In the case of a jury trial:
 - (i) a proposed jury verdict sheet.
 - (ii) 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. Otherwise, if

the section does call for a characterization or description of the evidence or the 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.

- (iii) a short (one to two lines) summary of the party's claims to be used by the Court as part of the preliminary instructions given to the jury during opening statements.
 - g. A list of proposed witnesses. If a witness needs an interpreter, please indicate the language and any dialect.
 - h. In the case of a bench trial: for non-jury trials, all direct testimony of a party's own witness shall be submitted in affidavit form. Upon being called at trial, a witness shall swear to the contents of his/her affidavit, the Court shall hear opposing counsel's objections (if any) to the direct testimony followed by cross examination and re-direct, if any, of the witness in court. Parties shall exchange direct testimony affidavits at least ten (10) business days prior to the commencement of trial. Direct testimony affidavits must also be e-filed at least seven (7) business days before trial commences.
 - (i) Exceptions: In a bench trial, a witness's direct testimony need not be submitted in affidavit form if the witness is not within the control of the party who/which intends to call the witness. The direct testimony by affidavit rule will not apply to jury trials; in a jury trial, a witness's direct testimony will be elicited in open court.
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 while the jury is not present.
 3. It is the duty of counsel, not court personnel, to make sure that 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 7 business days prior to the date of trial, unless otherwise advised by the Court.
 5. Notwithstanding the fact that Part 53 is a paperless part, all proposed exhibits should be provided to the Court in hard copy in advance of trial.

6. All requests to set up electronic media and audiovisual equipment in the Courtroom shall be directed to the Part Clerk in advance of trial.

EXHIBIT A: FORM OF PROPOSED ORDER FOR *PRO HAC VICE* APPLICATIONS

_____, Esq., having applied to this Court for admission *pro hac vice* to represent [plaintiff/defendant]_____ in this action, and applicant having submitted an affidavit of _____, Esq., a member of the Bar of the State of New York and attorney of record herein for _____, an affidavit of the applicant dated _____, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the Court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted and _____, Esq. is permitted to appear and to participate in this action on behalf of _____; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the Court shall be signed and filed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the Courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that counsel shall notify the Court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

Dated: _____

ENTER:

J.S.C.

EXHIBIT B: FORM OF PROPOSED STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

----- X

_____,
Plaintiff,
-against-

Index No. _____

STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION

_____,
Defendant.

----- X

This matter having come before the Court by stipulation of plaintiff _____ and defendant _____ (individually “Party” and collectively “Parties”)¹ 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

¹ 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.

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 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 1 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 1 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. In connection with the review of electronically stored information and hard copy documents for production (the “Documents Reviewed”) the Parties agree as follows:
 - a. to implement and adhere to reasonable procedures to ensure Documents Reviewed that are protected from disclosure pursuant to CPLR 3101(c), 3101(d)(2) and 4503 (“Protected Information”) are identified and withheld from production.

- b. if Protected Information is inadvertently produced, the Producing Party shall take reasonable steps to correct the error, including a request to the Receiving Party for its return.
 - c. upon request by the Producing Party for the return of Protected Information inadvertently produced the Receiving Party shall promptly return the Protected Information and destroy all copies thereof. Furthermore, the Receiving Party shall not challenge either the adequacy of the Producing Party's document review procedure or its efforts to rectify the error, and the Receiving Party shall not assert that its return of the inadvertently produced Protected Information has caused it to suffer prejudice.
- 16. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. 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.

- 21. 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: _____

Ph.: _____
Attorneys for Plaintiff

[FIRM]
By: _____

Ph.: _____
Attorneys for Defendant

Dated: _____

SO ORDERED: _____
J.S.C.

EXHIBIT "1"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

_____,
Plaintiff,
-against-

_____,
Defendant.

Index No. _____

**AGREEMENT TO RESPECT
CONFIDENTIAL MATERIAL**

----- X

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.
4. I had received a copy of the Stipulation for the Production and Exchange of Confidential Information (“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 for 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: _____
