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6/20/2017 2:26 PM
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TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

FLORIDA HOME CARE GIVERS, LLC, HEART BODY AND MIND, LLC, RALPH LAUGHTON and PEARL LAUGHTON,	)	
Plaintiffs,	)	
VS.	)	**NO. 16-449-BC**
SITTERS ETC. FRANCHISING, LLC, and BEAU BROTHERS,	)	
Defendants.	)	

MEMORANDUM AND ORDER: (1) GRANTING MOTION FOR EXPEDITED PRODUCTION OF SETTLEMENT AGREEMENT AND (2) EXTENDING DEADLINE TO ADD PARTIES TO 7/14/17

It is ORDERED that the Plaintiffs' *Motion For Expedited Production* is granted and the settlement agreement(s) resolving the federal court litigation between the parties in the matters: *Beau K. Brothers v. CarpeVita Holdings, Inc. and CarpeVita Holdings, Inc., CarpeVita, Inc., Sitters Etc., Inc., and Sitters Etc. franchising, LLC v. Beau K. Brothers*, United States District Court for the Middle District of Tennessee Case No. 3:16-cv-0905 (consolidated, lead case) shall be produced to the Plaintiffs by Monday, June 26, 2017 under the terms of the parties' protective order.

It is additionally ORDERED that the June 23, 2017 deadline to add parties (stated in the May 8, 2017 *Rule 16 Order*) is extended to July 14, 2017 and combined with the deadline to amend pleadings.

The basis for granting production of the settlement agreement(s) is that Rule 26.02(1) provides that a party may obtain discovery regarding any matter not privileged which is "relevant to the subject matter involved in the pending action" and "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." It is not grounds for objecting to the discovery request that the information or documents would be inadmissible at trial. Thus, even if the settlement agreement(s) were ruled to be inadmissible at trial, the standard at the discovery stage is more expansive because it comes at a different stage of the litigation.

In this case, the Court concludes that discovery of the settlement agreement(s) resolving the federal court litigation is both relevant to the subject matter involved in the pending action and reasonably calculated to lead to the discovery of admissible evidence. The Court adopts the reasoning provided by the Plaintiffs on pages 2 through 4 of their June 6, 2017 *Reply To Defendants' Response In Opposition To Plaintiffs' Motion For Expedited Production* which provided 5 examples of matters which discovery of the settlement agreement(s) potentially informs. Those matters are (1) the addition of parties, (2) apportionment of liability versus indemnification, (3) ownership, possession and destruction of documents, (4) agreements pertinent to this lawsuit such as non-disparagement clauses, (5) information about the rescission of Carpe Vita's acquisition.

Additionally, research by the Court demonstrated that there is no bar as a matter of

law to production of the settlement agreement. Although no analogous Tennessee case could be located, federal law is instructive.[1]

Under Rule 26 of the Federal Rules of Civil Procedure, settlement agreements are generally discoverable even if the agreement was designated as confidential.

> Rule 26(b)(1) of the Federal Rules of Civil Procedure provides, in relevant part, 'Parties may obtain discovery regarding any *non-privileged* matter that is relevant to any party's claim or defense and proportional to the needs of the case.' (Emphasis added). Although the Sixth Circuit recognizes that the settlement privilege protects settlement negotiations from discovery, 'this privilege does not extend to the terms of the final agreement.' State Farm Mutual Automobile v. Physiomatrix, Inc., No. 12-cv-11500, 2014 WL 10294813, at *1 (E.D. Mich. Apr. 24, 2014) (citing Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 332 F.3d 976, 981 (6th Cir. 2003)). Moreover, a number of district courts have recognized that settlement agreements are not privileged. Oberthaler v. Ameristep Corp., No. 5:08-1613, 2010 WL 1506908, at 1 (N.D. Oh. Apr. 13, 2010); State Farm, 2014 WL 10294813, at *1; Wagner v. Circle Mastiffs, No. 2:09-cv-0172, 2013 WL 2096655, at *3 (S.D. Oh. May 14, 2013). 'This is true even where the agreement is designated as 'confidential.'' State Farm, 2014 WL 10294813, at *1.

Kelley v. Apria Healthcare, Inc., No. 3:13-CV-096, 2016 WL 737919, at *3 (E.D. Tenn. Feb. 23, 2016) (footnote omitted) (emphasis in original).[2]

[1] When applying the Tennessee Rules of Civil Procedure, the Court is permitted to look to federal court interpretations of the comparable Federal Rules of Civil procedure. *Turner v. Turner,* 473 S.W.3d 257, 268 (Tenn. 2015) ("Furthermore, when interpreting our own rules of civil procedure, we consult and are guided by the interpretation that has been applied to comparable federal rules of procedure.");*Harris v. Chern*, 33 S.W.3d 741, 745, n. 2 (Tenn. 2000) ("Federal case law interpreting rules similar to our own are persuasive authority for purposes of construing the Tennessee rule. *See Henderson v. Bush Bros. & Co.*, 868 S.W.2d 236 (Tenn.1993); *Continental Cas. Co. v. Smith,* 720 S.W.2d 48 (Tenn.1986).

[2] An inexhaustive survey of other federal court cases also recognizes that settlement agreements are not privileged and are discoverable under Rule 26 of the Federal Rules of Civil Procedure. *See, e.g., E&R VENTURE PARTNERS, LLC, a California limited liability company, Plaintiff, v. PARK CENTRAL PLAZA 32, LLC, a revoked Nevada limited liability company, Defendant,* No. 216CV02959RFBGWF, 2017 WL 1734023, at *2 (D. Nev. May 2, 2017) ("There is no federal privilege preventing the discovery of settlement agreements and related documents. The court in *Board of Trustees of Leland Stanford* noted that Congress enacted Fed. R. Evid. 408 to promote the settlement of disputes by limiting the admissibility of settlement materials, rather than prohibiting their discovery. Under Rule 408, evidence of

For all these reasons, the Court concludes that the settlement agreement(s) resolving the federal court litigation between the parties in the matters: *Beau K. Brothers v. CarpeVita Holdings, Inc. and CarpeVita Holdings, Inc., CarpeVita, Inc., Sitters Etc., Inc., and Sitters Etc. franchising, LLC v. Beau K. Brothers*, United States District Court for the Middle District of Tennessee Case No. 3:16-cv-0905 (consolidated, lead case)

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compromise offers or settlement negotiations are inadmissible to prove or disprove the validity or amount of a disputed claim. Such evidence may, however, be admitted for other purposes."); *DONALD NICHOLS, Plaintiff, v. KNOX COUNTY, TN, Defendant.*, No. 3:11-CV-417-PLR-HBG, 2016 WL 9138136, at *2 (E.D. Tenn. Feb. 17, 2016) ("Because a settlement agreement is not privileged, the only questions before this Court are whether the settlement agreement is relevant and whether the request for the settlement agreement is proportional to the needs of the case. See Fed. R. Civ. P. 26(b)(1)."); *Lovelace v. Pediatric Anesthesiologists, P.A.*, No. 213CV02289JPMDKV, 2013 WL 11776069, at *4 (W.D. Tenn. Oct. 21, 2013) ("Settlement agreements are not protected from discovery simply because they are marked confidential."); *Thermal Design, Inc. v. Guardian Bldg. Prod., Inc.*, 270 F.R.D. 437, 438 (E.D. Wis. 2010) (citation omitted) ("Most cases find that a settlement agreement is discoverable despite a confidential designation, especially when there is a protective order in place to prevent unauthorized disclosure."); *Oberthaler v. Ameristep Corp.*, No. 5:08-CV-1613, 2010 WL 1506908, at *1 (N.D. Ohio Apr. 13, 2010) ("Thus, the confidential settlement agreements are not privileged. Further, the agreements are not protected from discovery simply because they have been denominated "confidential" by the parties. '[A] general concern for protecting confidential information does not equate to privilege [...].[I]n the context of settlement agreements the mere fact that settling parties agree to maintain the confidentiality of their agreement does not serve to shield the information from discovery. Simply put, litigants may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality.'"); *Bd. of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 521, 523 (C.D. Cal. 2008) (citations omitted) ("Finally, the Court notes there is no federal privilege preventing the discovery of settlement agreements and related documents."); *Aaron v. Trump Org., Inc.*, No. 8:09-CV-2493-T-23AEP, 2011 WL 13141669, at *2 (M.D. Fla. Mar. 18, 2011), *order clarified*, No. 8:09-CV-2493-T-23AEP, 2011 WL 13141513 (M.D. Fla. June 2, 2011) ("Certainly, the admissibility of the Settlement Agreement could impact the relevance of the Settlement Agreement under Rule 26(b). However, as noted above, under Rule 26(b), the Settlement Agreement itself does not have to be admissible to be discoverable; it need only appear reasonably calculated to lead to other admissible discovery. Thus, although the Court questions the admissibility of the Settlement Agreement, that question need not be answered at this time because, upon review of the document, and with the liberal discovery standard of Rule 26 in mind, the Court finds that the Settlement Agreement could lead to the discovery of other admissible evidence."); *Jeld-Wen, Inc. v. Nebula Glass Int'l, Inc.*, No. 05-60860CIV, 2007 WL 1526649, at *3 (S.D. Fla. May 22, 2007) ("There is nothing magical about a settlement agreement. It ultimately is just a contract between two parties. No other contract enjoys the type of "heightened" protection that the Defendants require, and they do not explain just exactly why this type of contract merits such treatment. Rule 26 has no exception for settlement agreements.").

is/are discoverable under the Tennessee Rules of Civil Procedure and shall be produced to the Plaintiffs under the terms of the parties' protective order.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
BUSINESS COURT
PILOT PROJECT

cc by U.S. Mail, email, or efiling as applicable to:

Roland Baggott III
Stephen M. Feidelman
Hugh C. Howser, Jr.
Joshua Burgener
Ariel C. Mason