

## 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

**Oral Argument on Motions:** Monday through Friday, as scheduled by the Court

**Conferences:** Monday through Friday from 11:30 A.M. to 12:30 P.M. 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.<sup>1</sup>
2. Part 53 accommodates in person, hybrid and fully virtual appearances. Virtual appearances are supported on the Unified Court System's approved TEAMS platform. All appearances are scheduled as in person. Please email the Part Clerk ([sfc-part53-clerk@nycourts.gov](mailto:sfc-part53-clerk@nycourts.gov)) at least 48 hours in advance of the scheduled appearance if you intend to appear virtually so that a TEAMS link can be forwarded to you and the Court Reporter can be so apprised.
3. All scheduling and technology inquiries should be emailed to the Part Clerk ([sfc-part53-clerk@nycourts.gov](mailto:sfc-part53-clerk@nycourts.gov)). All other inquiries (including any requests for adjournment) are to be emailed to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)). When orders to show cause or motions **are fully submitted** (including those without opposition), please email the Part-Clerk ([sfc-part53-clerk@nycourts.gov](mailto:sfc-part53-clerk@nycourts.gov)) to have those orders to show cause or motions scheduled. Please include the index number and all counsel of record cc'ed on the email. Counsel and litigants (represented or self-represented) are advised that Justice Borrok, his Law Clerks, and Part Clerk may not engage in any *ex parte* communications.
4. The Court supports the professional development of junior attorneys and encourages their participation in trials and oral arguments on motions. The Court also strongly encourages substantive participation in court proceedings by women and diverse lawyers who historically have been underrepresented in the commercial bar.
5. The Part Clerk is unable to accept deliveries or answer emails or phone calls between 1:00 and 2:15 P.M. or after 4:30 P.M.

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<sup>1</sup> The Commercial Division Rules are available at: [ww2.nycourts.gov/rules/trialcourts/202.shtml#70](http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70)

6. Counsel must notify the Court, as soon as practicable, by email 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.
7. Part 53 is a paperless part. Working or courtesy copies of motions and related documents are not accepted by email or otherwise except with prior permission of the Court for *in camera* review or for other lawful purpose. However, counsel may bring working copies to in person appearances to the extent they wish to refer to any such working copies. Please do not email or send copies of any documents that were e-filed other than proposed Orders and Stipulations requiring the Court's signature. These should be sent via email to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)) in both PDF and MS Word format. Please do not email or send Proposed Orders to Show Cause. These must be e-filed for processing in the Commercial Division Support Office. Once reviewed, they will be sent to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)) by the Commercial Division Support Office once a motion sequence number is assigned.
8. 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 at least one week before the scheduled appearance date by email to Chambers explaining the need for the demonstrative and a copy of the proposed demonstrative. Any such email request and proposed demonstrative shall have all counsel of record or parties cc'ed on the email and shall be made at least one week before the scheduled appearance date.
9. Trials (not currently scheduled) are scheduled following adjudication of all motions including motions *in limine*.
10. Part 53 has three law clerks. Available clerkship opportunities are posted online (<https://www.nycourts.gov/legacyHTM/courts/comdiv/clerkships>). Applications are accepted on a rolling basis.

## **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. Submission of documents containing hyperlinks is required.
3. Hyperlinks: The parties shall serve all documents associated with a motion or order to show cause on the dates required for their submission and service. The parties shall also on such dates upload the exhibits to NYSCEF (*i.e.*, so that there is a document to

hyperlink to). Memoranda of law and corresponding affidavits that hyperlink to the exhibits previously uploaded may be e-filed on the return date.

4. “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>.

### **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 Rules 2 and 18, or by prior approval of the Court. To the extent that the parties seek an unscheduled conference, they may make such request by email to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)) briefly stating the reason for such conference, which the Court may grant, if appropriate.
2. As indicated above, all inquiries concerning scheduling, technology and case status shall be emailed to the Part Clerk ([sfc-part53-clerk@nycourts.gov](mailto:sfc-part53-clerk@nycourts.gov)). All other inquiries shall be emailed to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)). Please include the index number.
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 a conference is scheduled only for either (i) 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 (oral argument on motions, conferences, trials) require prior Court approval. *Ex parte* applications for adjournments will not be considered.
2. As discussed above, requests to adjourn an appearance (conference or oral argument) must be directed to Chambers. Adjourned motions shall be adjourned to the Court’s next available date. Absent emergency, applications for adjournment must be made at least one week 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 also 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 and email to Chambers.
  - 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 Chambers via email ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)) with all counsel of record cc'ed on the email. Absent emergency, applications for adjournments shall be made at least two weeks 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 have available all signed copies of all prior decisions, orders and stipulations (both substantive and discovery related) at 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 submit a proposed status conference order prior to arriving in the courtroom or appearing virtually for the conference. Any disputes will be resolved at the conference.
3. Counsel must meet and confer to resolve any discovery disputes, as discussed below.
4. If parties wish to request a preliminary conference, they should do so by email to the Part Clerk ([sfc-part53-clerk@nycourts.gov](mailto:sfc-part53-clerk@nycourts.gov)).

## **MOTION PRACTICE**

1. All substantive motions with opposition may be scheduled for oral argument by the Court. All papers must be e-filed at least two weeks prior to the oral argument date except as otherwise permitted by the Court.
2. Unless otherwise indicated by the Court, summary judgment motions must be filed no later than 60 days from 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 may not submit a Rule 19-A statement.
3. No cross-motions for summary judgment will be permitted.
4. 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).
5. 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 virtual or in-person conference to resolve the dispute. Discovery motions shall be brought by Order to Show Cause. No reply briefing is permitted.
6. Absent a motion demonstrating appropriate, unusual, or compelling circumstances warranting a stay, the filing of a dispositive motion does not stay discovery.
7. *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.
8. Requests for commissions shall be made by Order to Show Cause.
9. Word limits specified in Commercial Division Rule 17 will be strictly enforced, unless permission to expand the word limits is granted by the Court in advance of the filing of the papers. Requests to modify word limits must be made at least two weeks before the motion papers are to be filed.

10. All memoranda of law must include a Table of Contents and Table of Authorities.
11. 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](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 and the Commercial Division 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. **Document Sealing and Redacting Procedures.** Parties may not stipulate to seal or redact documents or information. Motions to seal and/or redact must be made by order to show cause in compliance with subdivisions (a), (b), and (c) below.

Sealing entire documents or categories of documents is a drastic remedy. The court must fashion narrowly tailored orders to seal or redact certain highly sensitive information to maintain the transparency of the court's affairs and balance the interests of the public and the parties. The court strongly encourages parties to consider making motions to redact specific, protectable information in the applicable documents.

- a. Motions to Seal and/or Redact. A movant must submit a memorandum of law stating the basis of the purported good cause to seal or redact each document or piece of information. A movant must also submit a sealing/redacting spreadsheet that clearly identifies: (1) each document sought to be sealed or redacted with the corresponding NYSCEF Docket Number; (2) the categorization of each document (*see* [i]-[ii] below); (3) whether movant seeks to seal or redact the document; (4) the proposed good faith basis to seal or redact; and (5) citations to applicable authority supporting good cause to seal/redact.
- i. A movant should identify specific proposed categories in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order. Vague categories, such as "confidential business information" or "proprietary trade information," are not generally adequate.
  - ii. Examples of specific categories include "third-party borrower personal identifying information," "pricing terms for nonparty customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products."
  - iii. Except under extraordinary circumstances, the court will not permit parties to seal or redact any pleading. The court may, however, consider narrowly tailored redactions to exhibits attached to pleadings.
- b. Proposed Sealed or Redacted Documents. A movant must file documents to be sealed or redacted on NYSCEF as follows:
- i. Counsel must file every document sought to be sealed or redacted on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy) with all proposed redactions highlighted with yellow.
  - ii. Counsel must also e-file a public copy of each document on NYSCEF with only the proposed redactions blacked out.

- c. Opposing Motions to Seal/Redact. The parties must meet and confer to resolve any disputes before filing opposition to an application to seal/redact.
  - d. Good Cause Found. Upon a finding of good cause, the court will issue a written order directing the party or parties to seal or redact documents and/or specific information in the documents filed with the motion. The court will further order the party or parties to apply those written findings of good cause to any documents containing the same specific categories of information if or when other documents are later filed in the same action to reduce or eliminate the need for future motions to seal or redact.
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. General:
  - a. Following the filing of note of issue and after the adjudication of dispositive motions, an initial pre-trial conference shall be scheduled with the Court to discuss a schedule for the filing of all trial documents in the virtual evidence room on NYSCEF (the “Evidence” tab in the e-file docket), any motions *in limine*, a joint exhibit list indicating which exhibits are to be admitted on stipulation and which exhibits are subject to objection (and the basis for the objection), and all other pre-trial submissions (including any proposed jury questionnaires, *voir dire* statements, verdict sheets, and jury instructions).
  - b. Trial Submissions include marked pleadings, all prior decisions in the case, any notices to admit, with responses, copies of transcripts of depositions intended for use at trial, all trial exhibits, potential verdict sheet (in the case of a jury trial), direct testimony affidavits (in the case of a bench trial), potential jury instructions (in the case of a jury trial) which should be based on the most current version of the PJI and potential *voir dire* statements (in the case of a jury trial) and questions the parties submit to the Court for consideration (in the case of a bench trial).
  - c. Motions *in limine* are to be brought by Order to Show Cause.
  - d. Following the resolution of all motions *in limine* a pre-trial conference will be scheduled where trial will be scheduled and the parties shall provide a detailed schedule with the Court (including which witnesses will be testifying on which days).
  - e. All trials are timed trials where the parties shall agree to a total number of hours for trial. The parties shall each assign a time keeper which time keepers shall confer at the



conclusion of each day at trial. Any disputes as to time elapsed shall be brought to the Court's attention the following morning. Any dispute not brought to the Court's attention by the challenging party (*i.e.*, the party who believes more time was used) is waived.

- f. The parties are to stipulate to all facts and documents not in dispute prior to trial and marked for admission. However, all exhibits (even those admissible without objection) are not admitted until used by the parties at trial.
- g. All requests to set up electronic media and audiovisual equipment in the Courtroom shall be directed to the Part Clerk in advance of trial.
- h. Given the financial and other burdens of trial, witnesses may testify remotely in both bench trials and jury trials upon application to the Court.

2. Jury Trials:

- a. In the case of a jury trial, the Court conducts *voir dire* (except if otherwise indicated by the Court).
- b. The Court will consider any proposed jury questionnaires submitted by counsel and any questions counsel would like the Court to query a particular juror about. The Court reserves the right to ask the question in the manner proposed by counsel, in a different manner or to refrain from asking the question at all if the Court deems the question improper.
- c. Counsel shall submit a brief *voir dire* statement to the Court as part of its pre-trial submissions for the Court's consideration. The *voir dire* statement should include a brief summary of what the claims/counter-claims are in the case, what the defenses are, what the damages sought are, who the witnesses are, who the lawyers are, and any other relevant information such that the Court gives sufficient information to potential jurors so that the Court can determine whether a potential juror is inappropriate to sit on the jury of the case at issue.
- d. The parties shall agree to a total number of peremptory challenges prior to the pretrial conference. If the parties can not agree, the Court shall decide the appropriate number of peremptory challenges.
- e. During jury selection, if both sides have exercised a peremptory challenge against the same potential juror, that potential juror shall not serve on the jury and neither side will be charged with the exercise of a peremptory challenge.
- f. Following empanelment of the jury, counsel should assume that the trial will begin immediately.

- g. Post-trial briefs. Two weeks after receiving the conclusion of a jury trial, the parties are to file any motion to set aside the verdict by order to show cause of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). Opposition papers shall be filed two weeks thereafter of up to 4,200 words (subject to the same exclusions). No reply briefing is permitted.

In addition to filing on NYSCEF, copies of the post-trial briefs in Word format should be emailed to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)).

### 3. Bench Trials:

- a. Direct Testimony: The Court may hear direct testimony live or by direct testimony affidavit.
- b. If the Court is to hear the testimony live and not by direct testimony affidavit, the parties shall notify the Court at the pretrial conference to ensure that the timed trial schedule accounts for live testimony.
- c. Affidavits shall be reasonable in length and scope and, in any event, shall not exceed fifteen (15) pages including all exhibits to any such affidavits absent prior leave of the Court. 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.
- d. A bench trial may be held virtually in the discretion of the Court.
- e. Post-Trial Briefs. Two weeks after the conclusion of a non-jury trial, the parties are to submit post-trial briefs of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). One week thereafter, the parties may file reply briefs of up to 4,200 words (subject to the same exclusions). The initial post-trial briefs should be organized as follows:
  - a. Preliminary Statement (optional)
  - b. Proposed Findings of Fact
  - c. Proposed Conclusions of Law, separately for each cause of action (claim, counterclaim, crossclaim, and third-party claim)
  - d. Conclusion – including specific relief sought for each cause of action
  - e. Proposed Judgment.

In addition to filing on NYSCEF, copies of the post-trial briefs in Word format should be emailed to Chambers ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)).

**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-

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

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

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

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

\_\_\_\_\_  
<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.

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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

New York, NY \_\_\_\_\_

\_\_\_\_\_

Tel.: \_\_\_\_\_

\_\_\_\_\_

Attorneys for Plaintiff

[FIRM]

By:

New York, NY

Tel.:

Attorneys for Defendant

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

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

J.S.C.

EXHIBIT "1"

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

Revised 7/19/24

----- X

\_\_\_\_\_,  
Plaintiff,  
-against-

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

**AGREEMENT TO RESPECT  
CONFIDENTIAL MATERIAL**

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

----- 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: \_\_\_\_\_