

John J. Bowers
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, D.C. 20549
(202) 551-4645

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

**JOSEPH A. FIORE, BERKSHIRE CAPITAL
MANAGEMENT COMPANY, INC., and
EAT AT JOE'S, LTD. n/k/a SPYR, INC.,**

Defendants.

18-cv-5474 (KMK)

**STIPULATION AND
[PROPOSED] ORDER
REGARDING THE
PROTECTION AND
CONFIDENTIALITY OF
SENSITIVE PERSONAL
INFORMATION**



1. This Stipulation and [Proposed] Order is made between the United States Securities and Exchange Commission (“Commission”) and the defendants in this action (“Defendants”) to protect confidential and/or sensitive information received by the Commission during the course of its investigation of this matter and by the parties during the litigation.

2. As used in this Stipulation and Order, the term “*Sensitive Personal Information*” shall mean any documents or other information containing any one or more of the following categories of personal and private documents or information: (a) a social security or tax identification number; (b) individuals’ financial account statements, including statements for any bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (c) any financial account number, including for a bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (d) tax returns; (e) the home address and phone number of any individual person; (f) the birth date of any individual person; (g) the name of any individual person who, at the time of the filing of this matter, was known to be less than 18 years old; or (h) medical information. Sensitive Personal Information *does not* include the last four digits of a financial account number or phone number, the city and state of an individual’s home address, the year of an individual’s birth, or copies of unredacted filings by regulated entities or registrants that are available on the Commission’s public website.

3. Sensitive Personal Information disclosed to any Defendant in this action or to defense counsel during the course of this action:

- a. Shall be used only for the purpose of preparation, trial, and appeal of this matter and for no other purpose, and shall not be disclosed except in accordance with the terms hereof;
- b. Shall not be used for any business or commercial purposes;
- c. Shall not be published to the public in any form, except as permitted below;
- d. May be disclosed only to the following persons, on an as-needed basis in the course of the litigation, with reasonable precautions taken to ensure that the confidentiality of the information is protected and maintained:
 - i. A Defendant;
 - ii. Employees or contractors of any law firm that represents a Defendant, including attorneys and secretarial, clerical, paralegal, legal, or student personnel, and any person or entity with whom a Defendant's counsel contracts to reproduce or manage documents;
 - iii. Non-party witnesses;
 - iv. A document's author(s) or recipient(s);
 - v. Independent (non-employee) consultants, expert witnesses, or advisors retained by any of the parties to this action in connection with this action;
 - vi. Court reporters or stenographers – and their employees – who are engaged to record testimony for a hearing or deposition;
 - vii. The Securities and Exchange Commission and its employees, agents, or contractors; and
 - viii. Such other persons as hereafter may be authorized by either (1) written consent of all the parties or (2) the Court upon motion of either party.

4. Sensitive Personal Information disclosed in this action may be used by the Securities and Exchange Commission for any of the "Routine Uses of Information" identified in SEC Form 1662 ("Supplemental Information for Persons Requested to Supply Information Voluntarily Or Directed to Supply Information Pursuant to a Commission Subpoena"), a copy of which is attached hereto as Exhibit A.

5. The provisions of this Stipulation and Order shall not be construed as preventing:

- a. Any disclosure of Sensitive Personal Information to any party to this action or the party's counsel for the purposes of this action;
- b. Any disclosure of Sensitive Personal Information to the Court or its employees for the purposes of this action; or
- c. Any disclosure of Sensitive Personal Information for the purpose of enforcing the criminal law or as otherwise required by law.

6. Except as otherwise agreed or ordered, prior to making a public filing of any document in these proceedings, the Commission and Defendants agree to redact all Sensitive Personal Information from the document. The Commission and Defendants also agree to take reasonable and appropriate measures to prevent unauthorized disclosure of Sensitive Personal Information contained in documents produced or filed in these proceedings, including by persons to whom the Commission or Defendants show or give access to such documents. In the event that redacting a filing is impracticable or would result in a filing being almost entirely redacted, the parties shall file the document under seal. If a document is filed under seal, it may be disclosed to the parties or persons under paragraph 3.d. In addition, if a party intends to make a filing (such as a brief or motion) that incorporates Sensitive Personal Information in the written text, the party must: 1) file a version clearly labeled "under seal," with the Sensitive Personal Information subject to this Stipulation and Order noted by brackets, bold typeface, or some other clear indication; and 2) file a public redacted version that removes the Sensitive Personal Information.

7. This Stipulation and Order shall not:

- a. Operate as an admission by any party that any particular document in fact contains Sensitive Personal Information;
- b. Prejudice in any way the right of a party to seek a determination of whether such material is or should be subject to the terms of this Stipulation and Order;
- c. Prevent a Defendant's or non-party's disclosure of its own Sensitive Personal Information; or
- d. Prejudice in any way the right of any party to apply to the Court for a further protective order relating to any other confidential information or Sensitive Personal Information.

8. Nothing in this Stipulation and Order shall be interpreted to mean that any party has agreed to produce all documents requested by another party or otherwise waived any objection to any outstanding document request, nor shall this Stipulation and Order preclude the

parties from offering Sensitive Personal Information into evidence at the trial of this action or in any deposition or other proceeding in this action, subject to the restrictions set forth herein.

9. Pursuant to Rule 26(a)(1), the SEC provided Initial Disclosures to Defendants that included as Exhibit 2 a description of the documents, data compilations, and tangible things that the SEC may use to support its claims, as well as additional documents not privileged or protected from disclosure, which materials are voluminous and may contain Personally Identifiable Information (“PII”) and therefore require protection by the Court. Without waiving its objections on relevance and other grounds to individual items within the production, the SEC has agreed, upon entry of this Stipulation and Order, to produce an electronic copy of these materials to Defendants in the manner in which they have been maintained in the ordinary course of business by the SEC during its investigation. Defendants have agreed to treat these materials as Sensitive Personal Information as described hereinabove, based on the sensitive nature of the information and the nature of the conduct alleged in this matter.

10. Unless otherwise agreed or ordered, this Stipulation and Order shall survive the termination of the litigation.

SO AGREED:

/s/John J. Bowers

John J. Bowers
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

*Counsel for Plaintiff Securities
and Exchange Commission*

Dated: December 16, 2019

/s/Marc S. Gottlieb


Marc S. Gottlieb
Ortoli Rosenstadt LLP
366 Madison Ave, 3rd Floor
New York, NY 10017
msg@orllp.legal

Counsel for Defendants

Dated: December 16, 2019

SO ORDERED.

DATED: White Plains, New York
12/28, 2019.



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE