

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 90-229 (Erie)
	)	
ROBERT BRACE, and	)	
ROBERT BRACE FARMS, Inc.	)	
	)	
Defendants.	)	

**JOINT MOTION FOR LEAVE TO FILE UNDER SEAL CERTAIN SETTLEMENT  
CONFIDENTIAL INFORMATION**

Pursuant to Local Civil Rule 5.2(H), Plaintiff United States of America (“United States”) and Defendants Robert Brace and Robert Brace Farms, Inc. (“Defendants”) (collectively the “Parties”), respectfully and jointly request that the Court grant the Parties leave to file under seal certain information that qualifies as “confidential information” under the Court’s ADR Practices and Procedures. The information is relevant to “Defendants’ Motion for Sanctions Regarding Plaintiffs’ Failure to Comply with Court Order and Applicable ADR Policies and Procedures,” ECF No. 109. In support of this motion, the Parties submit as follows:

1. On March 8, 2017, the Parties appeared at the Court-ordered mediation. *See* ECF Nos. 97, 110.
2. On March 13, 2017, Defendants filed their “Motion for Sanctions Regarding Plaintiffs’ Failure to Comply with Court Order and Applicable ADR Policies and Procedures,” ECF No. 109. In that motion, Defendants assert that “sanctions would appear to be called for in the present case because Plaintiffs ‘fail[ed] to have physically in attendance the necessary

decision maker(s),’ [at the mediation] and failed to file the required ‘motion seeking excuse from the selected ADR process session.’” *Id.* at ¶ 19.

3. Prior to the March 8, 2017 mediation, counsel for the parties engaged in a series of communications regarding the United States’ settlement authority and attendance at the March 8, 2017 mediation. These communications, which are directly relevant to Defendants’ motion, are identified below:<sup>1</sup>

- a. E-mail from Laura Brown, Esq., Counsel for the United States, to Neal Devlin, Esq., Counsel for Defendants (Feb. 24, 2017, 11:33 A.M. EST) (submitted as Exhibit 1 to the Appendix (“App’x”).
- b. E-mail from Laura Brown, Esq., Counsel for the United States, to David L. Cook, Esq., Mediator; Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Feb. 27, 2017, 1:25 P.M. EST) (App’x, Exhibit 2).
- c. Email from Neal Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States (Feb. 28, 2017 11:28 A.M. EST) (included in threaded emails at App’x, Exhibit 9).
- d. Email from Laura Brown, Esq., Counsel for the United States, to Neal Devlin, Esq., Counsel for Defendants (Feb. 28, 2017, 12:48 P.M. EST) (included in threaded emails at App’x, Exhibit 9).
- e. Email from Neal Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States (Feb. 28, 2017, 1:51 P.M. EST) (included in threaded emails at App’x, Exhibit 9).

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<sup>1</sup> As exhibits to an appendix to this filing, the Parties will submit the documents referenced *infra* at ¶ 3(a)-(y) to the Court only.

- f. Email from Laura Brown, Esq., Counsel for the United States, to Neal Devlin, Esq., Counsel for Defendants (Feb. 28, 2017, 1:57 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- g. E-mail from Neal Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 6, 2017, 12:10 PM EST) (App'x, Exhibit 3).
- h. Email from Neal Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 6, 2017, 4:13 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- i. E-mail from Laura Brown, Esq., Counsel for the United States, to Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 6, 2017, 5:48 P.M. EST) (App'x, Exhibit 4).
- j. E-mail from Lawrence Kogan, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 10:09 A.M. EST) (App'x, Exhibit 5).
- k. E-mail from Laura Brown, Esq., Counsel for the United States, to Lawrence Kogan, Esq., Counsel for Defendants; Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 2:10 P.M. EST) (App'x, Exhibit 6).
- l. Email from Neal R. Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; David L. Cook, Esq., Mediator; Lawrence Kogan,

Esq., Counsel for Defendants (Mar. 7, 2017, 2:23 P.M. EST) (included in threaded emails at App'x, Exhibit 9).

- m. E-mail from Lawrence Kogan, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 2:55 P.M. EST) (App'x, Exhibit 7).
- n. Email from Neal R. Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 7, 2017, 3:53 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- o. E-mail from Laura Brown, Esq., Counsel for the United States, to Lawrence Kogan, Esq., Counsel for Defendants; Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 6:44 P.M. EST) (App'x., Exhibit 8).
- p. Email from Laura Brown, Esq., Counsel for the United States to David L. Cook, Esq., Mediator; Neal R. Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 9, 2017, 11:21 A.M. EST) (included in threaded emails at App'x, Exhibit 9).
- q. Email from David L. Cook, Esq., Mediator, to Laura Brown, Esq., Counsel for the United States; Neal R. Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 9, 2017, 5:08 A.M. EST) (included in threaded emails at App'x, Exhibit 9).

- r. Email from Lawrence Kogan, Esq., Counsel for Defendants, to David L Cook, Esq., Mediator; Neal Devlin, Esq., Counsel for Defendants (Mar. 10, 2017 9:04 A.M. EST) (included in threaded emails at App'x, Exhibit 9).
- s. Email from David L. Cook, Esq., Mediator, to Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 11:29 A.M. EST) (included in threaded emails at App'x, Exhibit 9).
- t. Email from David L. Cook, Esq., Mediator, to Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 2:11 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- u. Email from David L. Cook, Esq., Mediator, to Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 3:10 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- v. Email from David L. Cook, Esq., Mediator, to Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 3:56 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- w. Email from David L. Cook, Esq., Mediator, to Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 4:55 P.M. EST) (included in threaded emails at App'x, Exhibit 9).
- x. Email from David L. Cook, Esq., Mediator, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 4:58 P.M. EST) (included in threaded emails at App'x, Exhibit 9).

y. Email from David L. Cook, Esq., Mediator, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 10, 2017, 5:01 P.M. EST) (included in threaded emails at App'x, Exhibit 9).

4. Section 6(A) of the Court's ADR Policies and Procedures provides that "this Court, the ADR Coordinator, all neutrals, all counsel, all parties and any other person who participates in" the Court's ADR program "shall treat as 'confidential information' (i) the contents of all documents created for or by the neutral, (ii) all communications and conduct during the ADR process, and (iii) all 'communications in connection with' the ADR process."

5. Section 6(B) of the Court's ADR Policies and Procedures defines "communications in connection with" the ADR process, which includes written communications by, between, or among counsel for a party or with the neutral, and it further includes communications "before or after any ADR process" when that communication "is made by or to the neutral . . . ."

6. Section 6(C) of the Court's ADR Policies and Procedures prohibits disclosure of "confidential information," as used in Section 6(A), to any other person, including the Judicial Officer, or her staff, unless (among other things), pursuant to Section 6(D)(3) of the Court's ADR Policies and Procedures, the parties "agree in writing that such specifically identified information may be disclosed."

7. Pursuant to Section 6(D)(3) of the Court’s ADR Policies and Procedures, the Parties agree that the e-mails identified *supra* (¶ 3(a)-(y)) contain “confidential information” that may be disclosed to the Court under seal.<sup>2</sup>

8. Local Civil Rule 5.2(H) governs the sealing of documents. Pursuant to that Rule, the moving party must identify the specific documents that it seeks to seal.

9. Pursuant to Local Civil Rule 5.2(H), the Parties jointly request leave to file under seal the e-mails, with attachments, identified *supra* (¶ 3(a)-(y)). Furthermore, to the extent the parties discuss the content of such documents in their briefs, the Parties jointly request that they be granted leave to redact such discussions from the publicly filed briefs and file a complete, un-redacted brief under seal.

Respectfully submitted,

<p>ON BEHALF OF ROBERT BRACE &amp; ROBERT BRACE FARMS, INC.:</p> <p><u>/s/ Lawrence A. Kogan</u>                  LAWRENCE A. KOGAN (Pro Hac Vice)                  (NY # 2172955)                  The Kogan Law Group, P.C.                  100 United Nations Plaza                  Suite #14F                  New York, New York, 10017                  (212) 644-9240                  lkogan@koganlawgroup.com</p> <p><u>/s/Neal R. Devlin</u>                  NEAL R. DEVLIN (PA Bar # 89223)                  ALEXANDER K. COX (PA Bar # 322065)                  Know, McLaughlin, Gornall &amp; Sennett, P.C.                  120 West Tenth Street</p>	<p>ON BEHALF OF THE UNITED STATES:</p> <p>JEFFREY H. WOOD                  Acting Assistant Attorney General                  U.S. Department of Justice</p> <p><u>/s/ Laura J. Brown</u>                  LAURA J. BROWN (PA Bar # 208171)                  CHLOE KOLMAN (IL Bar # 6306360)                  BRIAN UHOLIK (PA Bar # 209518)                  U.S. Department of Justice                  Environmental Defense Section                  601 D Street, N.W., Suite 8000                  Washington, DC 20004                  Phone: (202) 514-3376 (Brown)                  Laura.J.S.Brown@usdoj.gov</p>
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<sup>2</sup> The Parties’ disclosure is limited to the portions of the above referenced documents that relate to the United States’ settlement authority and attendance at the March 8, 2017 mediation. To the extent the documents discuss other issues, they will be redacted.

<p>Erie, PA 16501-1461 (814) 459-2800 ndevlin@kmgslaw.com</p>	
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2017, I served the foregoing Joint Motion for Leave to File Under Seal Certain Settlement Confidential Information on the following counsel for Defendants via ECF:

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