

NO. 09-CI-5292

FAYETTE CIRCUIT COURT
DIVISION 3
HONORABLE JAMES D. ISHMAEL

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

PLAINTIFF

**AMERICAN SADDLEBRED HORSE ASSOCIATION'S MOTION
TO WITHHOLD RECORDS RELATING TO THE TERMINATION
OF ALAN BALCH'S EMPLOYMENT WITH ASHA PURSUANT
TO THE MATERIAL TERMS OF CONFIDENTIALITY
CONTAINED IN THE SETTLEMENT AGREEMENT AND THIS
COURT'S ORDER OF AUGUST 9, 2011**

v.

EDWARD R. BENNETT, CARL T.
FISCHER, JR., KRIS KNIGHT, TOM
FERREBEE, SIMON FREDRICKS,
M.D. AND LYNN W. VIA

DEFENDANTS

TO: Stephen A. Houston
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Counsel for Defendants

NOTICE

PLEASE TAKE NOTICE that the undersigned will on **Friday, August 19, 2011, at 8:30 a.m.**, local prevailing time, in the courtroom of the above Court, make the following Motion to withhold records relating to the termination of Alan F. Balch's employment with ASHA pursuant to the material terms of confidentiality contained in the settlement agreement and this Court's Order of August 9, 2011.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served via first class mail on this 15th day of August, 2011 to the persons and addresses listed above.

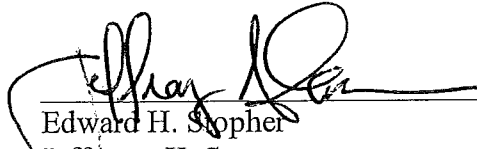
**MOTION TO WITHHOLD RECORDS RELATING TO THE TERMINATION OF
ALAN BALCH'S EMPLOYMENT WITH ASHA PURSUANT TO THE MATERIAL
TERMS OF CONFIDENTIALITY CONTAINED IN THE SETTLEMENT
AGREEMENT AND THIS COURT'S ORDER OF AUGUST 9, 2011**

Comes the Plaintiff, American Saddlebred Horse Association (hereinafter "ASHA"), by counsel, and hereby respectfully moves the Court for an Order granting ASHA's motion to withhold records relating to the termination of Alan Balch's employment with ASHA pursuant to the material terms of confidentiality contained in the settlement agreement and this Court's Order of August 9, 2011. As grounds for this Motion, ASHA states as follows:

Appellee Members contend they are entitled to production of the records relating to the termination of Alan Balch's employment with ASHA under this Court's Opinion, Order and Judgment of this Court entered on December 2, 2010 and the Court's Final Judgment and Order of January 6, 2011 (the "December 2nd Order"). This Court's Order of August 9, 2011, affords ASHA the opportunity to request relief entitling it to preserve the confidentiality of records relating to the termination of Alan Balch's employment with ASHA and to withhold these records from the ongoing Court-ordered document production. Furthermore, to the extent this Court deems that such records fall under the scope and relevant time period of the December 2nd Order, ASHA is contractually obligated to a person who is not a party to this litigation to strictly maintain the confidentiality of such records and to seek all available relief from this Court.

ASHA relies upon the attached Memorandum of Law in further support of this Motion.

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DEFENDANTS

**MEMORANDUM OF LAW IN SUPPORT OF ASHA'S MOTION TO WITHOLD
RECORDS RELATING TO THE TERMINATION OF ALAN BALCH'S
EMPLOYMENT WITH ASHA PURSUANT TO THE MATERIAL TERMS OF
CONFIDENTIALITY CONTAINED IN THE SETTLEMENT AGREEMENT AND THIS
COURT'S ORDER OF AUGUST 9, 2011**

Appellee Members contend they are entitled to production of the records relating to the termination of Alan F. Balch's ("Balch") employment with ASHA under this Court's Opinion, Order and Judgment of this Court entered on December 2, 2010 and the Court's Final Judgment and Order of January 6, 2011 (the "December 2nd Order"). This Court's Order of August 9, 2011, affords ASHA the opportunity to request relief entitling it to preserve the confidentiality of records relating to the termination of Alan Balch's employment with ASHA and to withhold such records from the ongoing Court-ordered document production in this matter. Such relief is just and proper on the grounds that the terms of the Settlement Agreement and Release of All Claims ("Agreement"), entered into between ASHA, the American Saddlebred Registry, Inc., and Alan F. Balch on or about April 29, 2010, require ASHA to hold the terms of the Agreement in strict confidence. Paragraph 29 of the Agreement provides "that the contents of this Agreement, but not the fact of this agreement, shall be held in strict confidence and shall not be

divulged to anyone other than the spouses, accountants, attorneys, and fiduciary advisors of the Parties.” ASHA is therefore obligated to seek relief from this Court in order to avoid violating a material term of its Agreement with Balch.

Although not binding on this Court Kalinauskas v. Wong, 152 F.R.D. 363 (Nev. 1993), a case cited in Kentucky Practice Rule 26.02, is instructive on this issue.

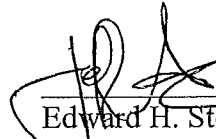
“Confidential settlements benefit society and the parties involved by resolving disputes relatively quickly, with slight judicial intervention and presumably result in greater satisfaction to the parties. Sound judicial policy fosters and protects this form of alternative dispute resolution...The secrecy of a settlement agreement and the contractual rights of the parties thereunder deserve court protection.”

Id. at 365. It is standard practice in Kentucky to include of confidentiality clauses in settlement agreements. Rose v. Kroger Co., 201 F.3d 441 (6th Cir. 1999). The confidentiality clause contained in the Agreement between ASHA, the American Saddlebred Registry, Inc., and Alan F. Balch is standard, reasonable and enforceable. The Agreement should be afforded protection.

Additionally, Balch is not a party to this litigation. As such, the Appellee members are requesting the Court to enter an Order that affects the substantive rights of a person not a party to this litigation and not presently before this Court. Until Balch is provided an opportunity to intervene and be heard on this matter, ASHA is obligated under the Agreement to request that the Appellee Members’ request for production of records relating to the termination of his employment with ASHA be denied.

WHEREFORE, ASHA respectfully requests the Court to enter an Order preserving the confidentiality of records relating to the termination of Alan F. Balch’s employment and entitling ASHA to withhold such records from the document productions ordered by this Court.

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