

IN THE SHAKER HEIGHTS MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

COMMERCE PARK PLACE HOLDINGS,) CONSOLIDATED CASE NOS.:
LLC,) 18CVG00298, 18CVG00299,
) 18CVG00300, 18CVG00301,
 Plaintiff,) 18CVG00302, 18CVG00303,
) 18CVG00304, 18CVG00361,
 vs.) 18CVG00362, 18CVG00363,
) 18CVG00364, 18CVG00365,
 CHAN-YANG HSU,) 18CVG00366, 18CVG00367,
) 18CVG00368, 18CVG00369,
 Defendant.) 18CVG00370. 18CVG00371
)
) JUDGE K.J. MONTGOMERY
)
) ACTING JUDGE KEITH BELKIN

**PLAINTIFF'S COMBINED MOTION TO SHOW CAUSE AND FOR SANCTIONS AGAINST
DEFENDANT CHAN-YANG HSU (18CVG00371)**

Plaintiff, Commerce Park Place Holdings, LLC, by and through the undersigned counsel, hereby requests this Court to order Chan-Yang Hsu to appear before this Court and show cause as to why he should not be held in contempt of Court for failure to abide by the Court's order of May 9, 2018. Further, Plaintiff requests this Court award sanctions, including but not limited to Plaintiff's attorney's fees incurred in connection with Defendant's violation of this Courts May 9, 2018 order. A Memorandum in Support of this Motion is attached hereto and made apart hereof.

Respectfully submitted,



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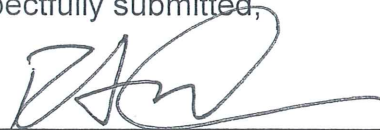
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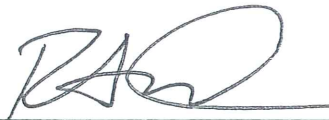
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Plaintiff's Combined Motion to Show Cause and for Sanctions Against Chan-Yang Hsu* was sent by ordinary U.S. mail on June 1, 2018 to the following:

~~Chan-Yang Hsu
23220 Chagrin Boulevard, #478
Beachwood OH 44122~~

Avery Friedman, Esq.
701 The City Club Building
Cleveland OH 44114



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Attorneys for Plaintiff

MEMORANDUM IN SUPPORT

I. FACTS

On April 18, 2018, the parties entered into a settlement of this case. The settlement terms were read into the record and acknowledged by Counsel for all parties on the record. (A copy of the transcript of the Court proceeding on April 18, 2018 has been filed separately with the Court). Subsequently, at the May 3, 2018 status hearing of this case, the Defendant refused to abide by the terms of the settlement. Upon Plaintiff's motion to enforce the settlement, the Court ordered that the Parties, including Defendant Chan-Yang Hsu (hereinafter "Defendant Hsu"), were bound by the settlement terms entered into on April 18, 2018. A Court order was then entered on May 9, 2018 which made binding the terms of the April 18, 2018 settlement on both parties to this action.

Included in the order was a directive by the Judge related to non-disparagement. The Court went out of its way to modify the terms of the original settlement to enable the Defendants to comply with its order, without being held liable for past negative comments. Specifically, the Court stated:

"6. As much as is possible and practical, neither party shall disparage the other."

This Court gave the parties protection from exposure to claims by the other in the case of "accidental" disparagement or breach of confidentiality prior to the settlement.

Unfortunately, Defendant Hsu violated this Court's order. Specifically, in January 2018, Defendant Hsu posted a negative disparaging review of The Vue on "Google Reviews." Not only did Defendant Hsu fail to even attempt to remove this previously posted negative review of Plaintiff's property, after the Court order, which he most certainly could have easily done, but

on May 27, 2018 he went out of his way to post a new negative and disparaging review on “Google Reviews.” (A copy of the review is attached hereto as **Exhibit 1**).

After being confronted by a representative of the Plaintiff about the negative and disparaging review, Defendant Hsu was defiant in his attitude. Furthermore, Defendant Hsu made it clear in his email that “other” tenants who participated in the settlement of the Rent Escrow cases would be posting additional disparaging reviews in the near future. (A copy of email correspondence between Plaintiff’s representative and Defendant Hsu is attached hereto as **Exhibit 2**). Due to Defendant Hsu’s flagrant breach of the settlement agreement, Plaintiff now asks this Court for the following: 1) require Defendant Hsu’s appearance before this Court to show cause as to why his failure to abide by the Court’s order should not warrant an order of contempt; 2) order Defendant Hsu to be sanctioned so as to deter other Defendants from engaging in a willful refusal to follow the terms of the settlement agreement; and 3) award Plaintiff’s attorney’s fees incurred in connection with Defendant’s violation of this Court’s order from May 9, 2018 stating that both parties were bound by the settlement terms entered into on April 18, 2018.

II. LAW AND ARGUMENT

A. The Court Should Enforce The Settlement Agreement Reached By The Parties On April 18, 2018.

It is well established that courts have the authority to enforce settlement agreements reached between the parties to a lawsuit. Mack v. Polson Rubber Co., 14 Ohio St. 36 34, 36, 470 N.E.2d 902 (1984); Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir. 1976). An agreement to settle a case is a contract designed to terminate a claim by preventing or ending litigation. Such agreements are valid and should be judicially enforced upon the motion of any party. Spercel v. Sterling Indus., Inc., 31 Ohio St.2d 36, 285 N.E.2d 324 (1972); Marshall v.

Beach, 143 Ohio App.3d 432, 436, 758 N.E.2d 247 (11th Dist. 2001). Here, the parties entered into a settlement agreement through their respective attorneys. On April 18, 2018, Counsel for Plaintiff and for the Defendants appeared in the Shaker Heights Municipal Court and agreed to terms by which to resolve their dispute. Each party represented that they had authority to enter into said agreement, and the Court deemed the terms of the April 18, 2018 agreement binding on all parties. As a result, Plaintiff now asks this Court to enforce the settlement agreement by: 1) sanctioning Defendant Hsu, and 2) requiring Defendant Hsu to appear and show cause as to why he should not be held in contempt for violating an order of this Court.

B. Plaintiff Is Entitled To Costs And Attorney Fees For This Motion And All Actions Required To Enforce The Settlement Agreement.

Attorney's fees are recoverable as compensatory damages when the fees are incurred as a direct result of the breach of a settlement agreement. See Kornick v. Zomparelli, 8th Dist. Cuyahoga Nos. 53599, 53875, 1998 WL 32154 (8th Dist. 1988); Raymond J. Schaefer, Inc. v. Pytlik, 6th Dist. No. OT-09-026, 2010-Ohio-4714, ¶134 (6th Dist. 2010); Tejada-Hercules v. State Auto. Ins. Co., 10th Dist. No. 08AP-150, 2008-Ohio-5066, ¶10 (10th Dist. 2008). The rationale behind the exception for allowing attorney fees expended as a result of enforcing a settlement agreement is that "any fees incurred after the breach of the settlement agreement were relevant to the determination of compensatory damages, including those fees [a party was] 'forced' to incur by filing the action." Tejada-Hercules, 2008-Ohio-5066, ¶10. Here, the settlement agreement between the parties was intended to resolve, properly and once and for all, all pending issues, to bring finality to this litigation, and the flow of attorney fees. However, Plaintiff has been forced to incur additional attorney's fees due to Defendant Hsu's negative and disparaging remarks about Plaintiff's property. As a result of Defendant Hsu's conduct, Plaintiff's Counsel has been required to seek the Court's assistance in enforcing the settlement

agreement. There can be no clearer case of attorney's fees incurred as the direct result of a party's breach of a settlement agreement.

III. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that this Court enter an order requiring Defendant Hsu to appear and show cause as to why he should not be held in contempt of this Court's clear and unambiguous order enforcing the April 18, 2018 settlement agreement. Plaintiff also requests an award of costs, including its attorney fees, as a sanction for Defendant's conduct.



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