

**IN THE CIRCUIT COURT FOR THE 17<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY FLORIDA**

PHILIP J. VON KAHLE, et al)

Plaintiffs,

v.

MICHAEL D. SULLIVAN,  
Defendant.

) CASE NO. 12-034123 (07)  
) COMPLEX LITIGATION UNIT  
)  
)  
)  
)  
)

**DEFENDANT’S MOTION TO  
DISMISS/ENFORCE SETTLEMENT**

COMES NOW, the Defendant, MICHAEL SULLIVAN (hereinafter “Defendant”), by and through its undersigned attorney, and hereby files this Motion to Dismiss/Enforce the Settlement and states as follows:

1. On June 25, 2014, the Plaintiff and Defendant executed a Confidential Settlement Agreement.

2. Defendant has fulfilled and stands ready, willing and able to perform any and all obligations imposed on Defendant pursuant to the Confidential Settlement Agreement.

3. On July 28 2014, counsel for Plaintiff and Defendant announced the settlement to this Court and the Court approved said settlement.

4. Notwithstanding the settlement, Plaintiff named Defendant in its recently filed Fourth Amended Complaint and further made allegations therein that are contrary to the representations in the Confidential Settlement Agreement and violate the Confidential Settlement Agreement terms and conditions.

5. Notwithstanding the above and multiple telephone calls and emails to Plaintiff’s counsel to dismiss the Defendant, Plaintiff’s counsel has refused to do so

intending the Fourth Amended Complaint to act as some form of enforcement to force testimony from the Defendant that the Defendant has refused to give since the commencement of this action and for which it appears that Plaintiff has no good faith basis to threaten Defendant by continuing Defendant's presence in the Fourth Amended Complaint.

6. Defendant's counsel has operated under the oral representation of Plaintiff's counsel almost from the inception of these proceedings that Defendant would be released and the execution of the Confidential Settlement Agreement was to be the fulfillment of that representation. In fact, Defendant has given a sworn statement and delivered documents to Plaintiff's counsel in accordance with the terms of the settlement and that discovery and trial preparation was terminated based on the settlement of the parties.

7. It would be prejudicial to Defendant to be compelled to proceed to trial after the parties agreed to the Confidential Settlement Agreement that was negotiated in good faith.

8. Defendant is entitled to entry of a court order enforcing the Confidential Settlement Agreement and an award of attorneys' fees and costs for the execution of this motion.

### **MEMORANDUM OF LAW**

As a general matter, "[s]ettlement agreements are highly favored" and policy favors "enforce[ing] such agreement whenever possible. Where the parties have agreed to the essential terms of a settlement, it will be enforced." [State Farm Mut. Auto. Inc. Co. v. InterAmerican Car Rental, Inc., 781 So.2d 500, 502 \(Fla. 3d DCA 2001\)](#) (citations omitted). In that regard, a party may move to enforce a settlement agreement that has not

been complied with by another party to the agreement. See e.g. [Spiegel v. H. Allen Holmes, Inc.](#), 834 So.2d 295, 298 (Fla. 4th DCA 2002). In ruling on such a motion, the court may consider evidence provided at the hearing and award attorneys' fees to the movant. Id. (Holding that "[a]s the defendant was forced to file a motion... and participate in an evidentiary hearing to enforce the settlement agreement, it is entitled to attorney's fees."). Where the evidence reflects that there was a meeting of the minds to form an agreement, such as in this matter, the court will enforce the agreement. [Id. at 297](#); [State Farm, 781 So.2d at 502](#) (citation omitted).

In this matter, the parties have executed the Confidential Settlement Agreement; however, the Plaintiff has failed to comply therewith. As such, the Defendant has been forced to file this motion to enforce the Confidential Settlement Agreement and/or continue the pending trial.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant its Motion to Dismiss/Enforce Settlement and award attorneys' fees and costs for the execution of this motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above was sent by this Court's E-Filing System to all registered parties this November 4, 2013.

\_\_\_\_\_/s/ Harry Winderman  
HARRY WINDERMAN, ESQ.  
Counsel for Defendant SULLIVAN  
One Boca Place, Suite 218A  
2255 Glades Road  
Boca Raton, FL 33431  
(561) 241-0332 Telephone  
(561) 241-5266 Facsimile  
FBN 0209562