

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

PRESENT: JOAN M. KENNEY
J.S.C.

PART 8

Index Number : 100639/2011
BALLENILLA, KEISI
vs.
NEW YORK ATHLETIC CLUB
SEQUENCE NUMBER : 001
ORDER OF PROTECTION

FILED
OCT 04 2012
COUNTY CLERK'S OFFICE
NEW YORK

INDEX NO. 100639/11
MOTION DATE 9/25/12
MOTION SEQ. NO. 001

The following papers, numbered 1 to 13, were read on this motion to/for Order of Protection

Notice of Motion/Order to Show Cause — Affidavits — Exhibits <u>+ Memo of Law</u>	No(s). <u>1-9</u>
Answering Affidavits — Exhibits _____	No(s). <u>10-12</u>
Replying Affidavits _____	No(s). <u>13</u>

Upon the foregoing papers, it is ordered that this motion is

In this action seeking damages for alleged sexual harassment, defendants seek a protective order, pursuant to CPLR 3101, directing plaintiff to execute a confidentiality agreement limiting the dissemination of documents and information to third parties not affiliated with this case. Defendant argues that its proposed Stipulation and Order for the Protection and Exchange of Confidential Information (the Confidentiality Agreement; Exhibit "A" to Notice of Motion Papers), is merely a "standard" agreement to protect any document/material produced or provided which defendants believe, in good faith, constitute, reflect, or disclose confidential information and/or proprietary information. In addition, defendants seek that anyone who does review their produced documents/other materials, also execute the Confidentiality Agreement. Defendants contends that because plaintiff stated that this case may be "newsworthy," defendants have grounds for seeking the within relief in order to restrict dissemination of "sensitive document concerning [defendants] employees and customer, would result in undue prejudice and disadvantage, and a violation of New York State law."

Plaintiff contends that the within application should be denied because: (1) the Confidentiality Agreement, is overly-broad; (2) this is not an action seeking trade secrets; (3) courts favor a generous and liberal scope of disclosure; (4) defendants have not specifically challenged the propriety of discovery requests; (5) defendants have not met their burden of particularizing the documents that would allegedly reveal proprietary information; (6) defendants have not established entitlement to a broad confidentiality order and/or a seal order; and (7) defendants waived their objection to production of documents etc. on confidentiality grounds, having already responded to plaintiff's interrogatories.

Upon review of the proposed Confidentiality Agreement, this Court finds that the agreement is broad and allows "either" party to mark whatever document they wish as "confidential," without setting forth any specific grounds for such a marking. More to the point, documents have not been identified as "confidential" but rather the Confidentiality Agreement is for possible future disclosure that defendants may deem, in good faith, to be confidential. In sum, defendants have not set forth entitlement to the within relief sought. Accordingly, it is

ORDERED that defendants motion, is denied, in its entirety; and it is further
ORDERED that the parties appear for a preliminary conference on November 8, 2012 at 9:30 a.m. in

Room 204 located at 71 Thomas Street, NYC 10013.
Dated: 10/1/12

Joan M. Kenney J.S.C.
JOAN M. KENNEY

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE