

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p>Plaintiffs' Motion to Compel Production of the Settlement Agreement between Defendant Ghoubrial and his ex-wife Julie</p>
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Julie Ghoubrial, through her attorney, has suddenly claimed, contrary to her and her attorneys' prior communications with Plaintiffs' counsel, that she "does not have any information with regard to her former husband's business practices and she will not be able to provide any direct testimony with regards to the issues which appear to be relevant in this matter." *See* Julie Ghoubrial's 04/25/2019 Motion to Reconsider Court's April 18, 2019 Order, at 1.

This change of course, in the immediate wake of Julie's recent settlement of the divorce proceedings she instituted against Defendant Ghoubrial, underscores the need for an order compelling production of the settlement agreement between Defendant Ghoubrial and Julie. *See Exhibit 1*, 04/03/2019 docket entry in Summit County D.R. Case No. 2018-04-1027 confirming "final decree" of "divorce" and "separation agreement." This agreement is not privileged, and is highly relevant to this action, including as to Julie's motives to misrepresent facts at issue in this case.

Litigants "may not shield otherwise information from disclosure to others merely by agreeing to maintain its confidentiality." *Oberthaler v. Ameristep Corp.*, N.D. Ohio No. 5:08-cv-1613, 2010 U.S. Dist. LEXIS 37367, at *4 (Apr. 13, 2010). It is well established that parties may obtain discovery of confidential settlement agreements if they contain relevant evidence. *Id.* at *3-4; *In re E. I. du Pont de Nemours & Co. C-8 Personal Injury Litigation*, S.D. Ohio No. 2:13-md-2433, 2016 U.S. Dist.

LEXIS 140117, at *1114-1116 (Oct. 7, 2016). Thus, confidential settlement agreements “are not privileged.” *Oberthaler*, at *3; *see also Qsi-Fostoria, D.C., LLC v. BACM 2001-1 Cent. Park W., LLC*, N.D. Ohio No. 3:02CV07466, 2006 U.S. Dist. LEXIS 48245, at *4 (July 17, 2006) (any existing privilege “does not extend beyond actual negotiations to the terms of the final agreement.”).

Accordingly, courts routinely order the disclosure of settlement agreements, “including a breakdown of the claims actually settled and the settlement amounts.” *Wagner v. Mastiffs*, S.D. Ohio No. 2:08-cv-431, 2013 U.S. Dist. LEXIS 68349, at *12-13 (May 14, 2013). The contents of such documents may provide relevant evidence reflecting upon the credibility of witnesses, *see Thomas & Marker Constr. Co. v. Wal-Mart Stores*, No. 3:06-cv-406, 2008 WL 3200642 at *3 (S.D. Ohio Aug. 6, 2008), and may reveal whether one settling party has “motivation ... to provide favorable testimony” for the other. *See CadleRock Joint Venture v. Royal Indem. Co.*, Nos. 02cv16012, 02cv16019, 2012 WL 443316 at *2 (N.D. Ohio Feb. 10, 2012).

Additionally, settlement agreements may not be used to shield evidence of fraud, even where the agreement is related to or is the result of divorce proceedings. *See U.S. v. Barrier Industries*, S.D.N.Y. 95 Civ. 9114 (BSJ), 1997 U.S. Dist. LEXIS 2244, at *7 (Feb. 28, 1997) (compelling production of settlement communications from a divorce settlement as “highly relevant” where the spouse was suspected of “fraudulently convey[ing] property to his wife” through the “divorce settlement.”); *see also Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809, N.E.2d 1161, ¶ 64 (9th Dist.), citing *King v. King*, 63 Ohio St. 363, 372, 59 N.E. 111 (1900) (“[C]ontracts which bring about results which the law seeks to prevent are unenforceable as against public policy. Moreover, actual injury is never required to be shown; it is the tendency to the prejudice of the public’s good which vitiates contractual relations.”); *Cochran v. N.E. Ohio Adoption Servs.*, 85 Ohio App.3d 750, 756, 621 N.E.2d 470 (11th Dist. 1993) (“[I]t is clear that the dictates of

public policy would mandate disclosure of information likely to uncover fraud or misrepresentation.”).

Finally, it is well-established that protective orders may serve to protect the parties’ interest in the confidentiality of information produced in discovery. *Cadlerock* at *3; *accord, Thomas & Marker*, 2008 WL 3200642 at *3; *Splater v. Thermal Ease Hydronic Sys., Inc.*, 169 Ohio App.3d 514, 2006- Ohio-5452, 863 N.E.2d 1060, ¶ 11 (8th Dist.) (“The rules require the court to balance the need to preserve a trade secret with a party’s right to discover material that is relevant and reasonably necessary. As appropriate, the court may fashion a protective order which limits who may have access to the discovered evidence.”).

Because any settlement agreement entered into between Defendant Ghoubril and Julie Ghoubril is not privileged, and bears upon, at a minimum, the credibility of Julie’s testimony in this lawsuit, the Court should exercise its sound discretion to order the agreement’s production, as “necessary for the orderly and efficient exercise of justice.” *Zakany v. Zakany*, 9 Ohio St.3d 192, 194, 459 N.E.2d 870 (1984); *State ex rel. Abner v. Elliot*, 85 Ohio St.3d 11, 16 706 N.E.2d 765 (1999).

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

The foregoing document was filed on May 1, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs

Sandra Kurt - Summit County Clerk of Courts

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Domestic Case No	File Date	Type	Judge
DR-2018-04-1027	04/20/2018	DIVORCE WITH CHILDREN - Marriage Terminations with Children	JOHN P. QUINN

Searching.....

Filing Date	By Atty	Pleading Text	Motion	Document
04/25/2019	SUMMIT COUNTY CLERK OF COURTS	TRANSCRIPT SW		No Document Access
04/03/2019	JULIE GHOUBRIAL	DECREE OF DIVORCE W/CHILDREN TRIAL BY JUDGE WITH SUPPORT W/ATTACHED SEPARATION AGREEMENT CERTIFIED COPY OF FINAL DECREE GIVEN TO EACH ATTY MORRIS & ATTY LEMERMAN @ CLERK'S WINDOW -CSB		No Document Access

EXHIBIT 1