

JUSTICE ANDREA MASLEY

PART 48 PRACTICE RULES

Updated: 10/15/2018

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION PART 48
60 CENTRE STREET, COURTROOM 242
NEW YORK, NY 10007**

PHONE: 646-386-3265

FAX: 212-618-0571

<u>Part Clerk:</u>	Brendan Hanson	646-386-3265	bhanson@nycourts.gov
<u>Law Clerk:</u>	Victoria G. Corbo, Esq.	646-386-4381	vcorbo@nycourts.gov
<u>Law Clerk:</u>	Tyler D. Evans, Esq.	646-386-4381	tdevans@nycourts.gov
<u>Law Clerk:</u>	Kevin J. Quaratino, Esq.	646-386-4381	kquarati@nycourts.gov

I. E-Track Directive

Notification of developments in cases, including court appearance dates and adjournments, is now made exclusively through e-Track, the court system's case tracking and e-mail notification service. New York County Supreme Court no longer provides these notifications by regular mail. In all cases now pending in the Commercial Division, and upon the assignment of any case to the Commercial Division, all counsel shall immediately register to create an e-Track account and then record each case to ensure that counsel will receive e-mail notifications about developments in the cases. As an alternative, counsel may subscribe to a private sector e-mail notification service that provides comparable notice. The e-Track link appears at the end of each electronic filing. The e-Track address is: <https://iapps.courts.state.ny.us/webcivil/etracklogin>. There is no charge to use e-Track. For further information, please contact e-Track at ecourts@nycourts.gov.

II. E-Filing

Please note that as of May 24, 2010, e-filing is mandatory in all commercial cases filed in New York County. For any questions with respect to e-filing rules and procedures, call the e-filing office at 646-386-3610, or go to <http://www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml>

Opt-out: If parties are eligible and wish to opt-out from participating in mandatory e-filing, they must file a Notice of Opt-Out (Note: all forms can be found on the e-filing website).

III. Commercial Division Rules

The Rules of the Commercial Division, as well as the Uniform Civil Rules for the Supreme Court, shall apply unless modified by the individual Rules of Part 48. All parties and counsel should familiarize themselves with the Commercial Division Rules, available at <http://www.nycourts.gov/courts/comdiv/>.

IV. General Information

1. Contact Information

- a. All attorneys or unrepresented litigants must provide their contact information to the Trial Support Office, located in Room 158M. Failure to provide the contact information will result in undeliverable communications from the Part.
- b. Any issues related to incorrect contact information must be addressed directly with the Trial Support Office by counsel/unrepresented litigants. The Part Clerk cannot change the contact information.

2. Communications

- a. Neither Justice Masley nor her law clerks will speak to any attorney or unrepresented litigant regarding any matter without all parties to the action present. **Do not call Chambers unless authorized in advance by the Court or as permitted by the Rules.**
- a. Email is preferred for all communications to Chambers. **DO NOT SEND THE SAME COMMUNICATIONS USING MULTIPLE METHODS.**
- b. All inquires regarding the scheduling of conferences and/or oral arguments must be directed to the Part Clerk, Brendan Hanson, who can be reached at (646) 386-3265 or bhanson@nycourts.gov. Please have the index number readily available when you call.
- c. **Letters:** Letters shall not be filed without prior authorization of the Court.

Exceptions: The following may be submitted without prior authorization:

i. A joint letter, no more than 3 pages, outlining discovery issues to be resolved at a discovery conference previously scheduled by the Court. Such a letter must be submitted at least 3 business days in advance of the scheduled conference.

ii. Letters authorized by Commercial Division Rule 2 and letters notifying the Court, in advance of an oral argument date, of the disposition or other resolution of the motion, with a stipulation reflecting the disposition.

iii. Letters requesting ADR. See Mediation, Section 5 below.

iv. Letters authorized by Commercial Division Rule 18. Such letters are limited to only the citation of a relevant post-submission court decision. The Court will not consider letters that argue the substance of the cited authority. The Court will notify the parties if it requires any further briefing.

e. All counsel of record, or parties where applicable, must be copied on any written communication to the court.

3. **Requests for Adjournment**

a. All adjournments (motions, conferences, trials) require prior Court approval. Requests for adjournments, in the first instance, shall be directed to the Part Clerk at 646-386-3265. **Do not telephone Chambers.**

A court approved adjournment shall be reduced to a written stipulation prepared by the requesting counsel and signed by all counsel. If applicable, the stipulation should set forth a briefing schedule. The requesting counsel shall send the stipulation to Part 48 by email to bhanson@nycourts.gov and shall be responsible for e-filing the stipulation.

b. Adjournment applications and stipulations shall be made at least 48 hours in advance of the scheduled court appearance.

4. **Request for admission *PRO HAC VICE***, shall be made by Order to Show Cause and shall be accompanied by 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 even been or is presently subject to a disciplinary proceeding. Exhibit A, annexed to these Rules, is the form of the proposed order for *pro hac vice* applications. **In Part 48, the New York attorney of record, and not the attorney admitted pro hac vice, shall file all documents, electronically or otherwise.**

5. **Mediation:** If, at any point, the parties decide to engage in mediation, the Commercial Division ADR program, or other ADR, they shall submit a stipulation to vcorbo@nycourts.gov. Discovery may be stayed during the mediation/ADR process upon such notice.

V. Motion Practice

1. Motions

- a. **Motion sequence numbers** must appear on **ALL** motion papers including: the notice of motion, memoranda of law, exhibits, affirmations, AND proposed/settled orders.
- b. **Working Copies (a.k.a. “Courtesy Copies,” “Originals,” “Duplicate Originals”):**

i. In addition to electronically filing all motion papers, **counsel shall submit a hard copy set of all papers filed in connection with every motion: memoranda of law must be individually bound separately from all other submissions**; all other papers, including notices of motion, affirmations, and exhibits, shall be bound in **labeled, consecutively-paginated volumes not exceeding 2 inches wide. All submissions must include blue backs.** NYSCEF confirmation pages may NOT be attached to the front of any submission. **All working copies must be delivered to the Motion Submissions Part in Room 130 on the return date unless otherwise specified in these Rules.**

Note: Where these Rules require working copies to be delivered directly to Part 48, such copies must be delivered to the Part Clerk in **Courtroom 242**; working copies of such papers delivered to a

location other than Room 242 will be rejected. **Do not deliver working copies to Chambers by any method unless specifically instructed by Part 48 to do so.**

ii. **Redacted and/or Sealed Documents: Unredacted/unsealed working copies of all exhibits must be delivered to the Part Clerk in Room 242 on the return date.** Unredacted/unsealed working copies must be bound in consecutively-paginated volumes not exceeding 1 inch in width; velo binding is preferred. Further, **all documents electronically filed on NYSCEF in redacted or sealed form, whether temporarily or by court order, must also be electronically filed to NYSCEF in unredacted form, under electronic seal, in addition to the redacted files submitted to NYSCEF such that Part 48 may access unredacted versions of all documents through NYSCEF.** Contact the E-Filing Office for assistance with all NYSCEF-related matters.

iii. Only an attorney of record may digitally sign documents. All other affidavits/affirmations must contain the affiant's original signature. All signatures must be dated.

iv. **THE COURT WILL NOT CONSIDER ANY DOUBLE-SIDED DOCUMENTS.**

v. **Working copies of memoranda of law must be submitted separately bound from all other submissions;** for instance, memos must not be attached to affirmations/affidavits and/or exhibits.

vi. **Unreported/Unavailable Cases:** If submissions, such as legal memoranda, cite or refer to unreported cases, hard copies of those cases must be submitted. **Submit ONLY copies of cases that are not available on Westlaw, Lexis, or NYSCEF, as well as cases that are "reported" in the New York Law Journal (NYLJ) but are otherwise unavailable.**

Note: Citations to cases that are available on Westlaw and/or Lexis should include Slip Op. Numbers and Westlaw/Lexis cites; cases on NYSCEF must include Index Number(s) and NYSCEF Document Number(s). Copies of the entire actual case/decision must be submitted for cases "reported" in NYLJ; copies of NYLJ

articles/summaries/text are insufficient. Copies of cases shall be separately bound and submitted to the court in accordance with Part V (1) (b) of these Rules.

c. **Submissions Part (Room 130):**

Motions must be fully submitted in the Submissions Part (Room 130).

i. All motion “Working Copies” must be submitted to the Submissions Part before the court schedules oral argument.

ii. Any issues related to the return date of a motion still on the submissions calendar must be addressed directly with the Submissions Part. No more than three adjournments for an aggregate of 60 days from the original return date shall be permitted absent a Stipulation So Ordered by Justice Masley. See Uniform Rules of the Trial Court 202.8 (e) (1).

d. **Memoranda of Law** are required on **all** motions. Memoranda of law submitted in support of or in response to all motions must include a Table of Contents and a Table of Authorities. Memoranda of law must be bound separately from the other papers and be single-sided. Affidavits and affirmations may not contain legal arguments or be used to circumvent or exceed the page limits for memoranda of law set below in subsection (e).

e. **Page Limit:**

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 25 pages each; (ii) reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 25 pages each.

Combined briefs for cross motions are restricted to the same page limits set forth in Commercial Division Rule 17. All text, including footnotes, must be at least 12-point font and double spaced.

f. **Page Extension Requests** will be denied absent an extraordinary showing of good cause. Parties requesting a page extension shall submit a short

statement explaining the request to vcorbo@nycourts.gov. All parties must be included on this correspondence.

- g. **Affidavits/Affirmations** must be separate from any memoranda of law submitted in relation to the motion. Affidavits/affirmations that contain substantive arguments are not permitted.
- h. **Exhibits:**
 - i. On the return date, parties must file “Working Copies” of all exhibits in the Submission Part, Room 130, and all unredacted “Working Copies” are to be submitted to the Part Clerk in Room 242. **Exhibits must be bound in consecutively-paginated volumes with clearly-marked cover pages and exhibit tabs.**
 - ii. Parties, in the e-filing system, must identify with specificity the type of exhibit electronically filed. For example:
 - Exhibit A - Affidavit of Jane Doe, dated June 1, 2013
 - Exhibit B - Lease Agreement between X & Y, dated June 1, 2013
 - iii. If a deposition transcript is submitted as an exhibit, it should be in miniscript format.
 - iv. Hard copies of e-filed spreadsheets are required.
 - v. All e-filed documents and exhibits must be OCR/text searchable.
- i. **Opposing Papers on Orders to Show Cause** are returnable directly to the Part (Room 242) between the hours of 9:30 a.m. - 1:00 p.m. and 2:15 p.m. - 4:30 p.m., and must be submitted at least 24 hours prior to oral argument on the application unless otherwise directed.
- j. **Rules for Dispositive Motions**
 - i. Rule 19-A Statements will not be accepted on summary judgment motions. Only a Joint Statement of Undisputed Fact(s) will be accepted; if there are no facts to which the parties agree, the parties are not to submit a any statement of fact.

ii. Summary judgment motions must be initiated within 30 days after the filing the Note of Issue unless otherwise directed by the Court. Cross motions for summary judgment will not be accepted if beyond the 30-day time limit barring prior Court order.

iii. Discovery is not stayed by the filing of a dispositive motion unless otherwise directed by the Court.

- k. **Oral argument.** If Justice Masley chooses to hear argument, the parties will be contacted by the Part Clerk. Multiple attorneys are permitted to argue a motion, and the participation of junior associates is encouraged.
- l. **Prior Permission:** Except for discovery motions, no prior permission is required before making a formal motion. **Commercial Division Rule 24 letters are NOT accepted by Part 48, and no informal requests (i.e., letters, e-mails) for motion relief will be entertained.**
- m. **Discovery motions** are strongly discouraged. If a discovery dispute arises after the issuance of a preliminary or compliance conference order, the parties must confer in a good faith effort to resolve the issue(s). If the dispute cannot be resolved, the parties shall telephone the Part Clerk (646-386-3265) to schedule a discovery conference. If the issue cannot be resolved following such conference, the parties may move for appropriate relief. **All discovery motions shall be made by Order to Show Cause.** An OSC shall be initiated by filing the appropriate papers with the Commercial Division Support Office in Room 119 with proof of e-filing. The moving party is responsible for retrieving the OSC from the Commercial Division Support Office after it has been processed, and is further responsible for delivering the OSC jacket with a complete set of working papers to the Part Clerk in Room 242.
- n. **Transcript of Proceedings Required:** subsequent to each oral argument held on a motion, the moving party shall request from the court reporter a transcript of the proceedings and promptly provide a copy to the Court by delivering a copy signed and certified by the reporter to the Part Clerk in Room 242 with a cover letter setting forth the case name, index number, and motion sequence number; the certified transcript must also be electronically filed. The moving party shall bear the cost. Motions will not be marked fully submitted until the Court receives a certified copy of the transcript. The name and contact information of the court reporter can be

obtained from the Part Clerk.

- o. **Text Searchable:** All electronically-filed documents must be OCR Text Searchable.
- p. **Confirmation notices** for e-filing must be attached to the last/back page, not as a cover page.
- q. **Motions to Amend Pleadings:** All motions to amend the pleadings shall include the proposed amended pleading, as well as a red-line version of the proposed changes.

VI. Post-Oral Argument

1. **Settlement of Orders:** The following procedure MUST be adhered to if the parties are directed to settle an order or to settle an order on notice during oral argument or in a short form order:
 - a. The parties must wait until a short form order has been issued by the court before submitting any orders for settlement. All proposed orders must be settled on notice, pursuant to [Uniform Rule 202.48](#).
 - b. All notices, proposed orders, and accompanying transcripts, affidavits, and/or documents must contain the motion sequence number, shall be e-filed, and provided to the Part Clerk in Room 242 in hard-copy form.
 - c. Proposed Orders should be sent to the Commercial Division Support Office, Room 119 and to the Part Clerk in Room 242 with a cover letter.
2. **Settlement of Transcripts:** transcripts filed to be “So Ordered” by the Court shall be submitted together with an errata sheet correcting all errors in the record, including presumed court errors. If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall accompany the errata sheet or transcript. In the absence of consent as to the errata sheet, the requesting party shall notice the record for settlement pursuant to CPLR

5525 (c). **The submitted transcript must be signed and certified by the court reporter.**

3. **Procedures for Inquests:** A party requesting or directed to submit an inquest in Part 48 shall submit in hard-copy form and e-file the following information or documents:
 - a. An affidavit from a person with knowledge of the facts setting forth how damages are computed.
 - b. Attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation should also discuss the damages incurred by the party.
 - c. Exhibits should be submitted electronically and with working copies in support of all requests for damages.
 - d. Whenever counsel believes it would assist the court, affidavits from experts (i.e., accountants, appraisers, etc.) should be submitted.
 - e. Proof of service must be filed indicating that all papers and exhibits submitted to the court have been served on opposing parties.

VII. Discovery

1. **Confidentiality:** For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in **Exhibit B to these Rules (not the Commercial Division Rules)**. In the event the parties wish to deviate from the form set forth in Exhibit B, they shall also submit to the Court a red-line version of the proposed changes and a written explanation of why the deviations are warranted in the pending matter. See Commercial Division Rule 11-g (a) and (b).
 - a. **Applications to seal or redact documents** shall include a summary of the nature of each document, the reason(s) that each document should be sealed or redacted, and the particular “good cause” to seal or redact each document (*see* 22 NYCRR § 216.1). The court prefers presentation of this information in the form of a chart or table. Applications to seal must be made by Order to Show Cause, and all documents, papers, exhibits, and memoranda must be filed in accordance with these Part Rules and the rules applicable to e-filing (*see* NYSCEF/E-File Office) and the

Submissions Part at 60 Centre Street. Additionally, the movant **must provide the court with UNREDACTED working copies of anything filed with redactions or under seal** (see subsection [b] below).

b. **Unredacted Copies:** A party filing any motion papers, including notice or memorandum of law, affidavit, affirmation, or declaration in support of such motion/application, that attaches, affixes, summarizes, or excerpts Confidential or Highly Confidential information shall redact all such Confidential or Highly Confidential information before submitting the papers to the public file. **COMPLETELY UNREDACTED HARD COPIES OF ALL DOCUMENTS, PAPERS, EXHIBITS FILED UNDER SEAL OR WITH REDACTIONS MUST BE PROVIDED TO THE PART CLERK IN ROOM 242 ON THE RETURN DATE. Additionally, UNREDACTED COPIES MUST ALSO BE FILED ELECTRONICALLY UNDER SEAL such that Part 48 can access wholly unredacted digital copies on NYSCEF.** Unredacted court copies must clearly state on each cover/front page: **“Unredacted Chambers Copy – Redacted Copy Filed Pursuant to Court Order.”**

2. **Discovery Conferences**

a. Part 48 conducts scheduled discovery conferences, in person, via telephone, or Skype on Tuesdays, Wednesdays, and Thursdays. If the conference is telephonic, a party to the case must initiate the call with all parties on the line before contacting the Court, or provide dial-in information (email - bhanson@nycourts.gov) at least 24 hours before the scheduled call. The parties shall make a good faith effort to appear at compliance conferences with a proposed compliance conference order or stipulation. If an emergency conference is needed, please contact the Part Clerk at 646-386-3265 or bhanson@nycourts.gov . If the Part Clerk cannot be reached during normal court hours, please email Justice Masley’s law clerks and copy all counsel of record and/or pro se parties. If an emergency occurs outside of normal court hours, please call 1-800-430-8457 or email emergency@nycourts.gov .

b. **Preliminary Conferences:** Counsel are encouraged to use the Form Preliminary Conference Order available in Part 48 and at <http://www.nycourts.gov/courts/comdiv/ny/PDFs/JMasley-PCO.pdf> prior to the scheduled PC and confer with each other. Plaintiff’s counsel

shall bring a copy of the complaint to the PC.

3. **NO PARTY SHALL SEND A LETTER TO CHAMBERS RELATED TO A DISCOVERY DISPUTE** (EXCEPTION: SEE PART 48 PRACTICE RULES GENERAL INFORMATION, Section 2 [d] [I], ABOVE). If a discovery dispute arises, **(1) THE PARTIES MUST MEET AND CONFER ON THE ISSUE. IF THE PARTIES ARE UNABLE TO RESOLVE THE ISSUE, (2) CONTACT THE PART CLERK TO SCHEDULE A CONFERENCE. JUSTICE MASLEY WILL NOT ENTERTAIN “MOTION LETTERS.”** IF THE DISCOVERY ISSUE IS NOT RESOLVED AFTER THE CONFERENCE, COUNSEL MAY MOVE FOR APPROPRIATE RELIEF BY ORDER TO SHOW CAUSE.

Note: Do not e-mail Justice Masley or her law clerks to raise discovery disputes or seek discovery conferences. All scheduling matters and conferences are coordinated by the Part Clerk. Substantive arguments are not appropriate and should not be included in e-mails to the Part Clerk requesting a discovery conference. If the Court requires specific information pertaining to an alleged dispute, the Part Clerk will communicate instructions to counsel.

4. **Commissions:** Requests for commissions should be made by stipulation, if possible, or by Order to Show Cause.
5. **Trial Rules:** Please see Part 48 Trial Rules, available on the Commercial Division website. **Note:** Motions in limine, pre-trial memoranda, exhibit books, and witness lists are due in the time frame set forth in Part 48 Trial Rules, and not at the pre-trial conference as set forth in Commercial Division Rules 27, 28, and 31.

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.

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 NEW YORK: COMMERCIAL PART 48

-----X

Index No.: _____

Plaintiff(s),

-against-

Defendant(s).

STIPULATION AND
ORDER FOR THE
PRODUCTION AND
EXCHANGE OF
CONFIDENTIAL
INFORMATION

-----X

This matter having come before the Court by stipulation of plaintiff,
_____, and defendant, _____, (individually “Party”
and collectively “Parties”) 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 by either party and their respective counsel or
by any non-party 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;

It is ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the “Documents” or “Testimony”).

2. Any Party or, as appropriate, non-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 undersigned counsel for the Parties, or by other appropriate means.

3. Definition of terms used in this stipulation:

(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 or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party’s or non-party’s business or the business of any of that Party’s or non-party’s customers or clients.

(b) “Producing Party” shall mean the Parties to this action and any non-parties producing “Confidential Information” in connection with depositions,

document production or otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(c) “Receiving Party” shall mean the Parties to this action and/or any non-party receiving “Confidential Information” in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party 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 request, 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 such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, 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 the Parties 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 below;

(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, below; 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 making such disclosure shall provide to the expert witness or consultant a copy of this Stipulation and request the expert's or consultant's written agreement, in the form of Exhibit 1 attached, 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 said 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 or, as appropriate, non-party, to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, that Party or, as appropriate, non-party may do so only after taking such steps, if any, that the Court, following a motion by 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. If a Party seeks to give access to Confidential Information to a deposition witness, the Party shall provide the witness with a copy of this Stipulation and request that the witness execute a written agreement, in the form of Exhibit 1 attached below, 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 and, as appropriate, a non-party that is a Producing Party. In the event that a witness refuses to execute the agreement to be bound by this Stipulation, the Court may, upon application, enter an order directing the witness’s compliance with the Stipulation, or directing such other steps as the Court may deem necessary under the circumstances.

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 of such materials or information. 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 (or, as appropriate, non-party) asserting the confidentiality. 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, fourteen (14) 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 or redact such Confidential Information in conformance with the Part 48 Practice Rules and other applicable rules and procedures. 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 or redact such Confidential Information. The motion to seal or redact the Confidential Information must be filed seven (7) days prior to filing the motion, and the Confidential Information shall be filed under

temporary seal until the Court renders a decision on the motion to seal or redact the document(s).

(b) If the motion to seal or redact is granted, the filing party shall ensure that all documents that are the subject of the order to seal or redact are filed in accordance with the procedures that govern the filing of sealed or redacted documents on the NYSCEF system and in conformance with the Part 48 Practice Rules.

(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 of this Stipulation and shall use reasonable measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

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 production from which the document or information was disclosed 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. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential Information designation shall not preclude a Party or non-party from making a subsequent challenge as to those documents or information.

17. This Stipulation is entered without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any of its provisions by properly-noticed motion to the Court, or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

18. This Stipulation shall continue to be binding after the conclusion of this litigation; however, there shall be no restriction on documents that are used as exhibits in Court unless, and only insofar as, such exhibits were sealed or redacted pursuant to an

order of the Court). Further, nothing in this Stipulation prevents a Receiving Party from seeking the written permission of the Producing Party, or further order of the Court, to dissolve or modify the Stipulation. The provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action; however, documents sealed or redacted by order of the Court prior to, or for a purpose other than, trial shall not remain sealed or redacted for use as trial exhibits absent further order of the Court extending the sealed or redacted status of such documents for use at trial.

19. Nothing in this Stipulation 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 of such materials, shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, that Receiving 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 applicable 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 non-party or their affiliate(s) in connection with any other matter.

21. If a Receiving Party is called upon to produce Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information is sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information, if the Producing Party so desires.

Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.

22. 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.

23. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

By:

By:

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Dated: _____

SO ORDERED:

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

-----X

Plaintiff,

-against-

Defendant.

Index No. _____

AGREEMENT WITH
RESPECT TO
CONFIDENTIAL
MATERIAL

-----X

I, _____, state that:

1. My address is _____.

2. My present occupation or job description is _____.

3. 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 _____.

4. I have carefully read and understand the provisions of the Stipulation.

5. I will comply with all of the provisions of the Stipulation.

6. 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.

7. 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.

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

Dated: _____

Signature: _____