



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**MOTION TO...**  
**July 23, 2020 11:37**

By: PETER G. PATTAKOS 0082884

Confirmation Nbr. 2036803

1909 W25, LLC, DBA TOWNHALL, ET AL.

CV 20 932784

vs.

EUCLID MEDIA GROUP, LLC, DBA CLEVELAND  
SCEN, ET AL

**Judge:** PETER J. CORRIGAN

**Pages Filed:** 52

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

TOWNHALL, <i>et al.</i> ,  Plaintiffs,  vs.  CLEVELAND SCENE, <i>et al.</i> ,  Defendants.	Case No. CV-20-932784  Judge Peter J. Corrigan  <b>Defendants' Motion to Enforce Settlement Agreement</b>
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**I. Introduction**

Defendants Euclid Media Group, owner of local news outlet *Cleveland Scene*, and *Scene*'s editor Vince Grzegorek hereby move for enforcement of the parties' agreement to settle this matter. As set forth below, the parties reached an enforceable settlement agreement on July 2, 2020, in writing, on all material terms. The Plaintiffs, 1909 W25, LLC, owner of the TownHall restaurant/bar, and TownHall's general manager Ryan Hartzell have since failed to comply with that agreement, and contrary to clear and binding Ohio law, have refused to acknowledge its enforceability.

*Scene*'s journalistic mission requires vigilance against threats to its and the public's First Amendment rights,<sup>1</sup> including that represented by this frivolous lawsuit by the TownHall parties. The settlement agreement reached by the parties reflects the importance of this concern to *Scene*, as it required the TownHall Plaintiffs to immediately dismiss their lawsuit and make a donation to *Scene* in the amount of its attorneys' fees, without requiring *Scene* to give up any rights to continue to report on the Plaintiffs. As set forth below, Ohio law entitles *Scene* to enforcement of the settlement.

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<sup>1</sup> The Supreme Court of Ohio has made clear that "an unfettered press is the custodian of all our liberties and the guarantor of our progress as free society," and that the First Amendment "is essential to the common quest for truth and the vitality of society as whole." *Varanese v. Gall*, 35 Ohio St.3d 78, 83, 518 N.E.2d 1177 (1988), quoting *Bose Corp. v. Consumers Union*, 466 U.S. 485, 503-504, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984).

## II. Facts

On May 21, 2020, Plaintiffs TownHall and Hartzell filed this lawsuit, asserting claims against Defendants *Scene* and Grzegorek, an alt-weekly news outlet and its editor, for defamation, false-light invasion of privacy, and intentional infliction of emotional distress in connection with an allegedly defamatory story that *Scene* published about the Plaintiffs. After having reviewed the pleadings and Ohio law on the claims at issue, and conducting an investigation into the relevant facts, *Scene*'s and Grzegorek's attorneys Peter Pattakos and Rachel Hazelet prepared a motion for summary judgment and forwarded a draft of that motion to Plaintiffs' attorney Chris Congeni on July 1, 2020, advising that the motion would be filed the following morning if Plaintiffs did not agree to dismiss the case and pay *Scene*'s and Grzegorek's attorneys fees incurred in defending against it. *See Exhibit 1*, p. 13–14 (July 1, 2020, 3:52 PM email from Peter Pattakos to Chris Congeni<sup>2</sup> (attaching draft summary judgment motion<sup>3</sup>)).

This draft motion for summary judgment was based on evidence and Ohio law respectively showing and providing as follows:

1. First, because the “gist” or “sting” of *Scene*'s report—that Hartzell made a discriminatory remark to the member of the public, a Ukrainian immigrant, not a black woman as was initially mistakenly reported for approximately one hour, in response to criticism over TownHall's apparent disregard for public safety in the COVID-19 reopening—was entirely accurate, Plaintiffs' defamation and false light claims were subject to dismissal under the “substantial truth” doctrine (*See, e.g., Cooper School of Art v. Plain Dealer Pub. Co.*, 8th Dist. Cuyahoga No. 50569, 1986 Ohio App. LEXIS 6698, at \*6 (May 8, 1986), quoting W. Prosser, *LAW OF TORTS* (4th ed. 1971)

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<sup>2</sup> The authenticity and admissibility of the correspondence attached to this motion as evidence of the parties' settlement agreement is confirmed in the Affidavit of Peter Pattakos, attached as **Exhibit 2**.

<sup>3</sup> In order to preserve the confidentiality of certain aspects of the parties' agreement, as outlined below, Defendants are not attaching a copy of the draft motion for summary judgment. While it is Defendants' position that an evaluation of the contents of this draft motion is not necessary to the Court's determination of whether the parties' settlement agreement (contained in **Exhibit 1**) should be enforced, Defendants would of course promptly submit a copy to the Court for *in camera* review upon being so ordered.

798-799; *Boddie v. Landers*, 10th Dist. Franklin No. 15AP-962, 2016-Ohio-1410, ¶ 24–25);

2. Second, because this matter relates to a news outlet reporting on a matter of public concern—a discriminatory remark made publicly by a manager of a popular Cleveland restaurant in the midst of a public health crisis—Plaintiffs were required to prove that they were actually harmed by the temporarily and minimally inaccurate publication, and could not possibly have proven actual damage given the various developments, summarized in the draft motion, reflecting far more negatively on Plaintiffs’ reputations than Scene’s allegedly defamatory statement possibly could (*See, e.g., Ferreri v. Plain Dealer Publishing Co.*, 142 Ohio App.3d 629, 642, 756 N.E.2d 712 (8th Dist. 2001); *Gilbert v. WNIR 100 FM*, 142 Ohio App.3d 725, 745, 756 N.E.2d 1263 (9th Dist. 2001); *Woods v. Capital Univ.*, 10th Dist. Franklin No. 09AP-166, 2009-Ohio-5672, ¶ 38; *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 671, 105 S.Ct. 2939, 2946, 86 L.Ed.2d 593);
3. And finally, that Hartzell’s claim for intentional infliction of emotional distress (“IIED”) must be dismissed because Hartzell could not possibly prove that Scene’s temporary and minor error, which was corrected within a few hours, rises to the level of intentional, “extreme and outrageous conduct” required to sustain an IIED claim under Ohio law (*See, e.g., Lombardo v. Mahoney*, 8th Dist. Cuyahoga No. 92608, 2009-Ohio-5826, ¶ 7; *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 423 N.E.2d 666 (1983)).

*Id. See also Id.* at p. 6–7 (July 2, 2020, 11:00 AM email from Pattakos to Congeni (“That’s it. Take it or leave it. Rachel is finalizing the table of contents and attaching the exhibits to the brief now. We will give you about 15 more minutes.”)).

As the parties’ negotiations continued on the morning of July 2, Defendants’ counsel informed Plaintiffs’ counsel that Defendants would not “withhold filing [their] MSJ” unless the parties reached “**an agreement to material terms THIS MORNING in an enforceable settlement.**” *Id.* at p. 6–7 (July 2, 2020 11:00 AM email from Pattakos to Congeni) (emphasis added). By 11:20 AM, Plaintiffs’ counsel represented to Defendants’ counsel that Plaintiffs would “dismiss [the] case” by the “next week” in connection with this agreement. *Id.* at p. 5 (July 2, 2020, 11:20 AM email from Congeni to Pattakos). Defendants’ counsel, in turn, clarified that:

**If [Plaintiffs] agree to the terms below, as an enforceable settlement agreement**, Scene does not intend to issue any press release or report until after the lawsuit is formally dismissed pursuant to the agreement ... If you breach any of the material terms below,

including by unreasonably delaying in dismissing the lawsuit as agreed, all bets are off.

**Exhibit 3**, p. 1 (July 2, 2020, 11:22 AM email from Pattakos to Congeni and TownHall owner Bobby George) (emphasis added).

These “material” and “enforceable” terms were listed in Defendants’ counsel’s email as follows:

1. [Plaintiffs] dismiss the case and make a donation to [*Scene*] in the amount of *Scene*’s attorneys fees;
2. *Scene*’s headline [in reporting on the settlement] will be something [to the effect] of: “TownHall drops lawsuit against *Scene*; makes donation to *Scene* Press Club,” the report will announce that TownHall’s donation was in an amount commensurate with *Scene*’s attorneys’ fees, *Scene* will state that it “corrected the report and regrets the error,” and will consider publishing a short reasonable statement from [TownHall owner Bobby George], subject to *Scene*’s approval; and,
3. *Scene* [agreed] to [state] in its report on the settlement that the parties met in person and resolved the dispute amicably.

**Ex. 1**, p. 6–7 (July 2, 2020 11:00 AM email from Pattakos to Congeni). Additionally, while *Scene* made clear that it would not give up its right to report on the Plaintiffs, and would not keep any information pertinent to this lawsuit confidential apart from the amount of its attorneys fees incurred, it did agree to one additional aspect of confidentiality in reporting on the settlement that cannot be disclosed publicly without potentially violating the parties’ agreement. *Id.*

Soon thereafter, in a phone conversation among the parties, Plaintiffs’ counsel stated that his clients were in agreement with the proposed settlement offer, the material terms of which, as discussed above, were that Defendants would refrain from filing their motion for summary judgment if Plaintiffs would dismiss the lawsuit and make a donation to *Scene*. *See Id.* Plaintiffs’ counsel confirmed the same in emailing Defendants’ counsel, in the same email thread identifying the “material” and “enforceable” terms as follows: “**Per our call. I talked to [Mr. George]. He**

**cares about his employees a great deal and wants to move forward. Yes, agreed.”** *Id.* p. 3–4 (11:30 AM email from Congeni to Pattakos).

After Plaintiffs sent this email agreeing to the “material” and “enforceable” terms of Defendants’ offered settlement agreement, Defendants’ counsel emailed Plaintiffs’ counsel to confirm that the parties “ha[d] a deal,” and merely needed to “formalize the agreement (**which is currently enforceable per the below terms**).” *Id.* at 3 (11:39 AM email from Pattakos to Congeni) (emphasis added). Defendants’ counsel also asked Plaintiffs’ counsel whether he would “be preparing the document formalizing the settlement” or if Defendants’ counsel should “do it.” *Id.* at 2–3 (12:49 PM email from Pattakos to Congeni). Minutes later, Defendants’ counsel again followed up stating, “I don’t think the [settlement] document needs to be very complicated,” again summarizing the material and enforceable terms of the agreement as set forth at page 3 above, and stating that, “short of negotiating what [Plaintiffs’] statement[s are] going to be [for consideration by Scene in reporting on the settlement], I don’t see that there is much if any other work to do here.” *Id.* at 1–2 (July 2, 2020, 1:07 PM email from Pattakos to Congeni). In response, Plaintiffs’ counsel wrote, “I will email it to you this [*sic*] before ... Monday ... this weekend. I will also email [Plaintiffs’] statements as you request once I talk to them.”

Plaintiffs’ counsel never objected to any of defense counsel’s various statements about “material” terms, or an “enforceable” “agreement,” or “deal,” and at no time indicated that Plaintiffs did not intend for there to be an agreement until there was a formalized, signed document. *Id.*

The following week, on Tuesday July 7, 2020, at 3:30 PM, Plaintiffs had not yet provided Defendants the draft settlement document as promised, so Defendants’ counsel followed up with an email requesting a status update. **Exhibit 4**, July 7, 2020, 3:30 PM email from Pattakos to Congeni. The next day, despite having already agreed to the deal (**Ex. 1** p. 3–4), Plaintiffs’ counsel expressed in an email to Defendants’ counsel that there was no “actual enforceable agreement” between the

parties (**Exhibit 5**, July 10, 2020 emails between Pattakos and Congeni), and began communicating the legally frivolous position that, contrary to controlling Ohio law, Defendants could not move to enforce compliance with the parties' agreement simply because there was not yet a "formal, written settlement agreement." **Exhibit 6**, July 10, 2020, 9:52 PM email from Congeni to Pattakos.

To date, Plaintiffs have maintained their position that the parties do not have an enforceable settlement agreement, have refused to comply with the "material" and "enforceable" terms to which they agreed on July 2, and have insisted on new terms, including by having insisted that the fact of any payment by the TownHall parties to *Scene* must be kept confidential. **Exhibit 7**, July 21, 2020, 8:39 AM email from Congeni to Pattakos.

## **II. Law and Argument**

It is well-established in Ohio courts that "[p]ublic policy strongly favors the enforcement of settlement agreements." *Rayco Mfg. v. Murphy*, 2018-Ohio-4782, 117 N.E.3d 153, ¶ 56 (8th Dist.), citing *Spercel v. Sterling Industries, Inc.*, 31 Ohio St.2d 36, 38, 285 N.E.2d 324 (1972) "The resolution of controversies ... by means of compromise and settlement ... results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole." *Spercel* at 38. Accordingly, an agreement to settle litigation "cannot be repudiated by either party and will be summarily enforced by the court." *Spercel v. Sterling Industries, Inc.*, 31 Ohio St.2d 36, 38–39 (1972).

Because the parties to this litigation reached an enforceable agreement to resolve this case on July 2, the *Scene* parties hereby seek enforcement of that July 2 settlement as required by the clear and controlling Ohio law set forth below.

### **A. On July 2, 2020, the parties entered into an enforceable settlement agreement.**

"A settlement agreement is[, simply,] a contract designed to terminate a claim by preventing or ending litigation." *Rayco*, ¶ 30, citing *Continental W. Condominium Unit Owners Ass'n v. Howard E.*

*Ferguson, Inc.*, 74 Ohio St. 3d 501, 502, 1996-Ohio-158, 660 N.E.2d 431 (1996). “Like any other contract, it requires an offer, acceptance, consideration and mutual assent between two or more parties with the legal capacity to act.” *Rayco*, ¶ 30, citing *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16. *See also Hillbrook Bldg. Co. v. Corporate Wings*, 8th Dist. Cuyahoga No. 68619, 1996 Ohio App. LEXIS 3854, at \*10 (Sep. 5, 1996) (“An oral settlement agreement requires no more formality and no greater particularity than appears in the law for the formation of a binding contract.”).

Accordingly, an enforceable settlement agreement exists as long as the “essential terms of the agreement [are] ... ‘reasonably certain and clear’ and mutually understood by the parties.” *Rayco* ¶ 30, quoting *Kostelnik* ¶ 16, *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376, 1997-Ohio-380, 683 N.E.2d 337 (1997). “Particularly where, as here, there is written evidence of a settlement agreement ... a preponderance of the evidence standard applies in determining whether a settlement agreement exists.” *Rayco*, ¶ 42, citing *Hillbrook*, \*9-13. And, importantly, “[i]t is only where the parties intend that there will be no contract until the agreement is fully reduced to writing and executed that no settlement exists unless the final, written settlement agreement is signed by all of the parties.” *Rayco*, 2018-Ohio-4782, ¶ 31, citing *PNC Mtge. v. Guenther*, 2d Dist. Montgomery No. 25385, 2013-Ohio-3044, ¶ 15. In other words, where the “parties have agreed on the essential terms of a settlement, and all that remains is to memorialize the agreement in writing, the parties are bound by the terms of the oral agreement.” *RE/MAX Internatl., Inc. v. Realty One, Inc.*, 271 F.3d 633, 646 (6th Cir. 2001).

Moreover, “[o]nce a settlement offer has been accepted, the settlement agreement is mutually binding; the settlement agreement cannot be set aside simply because one of the parties later changes its mind.” *Rayco*, ¶ 31, citing *Turoczy Bondsing Co. v. Mitchell*, 8th Dist. Cuyahoga No. 10694, 2018-Ohio-3173, ¶ 18 (“Once there is ... a meeting of the minds, one cannot refuse to proceed with settlement due to a mere change of mind.”). *See also Mack v. Polson Rubber Co.*, 14 Ohio



St.3d 34, 36-37, 14 Ohio B. 335, 470 N.E.2d 902 (1984), quoting *Spervel*, 31 Ohio St.2d at 37 (“To permit a party to unilaterally repudiate a settlement agreement would render the entire settlement proceedings a nullity...”); *Walland v. Rinehart*, 8th Dist. Cuyahoga Nos. 51935, 52672, 1987 Ohio App. LEXIS 6805, at \*6 (Mar. 26, 1987), citing *Mack v. Polson Rubber Co.*, 14 Ohio St.3d 34 (1984) (“[M]ere dissatisfaction with a settlement will not permit repudiation of the agreement.”). While “all agreements have some degree of indefiniteness and some degree of uncertainty,” it is well-settled that “people must be held to the promises they make.” *Kostelnik*, 2002-Ohio-2985, 770 N.E.2d 58, at ¶ 17. *See also Clark v. Corwin*, 9th Dist. Summit No. 28455, 2018-Ohio-1169, ¶ 13 (“[W]hen the parties agree to a settlement offer, [the] agreement cannot be repudiated by either party, and the court has the authority to sign a journal entry reflecting the agreement and to enforce the settlement.”).

And Ohio law is similarly clear that, “[i]f a client authorizes its attorney to negotiate a settlement and the attorney negotiates a settlement within the scope of that authority, the client is bound by it.” *Rayco*, 2018-Ohio-4782, ¶ 31 citing *Bromley v. Seme*, 2013-Ohio-4751, 3 N.E.3d 1254, ¶ 25 (11th Dist.), *Saylor v. Wilde*, 11th Dist. Portage No. 2006-P-0114, 2007-Ohio-4631, ¶12. Further, “[a] party cannot avoid a settlement that was negotiated through counsel by claiming that his attorney lacked actual authority to enter into the settlement.” *Rayco* ¶ 31, citing *Fugo v. White Oak Condominium Assn.*, 8th Dist. Cuyahoga No. 69469, 1996 Ohio App. LEXIS 2725, 8-12 (June 27, 1996), *Klever v. Stow*, 13 Ohio App.3d 1, 4-5, 13 Ohio B. 1, 468 N.E.2d 58 (9th Dist. 1983), *Argo Plastic Prods. Co. v. Cleveland*, 15 Ohio St.3d 389, 392-393, 15 Ohio B. 505, 474 N.E.2d 328 (1984).

Here, there can be no dispute that the parties reached an enforceable settlement agreement as of 11:30 AM on July 2, 2020, when Plaintiffs’ counsel expressed his clients’ acceptance of the “material” terms set forth by Defendants, as an “enforceable settlement” as of “TH[AT] MORNING.” **Ex. 1** at 3–4, 6–7 (Pattakos/Congeni emails). There is no question that counsel’s

correspondence set forth the “essential terms of the agreement” that are ... ‘reasonably certain and clear’ and mutually understood by the parties.” **Ex. 1** at 1–7; *Rayco* ¶ 30; *Kostelnik* ¶ 16. And counsel’s correspondence leaves no room for an argument that, “the parties intend[ed] that there will be no contract until the agreement is fully reduced to writing and executed.” **Ex. 1** at 1–7; *Rayco*, ¶ 31; *Guenther*, 2013-Ohio-3044, ¶ 15. *See also Rayco*, 2018-Ohio-4782, ¶ 33 (affirming the existence of a settlement agreement where counsel emailed an “unambiguous offer” to settle and opposing counsel verbally accepted in leaving “a voicemail message ... later that day.”).

**B. Defendants are entitled to an award of attorneys’ fees as compensatory damages for Plaintiffs’ conduct in breaching the parties’ settlement agreement.**

Here, the agreement between the parties plainly and unambiguously requires the TownHall Plaintiffs to pay the *Scene* Defendants’ attorneys’ fees that they incurred in defending this case. **Ex. 1** at 1–7. Because the Plaintiffs have failed to comply with the parties’ settlement agreement, the Court should thus require Plaintiffs to pay Defendants’ fees incurred in seeking the Court’s enforcement of the settlement.

Defendants’ position on attorneys’ fees is further supported by Ohio law providing that, “attorney fees can be awarded as compensatory damages to the prevailing party on a motion to enforce a settlement agreement when the fees are incurred as a direct result of a breach of the settlement agreement. *Rayco Mfg. v. Murphy, Rogers, Sloss & Gambel*, 2019-Ohio-3756, 142 N.E.3d 1267, ¶ 11 (8th Dist.). *See also Tejada-Hercules v. State Auto. Ins. Co.*, 10th Dist. Franklin No. 08AP-150, 2008-Ohio-5066, ¶ 22 (“When a party breaches a settlement agreement to end litigation and the breach causes a party to incur attorney fees in continuing litigation, those fees are recoverable as compensatory damages in a breach of settlement claim ... The trial court’s judgment here, as well as the holding in *Shanker*, encourages parties to comply with the terms of their settlement agreements, lest they put themselves at risk of paying the non-breaching parties’ attorney fees incurred in filing a breach of contract action.”), citing *Shanker v. Columbus Warehouse Ltd. Partnership*, 10th Dist. Franklin

No. 96APE09-1269, 1997 Ohio App. LEXIS 1241 (Mar. 31, 1997); and *Savoy Hosp., LLC v. 5839 Monroe St. Assocs. LLC*, 6th Dist. Lucas No. L-14-1144, 2015-Ohio-4879, ¶ 69 (“[A] party may receive attorney fees resulting from the other party’s breach of the settlement agreement as a form of compensatory damages.”), citing *Raymond J. Schaefer, Inc. v. Pytlik*, 6th Dist. Ottawa No. OT-09-026, 2010-Ohio-4714, ¶ 34 (“[A]ppellee is entitled to an award of attorney’s fees as compensatory damages because those fees were incurred as a direct result of appellants’ breach of the settlement agreement.”).

Here, because Plaintiffs have caused Defendants to incur additional legal fees by necessitating the instant motion to enforce, Defendants are “entitled to recover the reasonable attorney fees [they] incurred in enforcing the settlement agreement ... as compensatory damages for [Plaintiffs]’ breach of the settlement agreement.” *Rayco*, 2019-Ohio-3756, 142 N.E.3d 1267, ¶ 13 (8th Dist.).

### **III. Conclusion**

Plaintiffs’ continued delay and refusal to abide by the parties’ enforceable settlement agreement continues to chill Defendants’ First Amendment rights and journalistic mission.<sup>4</sup> Pursuant to the clear and controlling caselaw set forth above, and the undisputable evidence of the parties’ agreement attached, the Court should order Plaintiffs to immediately comply with the parties’ settlement agreement and hold an evidentiary hearing as to the amount of attorneys’ fees incurred, and whether Plaintiffs should be sanctioned under R.C. 2323.51 for their continued obstruction and any further opposition to Defendants’ clear entitlement to the relief requested.

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<sup>4</sup> *Varanese v. Gall*, 35 Ohio St.3d 78, 83, 518 N.E.2d 1177 (1988) (“We should never forget that an unfettered press is the custodian of all our liberties and the guarantor of our progress as a free society. ‘The First Amendment presupposes that the freedom to speak one’s mind is not only an aspect of individual liberty -- and thus a good unto itself -- but also is essential to the common quest for truth and the vitality of society as a whole.’”), quoting *Bose Corp. v. Consumers Union*, 466 U.S. 485, 503-504, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984).

Respectfully submitted,

/s/ Peter Pattakos

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Rachel Hazelet (0097855)  
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peter@pattakoslaw.com  
rhazelet@pattakoslaw.com

*Attorneys for Defendants Euclid Media Group  
and Vince Grzegorek*

### **Certificate of Service**

The foregoing document was filed on July 23, 2020, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

*Attorney for Defendants*



Peter Pattakos &lt;peter@pattakoslaw.com&gt;

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**408 Communications - DRAFT MSJ**

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**Christopher B. Congeni** <cbcongeni@bmdllc.com>  
To: Peter Pattakos <peter@pattakoslaw.com>

Thu, Jul 2, 2020 at 3:11 PM

I will email it to you this before the Monday meeting this weekend. I will also email Bobby and Ryan's statements as you request once I talk to them.

Thanks.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

**BRENNAN, MANNA & DIAMOND, LLC**

75 E. Market Street Akron, OH 44308

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Thursday, July 2, 2020 1:07 PM  
**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>  
**Subject:** Re: 408 Communications - DRAFT MSJ

OK. Good luck. I don't think the document needs to be very complicated: (1) Plaintiffs agree to dismiss case with prejudice and make a donation to the Cleveland Scene Press Club equivalent to Defendants' attorneys' fees incurred; (2) In reporting on the settlement, Defendants agree (a) that the headline of the report will be "TownHall drops lawsuit against Scene; makes donation to Scene Press Club," (b) the report will announce that TownHall's donation was in an amount commensurate with Scene's attorneys' fees incurred in defending the lawsuit, (c) Scene will state that it "corrected the report and regrets the error," (d) Scene will consider publishing a short reasonable statement in the report from Bobby subject to Scene's approval, (e)

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**EXHIBIT 1**

and (f) Scene will include in its report on the settlement a statement that the parties met in person and resolved the dispute amicably.

Short of negotiating what Bobby's statement is going to be, I don't see that there is much if any other work to do here, though Scene would also consider publishing a reasonable statement from Hartzell too if he wanted to say anything about it. Bobby and Ryan should think about that over the weekend and the sooner you can email me content on that the smoother things will go on Monday.

Thanks, and congrats again for coming to a resolution on a difficult situation.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Thu, Jul 2, 2020 at 12:53 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Let me take a breath and I will. I just had a client sued I have to meet with.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 2, 2020, at 12:49 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

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Chris, will you be preparing the document formalizing the settlement or do you want me to do it?

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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On Thu, Jul 2, 2020 at 11:39 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

OK, so we have a deal, and we will meet on Monday afternoon to formalize the agreement (which is currently enforceable per the below terms). Congratulations to all of us. This is a good resolution for all involved. Let's meet at my office Monday, say 3PM, OK?

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

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On Thu, Jul 2, 2020 at 11:30 AM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Per our call. I talked to Bobby. He cares about his employees a great and wants to move forward. Yes, agreed. Monday afternoon work to meet in person at TH or your office? You did enjoy the TH beer last time.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 2, 2020, at 11:27 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Yes.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

--

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On Thu, Jul 2, 2020 at 11:25 AM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

It sounds like both sides maintain their right to disseminate truthful material I assume.

Chris

Christopher B. Congeni

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BRENNAN, MANNA & DIAMOND LLC / Member



75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 2, 2020, at 11:20 AM, Christopher B. Congeni  
<cbcongeni@bmdllc.com> wrote:

When we dismiss case (next week) they can the report it was dismissed.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 2, 2020, at 11:19 AM, Robert George  
<bgeorge@ethoscap.com> wrote:

I am asking will there be press release issued before we  
have a formal settlement & Pete & I discuss.

Robert George

Ethos Capital Partners

**From:** Peter Pattakos <peter@pattakoslaw.com>

**Sent:** Thursday, July 2, 2020 11:12 AM

**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>

**Cc:** Robert George <bgeorge@ethoscap.com>

**Subject:** Re: 408 Communications - DRAFT MSJ

[www.pattakoslaw.com](http://www.pattakoslaw.com)

—

**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>  
**Cc:** Robert George <bgeorge@ethoscap.com>  
**Subject:** Re: 408 Communications - DRAFT MSJ

No. We are not going to leave any material terms open past this morning. If we are going to withhold filing our MSJ, we need to have an agreement to material terms THIS MORNING in an enforceable settlement. All that will be finalized this weekend is the details, which is basically only the short statement that Bobby wants to include in the article reporting on the settlement. As for the material terms, Scene's offer is as follows:

1. TownHall dismisses the case and makes a donation to Scene Press Club in the amount of Scene's attorneys fees

3. Also, Scene's headline will be something along the lines of: "TownHall drops lawsuit against Scene; makes donation to Scene Press Club," the report will announce that TownHall's donation was in an amount commensurate with Scene's attorneys' fees, Scene will state that it "corrected the report and regrets the error," and will consider publishing a short reasonable statement from Bobby, subject to Scene's approval.

4. Finally, per your email below, Scene will agree to say in its report on the settlement that the parties met in person and resolved the dispute amicably.

That's it. Take it or leave it. Rachel is finalizing the table of contents and attaching the exhibits to the brief now. We will give you about 15 more minutes.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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---

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On Thu, Jul 2, 2020 at 10:50 AM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Per our many discussions this morning, I wanted to inject some additional language to be used in their own words.

The parties amicably settled and resolved their lawsuit. The parties had an opportunity over the last six weeks to meet in person and seek common ground.

We will meet IN PERSON to discuss material terms.

the Plaintiff  
dismisses their lawsuit then Scene can put out a brief blast about the settlement.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

<image001.png>

**BRENNAN, MANNA & DIAMOND, LLC**

75 E. Market Street Akron, OH 44308

Electronically Filed 07/23/2020 11:37 / MOTION / CV 20-932784 / Confirmation No. 2036803 / BATCH  
**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Thursday, July 2, 2020 7:04 AM  
**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>

**Cc:** Robert George <bgeorge@ethoscap.com>  
**Subject:** Re: 408 Communications - DRAFT MSJ

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"TownHall drops lawsuit against Scene; makes donation to Scene Press Club,"

or

"Cleveland Scene seeks dismissal of TownHall defamation lawsuit;

I don't see how this isn't an easy choice. And once again, Scene would be glad to publish a statement in Bobby's own words, and I can assure you (though not as a contractual promise) that they will not be unnecessarily unkind or make any cheap shots in reporting on this.

Anyway, we are not going to mess around on this. We are going to move one way or another this morning.

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On Wed, Jul 22, 2020 at 11:02 AM Christopher B. BATCH  
Congeni <cbcongeni@bmdllc.com> wrote:

What it means is determining the verbiage as it relates to how the publication disseminates the donation piece. Which now seems to be important. This needs to be spelled out.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

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Also, just to confirm, what you have outlined below is two alternative offers? Can you please explain what you mean by "donation as discussed provided – publish or not publish"? What does "publish or not publish" mean? Thanks.

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I have passed this along to my clients. I do not believe they will accept because you continue to insist on limiting Scene's ability to report on this case.

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when it could have be, "TownHall drops lawsuit against Scene; makes donation to Scene Press Club."

I just can't imagine how you think the former could be preferable, especially when it will be accompanied by our motion

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I will be up for another hour or so tonight and will do my best to respond to emails until then.

Otherwise, we can talk in the

morning. I will be up early and you can feel free to call me anytime after 7.

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Christopher B. Congeni  
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Per our call.

Offer:

1)

•

- If your MSJ is granted by the Court, we agree to not Appeal the Order. TH also agrees to pay your reasonable attorney fees without a hearing plus provide a donation at the time of dismissal.
- If it is not granted by the Court, the parties agree to immediately enter a Confidential Mediation process prior to the

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commencement of  
depositions (written  
discovery may be  
complete by then)

2)

- One line statement saying the matter has been settled. Simple apology and case settled. Perhaps no statement from BG at all. Building bridges theme.
- Donation as discussed provided – publish or not publish. Wording can be discussed.

Let me know tonight what your client says. I know youre busy until 8:30pm. Call whenever.

Thanks.

Chris

**CHRISTOPHER B.  
CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

<image001.png>

**BRENNAN, MANNA &  
DIAMOND, LLC**

75 E. Market Street Akron,  
OH 44308

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<peter@pattakoslaw.com>

**Sent:** Wednesday, July 1, 2020

3:52 PM

**To:** Christopher B. Congeni

<cbcongeni@bmdllc.com>

**Subject:** 408 Communications -  
DRAFT MSJ

**\*\*External User\*\***

See attached draft MSJ which is essentially file-ready, but may be subject to some changes between now and filing. We will file tomorrow morning with a press release if we don't have an agreement by tonight. I have not attached the exhibits here but you are familiar with the most pertinent ones and the rest are public record and otherwise non-controversial.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

330.836.8533

office; 330.285.2998 mobile

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www.pattakoslaw.com

---

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On Wed, Jul 1, 2020 at 2:17 PM

Peter Pattakos

<peter@pattakoslaw.com> wrote:

This is consistent with what she told us. She said there was a huge argument that night, and she was on a call the next morning where she said she quit and they said she was fired.

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I'm trying to finish this MSJ for your review. Hoping to have it to you within the hour then we can talk.

Peter Pattakos

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On Wed, Jul 1, 2020 at 1:27 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Below is Dee's sep document. Are you free for a call?

Thanks.  
Chris

Notice: The information contained in this electronic mail transmission is intended by Brennan, Manna & Diamond, LLC for the use of the named individual or entity to which it is directed and may contain information that is privileged or otherwise confidential. It is not intended for transmission to or receipt by, anyone other than the named addressee

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(or a person authorized to deliver it to the named addressee). It should not be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying or forwarding it, and notify the sender of the error by reply email or by calling Brennan, Manna & Diamond, LLC at 1-330-253-5060, so that our address record can be corrected.

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

TOWNHALL, <i>et al.</i> ,  Plaintiffs,  vs.  EUCLID MEDIA GROUP, <i>et al.</i> ,  Defendants.	Case No. CV-20-932784  Judge Peter J. Corrigan  <b>Affidavit of Peter Pattakos</b>
---	--

I, Peter Pattakos, am over eighteen years of age, am of sound mind, have personal knowledge of the following matters of fact, and, having been duly sworn, testify as follows:

1. I am an attorney representing Defendants Euclid Media Group and Vince Grzegorek in the above-captioned lawsuit, *1909 W25, LLC dba TownHall, et al., v. Euclid Media Group, et al.*, Cuyahoga C.P. No. CV-20-932784. I am executing this affidavit in connection with Defendants' July 23, 2020 Motion to Enforce Settlement Agreement.
2. The email correspondence attached to Defendants' Motion to Enforce are true and accurate copies of my correspondence with Plaintiffs' attorney Chris Congeni and TownHall owner Bobby George that I received and engaged in within the ordinary course of business in representing the Defendants throughout this litigation.
3. The statement facts set forth in Defendants' Motion to Enforce is true and accurate based on my personal knowledge, including as to the conversations that I had over the phone with Mr. Congeni and Mr. George about this litigation.
4. The facts set forth in this affidavit are true and accurate as personally known to and experienced by me, and if called upon, I am competent to and will testify to such facts in court.

I affirm the above to be true and accurate to the best of my knowledge under penalty of

perjury.

*[Signature]*

Signature of Affiant

7.23.2020

Date

Sworn to and subscribed before me on 7-23-2020 at Fairlawn, Ohio.

*Rachel Hazelet*

Notary Public



Attorney Rachel L. Hazelet  
Notary Public, State of Ohio  
My Commission  
Has No Expiration Date  
Sec 147.03 RC





Peter Pattakos &lt;peter@pattakoslaw.com&gt;

---

**408 Communications - DRAFT MSJ**

---

**Peter Pattakos** <peter@pattakoslaw.com>  
To: "Christopher B. Congeni" <cbcongeni@bmdllc.com>  
Cc: Robert George <bgeorge@ethoscap.com>

Thu, Jul 2, 2020 at 11:22 AM

If you agree to the terms below, as an enforceable settlement agreement, Scene does not intend to issue any press release until after the lawsuit is formally dismissed pursuant to the agreement.  
If you breach any of the material terms below, including by unreasonably delaying in dismissing the lawsuit as agreed, all bets are off.

Peter Pattakos  
The Pattakos Law Firm LLC  
101 Ghent Road  
Fairlawn, OH 44333  
330.836.8533 office; 330.285.2998 mobile  
peter@pattakoslaw.com  
www.pattakoslaw.com

---

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On Thu, Jul 2, 2020 at 11:20 AM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

When we dismiss case (next week) they can the report it was dismissed.

Chris

Christopher B. Congeni  
BRENNAN, MANNA & DIAMOND LLC / Member  
75 East Market, Akron, Ohio 44333

330-253-2038 office  
330-253-2043 fax

On Jul 2, 2020, at 11:19 AM, Robert George <bgeorge@ethoscap.com> wrote:

I am asking will there be press release issued before we have a formal settlement & Pete & I discuss.

Robert George  
Ethos Capital Partners

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Thursday, July 2, 2020 11:12 AM  
**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>  
**Cc:** Robert George <bgeorge@ethoscap.com>  
**Subject:** Re: 408 Communications - DRAFT MSJ

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**EXHIBIT 3**

Peter Pattakos

The Pattakos Law Firm LLC

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Okay, I will let Bobby respond.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

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75 E. Market Street Akron, OH 44308

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<image001.png>

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2)

- One line statement saying the matter has been settled. Simple apology and case settled. Perhaps no statement from BG at all. Building bridges theme.
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Thanks.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

<image001.png>

**BRENNAN, MANNA & DIAMOND, LLC**

75 E. Market Street Akron, OH 44308

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Wednesday, July 1, 2020 3:52 PM  
**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>  
**Subject:** 408 Communications - DRAFT MSJ

**\*\*External User\*\***

See attached draft MSJ which is essentially file-ready, but may be subject to some changes between now and filing. Also will file tomorrow morning with a press release if we don't have an agreement by tonight.

Electronically Filed 07/23/2020 11:37 AM MOTION LCV 20-932784-Confirmation with 2036893 (PATCH)



Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

---

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Wed, Jul 1, 2020 at 2:17 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

I'm trying to finish this MSJ for your review. Hoping to have it to you within the hour then we can talk.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

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---

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On Wed, Jul 1, 2020 at 1:27 PM Christopher B. Congeni  
<cbcongeni@bmdllc.com> wrote:

Are you free for a call?

Thanks.  
Chris

Notice: The information contained in this electronic mail transmission is intended by Brennan, Manna & Diamond, LLC for the use of the named individual or entity to which it is directed and may contain information that is privileged or otherwise confidential. It is not intended for transmission to, or receipt by, anyone other than the named addressee (or a person authorized to deliver it to the named addressee). It should not be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying or forwarding it, and notify the sender of the error by reply email or by calling Brennan, Manna & Diamond, LLC at 1-330-253-5060, so that our address record can be corrected.

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Peter Pattakos &lt;peter@pattakoslaw.com&gt;

---

**408 Communications - DRAFT MSJ**

---

**Peter Pattakos** <peter@pattakoslaw.com>  
To: "Christopher B. Congeni" <cbcongeni@bmdllc.com>

Tue, Jul 7, 2020 at 3:30 PM

Chris, where are we on this? We were supposed to receive a draft document from you yesterday. Please let me know what is going on. Thanks.

Peter Pattakos  
The Pattakos Law Firm LLC  
101 Ghent Road  
Fairlawn, OH 44333  
330.836.8533 office; 330.285.2998 mobile  
peter@pattakoslaw.com  
www.pattakoslaw.com

---

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[Quoted text hidden]



Peter Pattakos &lt;peter@pattakoslaw.com&gt;

---

**408 Communications - DRAFT MSJ**

---

**Christopher B. Congeni** <cbcongeni@bmdllc.com>  
To: Peter Pattakos <peter@pattakoslaw.com>

Wed, Jul 8, 2020 at 9:00 PM

Pete-

I don't know what you are seeking to enforce. The purpose of us setting a meeting is to finalize The framework and terms we previously discussed and create an actual enforceable agreement. Send us your proposed settlement document and we can send you back proposed redlines and then discuss it in person and mark it up Monday or Tuesday. I can also meet this weekend re your proposed document. You have far more terms than we desire so we would ask you take the first crack. Let's try to meet and be reasonable. Bobby was presented with blatantly false affidavits and he still seeks common ground with Scene during these unique times. Bobby is still committed to building bridges.

Please also ask Vince to be available by phone next week When we meet. You have far more proposed terms than we do. Also the affidavits Bobby wants to show you are directly relevant to settlement and the parties.

Clearly, Based on all of our discussions by phone last week Thursday, my proposal allows us the best chance to try and come to a real and final resolution and create an actual settlement agreement. We are free to meet this weekend (Sat afternoon), Monday or Tuesday. I am out of state until Friday afternoon as you know.

Thanks.

Chris

Christopher B. Congeni  
BRENNAN, MANNA & DIAMOND LLC / Member  
75 East Market, Akron, Ohio 44333

330-253-2038 office  
330-253-2043 fax

On Jul 7, 2020, at 3:51 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

This is ridiculous, Chris. Send us a proposed settlement document as agreed – with the statement that Bobby wants Scene to consider printing – or we will move to enforce. His "affidavits" are not germane to our agreement.

Peter Pattakos  
The Pattakos Law Firm LLC  
101 Ghent Road  
Fairlawn, OH 44333  
330.836.8533 office; 330.285.2998 mobile  
peter@pattakoslaw.com  
www.pattakoslaw.com

---

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On Tue, Jul 7, 2020 at 5:30 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:  
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Pete –

**EXHIBIT 5**

Bobby has made clear to me that he doesn't want his proposed statements sent to you until you inspect his affidavits. They affect what he may want to say and what you may want to restrict him from saying in the future article. I am waiting to see if Bobby has availability tomorrow morning for us all to meet. He and I were both available today all day but you had a mediation. If he can't do tomorrow morning, I have a mid-afternoon flight to Denver for meetings. I am back Friday afternoon. Perhaps Saturday afternoon is an option. I have nothing on my calendar next Monday after 3 and nothing I can't move on my schedule next Tuesday. Any written material can be written up together at our meeting on a computer. Perhaps you already know some of this information if Bobby reached out.

Thanks,

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

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Peter Pattakos &lt;peter@pattakoslaw.com&gt;

---

**408 Communications - DRAFT MSJ**

---

Christopher B. Congeni <cbcongeni@bmdllc.com>  
To: Peter Pattakos <peter@pattakoslaw.com>

Fri, Jul 10, 2020 at 9:52 PM

Pete –

I briefly reviewed the Rayco decision that you provided and it is not applicable in any manner to where things stand in our case. As I am sure you know, the Rayco, the parties exchanged multiple drafts of a formal, written settlement agreement after having gone through mediation. The parties jointly made a decision to notify the court to cancel a pretrial hearing based upon their discussions and had every material term completed for the settlement other than having the parties' signatures on the final document. By comparison, in our case, we have had informal 408 settlement discussions producing a very general framework for much of what the parties would be seeking in a potential settlement, but there are still very material terms to finalize and a complete, a written settlement agreement document to prepare. Of particular importance, that have yet to be finalized, are the contents of statements by Bobby and Ryan and whether your client would agree to publish those statements as written, as well as the contents of the article that your client would be writing about the settlement. As you know, we agreed to meet to discuss the specifics of these additional terms and attempt to hammer out a complete settlement agreement for all parties to sign. We are still ready and willing to meet with you in order to attempt to complete these discussions and to reach a full resolution. I suspect that if you file a Motion to Enforce at this point, the Court will initially address it by bringing the parties together initially to try to determine if the parties are in agreement before taking any further action. Meeting together now would skip that step and potentially save both sides time and expense. Bobby and I are available to meet on Tuesday and Wednesday afternoon of next week. Please confirm when you and your client can meet with us. We will come prepared with the proposed statements that MUST appear in any future article (If Scene feels an article is necessary). If Scene wishes to make no such promises in a future settlement agreement, we have little incentive to resolve this.

Thanks,

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Principal Member

P: 330.253.2038

F: 330.253.2043

E: [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)**BRENNAN, MANNA & DIAMOND, LLC**

75 E. Market Street Akron, OH 44308

From: Peter Pattakos <peter@pattakoslaw.com>  
Sent: Friday, July 10, 2020 6:11 PM  
To: Christopher B. Congeni <cbcongeni@bmdllc.com>  
Subject: Re: 408 Communications - DRAFT MSJ

Sorry, I did not mean to send you that last email. Needless to say I am not optimistic that whatever you send me tonight or anytime before next week is going to eliminate the need for us to file our motion to enforce the settlement. I would be glad to be surprised.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

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330.836.8533 office; 330.285.2998 mobile

**EXHIBIT 6**

7/23/2020

The Pattakos Law Firm LLC Mail - 408 Communications - DRAFT MSJ

peter@pattakoslaw.com

www.pattakoslaw.com

---

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On Fri, Jul 10, 2020 at 6:09 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Oh boy.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

---

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On Fri, Jul 10, 2020 at 6:02 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

I will respond tonight. Just got home from Denver.

Thanks.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 9, 2020, at 8:13 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Chris: To follow up on the below, please see the attached decision from the 8th District in *Rayco Mfg. v. Murphy*, 2018-Ohio-4782, 117 N.E.3d 153, which affirms the basic principles at issue here. You are not close on this one. Your clients need to stop messing around and comply with our agreement.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

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330.836.8533 office; 330.285.2998 mobile



peter@pattakoslaw.com

www.pattakoslaw.com

---

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On Wed, Jul 8, 2020 at 9:59 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Chris,

We have an enforceable settlement agreement. The material terms are set forth clearly below and are enforceable, as you agreed and acknowledged below.

You were supposed to be at my office on Monday afternoon and have a draft settlement document to us before then that included Bobby and Ryan's statements for Scene to consider publishing. The terms are simple and set forth clearly below. We don't even need a formal document as all there is really left to do is for you submit Bobby's and Ryan's statements, and for Bobby to cut a check and you to dismiss the lawsuit. There is no legitimate excuse for your failure to have submitted a draft settlement document and statements by now as you promised to do.

At this point, especially with you now having suggested that there is no "actual enforceable settlement," and that it would somehow be necessary for me to review "affidavits" that Bobby has in order for Plaintiffs or Defendants to fulfill their obligations under the agreement, you are far beyond anything reasonably contemplated under our agreement and are thus leaving me with no choice but to file a motion to enforce. Your clients will owe my fees for that as well, both under our settlement agreement, by which your clients have agreed to pay my fees in full, and also under well-established Ohio law providing that when a party breaches an agreement to settle a case, attorneys' fees are recoverable as compensatory damages. *Tejada-Hercules v. State Auto. Ins. Co.*, 10th Dist. Franklin No. 08AP-150, 2008-Ohio-5066, ¶ 22 ("When a party breaches a settlement agreement to end litigation and the breach causes a party to incur attorney fees in continuing litigation, those fees are recoverable as compensatory damages in a breach of settlement claim. ... The trial court's judgment here, as well as the holding in *Shanker*, encourages parties to comply with the terms of their settlement agreements, lest they put themselves at risk of paying the non-breaching parties' attorney fees incurred in filing a breach of contract action.") See also *Shanker v. Columbus Warehouse Partnership*, 10th Dist. Franklin No. 96APE09-1269, 1997 Ohio App. LEXIS 1241, at \*10 (Mar. 31, 1997) ("The fact that not each and every term was decided on April 18, 1996 and that the parties mutually assented to additional terms after the April 18, 1996 settlement agreement does not mean there was no contract on April 18, 1996."); *Hillbrook Bldg. Co. v. Corporate Wings*, 8th Dist. Cuyahoga No. 68619, 1996 Ohio App. LEXIS 3854, at \*10 (Sep. 5, 1996) ("An oral settlement agreement requires no more formality and no greater particularity than appears in the law for the formation of a binding contract. In the event that a party fails to make a good faith attempt to agree on the language, the trial judge may hold a hearing to determine the terms and construct a reasonable journal entry outlining the agreement.");

Get us a draft settlement document with Bobby's and Ryan's proposed statements by the end of the day Friday and we can meet at my office on Saturday early afternoon to discuss if it is necessary to meet in person. If you fail to reasonably comply by then we will proceed to enforce our agreement in court first thing next week.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

---

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On Wed, Jul 8, 2020 at 9:00 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Pete-

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I don't know what you are seeking to enforce. The purpose of us setting a meeting is to finalize The framework and terms we previously discussed and create an actual enforceable agreement. Send us your proposed settlement document and we can send you back proposed redlines and then discuss it in person and mark it up Monday or Tuesday. I can also meet this weekend re your proposed document. You have far more terms than we desire so we would ask you take the first crack. Let's try to meet and be reasonable. Bobby was presented with blatantly false affidavits and he still seeks common ground with Scene during these unquies times. Bobby is still committed to building bridges.

Please also ask Vince to be available by phone next week When we meet. You have far more proposed terms than we do. Also the affidavits Bobby wants to show you are directly relevant to settlement and the parties.

Clearly, Based on all of our discussions by phone last week Thursday, my proposal allows us the best chance to try and come to a real and final resolution and create an actual settlement agreement. We are free to meet this weekend (Sat afternoon), Monday or Tuesday. I am out of state until Friday afternoon as you know.

Thanks.

Chris

Christopher B. Congeni

BRENNAN, MANNA & DIAMOND LLC / Member

75 East Market, Akron, Ohio 44333

330-253-2038 office

330-253-2043 fax

On Jul 7, 2020, at 3:51 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

This is ridiculous, Chris. Send us a proposed settlement document as agreed -- with the statement that Bobby wants Scene to consider printing -- or we will move to enforce. His "affidavits" are not germane to our agreement.

Peter Pattakos

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On Tue, Jul 7, 2020 at 5:30 PM Christopher B. Congeni <cbcongeni@bmdllc.com> wrote:

Pete --

Bobby has made clear to me that he doesn't want his proposed statements sent to you until you inspect his affidavits. They affect what he may want to say and what you may want to restrict him from saying in the future article. I am waiting to see if Bobby has availability tomorrow morning for us all to meet. He and I were both available today all day but you had a mediation. If he can't do tomorrow morning, I have a mid-afternoon flight to Denver for meetings. I am back Friday afternoon. Perhaps Saturday afternoon is an option. I have nothing on my calendar next Monday after 3 and nothing I can't move on my schedule next Tuesday. Any written material can be written up together at our meeting on a computer. Perhaps you already know some of this information if Bobby reached out.

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Thanks,

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

**P:** 330.253.2038

**F:** 330.253.2043

**E:** [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)

<image001.png>

**BRENNAN, MANNA & DIAMOND, LLC**

75 E. Market Street Akron, OH 44308

**From:** Peter Pattakos <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)>  
**Sent:** Tuesday, July 7, 2020 3:31 PM  
**To:** Christopher B. Congeni <[cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)>  
**Subject:** Re: 408 Communications - DRAFT MSJ

Chris, where are we on this? We were supposed to receive a draft document from you yesterday. Please let me know what is going on. Thanks.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

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[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)

[www.pattakoslaw.com](http://www.pattakoslaw.com)

---

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On Thu, Jul 2, 2020 at 3:11 PM Christopher B. Congeni <[cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)> wrote:

I will email it to you this before the Monday meeting this weekend. I will also email Bobby and Ryan's statements as you request once I talk to them.

Thanks.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

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**P:** 330.253.2038



Peter Pattakos &lt;peter@pattakoslaw.com&gt;

---

## Proposal

---

**Christopher B. Congeni** <cbcongeni@bmdllc.com>  
To: Peter Pattakos <peter@pattakoslaw.com>

Tue, Jul 21, 2020 at 8:39 AM

Pete –

These are the general material terms I propose.

1. No article or report on this matter at all. OR (if Scene strongly desires to report on this)
2. Brief dissemination stating generally BG and Townhall and Scene settled their dispute (build bridges mentality). BG values independent journalism. Scene regrets and apologizes for it's error in the May online article that provided misinformation about the race of the party communicating with the TH GM. BG can at least review dissemination before running. **No mention of money.**
3. \$27,000 for "marketing" with Scene will be delivered to your office by Friday.
4. An effort will be made to reach out to BG for comment when running a story about BG or TH. BG will usually choose to make a statement. Report in a factual manner.
5. Mutual Confidentiality provision in the Settlement Agreement.
6. Commitment between us to have a confidential settlement agreement drafted this week. I could take first crack. We could deliver signed agreement when we deliver check.

Thanks and let me know what your client says.

Chris

**CHRISTOPHER B. CONGENI**

Attorney/Member

P: 330.253.2038

F: 330.253.2043

E: [cbcongeni@bmdllc.com](mailto:cbcongeni@bmdllc.com)



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**BRENNAN, MANNA & DIAMOND, LLC**

**EXHIBIT 7**

75 E. Market Street Akron, OH 44308

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Monday, July 20, 2020 6:39 PM  
**To:** Christopher B. Congeni <cbcongeni@bmdllc.com>  
**Subject:** FYI

**\*\*External User\*\***

I forwarded your draft TRO motion to my colleague Andy Geronimo and he mentioned that he recently filed an amicus brief in *Bey v Resawehr*, 2020-Ohio-3301, where the Supreme Court of Ohio affirmed that "before a court may enjoin the future publication of allegedly defamatory statements based on their content, there must first be a judicial determination that the subject statements were in fact defamatory."

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

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