

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE-25-006694

SIGNALWAVE, LLC,

Plaintiff,

v.

VILLA VIE RESIDENCES CORPORATION
d/b/a VILLA VIE RESIDENCES INC.
MARSHALL ISLANDS,

Defendant,

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO
DETERMINE CONFIDENTIALITY OF COURT RECORDS – WITH RESPECT TO
FILING # PENDING E-FILED 11/6/2025 CONSISTING OF THE
CONTEMPORANEOUSLY FILED PLAINTIFF'S MOTION FOR SANCTIONS
PURSUANT TO § 44.406, FLA. STAT., FILED UNDER SEAL**

Defendant, Villa Vie Residences Corporation ("Defendant"), through undersigned counsel, hereby files this Memorandum in Opposition to Plaintiff's Motion to Determine Confidentiality of Court Records – With Respect to Filing # Pending E-Filed 11/6/2025 Consisting of the Contemporaneously filed Plaintiff's Motion for Sanctions Pursuant to § 44.406, Fla. Stat., Filed Under Seal (the "Motion to Determine Confidentiality"). In support, Defendant states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

This Motion to Determine Confidentiality represents the latest in a series of filings by Plaintiff attempting to mitigate the consequences of its own voluntary disclosure of mediation communications. On October 16, 2025, Plaintiff filed its Motion to Enforce Settlement and Motion for Sanctions (Filing #233781844), which included an attached unsigned draft settlement agreement together with narrative descriptions of alleged discussions from mediation discussions

- materials explicitly protected under § 44.405, Fla. Stat., which mandates that “all mediation communications shall be confidential, [and further provides that] [a] mediation participant shall not disclose a mediation communication to a person other than another mediation participant or participant’s counsel.” These filings entered the public court record and remained publicly accessible, where they were viewed, downloaded, circulated, and discussed.

It was only after Defendant responded on October 24, 2025, with a Cross-Motion for Sanctions under § 44.406, Fla. Stat. (Filing #23444403) - seeking remedies for Plaintiff’s knowing disclosure of mediation communications, that Plaintiff began filing motions seeking to retroactively seal the very materials it had voluntarily released, while asserting that the Clerk was responsible for the disclosure. In that cross-motion, Defendant highlighted Plaintiff’s violations of the mediation privilege, which prohibits participants from disclosing such communications absent narrow statutory exceptions (none of which apply here).

Concurrently, on October 24, 2025, Plaintiff filed its initial Motion to Determine Confidentiality (Filing # 234449567), attempting to retroactively seal the Motion to Enforce following the public reaction to its disclosures. Defendant filed an Opposition to that motion on October 30, 2025 (Filing # 234770899), arguing, *inter alia*, that confidentiality had been waived by Plaintiff’s own voluntary filing, and that retroactive sealing would be futile because the information had already entered the public domain and could not be retrieved.

Undeterred, on November 6, 2025, Plaintiff filed a Motion for Sanctions Pursuant to § 44.406, Fla. Stat. (Filing # 235330359), seeking sanctions against Defendant and its counsel for allegedly disclosing mediation communications in public filings, and contemporaneously filed the instant Motion to Determine Confidentiality seeking to have the entire Motion for Sanctions treated as confidential, without specifying any particular portions of the Motion for Sanctions

warranting protection or demonstrating compliance with Rule 2.420's requirements for such requests—including identification of confidential segments, citation to supporting authorities with analysis, proof that the order is narrowly tailored, and a showing that no less restrictive alternatives exist.

Plaintiff's approach overlooks a fundamental truth: once waived through voluntary disclosure, the mediation confidentiality privilege under §44.405 cannot be retroactively revived. Nor can Rule 2.420, which governs the mechanics of filing confidential records, be invoked to legitimize a disclosure that the statute prohibited from the beginning. For these compelling reasons—rooted in futility, waiver, procedural deficiencies, and the strong public policy favoring open access to court records under Article I, Section 24 of the Florida Constitution—the Motion must be denied.¹

II. LEGAL ARGUMENT

A. **Plaintiff Violated § 44.405 by Disclosing Mediation Communications in the Motion to Enforce**

Plaintiff's Motion to Enforce disclosed mediation communications in violation of § 44.405, Fla. Stat., by publicly filing an unsigned draft settlement agreement and narrating alleged discussions that occurred during mediation.² Section 44.405 provides that “all mediation

¹ By filing and arguing this Opposition, Defendant does not condone or consent to Plaintiff's public filing of any confidential or privileged material. Nothing herein should be construed as a waiver of any confidentiality, mediation-privilege, or other protections. Defendant expressly reserves all rights and remedies against Plaintiff and Plaintiff's counsel arising from the improper disclosure and dissemination of confidential information—including, without limitation, relief available under §§ 44.405–406, Fla. Stat., Rule 2.420, Fla. R. Gen. Prac. & Jud. Admin., and any other applicable authority—together with fees, costs, sanctions, damages, and such further relief as may be warranted.

² Defendant restates and incorporates herein its argument contained in its (I) Memorandum in Opposition to the Motion to Enforce and (II) Cross-Motion for Sanctions Against Plaintiff and Its Attorney, Including Dismissal of Plaintiff's Complaint Pursuant to § 44.406, Fla. Stat. (Filing #

communications shall be confidential,” and prohibits disclosure to any person other than another mediation participant, subject only to narrow exceptions enumerated in § 44.405(6). None of the exceptions apply here. Florida law does not allow a party to enforce an alleged settlement agreement by disclosing mediation discussions to the Court. The disclosures in the Motion to Enforce violated § 44.405, and the issue is not simply one of sealing or redaction, but one of substantive inadmissibility and a statutory prohibition.

B. Rule 2.420 Cannot Be Used to Retroactively Cure a Violation of § 44.405

Plaintiff now attempts to invoke Rule 2.420 to reclassify filings as confidential after the disclosures already occurred. This is legally backwards. Rule 2.420 regulates how confidential information must be filed—it is procedural. Section 44.405 regulates whether mediation communications may be disclosed at all—it is substantive. Rule 2.420 controls the envelope; § 44.405 controls the contents. If the contents are prohibited, sealing the envelope does not cure the violation. A party may not disclose mediation communications to the Court and then attempt to sanitize the disclosure by later marking subsequent filings as confidential. The privilege was violated at the point of disclosure. Because Plaintiff lacked authority to disclose the mediation communications to the Court at all, this motion to classify later filings as confidential is legally misplaced.

C. Confidentiality Has Been Waived and Cannot Now Be Restored

The Motion to Determine Confidentiality is moot because confidentiality of the mediation communications cannot be restored where the information has already entered the public realm. Plaintiff’s Motion to Enforce was publicly accessible, downloaded, circulated, and discussed on

234444033) as well as its Memorandum in Opposition to Plaintiff’s Motion to Determine Confidentiality of Records (Filing # 234770899).

internet forums and social media. Once such information is disseminated beyond the Court's control, the bell cannot be unrung. Retroactive sealing cannot retrieve or suppress information already possessed and shared by third parties. Florida courts recognize that "once the bell has been rung," it cannot be unrung. Attempting to classify the Motion for Sanctions as confidential now does nothing to retrieve the disclosure already made. The request therefore cannot accomplish its stated purpose and must be denied as futile.

D. Retroactive Sealing Would Create Prejudice and Litigation Imbalance

Allowing Plaintiff to seal the Motion for Sanctions now would create a one-sided litigation posture. Plaintiff made allegations based on alleged mediation discussions publicly. The public has reacted to those allegations. Plaintiff now seeks secrecy not to protect confidentiality but to avoid scrutiny and sanctions as well as to restrict Defendant's ability to respond publicly. Confidentiality cannot be used as both sword and shield. Moreover, Plaintiff's disclosure has already placed the Court in the position of having been exposed to alleged mediation communications that Florida law deems inadmissible and irrelevant. While the Court will make every effort to disregard such material, the statute exists precisely to avoid this situation. Plaintiff's choice to disclose creates a procedural and perceptual risk that cannot be cured by sealing documents after the fact.

E. Plaintiff's Motion Is Procedurally Defective Under Rule 2.420

Even setting aside the statutory confidentiality issues, the Motion to Determine Confidentiality must be denied because it does not satisfy the procedural requirements of Rule 2.420(e). Rule 2.420(e)(1) establishes four mandatory requirements for any motion seeking to determine confidentiality. Plaintiff's Motion to Determine Confidentiality fails to satisfy any of them.

1. Failure to Identify Records with Specificity (Rule 2.420(e)(1)(A))

Rule 2.420(e)(1)(A) requires that a motion "identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination."

Plaintiff's Motion to Determine Confidentiality simply states that it seeks confidentiality for "the entire filing" consisting of the "Motion for Sanctions." See Pl.'s Mot. ¶¶ 1, 8, and Wherefore Clause. This is wholly insufficient. The rule requires specificity about what information within the filing is confidential and where it is located. For example, the motion could have pinpointed exact paragraphs, sentences, or phrases in the Motion for Sanctions (Filing # 235330359) that allegedly reference confidential material, but it does not.

Plaintiff vaguely asserts that the Motion for Sanctions "contains certain references to settlement communications" but provides no detail about: (1) which specific paragraphs contain such references (e.g., the Motion for Sanctions' ¶¶ 7, 9–10 reference the existence of a settlement without quoting any communications, while procedural background in ¶¶ 1–6 and legal standards contain no such references at all); (2) what type of information is allegedly confidential (e.g., whether it is a direct quote from mediation, a summary, or merely an acknowledgment of settlement); or (3) why each specific portion requires confidential treatment.

This lack of specificity makes it impossible for the Court to conduct the narrow tailoring analysis required by Rule 2.420(c)(9)(B) and makes it impossible for Defendant to meaningfully respond. The Motion to Determine Confidentiality fails on this ground alone.

2. Failure to Specify Bases Without Revealing Confidential Information (Rule 2.420(e)(1)(B))

Rule 2.420(e)(1)(B) requires that the motion "specify the bases for determining that the court records are confidential without revealing confidential information."

Plaintiff makes only conclusory assertions. Paragraph 8 states: "The Motion for Sanctions contains certain references to settlement communications, and therefore, Plaintiff requests that the Motion for Sanctions be redacted in its entirety and be maintained as confidential." See also Pl.'s Mot. ¶ 1 (summarizing the motion as seeking confidentiality for a filing that "related to the disclosure of confidential matters pertaining to mediation").

This is not a "basis"—it is a conclusory statement devoid of factual support. Plaintiff does not explain how these references meet any of the (c)(9)(A) criteria (e.g., preventing imminent harm or complying with public policy), or what harm would result from public access, especially considering that Plaintiff already disclosed the mediation communications in publicly filing the Motion to Enforce Settlement (Filing #233781844), resulting in the communications being widely circulated on online platforms and social media.

3. Failure to Set Forth Specific Legal Authority and Standards (Rule 2.420(e)(1)(C))

Rule 2.420(e)(1)(C) requires that the motion "set forth the specific legal authority and any applicable legal standards for determining the court records to be confidential without revealing confidential information."

Plaintiff cites three provisions: § 44.405, Rule 2.420(c)(7), and Rule 2.420(c)(9)(A)(vii). See Pl.'s Mot. ¶¶ 5–7. But Plaintiff does not explain why confidentiality is required under (c)(9)(A)(vii) or how the sealing requested satisfies (c)(9)(B)'s requirement that confidentiality be "no broader than necessary" or why there are no less restrictive measures available under (c)(9)(C) (e.g., no explanation why public access to non-sensitive portions would not suffice).

Most critically, Plaintiff does not attempt to demonstrate that any of the seven grounds enumerated in subdivision (c)(9)(A) apply. The Motion to Determine Confidentiality does not explain which ground Plaintiff relies upon or how that ground is satisfied. This omission renders the motion procedurally defective.

4. Missing Mandatory Certification (Rule 2.420(e)(2))

Rule 2.420(e)(2) mandates: "Any written motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a sound factual and legal basis."

Plaintiff's motion contains no such certification. This is a mandatory requirement, and the absence of the certification is, by itself, grounds for denial.

5. The Requested Sealing Is Overbroad (Rule 2.420(c)(9)(B) and (c)(4))

Subdivision (c)(9)(B) requires that "the degree, duration, and manner of confidentiality ordered by the court must be no broader than necessary to protect the interests set forth in subdivision (c)(9)(A)." Even if Plaintiff's Motion to Determine Confidentiality were otherwise compliant (which it is not), the request fails this standard.

Plaintiff seeks to seal the entire Motion for Sanctions. See Pl.'s Mot. ¶ 8, Wherefore Clause. But Plaintiff provides no explanation of why the entire motion must be sealed. Surely not every word in the motion constitutes a "reference to settlement communications." For instance, the Motion for Sanctions' procedural background (¶¶ 1–6), legal standard section, and certificates contain no such references and are purely public-domain information. Plaintiff offers no analysis, ignoring the rule's mandate for narrow tailoring.

Rule 2.420(c)(4) specifically provides: "To the extent reasonably practicable, restriction of access to confidential information is implemented in a manner that does not restrict access to any

portion of the record that is not confidential." Plaintiff's blanket request violates this principle and the constitutional presumption of openness.

III. CONCLUSION

Plaintiff's Motion to Determine Confidentiality is a flawed attempt to undo self-inflicted damage, contravening Florida's laws on openness and confidentiality. Denying it upholds these principles and deters future misconduct.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Court and served via email through the Florida Courts eFiling Portal on the 11th day of November 2025, in accordance with Rule 2.516 of the Florida Rules of Judicial Administration.

/s/ Alex P. Rosenthal
Alex P. Rosenthal, Esq.