SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, - against - JEFFREY E. EPSTEIN, Defendant-Appellant.	App. Div. No. 6081 On Appeal from New York Supreme Court, New York County, Index No. 30129/10 (Pickholz, J.)

MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO UNSEAL APPELLATE BRIEFS

DAVIS WRIGHT TREMAINE LLP

Robert D. Balin
John M. Browning
1251 Avenue of the Americas, 21st Floor
New York, New York 10020-1104
Telephone: (212) 603-6410
Counsel for Non-Party Movant NYP Holdings, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions

Statutes

Other Authorities

Non-party movant NYP Holdings, Inc., publisher of the *New York Post* (the "Post"), respectfully submits this memorandum of law in support of its motion, filed pursuant to 22 NYCRR § 1250.1(e)(3), for an order unsealing the briefs filed by the parties in the above-captioned appeal (the "Appeal").

PRELIMINARY STATEMENT

The Post seeks to unseal court documents that will shed light on why the Manhattan District Attorney's Office initially sought lenient treatment of billionaire financier and convicted pedophile Jeffrey Epstein. In 2008, Epstein pleaded guilty in federal court to soliciting prostitution from a minor, but there has been suspicion since that time – voiced by members of the judiciary and the press alike – that prosecutors gave Epstein preferential treatment because of his wealth and his political connections to powerful men like Donald Trump, Bill Clinton, and Prince Andrew. The handling of criminal proceedings against Epstein by federal prosecutors in Florida and thereafter by the Manhattan District Attorney's office has come under renewed scrutiny after the *Miami Herald* published a series of investigative articles on November 28, 2018 including an article reporting recently that "prosecutors worked to cut him a break" despite strong evidence that he had abused 80 girls and young women.

As part of its own news reporting on the New York proceedings against Epstein, the Post seeks to unseal the briefs filed in this Appeal, in which this Court affirmed the lower court's decision to class Epstein as a level three sex offender in New York, which is the category reserved for highest-risk offenders. *See People v. Epstein*, 89 A.D.3d 570, 570, 933 N.Y.S.2d 239, 240 (1st Dep't 2011). During the Appeal, the District Attorney's Office opposed Epstein's arguments that his status should be downgraded to a lower level. But the position taken by the District Attorney on appeal was in stark contrast to its position in proceedings before the lower

court, where it argued that Epstein "should be adjudicated a level one offender" – which is the lowest-risk designation available – in spite of damning evidence establishing that "defendant committed multiple offenses against a series of underage girls." *Id.* at 570-71, 933 N.Y.S.2d at 240. The public has the right to know why the Manhattan District Attorney's Office switched its legal position on appeal and what justifications it advanced in its brief to explain its initial request for lenient treatment of Epstein. Similarly, the briefing submitted by Epstein will shed light on the arguments he advanced for leniency and may shed additional light on why the District Attorney changed course on appeal. Despite the obvious public interest in knowing this information, the briefs filed on appeal are not available to the public because they were filed under seal pursuant to New York Civil Rights Law section 50-b.

The Post now moves this Court for an order unsealing those documents. As a threshold matter, the Rules of this Court and the common law both guarantee the Post's right to move this Court for an order unsealing court documents (POINT I, *supra*). And the Post easily demonstrates the "good cause" required to overcome sealing of documents under section 50-b. Simply put, the presumption of openness that governs judicial proceedings in this State is at its zenith because the documents sought by the Post are highly relevant to allegations of prosecutorial missteps and favoritism by the office of the District Attorney in a case involving a powerful sex offender (POINT II, *supra*). To the extent that it is necessary to protect the anonymity of victims of sexual abuse identified in the briefs, this Court should direct the District Attorney's Office to redact the names of those victims. The appropriateness of disclosure is underscored by the fact that the District Attorney's Office has indicated that it do not oppose the Post's motion for an order unsealing and directing the release of the redacted briefs.

FACTUAL BACKGROUND

A. Epstein's Conviction for Sex Crimes and Designation as a Level Three Sex Offender

In June 2008, a Florida Court sentenced Jeffrey Epstein to eighteen months in prison after he pleaded guilty to soliciting prostitution from a fourteen-year-old girl. Affirmation of John M. Browning dated December 21, 2018 ("Browning Aff."), Ex. A.

After serving thirteen months of his sentence, Epstein was released and required to register as a sex offender in New York, where he owned property and sought to reside. *Id.* Ex. B. The New York State Board of Examiners of Sex Offenders ("NYBSO") recommended that Epstein be designated a level three sex offender – which is the level reserved for the most dangerous sexual predators – because investigators in Florida had found compelling evidence that Epstein abused scores of underage girls, despite only pleading guilty to solicitation of a single minor. *Epstein*, 89 A.D.3d at 570, 933 N.Y.S.2d at 240.

Remarkably, New York Assistant District Attorney Jennifer Gaffney ignored the NYBSO recommendation and asked the trial court tasked with deciding Epstein's sex-offender status to designate him as a level one offender only, which is the least-restrictive category possible and is typically applied to offenders who pose the lowest risk of committing further crimes. *Id.* ADA Gaffney argued that, since "there was only an indictment for one victim," Epstein should not be placed under the heavy scrutiny required for the most dangerous class of abusers. *Id.* Ex. B. For their part, Epstein's lawyers argued that the lowest designation should be applied because "there are no real victims here." *Id.* Ex. C.

In January 2011, the judge presiding over the sex-offender registration proceedings, Justice Ruth Pickholz, rejected ADA Gaffney's arguments and designated Epstein as a level three sex offender. *Epstein*, 89 A.D.3d at 570, 933 N.Y.S.2d at 240. At a hearing preceding her ruling, Justice Pickholz told the Assistant District Attorney that she had "never seen the

prosecutor's office do anything like this" and further stated that she had "done many [cases] much less troubling than this one where [prosecutors] would never make a downward argument like this." *Id.* Ex. B. When ADA Gaffney was questioned about whether she knew Epstein had sexually abused other minors, Gaffney admitted that she had never spoken to the federal investigators in Florida who had reached the conclusion that Epstein was a serial abuser of underage girls. *Id.* Ex. C.

Epstein subsequently commenced this Appeal, seeking to overturn the trial court's ruling that he is a level three sex offender. The appellate briefs submitted by Epstein and the Manhattan District Attorney were filed under seal, pursuant to New York Civil Rights Law section 50-b. *Id.* at ¶7. That statute protects the anonymity "of any victim of a sex offense" by requiring any "court file . . . which tends to identify such a victim" to be filed under seal. N.Y. Civ. Rights Law § 50-b(1). The statute further provides, however, that court documents filed under seal shall be disclosed if a movant "demonstrates to the satisfaction of the court that good cause exists for disclosure to that person." *Id.* § 50-b(2)(b).

In a decision filed on the public docket (the "Decision"), this Court affirmed Epstein's level three offender status because the lower "court properly relied on highly reliable proof of criminal conduct for which defendant was neither indicted nor convicted." *Epstein*, 89 A.D.3d at 570, 933 N.Y.S.2d at 240. Specifically, the "evidence . . . established that [Epstein] committed multiple offenses against a series of underage girls," who "were brought to [Epstein's] home to provide 'massages' that led to very serious sex crimes." *Id.* at 570-71, 933 N.Y.S.2d at 240.

Although the Manhattan District Attorney's briefing remains under seal, the Decision confirms that "the People [took] a different position on appeal from the position they took before the hearing court." *Id.* at 571, 933 N.Y.S.2d at 241. In opposing Epstein's appeal seeking a

downgrade to level one status, it appears that the District Attorney's Office took the position that ADA Gaffney had "mistakenly conceded [before the lower court] that the conduct for which defendant was not indicted should not be considered, and that defendant should be adjudicated a level one offender." *Id.* at 572, 933 N.Y.S.2d at 241. In affirming Epstein's level three status, the First Department rejected the argument that the District Attorney "should be estopped" from changing position on appeal and also rejected Epstein's "remaining claims" as being "improperly raised for the first time on appeal." *Id.* This Court did not, however, unseal any of the appeal briefs or provide a detailed summary of the parties' respective arguments. The public and the press are thus left in the dark as to what exactly the District Attorney's Office and Epstein wrote in their respective appeal briefs.

B. Media Interest in New York and Florida Prosecutors' Lenient Handling of Epstein's Case

The handling of Epstein's prosecution in Florida and the subsequent sex offender registration proceeding against in him New York have both been the subject of legitimate public interest and intense controversy. In the Florida proceedings, the prosecutors were criticized for allowing Epstein to enter into a seemingly favorable plea deal. For instance, as the Post reported at the time, the Florida judge sentencing Epstein "was critical of two of the deal's conditions, indicating she thought he was getting special treatment by being allowed private counselling for his sex offender treatment and to serve time in county jail instead of state prison." Samuel Goldsmith, *Jeffrey Epstein Pleads Guilty to Prostitution Charges*, N.Y. POST (June 30, 2008), *available at* https://nypost.com/2008/06/30/jeffrey-epstein-pleads-guilty-to-prostitution-charges/. Another serious concern was that Epstein's status as a billionaire investor with powerful connections – including close relationships with Bill Clinton, Donald Trump, and Prince Andrew

– may have influenced prosecutors to give Epstein unduly favorable treatment and to turn a blind eye to the extent of his sexual abuse of minors. *Id.*

There has also been critical reporting on how the Manhattan District Attorney's Office handled the sex offender registration hearings in New York. After the Post obtained copies of the transcript of the status hearing before Justice Pickholz, it published an article on January 7, 2015, entitled "DA's office 'went easy' on sex offender Epstein." *Id.* Ex. B. In that article, the Post reported that "Prosecutors went to bat for the billionaire pervert at a 2011 legal hearing, asking a judge to cut the filthy-rich felon a break on the severity of his sex-offender status . . . ." *Id.* In addition to reporting the contents of the hearing transcript, Post reporters also sought to discover why the District Attorney initially sought lenient treatment for Epstein and, as part of its investigation, reached out for comment from the District Attorney's Office. As the article reported, the spokesman for the District Attorney did not give a detailed response on the record but referred the Post instead to the portion of the Decision stating "that the prosecution's position was based 'largely on the mistaken notion' that only the formal charges against Epstein could be factors in the decision." *Id.* The Post was unable to obtain copies of the briefs filed with the First Department – which would provide a more fulsome explanation of the District Attorney's position – because those documents remained under seal.

The prosecution of Epstein has remained in the news and was recently the subject of a wide-ranging investigation by the *Miami Herald*, which was published on November 28, 2018. *Id.* Ex. A. One of several in-depth feature articles published by the *Miami Herald* was entitled "Cops worked to put serial sex abuser in prison. Prosecutors worked to cut him a break." *Id.* In that article, the *Miami Herald* reported that investigators uncovered evidence that Epstein had abused "over 100 middle school and high school aged girls," but "despite ample physical

evidence and multiple witnesses corroborating the girls' stories, federal prosecutors and Epstein's lawyers quietly put together a remarkable deal for Epstein." *Id.* Epstein agreed to plead guilty to soliciting an underage prostitute "in state court, and in exchange, he and his accomplices received immunity from federal sex-trafficking charges that could have sent him to prison for life. *Id.* More troubling still, Epstein's case file was sealed – including a detailed criminal complaint – so that "no one . . . could know the full scope of Epstein's crimes and who else was involved." *Id.*

The *Miami Herald*'s reporting has also had serious political ramifications. As the *Miami Herald* has reported, "[t]he U.S. attorney in Miami, Alexander Acosta, was personally involved in the negotiations" back in and around 2008. *Id.* Ex. C. Acosta subsequently became "a member of President Donald Trump's cabinet" and currently serves as the Secretary of Labor. *Id.* Since the *Miami Herald* published its expose, some members of Congress have demanded an investigation into what led to the slap-on-the-wrist punishment for Jeffrey Epstein, a wealthy Palm Beach resident accused of sexually abusing eighty girls and young women.

The Post has also persisted with its own investigation into whether the Manhattan District Attorney's Office was unduly lenient when it advocated in favor of registering Epstein as a level one sex offender. On December 1, 2018, the Post published an article entitled "Manhattan DA sided with pedophile billionaire after botching investigation." *Id.* Ex. C. Following up on its prior reporting, the Post reported Justice Pickholz's denial of ADA Gaffney's efforts to register Epstein as a level one offender and then asked the District Attorney's Office to account for the "mishandling of the Epstein hearing." *Id.* In response to questions from the Post, the District Attorney's Office insisted that ADA Gaffney simply "made a mistake." *Id.* A spokesman also claimed that Manhattan District Attorney Cyrus Vance "'was not aware' of the hearing until

years later and had nothing to do with it." *Id.* But, as the Post also reported, "[s]ome law enforcement sources don't believe Vance had no clue that his office had a sex-offender case involving a Manhattan mogul with close ties to Democrats." *Id.*

Unsealing of the First Department appeal briefs in this case is crucial so that the public and the press may more fully understand why Epstein was initially offered level one offender status despite the overwhelming evidence that he was a serial sexual abuser of children.

C. The Post's Efforts to Obtain the Appellate Briefing Filed with the First Department

On December 4, 2018, Post reporter Sue Edelman contacted the Director of Communications for DA Cyrus Vance and requested a copy of the appellate brief filed by the District Attorney's Office. *Id.* ¶¶6-8. In making this request, Edelman specifically stated that the District Attorney's Office could redact the names of any victims of sexual abuse before forwarding the brief. *Id.* Edelman's request was denied, however, because the District Attorney's Office has taken the position that the brief was filed under seal in its entirety pursuant to N.Y. Civil Rights Act section 50-b and could not be released – even with the names of victims redacted – without an order from this Court. *Id.* Nonetheless, the District Attorney's Office stated that it "will *not* oppose" the Post's motion requesting that a redacted brief be produced. *Id.*

Counsel for the Post also contacted counsel for Epstein to ascertain his position on the disclosure of the appellate briefs. *Id.* Mr. Epstein's lawyer stated that he would not take a position until he had an opportunity to review the brief and reserved his right to oppose.[1]

[1] It is difficult to imagine what grounds Epstein would have for opposing the release of the briefs, since they were sealed solely for the purpose of protecting the anonymity of his alleged victims. Of course, the potential for embarrassment is not sufficient grounds for sealing, particularly where – as here – the crimes at issue have been widely reported. *See, e.g., In re Hoffman*, 284 A.D.2d 92, 94, 727 N.Y.S.2d 84, 86 (1st Dep't 2001) ("[T]he mere fact that embarrassing allegations may be made . . . even if [those allegations are] ultimately found to be without merit, is not a sufficient basis for a sealing order.").

Since it has become clear that the Post will not be able to obtain the documents it seeks from the District Attorney's Office without clear instructions from this Court, the Post has filed this motion and respectfully requests an order unsealing the appellate briefs filed in this action. The Post is mindful of the importance of maintaining anonymity for the victims of sexual assault and therefore respectfully requests that this Court direct the District Attorney's Office to redact the names of any victims before serving the Post with copies of the documents within seven days of the date on which this Court issues its unsealing order.

ARGUMENT

Even if the District Attorney's office or Epstein did oppose the Post's motion, good cause exists to unseal the appellate briefs because the Manhattan District Attorney's handling of Epstein's designation as a sex offender – including its arguments on appeal regarding that designation – are of paramount public concern and should be open to public scrutiny.

I. THE POST HAS THE RIGHT TO MOVE THIS COURT FOR AN ORDER UNSEALING THE APPELLATE BRIEFING

As a threshold matter, the Practice Rules of this Court permit non-parties (like the Post) to submit "[a]pplications for sealing and unsealing documents . . . by motion." 22 NYCRR § 1250.1(e)(3). The Post's right to petition this Court for an order unsealing the appellate briefs is further buttressed by the rule that "affected members of the media should be given the opportunity to be heard" before a Court takes the drastic step of sealing court proceedings, filings or dockets. *In re Capital Newspapers Div. of Hearst Corp. v. Moynihan*, 125 A.D.2d 34, 38, 512 N.Y.S.2d 266, 269 (3d Dep't 1987), *aff'd on other grounds*, 71 N.Y.2d 263, 525 N.Y.S.2d 24 (1988). *See also Mancheski v. Gabelli Grp. Capital Partners*, 39 A.D.3d 499, 501, 835 N.Y.S.2d 595, 597 (2d Dep't 2007) ("[P]rior to issuance of an order to seal judicial documents, the court is obligated, where possible, to afford news media an opportunity to be heard.") (citing

In re Herald Co. v. Weisenberg, 59 N.Y.2d 378, 383, 465 N.Y.S.2d 862, 864 (1983)); *Maxim, Inc. v. Feifer*, 145 A.D.3d 516, 43 N.Y.S.3d 313 (1st Dep't 2016) (reversing order denying motion of press entities to intervene for purpose of seeking access to filed motion papers and other court records).

In addition to guaranteeing the Post's right to move this Court to unseal documents, New York law also requires this Court to make "specific findings to support its determination" before limiting public access to judicial records or proceedings. *Daily News, L.P. v. Wiley*, 126 A.D.3d 511, 515, 6 N.Y.S.3d 19, 24 (1st Dep't 2015) (before sealing records, courts "must adhere strictly to the procedures set forth in the controlling case law including affording a full opportunity by any interested members of the press to be heard, and making specific findings to support its determination . . . . [T]rial court[s] . . . cannot . . . seal evidence and transcripts merely because the parties are consenting to same and the case has obtained notoriety."). Therefore, in the unlikely event that this Court declines to grant the Post's motion to unseal, either in part or *in toto*, the Post respectfully requests that this Court issue a written order setting forth the grounds for its decision.

II. GOOD CAUSE EXISTS TO UNSEAL THE APPELLATE BRIEFS

The appellate briefs should be disclosed because they are highly relevant to the public's understanding of whether the Office of the Manhattan District Attorney – whose fundamental mission is to protect the people of this State – initially showed undue deference to a dangerous pedophile, who is unusually rich and well-connected.

New York Civil Rights Law section 50-b permits courts to disclose court documents relating to the commission of a sexual offense whenever a showing is made that "good cause exists for disclosure." N.Y. Civ. Rights Law § 50-b. *See also* 22 NYCCR § 1250.1(e)(3) (permitting the "unsealing [of] court records . . . upon good cause shown"). Good cause clearly

exists for disclosing the appellate briefs because they contain a full explanation for why the District Attorney's Office argued before the lower court that Epstein should be registered as a level one sex offender before changing position on appeal. *See Epstein*, 89 A.D. at 571, 933 N.Y.S.2d at 241. The appellate briefs may also shed light on the extent of "the evidence . . . that [Epstein] committed multiple offenses against a series of underage girls," which the District Attorney's Office apparently disregarded or was not aware of in the proceedings before the lower court. *Id.*

Not only are the appellate briefs subject to the strong presumption of openness that applies to all judicial documents but there is also an intense public interest in disclosing these specific documents because they will shed light on why the District Attorney's Office initially took the controversial decision to argue in favor of lenient treatment of Epstein.[2] As Justice Burger wrote, "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). "Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people . . . ." *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring). In short, the appellate briefs should be unsealed so that the Post can inform the public about the decisions

---

[2] The presumption of openness is grounded in the U.S. and New York Constitutions as well as deeply-entrenched common law rules that govern this Court. The First Amendment to the United States Constitution and article I, section 8 of the New York State Constitution both recognize the presumptive right of the public and press to access and inspect court records. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *In re Associated Press v. Bell*, 70 N.Y.2d 32, 517 N.Y.S.2d 444 (1987). In addition to being well established under the federal and state constitutions, the right of access to court records "is also firmly grounded in common law principles." *Danco Labs., Ltd. v. Chem. Works of Gideon Richter, Ltd.*, 274 A.D.2d 1, 6, 711 N.Y.S.2d 419, 423 (1st Dep't 2000) (citing *inter alia Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)). *See also People v. Burton*, 189 A.D.2d 532, 535-36, 597 N.Y.S.2d 488, 491-92 (3d Dep't 1993) ("a common-law presumption" favors public access to court records); *In re Application of National Broad. Co.*, 635 F.2d 945, 949 (2d Cir. 1980) ("[T]he common law right to inspect and copy judicial records is beyond dispute.") (citation omitted).

taken by the District Attorney's Office with respect to Epstein and about whether there was anything careless or improper about those decisions.

The need for transparency and public understanding of why the District Attorney's Office handled the Epstein case the way it did is heightened by the fact that District Attorney Vance has attracted criticism over claims that his office gives favorable treatment to rich and powerful men facing claims of sexual abuse. As the *New Yorker* reported, DA Vance declined to charge Harvey Weinstein with a sex crime in 2015 even though investigators collected ample evidence that he had groped an actress without consent. *See* Jennie Suk Gersen, *Why Didn't the Manhattan DA Prosecute the Trumps or Harvey Weinstein*, THE NEW YORKER (Oct. 13, 2017) *available at* https://www.newyorker.com/news/news-desk/why-didnt-manhattan-da-cyrus-vance-prosecute-the-trumps-or-harvey-weinstein. Even after the emergence of the #Me Too movement and the indictment of Harvey Weinstein on rape charges, the Manhattan District Attorney's Office has continued to face criticism for failing to prosecute the Weinstein case aggressively enough. *Id.* District Attorney Vance is an elected official who wields an immense amount of discretion over prosecutions. The people of New York have the right to scrutinize how his office treated this case involving a rich and well-connected sex offender, especially in light of allegations that other notable sexual predators have benefitted from the apparent deference of prosecutors. To put it bluntly, the appellate briefs should be released immediately to avoid any impression of impropriety caused by continued secrecy.

There is also a strong interest in disclosing the appellate briefs to enable the public to review for itself the arguments that led this Court to issue the Decision affirming Epstein's status as a level three sex offender. By ensuring public access to the courts and enabling public discussion of the functioning of the judiciary, the news media help "the public to participate in

and serve as a check upon the judicial process – an essential component in our structure of self-government." *Globe Newspaper Co.*, 457 U.S. at 606. As courts have recognized time and again, "[w]ithout access to the proceedings, the public cannot analyze and critique the reasoning of the court." *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983). Thus, "[o]penness . . . enhances both the basic fairness of [a] trial and the appearance of fairness so essential to public confidence in the system." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (citing *Richmond Newspapers*, 448 U.S. 569-71). For this reason, the appellate briefs should be unsealed so that the public has the benefit of seeing the very documents that formed the basis of this Court's Decision. It is especially important to provide a transparent view into these judicial proceedings because suspicions have already been raised about how the District Attorney's Office handled Epstein's case.

When, as here, "issues of major public importance are involved, the interests of the public as well as the press in access to court records 'weigh heavily' in favor of release." *Danco*, 274 A.D.2d at 8, 711 N.Y.S.2d at 425 (citation omitted). This constitutional presumption of open access to court records requires "the most compelling circumstances" to justify any restriction upon that right. *In re Application of Nat'l Broad. Co.*, 635 F.2d at 952. Here, it is impossible to conceive of any circumstances that might justify wholesale sealing of relevant court documents that are necessary to understand how prosecutors and this Court handled a matter of such intense public concern.

The interest of Epstein's victims to remain anonymous can be satisfied by directing the District Attorney's Office to redact the names of victims before disclosing the appellate briefs. Courts must order redactions where possible to avoid overbroad sealing. *See, e.g.*, *Burton*, 189 A.D.2d at 535-36, 597 N.Y.S.2d at 491 (requiring courts to "consider less drastic alternatives to

sealing the records which would adequately serve the competing interests"); *Maxim, Inc.*, 145 A.D.3d at 518, 43 N.Y.S.3d at 316 ("We recognize that it may be easier for the parties and the motion court to seal an entire court record, rather than make a determination on a document by document basis about sealing, but administrative convenience is not a compelling reason to justify sealing."). In keeping with this State's strong preference against wholesale sealing of documents, section 50-b expressly permits this Court to release judicial documents after ordering redactions "as it deems necessary . . . to preserve the confidentiality of the identity of the victim." N.Y. Civ. Rights Law § 50-b. Since the statute under which the documents were sealed expressly contemplates redactions, there is clearly nothing improper about disclosing the appellate briefs after the District Attorney's Office has had an opportunity to redact victims' names.[3]

In sum, the strong presumption of openness that governs New York courts compels the conclusion that the appellate briefs in this action must be unsealed (with the names of any victims of a sexual offense redacted).

CONCLUSION

For the reasons set forth above, the Post respectfully requests an order unsealing the appellate briefs, which directs the District Attorney to provide counsel for the Post with copies of these documents, with the names of victims redacted, within seven days of the issuance of this Court's unsealing order.

Dated: New York, New York
December 21, 2018

[3] Since the Post does not seek the names of victims of sexual abuse and agrees that these names should be redacted before the appellate briefs are disclosed, there is no need under the statute to provide notice "to the victim or other person legally responsible for the care of the victim." N.Y. Civ. Rights Law § 50-b(2). But to the extent such notice is necessary, the Post is unable to notify any of the victims on its own because it has no knowledge of which victims (if any) may be identified in the requested documents. If victims must be notified, the Post respectfully submits that the District Attorney should provide notice promptly.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: _____

Robert D. Balin
John M. Browning
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Telephone: (212) 489-8230
Facsimile: (212) 489-8340
Email: robbalin@dwt.com
johnbrowning@dwt.com

Attorneys for Non-Party Petitioner NYP Holdings, Inc.