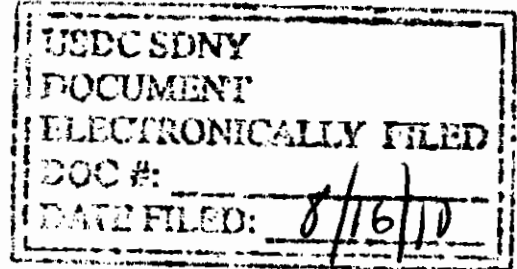


PROSKAUER ROSE LLP  
Bettina B. Plevan  
Joseph C. O'Keefe  
1585 Broadway  
New York, New York 10036  
(212) 736-8185  
bplevan@proskauer.com  
jokeefe@proskauer.com

*Attorneys for Defendant*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, :  
 :  
Plaintiff, :  
 :  
-against- :  
 :  
KELLEY DRYE & WARREN LLP, :  
 :  
Defendants. :  
----- X



No. 10 Civ. 655 (LTS)(MHD)

**~~STIPULATION AND ORDER~~  
REGARDING CONFIDENTIAL  
INFORMATION**

WHEREAS, Plaintiff Equal Employment Opportunity Commission ("EEOC") and  
Defendant Kelley Drye & Warren LLP ("Defendant" or "Kelley Drye") (collectively "the  
parties") were previously involved in proceedings with respect to a charge of discrimination  
("the Charge") (EEOC Charge No. 520-2008-02342) filed by Eugene T. D'Ablemont and will be  
engaged in discovery in the above captioned matter; and

WHEREAS, the parties consider certain of the information and/or documents previously  
produced or obtained, or which will be sought in discovery in this matter, to be of a confidential  
nature; and

WHEREAS, the parties have ~~agreed to the entry of this~~ *been unable to agree to all of the terms,* Stipulation and Order to permit  
Plaintiffs and Defendant to protect previously produced or obtained information and to discover

information deemed confidential pursuant to procedures protecting the confidentiality of such information;

ORDERED

IT IS ~~HEREBY STIPULATED AND AGREED~~ as follows:

1. ~~The parties agree that~~ Documents and information which are maintained by or by plaintiff or Eugene D'Allevant (the disclosure of) Kelley Drye as confidential, are not available to the general public, and which fall within the ~~which is~~ is likely to cause competitive or other commercial following categories, produced or provided by a party in discovery, are ~~Confidential~~ dam to Kelley Drye or unduly invade the legitimate privacy "Information" and may be designated as "CONFIDENTIAL" as described herein and treated as confidential in this litigation. The parties are free to agree to the

interests of any individual

- a. Kelley Drye's partnership agreement and amendments and documents related thereto, with the exception of Article Five of the Partnership Agreement and any amendments thereto;
- b. documents relating to Kelley Drye benefit plans;
- c. compensation information concerning Kelley Drye Partners and/or employees and their compensation;
- d. information relating to Kelley Drye finances including, without limitation, client billing and collection information;
- e. documents relating to Kelley Drye clients and work performed on behalf of Kelley Drye clients;
- f. documents relating to Kelley Drye's business planning, strategizing and decision making;
- g. social security and taxpayer identification numbers;
- h. tax returns;
- i. medical, health care, and mental health records and information;
- and
- j. evaluations of the performance of any attorney or employee and/or documents relating to the alleged misconduct of any attorney or employee.

The parties understand and agree that the categories listed in subparagraphs 1(a)-(j) are not intended to be exhaustive, and that during the course of discovery a party may seek, by agreement or court order, to add additional categories of documents to the definition of

confidential treatment of categories of documents.

~~"Confidential Information" set forth in this paragraph. The parties further understand and agree that agreement to include a category of documents in subparagraphs 1(a)-(j) shall not be construed as an agreement or admission that any document(s) falling within any such category is relevant and/or discoverable in connection with the claims and issues in this matter.~~

2. "Qualified Person" as used herein means: (a) Plaintiff; (b) Eugene D'Ablemont; (c) Defendant (including partners of Defendant and staff members involved in the defense of the matter); (d) the parties' counsel and clerical and professional employees of the parties, or their counsel, who work with the parties' counsel on the prosecution or defense of this matter; (e) any expert, expert's staff or third party employed or retained by the parties or the parties' counsel for the purpose of assisting the parties in the prosecution and/or defense of this litigation; (f) the Court (including any clerk, stenographer, or other person having access to any Confidential Information by virtue of his or her position with or affiliation with the Court); ~~and (g) any other person to whom counsel for the parties agree in writing, and (i) any other person deemed "Qualified" by court order.~~ *(g) a noticed deposition witness (at or before the deposition)*

3. Counsel for the parties shall designate discovery materials produced in the course of discovery as Confidential Information by marking or stamping such discovery materials with the word "CONFIDENTIAL" or, in the case of deposition testimony, by noting that certain testimony shall be "Confidential" within the meaning of this stipulation.

4. To the extent documents and information provided to the EEOC in connection with the Charge, by the Firm or Eugene D'Ablemont, fall within ~~any of the~~ *the scope of* ~~categories~~ *described in Paragraph 1, supra, such documents are hereby designated as* ~~"Confidential Information"~~ *"Confidential"* ~~and shall be treated for purposes of this Agreement as if they had~~ *defendant may them by written notice to plaintiff, and they*

been stamped "CONFIDENTIAL" in accordance with paragraph 3, at the time they were provided to the EEOC.

5. Access to/disclosure of Confidential Information properly designated as "CONFIDENTIAL" shall be limited only to Qualified Persons. Such access to/disclosure of Confidential Information to Qualified Persons shall only be permitted or made to the extent counsel in good faith believes that such access or disclosure is reasonably necessary to the prosecution or defense of this litigation, and in the case of Qualified Persons described in paragraphs 2(b), 2(e), and 2(g) (2(b) and 2(i)) above, only after execution by such persons of a written Acknowledgment in the form attached hereto as Exhibit A.

6. Each Qualified Person will maintain Confidential Information in confidence and will not reveal any Confidential Information to any person who is not a Qualified Person without the prior written consent of the designating party's counsel or an order by the Court authorizing such disclosure. Confidential Information shall be used only for the purposes of this litigation (not any other judicial or other proceeding) and for no other purpose whatsoever, and shall not be disclosed, given, shown, discussed or otherwise divulged or communicated to any person or entity except as provided herein.

7. In the event a party's counsel disagrees with any designation of "Confidential Information" or considers it necessary to disclose Confidential Information to persons other than as permitted herein, the party's counsel shall notify, in writing, the party who requested the confidential designation of its objection. Counsel for the parties shall confer and attempt to resolve the matter informally. If they are unable to do so within <sup>5 business</sup> 10 days, the party that seeks confidential treatment may, within <sup>business</sup> 5 days thereafter <sup>business</sup> (10) days after the written

objection to confidential treatment) file a motion for a protective order seeking a determination whether particular documents or other information should be treated as Confidential Information or whether the disclosure of the information shall be permitted. The information in question shall be treated as Confidential Information and subject to the terms of this ~~Stipulation and Order~~, until the later of: i) agreement of the parties, ii) expiration of the time period to move for a protective order, or iii) if a motion is made, the Court's issuance of an Order resolving the dispute.

8. <sup>inadvertent</sup> The disclosure of a document or information <sup>by a producing party</sup> without designating it as Confidential Information shall not constitute a waiver of the right to designate such document or information as Confidential Information pursuant to the procedures set forth herein and, if so designated, the document or information shall thenceforth be treated as Confidential Information subject to all the terms of this ~~Stipulation and Order~~.

9. Counsel for the parties may, in the course of deposing a person who is not a Qualified Person, show the witness Confidential Information and examine the witness concerning such information provided that (a) the witness is informed that the information is confidential, is instructed that such confidentiality must be maintained, and agrees on the record to maintain the confidentiality of the information; and (b) no persons are present during those portions of the examination concerning Confidential Information except the witness, Qualified Persons, <sup>the witness's counsel</sup> the parties' counsel, and a court reporter.

10. The transcript of deposition testimony deemed Confidential Information shall be bound separately, marked by the court reporter "CONFIDENTIAL" and treated as Confidential Information subject to the terms of this ~~Stipulation and Order~~.

11. Confidential Information once disclosed may be copied only to the extent necessary to permit its use in accordance with the terms of this ~~Stipulation and~~ Order.

12. Subject to the terms of this paragraph, either party may use information or documents designated as Confidential Information in connection with motion practice, other court filings, and during any trial of this action. The parties will, in advance <sup>(of public filings)</sup> confer in good faith to agree upon a method (subject to the Court's approval) to protect such Confidential Information (e.g. filing under seal) during such proceedings; if the parties are unable to agree upon a method to protect such Confidential Information, the party seeking to protect the Confidential Information may apply to the Court for a mechanism to maintain the confidentiality of discovery material designated as Confidential Information. Until the issue is resolved, the information or documents designated as Confidential Information shall not be publicly filed.

13. Within thirty (30) days of the conclusion of this action (including appeals, if any), all Confidential Information, and all documents containing Confidential Information, in the possession of any Qualified Person or any other person who has received such documents pursuant to this ~~Stipulation and~~ Order, shall be destroyed or returned to the producing party's counsel, together with all copies, extracts and summaries thereof, except that the parties' counsel shall be permitted to retain their working files on the condition that those files will remain confidential in perpetuity consistent with the terms of this ~~Stipulation and~~ Order.

14. This ~~Stipulation and~~ Order may be amended by further ~~Stipulation~~, or if the parties are unable to agree, by the Court on the application of either party.

15. This ~~Stipulation and~~ Order shall be binding on the parties, their counsel, all Qualified Persons, and all other persons having knowledge of its terms. It is enforceable by

the contempt power of the United States District Court for the Southern District of New York  
and by any other sanction deemed appropriate by the Court.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

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

Elizabeth Grossman, Regional Attorney  
New York District Office  
33 Whitehall Street  
New York, NY 10004  
Phone: (212) 336-3705  
Fax: (212) 336-3790  
judy.keenan@eeoc.gov

Jeffrey Burstein, Senior Trial Attorney  
1 Newark Center, 21<sup>st</sup> Floor  
Newark, NJ 07102  
Phone: (973) 645-2267  
Fax: (973) 645-4524  
jeffrey.burstein@eeoc.gov  
Attorneys for Plaintiff

PROSKAUER ROSE LLP

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

Bettina B. Plevan  
1585 Broadway,  
New York, New York  
Phone: (212) 969-3000  
Fax: (212) 969-2900  
Bplevan@proskauer.com  
Attorneys for Defendant

**SO ORDERED:**

August 16, 2010  
N.Y., N.Y.

  
\_\_\_\_\_  
Honorable ~~Laura Taylor Swain, U.S.D.J.~~

Michael H. Dolinger, U.S. Ct. J.

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
EQUAL EMPLOYMENT OPPORTUNITY	:	
COMMISSION,	:	No. 10 Civ. 655 (LTS)(MHD)
	:	
Plaintiff,	:	<b><del>STIPULATION AND ORDER</del></b>
	:	<b>REGARDING CONFIDENTIAL</b>
-against-	:	<b>INFORMATION</b>
	:	
KELLEY DRYE & WARREN LLP,	:	
	:	
Defendants.	:	
-----	X	

**ACKNOWLEDGMENT OF <sup>ORDER</sup>~~STIPULATION~~**  
**REGARDING CONFIDENTIAL INFORMATION**

I have read the Stipulation and Order Regarding Confidential Information in the above-captioned action. I hereby acknowledge that I understand the terms thereof, and that I consent to be bound by such terms.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name