

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**DEFENDANT SAM GHoubrial,
M.D.'S BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF THE
SETTLEMENT AGREEMENT WITH
JULIE GHoubrial**

Now comes Defendant, Sam Ghoubril, M.D. ("Dr. Ghoubril"), by and through undersigned counsel, and respectfully requests this Court deny Plaintiffs' Motion to Compel Production of the Settlement Agreement between Defendant Ghoubril and his Ex-Wife Julie ("Plaintiffs' Motion to Compel"). Plaintiffs' Motion to Compel the production of the Ghoubrils' settlement agreement from their divorce case is wholly inappropriate, contrary to the Civil Rules, meant solely to harass and embarrass, and is unfortunately indicative of Plaintiffs' desperate desire to inject wholly irrelevant personal and prejudicial information into this case for illegitimate reasons. Not only must Plaintiffs' Motion to Compel be denied, Plaintiffs and their counsel should be sanctioned and Dr. Ghoubril should be reimbursed all costs and attorney fees associated with the filing of this Brief in Opposition.

First and foremost, Plaintiff's Motion to Compel violates Civ. R. 37(A) for several reasons. Plaintiffs' Motion to Compel seeks a settlement agreement that was never requested during discovery. Plaintiff's Motion to Compel was filed without notice to any party and Plaintiffs made no attempt, let alone any good faith attempt, to meet and confer with anyone prior to filing the Motion.¹

¹ See Court's February 5, 2019 Order denying Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros for Plaintiffs' failure to comply with Civ. R. 37(A).

Plaintiffs simply cannot move to compel the production of a settlement agreement that was never requested during discovery. Of course, Plaintiffs' counsel knows this yet he filed the Motion to Compel anyway. Civ. R. 37 states, in pertinent part:

(A) Motion for order compelling discovery

Upon reasonable notice to other parties and persons affected thereby, a party may move for an order compelling discovery as follows:

- (2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rule 30 or Rule 31, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer or an order compelling inspection in accordance with the request. On matters relating to a deposition at oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. Civ. R. 37(A)(2)

Even if Plaintiffs' Motion to Compel did not violate Civ. R. 37(A), they still would not be entitled to compel the production of the Ghoubrials' divorce settlement agreement. Consistent with his approach throughout this entire case, Plaintiffs' counsel seems to believe his own self-serving and unsupported statements and jaundiced personal beliefs qualify as actual evidence to be considered by this Court. Plaintiffs' counsel is wrong. His personal beliefs, his biased representations of alleged off-the record conversations with non-parties, and his baseless assertions carry no evidentiary weight and should be summarily rejected by this Court. Just because Peter Pattakos says something does not make it true. If anything, the actual evidence before this Court demonstrates that much of what Mr. Pattakos says is knowingly false and/or intentionally misleading.

Contrary to Plaintiffs' counsel's representation that the Ghoubrials' divorce settlement agreement is not privileged, the settlement agreement is in fact confidential. The settlement agreement contains a confidentiality provision agreed to by the parties and approved by Judge John

Quinn. Likewise, Plaintiffs' counsel's representations the settlement agreement contains information that is "highly relevant to this action" and information relative to "Julie's motives to misrepresent facts at issue in this case" are nothing more than wishful thinking on his part. *See* Plaintiffs' Motion to Compel, Pg. 1. Plaintiffs' counsel does not, and could not possibly, have any information regarding the contents of the Ghoubrials' confidential divorce settlement agreement. He was not a party to the settlement agreement, he never represented a party in the divorce, he had no involvement in the negotiations leading to the settlement agreement, and he has never seen the settlement agreement. His representations are purely speculative and they are more intentional and calculated misrepresentations designed to further bias and improperly influence this Court leading up to class certification.

Plaintiffs' Motion to Compel is the latest in a string of desperate, last-ditch filings by Plaintiffs on the eve of the deadline for them to file their brief seeking class certification. Obviously Plaintiffs realize they lack sufficient evidence to obtain class certification so they are now resorting to grasping at any and all straws, no matter how inappropriate or irrelevant, in an effort to continue and prolong this charade. Plaintiffs' transparent bad-faith conduct cannot be permitted to continue. Plaintiffs, and primarily Plaintiffs' counsel, are making a mockery of this Court and the judicial system as a whole. How many times will Plaintiffs' counsel be permitted to blatantly misrepresent facts to this Court? How many times will Plaintiffs' counsel be permitted to lie as a means to an end? How many times will Plaintiffs' counsel be permitted to violate his ethical obligations and the Civil Rules before something is done? How has this conduct been permitted to go on for so long without consequence? At a minimum, Plaintiffs' Motion to Compel violates Civil R. 11 for the reasons outlined above and sanctions are warranted and necessary.

For the foregoing reasons, Plaintiffs' Motion to Compel must be denied. The filing of Plaintiffs' Motion to Compel violates both Civil R. 37(A) and Civil R. 11. Separate and apart from Plaintiffs' violation of the Civil Rules, Plaintiffs' Motion to Compel seeks a divorce settlement that is confidential and wholly irrelevant to any issue in this case. Nothing Plaintiffs' counsel says changes those facts. As such, Plaintiffs' Motion to Compel the production of the Ghoubrials' confidential divorce settlement agreement must be denied and Plaintiffs and their counsel must be sanctioned. Consistent with Civil R. 37(A)(4), Dr. Ghoubrial respectfully requests this Court scheduled hearing at the earliest possible time to assess the appropriate measure of costs and attorney fees to be awarded as Plaintiffs' Motion to Compel was not "substantially justified" *See* Civ. R. 37(A)(4).

Respectfully Submitted,

By: /s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

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CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s Brief in Opposition to Plaintiff's Motion to Compel Production of the Settlement Agreement with July Ghoubrial has been filed this 7th day of May, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubrial, M.D.