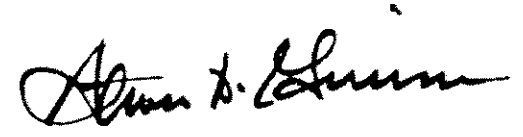


EXHIBIT “O”



CLERK OF THE COURT

1 **NAOC**

2 JOSH COLE AICKLEN

3 Nevada Bar No. 007254

4 Josh.aicklen@lewisbrisbois.com

5 DAVID B. AVAKIAN

6 Nevada Bar No. 009502

7 David.avakian@lewisbrisbois.com

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 702.893.3383

12 FAX: 702.893.3789

13 Attorneys for Defendants

14 MYDATT SERVICES, INC. d/b/a MYDATT

15 SERVICES, INC. and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

13 X'ZAVION HAWKINS,

14 Plaintiff,

15 vs.

16 GGP MEADOW MALL LLC, a Delaware

17 Limited Liability Company; MYDATT

18 SERVICES, INC. d/b/a VALOR

19 SECURITY SERVICES, an Ohio

20 Corporation; MARK WARNER,

21 individually; DOES 1 through 10; DOE

22 SECURITY GUARDS 11 through 20; and

23 ROE ENTITIES 21 through 30,

24 INCLUSIVE,

25 Defendants.

Case No. A717577

Dept. No. XXXI

24 **NOTICE OF ASSOCIATION OF COUNSEL**

25 The undersigned, Josh Cole Aicklen, Esq. and David B. Avakian, Esq. of LEWIS,

26 BRISBOIS, BISGAARD & SMITH, LLP, hereby associates with David S. Lee, Esq. and

27 Charlene N. Renwick, Esq. of LEE, HERNANDEZ, LANDRUM & GAROFOLO as counsel

28 of record for Defendants MYDATT SERVICES, INC. d/b/a MYDATT SERVICES, INC.

1 and MARK WARNER in the above referenced matter.

2 DATED this 16th day of November, 2015.

3 Respectfully submitted,

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

7

By /s/ David B. Avakian

8

JOSH COLE AICKLEN

Nevada Bar No. 007254

9

DAVID B. AVAKIAN

Nevada Bar No. 009502

10

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

12

Tel. 702.893.3383

13

Attorneys for Defendants MYDATT

14

SERVICES, INC. d/b/a MYDATT SERVICES,

15

INC. and MARK WARNER

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 16th day of November, 2015, I did cause a true copy of **NOTICE OF ASSOCIATION OF COUNSEL** be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

David J. Churchill
Jolene J. Manke
INJURY LAWYERS OF NEVADA
6900 Westcliff Dr., Ste. 707
Las Vegas, NV 89145
P: 702-868-8888
F: 702-868-8889
david@injurylawyersnv.com
jolene@injurylawyersnv.com
Attorneys for Plaintiff
X'ZAVION HAWKINS

David S. Lee
Charlene N. Renwick
LEE, HERNANDEZ, LANDRUM &
GAROFALO
7575 Vegas Dr., Ste. 150
Las Vegas, NV 89128
dlee@leelawfirm.com
crenwick@lee-lawfirm.com
Attorneys for Defendants MYDATT
SERVICES, INC. d/b/a VALOR SECUIRTY
SERVICES and MARK WARNER

By _____
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT “P”

Page 101

1 How else would we take this case to court?
2 Q. At the very end he also comes up and says,
3 "All I want is him off the street."
4 A. In order to get him off the street, I need
5 the victim's cooperation.
6 Q. But what I'm just trying to figure out
7 right now, is there anywhere on the record where he
8 says, "I don't want to prosecute?" Because here he
9 says, "I do."
10 A. From what it states right there, no. But I
11 mean you could look at this and you could read it and
12 make your own interpretation.
13 But when you ask the victim, "Who
14 is the person that did this to you," and you're
15 willing to show him photo lineups, and they don't
16 want to cooperate and they don't call you back, and
17 the only time they do call is if they want a copy of
18 their reports -- how else would you take this to
19 court, without the victim's cooperation?
20 Q. Has X'Zavion's father been in contact with
21 you?
22 A. What is X'Zavion's father's name?
23 Q. To be honest, I don't even know.
24 A. You and me both.
25 Q. Has anybody from X'Zavion's family been in

Page 102

1 contact with you regarding following up on this case?
2 A. I put in my case notes that his mother
3 called, and then his girlfriend called. But they
4 didn't ask for follow-up.
5 Well, they did ask for follow-up,
6 and I told him because he's an adult I can't give out
7 that information. And then they wanted a copy of the
8 report.
9 And his girlfriend refused to
10 identify herself. She just said, "I'm X'Zavion's
11 girlfriend."
12 Q. When you're meeting with X'Zavion, this is
13 in the ICU unit, correct?
14 A. Yes.
15 Q. And this recorded statement and photo
16 lineup -- this is all in the ICU?
17 A. It is, sir.
18 Q. And how many times was X'Zavion shot?
19 A. It's 2013. That shooting? I don't
20 remember.
21 Q. Multiple times?
22 A. Multiple times, it's fair to say. I
23 believe one in the ankle, leg, and stomach.
24 Q. It left him paralyzed as a result of the
25 shooting?

Page 103

1 A. I heard that later, yes.
2 Q. Are you aware of what medications
3 Mr. Hawkins was on at this time?
4 A. I'm not a doctor, sir.
5 Q. It's fair, you would assume with him being
6 in ICU with multiple gunshot wounds, paralyzed as a
7 result of the accident, that he's probably on some
8 pretty substantial meds?
9 MR. AICKLEN: Objection to
10 characterizing it as an "accident."
11 THE WITNESS: Yeah. You're going to
12 have to talk to him. I don't know. I'm not a
13 doctor. I can't comment on that.
14 MS. RENWICK: I'd like to insert a
15 belated objection that it calls for speculation.
16 BY MR. CHURCHILL:
17 Q. That would be a reasonable assumption on
18 your part though?
19 A. I don't know, sir.
20 Q. After you take the recorded statement, when
21 is the next time you attempted to contact X'Zavion
22 Hawkins?
23 A. The exact date and time I don't remember.
24 Q. That's not in your notes?
25 A. No. The fact when he said, "I'm not going

Page 104

1 to help you do your job," and the only time he called
2 since then was to get a copy of the report -- I don't
3 remember. I do remember contacting him. I don't
4 have the exact date and time.
5 Q. And just to be clear, when you attempted to
6 contact him again, that is not in your case notes?
7 A. That is not in my case notes.
8 Q. Going back to the meeting that you had with
9 Mr. Aicklen and Ms. Renwick, what date did that
10 occur?
11 A. I don't remember, sir.
12 Q. Was it within the last month?
13 A. Yeah, it was last month. I believe so.
14 Q. Was it in February or January?
15 A. I don't remember, sir.
16 MS. RENWICK: Would you like the date?
17 MR. CHURCHILL: Yes.
18 MS. RENWICK: January 20th.
19 BY MR. CHURCHILL:
20 Q. Sir, I believe you previously had your
21 deposition scheduled for February 8th, is that
22 correct?
23 A. I believe so, yeah.
24 Q. Why was your deposition --
25 MR. AICKLEN: That's wrong. I'm sorry,

Page 105

1 it was February 18th.
2 BY MR. CHURCHILL:
3 Q. February 18th at 9:00 a.m.
4 Why was your deposition unable to
5 go forward on February 18th?
6 A. I was taking a counter-terrorism class that
7 I put in for three months in advance, and I finally
8 got into the class and I really wanted to take it. I
9 double-booked.
10 Q. January 28th you had indicated certain
11 documents that you gave the defense counsel in this
12 case, and there are additional documents that are
13 here today that were not given to them. Is that
14 correct?
15 A. I believe so, yeah.
16 Q. Did they have the chance to review those
17 documents at that time?
18 A. Which documents? The ones here today?
19 Q. The ones that are here today. Obviously
20 the ones that you gave them, they had a chance to
21 review.
22 A. Did they review the ones from today?
23 Q. Yes.
24 A. I just handed it to them. You can ask them
25 if they reviewed it. I don't know if they reviewed

Page 106

1 it.
2 Q. But you did hand it to them?
3 A. You were here. Yes.
4 Q. I'm talking about on January 28th.
5 A. Oh, on January 28th? Yes, we all went over
6 it. We sat down and we talked about it.
7 Q. Okay.
8 MR. AICKLEN: Just to clarify, you
9 identified the documents we talked about?
10 THE WITNESS: Yes.
11 MR. AICKLEN: And then there were
12 additional documents that we did not see, correct?
13 THE WITNESS: That is correct.
14 MR. AICKLEN: And you listed those out?
15 THE WITNESS: Yes. We talked about
16 them at the very beginning of this.
17 MR. AICKLEN: Thank you.
18 BY MR. CHURCHILL:
19 Q. Here's the question that I have for you.
20 The documents that are new to us
21 today -- you had those with you at the meeting,
22 didn't you?
23 A. No.
24 Q. Did you discuss those things?
25 A. You know, we're talking about a lot of

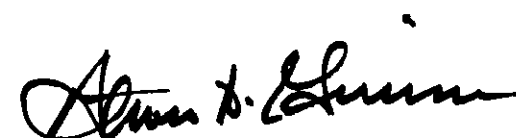
Page 107

1 documents. Can you be specific? What are we talking
2 about here?
3 Q. Well, like for example, there was a
4 deposition last week where Mr. Aicklen knew the
5 identity of the owner of the Dodge Charger, for
6 example. Obviously that had to come up in your
7 meeting, but that's not in any of the documents that
8 you gave them at that time.
9 MR. AICKLEN: Incorrect. Look at the
10 documents.
11 THE WITNESS: It's from my case notes.
12 And I can tell you which page of my case notes, if
13 you'd like.
14 BY MR. CHURCHILL:
15 Q. Yes.
16 A. So page 1 of 1 of creation date 9/6/2013,
17 the time is 3:28 p.m.
18 "Received information from a
19 citizen source that Mary Cromwell's gray Charger was
20 used during the shooting. Records check on Cromwell
21 showed that she has a 2010 Dodge Charger registered
22 to her with a Nevada plate of 487YSS to the address
23 of 9140 Patrick Henry Avenue, Las Vegas, Nevada,
24 89149. Last address was 441 Kings Avenue, North Las
25 Vegas, 89030. I am unable to confirm that this

Page 108

1 vehicle was used, due to only witness, Keisha Love,
2 that saw the vehicle, is no longer cooperating."
3 Q. And here's my question. That particular
4 case note -- did you provide that to Mr. Aicklen at
5 that time?
6 A. Yeah, I believe I did.
7 Q. According to Mr. Aicklen's production of
8 documents, he's identified six documents that he
9 received from you at that time, and I'll go through
10 those with you. The first one is the transcript of
11 "Recorded Voluntary Statement of X'Zavion Hawkins."
12 I think you acknowledged you did
13 provide that at that meeting, correct?
14 A. I did.
15 Q. The second one is the transcript of
16 "Recorded Voluntary Statement of Darrellonda
17 Peterson." I think you acknowledged earlier today
18 you did provide him that?
19 A. I did.
20 Q. He provided the transcript of "Recorded
21 Voluntary Statement of Keisha Love." I believe
22 that's one of the documents that you have identified
23 previously?
24 A. Yes.
25 Q. The next is the compact disk containing

EXHIBIT 20



CLERK OF THE COURT

1 **RIS**

DAVID J. CHURCHILL (SBN: 7308)

2 JOLENE J. MANKE (SBN: 7436)

INJURY LAWYERS OF NEVADA

3 6900 Westcliff Drive, Suite 707

Las Vegas, Nevada 89145

4 T: 702-868-8888

F: 702-868-8889

5 david@injurylawyersnv.com

jolene@injurylawyersnv.com

6 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

7
8
9 X'ZAVION HAWKINS,

Plaintiff,

10 vs.

11 GGP MEADOWS MALL LLC, a Delaware

Limited Liability Company; MYDATT

12 SERVICES, INC. d/b/a VALOR SECURITY

SERVICES, an Ohio Corporation; MARK

13 WARNER, individually; DOES 1 through 10;

14 DOE SECURITY GUARDS 11 through 20; and

ROE ENTITIES 21 through 30, inclusive,

15 Defendants.

CASE NO.: A-15-717577-C

DEPT. NO.: XXXI

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION TO DISQUALIFY LEWIS
BRISBOIS BISGAARD & SMITH AND
FOR SANCTIONS ON ORDER
SHORTENING TIME**

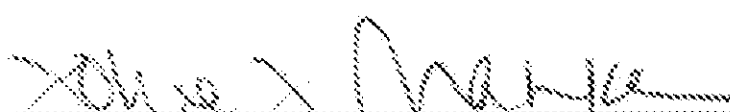
Date of Hearing: 05/26/2016

Time of Hearing: 1:00 p.m.

16
17 Plaintiff X'ZAVION HAWKINS (hereinafter "Plaintiff" or "X'Zavion"), by and through his
18 attorneys, David J. Churchill, Esq. and Jolene J. Manke, Esq. of INJURY LAWYERS OF NEVADA,
19 hereby presents his reply in support of his motion for an Order disqualifying the law firm of Lewis
20 Brisbois Bisgaard & Smith from representing Defendants MYDATT SERVICES, INC. d/b/a VALOR
21 SECURITY SERVICES and MARK WARNER in the current litigation pursuant to Nevada Rules of
22 Professional 1.9 and 1.10.

23 DATED this 20th day of May, 2016.

24 INJURY LAWYERS OF NEVADA



25 DAVID J. CHURCHILL (SBN: 7308)

26 JOLENE J. MANKE (SBN: 7436)

27 6900 Westcliff Drive, Suite 707

Las Vegas, Nevada 89145

28 *Attorneys for Plaintiff*

1 **POINTS AND AUTHORITIES**

2 **I. LEGAL ARGUMENT**

3 Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES (hereinafter
4 “Valor”) and MARK WARNER’s (hereinafter “WARNER”) opposition claims Plaintiff X’ZAVION
5 HAWKINS’ (hereinafter “X’Zavion”) motion to disqualify Lewis, Brisbois, Bisgaard & Smith
6 (hereinafter “LBBS”) is a “fallacy,” “unfounded procedural maneuver,” and laden with nothing more
7 than inaccurate beliefs and wild suppositions.” (See Defendants’ opposition at 3:1, 11-13.) To
8 paraphrase the words of William Shakespeare’s Queen Gertrude, the Defendants do protest too much,
9 methinks. (*Hamlet*, Act III, Scene II, 210-219.)

11 Defendants’ opposition is a well-written legal brief outlining Defendants’ arguments to be
12 presented at the evidentiary hearing on Defendants’ motion to dismiss Plaintiff’s complaint for unclean
13 hands. Defendants’ opposition hopes this Court will overlook the reason that the attorney-client
14 privilege exists and the reason attorneys are bound by the Nevada Rules of Professional Conduct to
15 protect clients, whether they are individuals or corporations.

17 LBBS’ skilled legal writers nicely minimize Paul A. Shpirt, Esq.’s involvement in X’Zavion’s
18 matter at Eglet Law Group to make it appear he did not have a “substantial role” in X’Zavion’s matter
19 during the four (4) months X’Zavion was a client of Eglet Law Group. LBBS has to downplay Mr.
20 Shpirt’s involvement in X’Zavion’s matter because having a substantial role or primary responsibility
21 for X’Zavion’s matter means Mr. Shpirt cannot be screened pursuant to NRPC 1.10(e), and his conflict
22 is imputed to LBBS pursuant to NRPC 1.10(a). Even though Mr. Shpirt signed the retainer agreement
23 and fee sharing agreement and was the only attorney at Eglet Law Group communicating with X’Zavion
24 and his former counsel, Jason Barrus, Esq., LBBS explains that Mr. Shpirt was not actively involved in
25 X’Zavion’s matter because he was a litigator at Eglet Law Group, and litigators only litigate. The
26 reality is that every client’s matter is a “pre-lit” case until the complaint is filed. The reality is also that
27
28

1 NRCP 11 requires litigators to evaluate matters before litigation actually commences. Lastly, the reality
2 is also that X'Zavion's matter was referred to Eglet Law Group for purposes of litigation.

3 LBBS' skilled legal writers went to a lot of effort to explain that even though there is no conflict
4 between LBBS and X'Zavion, if there ever could have been a conflict, it is somehow X'Zavion's fault
5 because the law firms representing X'Zavion changed before the complaint was filed and the law firms
6 representing Defendants changed several times after the complaint was filed. The Rules of Professional
7 Conduct do not make exceptions to the attorney-client privilege based on whether counsel for the client
8 changes before, during or after commencement of litigation. The reality is that the attorney-client
9 privilege lives even if the client dies. The reality is also that X'Zavion had a right to believe that his
10 attorney-client privilege would remain inviolate no matter what firm represented him before, during or
11 after litigation. Lastly, the reality is also that Plaintiff is sure Defendants likewise believe their attorney-
12 client privilege remains intact even though law firms have appeared, associated, disassociated and been
13 substituted on their behalf since litigation commenced.

14
15
16 Defendants' opposition makes it sound as if LBBS has gone above and beyond the call of duty to
17 protect X'Zavion's attorney-client privilege from being violated. If LBBS really has been acting so
18 diligently for all these months to protect X'Zavion, why be silent? LBBS' August 7, 2015, letter to
19 Tracy Eglet, Esq. might be meaningful if it actually mentioned X'Zavion. From August 7, 2015, until
20 October 2015, when Messrs. Aicklen and Shpirt discussed X'Zavion's matter was approximately two
21 months. If LBBS wanted to memorialize in writing how compliant it was with the Rules of Professional
22 Conduct it would have been fairly easy to write a letter to X'Zavion's current counsel to avoid the very
23 appearance of impropriety. How can LBBS think it was acting transparently and somehow protecting
24 X'Zavion with its August 7, 2015, letter? Why didn't LBBS say anything to X'Zavion in October,
25 November, December, January, February, March, April or May?
26
27
28

1 Defendants' opposition downplays the October 2015, discussions between Messrs. Shpirt and
2 Aicklen regarding X'Zavion's matter. However, the reality is that Messrs. Aicklen and Shpirt have
3 worked together (except for the 11 months Mr. Shpirt was a litigator at Eglet Law Group) for almost a
4 decade. Mr. Aicklen's affidavit suggests the level of the relationship between them when he explains
5 how Mr. Shpirt and Ms. Eglet contacted him to assist with Mr. Shpirt returning to LBBS.
6

7 **A. Mr. Shpirt's Substantial Role In X'Zavion's Matter Pursuant to NRPC 1.10(e).**

8 LBBS cannot overcome the three-part test established by the Nevada Supreme Court in *Nevada*
9 *Yellow Cab v. Eighth Jud. Dist. Ct.*, 123 Nev. 44, 50, 152 P.3d 737, 741 (2007); *Hackett v. Feeney*, 2010
10 WL 4102911 *4 (D. Nev. 2010) relating to disqualification pursuant to NRPC 1.9.

11 First, there was an attorney client relationship between X'Zavion and Mr. Shpirt. Surely,
12 Defendants' opposition cannot hope to go so far as to claim that X'Zavion was never Mr. Shpirt's client
13 while he was at Eglet Law Group. Mr. Shpirt signed the retainer agreement and fee sharing agreement.
14 Logically, attorneys do not sign retainer agreements or fee sharing agreements with people who are not
15 clients. Would Mr. Shpirt really want to argue that he signed retainer agreements and fee sharing
16 agreements with people who were not "clients?"

17 Second, the former matter and the current matter are substantially related. No one could ever
18 claim that X'Zavion's representation while a client at Eglet Law Group is different from this matter
19 where LBBS is currently representing Defendants.

20 Third, the current representation by LBBS of the Defendants is directly adverse to X'Zavion.

21 LBBS' last hope to avoid disqualification is to minimize Mr. Shpirt's role in X'Zavion's matter
22 at Eglet Law Group because pursuant to NRPC 1.10(e), LBBS can only avoid disqualification if Mr.
23 Shpirt did not play a "substantial role" in X'Zavion's matter at Eglet Law Group.

24 X'Zavion's matter was with Eglet Law Group for almost a third of the time Mr. Shpirt was there.
25 Although Mr. Shpirt may have been a busy litigator during the 11 months he was at Eglet Law Group,
26 he still had time to personally meet with X'Zavion and Mr. Barrus, obtain a zip drive containing Mr.
27 Barrus' work product and be tasked with the responsibility of communicating with X'Zavion and Mr.
28 Barrus. Mr. Shpirt knew enough about X'Zavion's matter to tell Mr. Barrus in his telephone conference

1 and follow up e-mail that the firm was concerned about the investigative report and liability. It would
2 seem that Mr. Shpirt participating in confidential meetings, obtaining privileged documents, executing
3 the retainer agreement and fee sharing agreement and directly communicating with X'Zavion and Mr.
4 Barrus would meet the definition of a "substantial role."

5 **B. Lewis Brisbois Bisgaard & Smith's Failure to Comply with NRPC 1.10(e).**

6 While LBBS claims Mr. Shpirt did not have a substantial role in X'Zavion's matter, it seeks to
7 avoid disqualification for substantial compliance with NRPC 1.10(e), which states in pertinent part as
8 follows:

9 When a lawyer **becomes associated with a firm, no lawyer associated in the firm shall**
10 **knowingly represent a person in a matter in which that lawyer is disqualified** under
Rule 1.9 unless:

11 **(1) The personally disqualified lawyer did not have a substantial role in or primary**
12 **responsibility for the matter** that causes the disqualification under Rule 1.9;

13 (2) The personally disqualified lawyer is **timely screened** from any participation in the
matter and is apportioned no part of the fee therefrom; and

14 (3) **Written notice is promptly given to any affected former client** to enable it to
15 ascertain compliance with the provisions of this Rule. [Emphasis added.]

16 LBBS has not satisfied all three parts of NRPC 1.10(e). First, Mr. Shpirt did have a substantial
17 role in X'Zavion's matter because he was the attorney who signed the retainer agreement and the fee
18 sharing agreement and he was the only attorney at Eglet Law Group directly communicating with
19 X'Zavion and Mr. Barrus. Second, how can X'Zavion know if Mr. Shpirt was "timely screened" from
20 this matter when LBBS never gave him prompt notice even though Messrs. Aicklen and Shpirt knew
21 there was a conflict in October of 2015?

22 **C. Defendants' Improper Reliance on Ryan's Express Trans. Svcs, Inc. v. Amador**
State Lines, Inc.

23 Defendants rely upon the case of *Ryan's Express Trans. Svcs, Inc. v. Amador State Lines, Inc.*,
24 128 Nev. Adv. Op. 27, 279 P.3d 166 (2012) citing to a footnote citing another case claiming caution
25 should be used against improper allocation of the imputed disqualification because such "motions
26 should be viewed with extreme caution for they can be misused as techniques of harassment." What
27 Defendants do not say about the *Ryan's* case is that the relationship between the disqualified lawyer and
28 the client was tangential. In that case the disqualified attorney had acted as a settlement judge in the

1 case. The attorney did not directly represent either party to the case. Here, Mr. Shpirt directly
2 represented X'Zavion. Mr. Shpirt cannot deny that he engaged in confidential communications with
3 X'Zavion and Mr. Barrus, signed the retainer agreement and fee sharing agreement and had access to
4 privileged documents.

5 While the District Court should always exercise sound discretion in addressing the issue of
6 attorney disqualification, it has broad discretion in determining whether disqualification is required in a
7 particular case.” *Brown v. District Ct.*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269 (2000). And,
8 importantly, the Nevada Supreme Court has stated that in situations involving disqualification “any
9 doubt is resolved in favor of disqualification.” *Cronin v. Eighth Jud. Dist. Ct.*, 105 Nev. 635 n. 1, 781
10 P.2d 1150, 1155 n. 1 (1989) at 635 n.1, *disapproved on other grounds by Nevada Yellow Cab Corp. v.*
11 *District Ct.*, 123 Nev. 44, 54 n.26, 152 P.3d 737, 7434 n. 26 (2007). The court may disqualify an
12 attorney from representing a particular client in order to preserve the integrity of its judgment, [and]
13 maintain public confidence in the integrity of the bar. . . .” *Coles v. Arizona Charlie’s*, 973 F.Supp. 971,
14 973 (D. Nev. 1997).

15 **D. Defendants Improperly Rely on Formal Opinion No. 39 from the State Bar of**
16 **Nevada’s Standing Committee on Ethics and Professional Responsibility.**

17 Defendant’s opposition cites Formal Opinion No. 39 from the State Bar of Nevada’s Standing
18 Committee on Ethics and Professional Responsibility to LBBS’ argument that it has “substantially
19 complied” with NRPC 1.10(e) even though it never provided any notice of the conflict to X'Zavion. (A
20 true and correct copy of Formal Opinion No. 39 is attached hereto as Ex.”1.”) However, Defendants’
21 analysis presupposes that Mr. Shpirt did not have a substantial role in X'Zavion’s matter at Eglet Law
22 Group. It is improper to simply ignore the level of Mr. Shpirt’s involvement in X'Zavion’s matter at
23 Eglet Law Group and the extent of his knowledge of the “problems” that Eglet Law Group foresaw
24 relating to the investigative report and liability. Formal Opinion No. 39 clearly states that
25 disqualification is mandatory where the attorney had a substantial role in the matter. LBBS can try to
26 excuse its failure to provide notice to X'Zavion, but it cannot change the level of Mr. Shpirt’s
27 involvement in the matter when he was at Eglet Law Group.
28

1 **E. Sanctions Are Appropriate.**

2 Nevada District Courts have broad discretion to control the conduct of attorneys practicing
3 before them in addition to determining whether disqualification is required in a particular case. *Brown*
4 *v. District Ct.*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269 (2000). This Court has discretion to determine
5 whether LBBS' conduct in this matter is compliant with the Nevada Rules of Professional Conduct, and
6 if not, to determine the appropriate remedy. In this instance, Mr. Shpirt knew about Eglet Law Group's
7 concerns relating to X'Zavion's matter because he discussed them with Mr. Barrus and memorialized
8 the conversation in an e-mail.

9
10 After Messrs. Aicklen and Shpirt discussed X'Zavion's matter in October of 2015, Mr. Aicklen
11 and Charlene Renwick, Esq. met with Det. Majors and accessed materials not available through Las
12 Vegas Metropolitan Police Department's designated custodian of records in violation of Metro's
13 established dissemination policies. Neither Mr. Aicklen nor Ms. Renwick produced the materials in
14 their possession, which should have been produced pursuant to NRCP 16.1 and 34, until after Plaintiff's
15 counsel had conducted a discovery dispute conference pursuant to EDCR 2.34 and begun preparing a
16 motion to compel the documents and protect X'Zavion from appearing for the second volume of his
17 deposition.

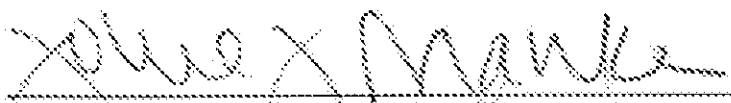
18
19 Again, all Defendants have substantially benefitted from the prejudice to X'Zavion. The
20 appropriate remedy would be to strike Defendants' respective answers. In *Young v. Johnny Ribereiro*
21 *Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), as in the case at hand, "the conduct of the appellants
22 evidenced their willful and recalcitrant disregard of the judicial process." The *Young* court affirmed the
23 trial court's decision to dismiss the Plaintiff's complaint and affirmed that the standard of review is for
24 abuse of discretion. *Id.*

25
26 LBBS kept silent about its decision to "timely screen" Mr. Shpirt from X'Zavion's matter.
27 While LBBS and Mr. Shpirt may vehemently deny any wrongdoing, X'Zavion holds the attorney-client
28 privilege, and he has never waived it.

1 Alternatively, besides disqualifying LBBS, X'Zavion respectfully requests this Honorable Court
2 impose the sanction of striking the first volume of his deposition and providing fees and costs for the
3 work performed during the time LBBS was involved in this action.

4 DATED this 20th day of May, 2016

5 INJURY LAWYERS OF NEVADA

7 
8 DAYID J. CHURCHILL (SBN: 7308)
9 JOLENE J. MANKE (SBN: 7436)
6900 Westcliff Drive, Suite 707
10 Las Vegas, Nevada 89145
Attorneys for Plaintiff

11 **CERTIFICATE OF E-SERVICE**

12 Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 20 day of May,
13 2016, I served the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO**
14 **DISQUALIFY LEWIS BRISBOIS BISGAARD & SMITH AND FOR SANCTIONS ON ORDER**
15 **SHORTENING TIME** on the following parties via Electronic Service as follows:
16

17 DAVID S. LEE (SBN: 6033)
18 CHARLENE N. RENWICK (SBN: 10165)
LEE, HERNANDEZ, LANDRUM &
19 GAROFALO
7575 Vegas Drive, Suite 150
20 Las Vegas, Nevada 89128
E-Mail: dlee@leelawfirm.com
crenwick@lee-lawfirm.com
21 Attorneys for Defendants
GGP MEADOWS MALL LLC;
22 MYDATT SERVICES, INC.
d/b/a VALOR SECURITY SERVICES; and
23 and MARK WARNER

JOSH COLE AICKLEN (SBN: 7254)
DAVID B. AVAKIAN (SBN: 9502)
HAROLD J. ROSENTHAL (SBN: 10208)
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
E-Mail: josh.aicklen@lewisbroisbois.com
david.avakian@lewisbrisbois.com
harold.rosenthal@lewisbrisbois.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER


24 
25 an employee of Injury Lawyers of Nevada
26
27
28

Exhibit “1”

**STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 39¹
April 24, 2008**

QUESTIONS

1. When a lawyer leaves one private firm and joins another (*i.e.*, lateral movement of a lawyer in private practice), may that lawyer represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a former client represented by that lawyer while in the former firm?
2. When a lawyer leaves one private firm and joins another (*i.e.*, lateral movement of a lawyer in private practice), may the lawyer represent a person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a client of the moving lawyer's former firm if the moving lawyer received material, confidential information about the matter while in the former firm?
3. When a lawyer leaves a private firm, may the former firm represent a person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a former client represented by the leaving lawyer while in the former firm?
4. Does imputed disqualification apply to all members of the firm of a laterally moving lawyer who formerly participated personally and substantially in a matter? For example, can other members of the laterally moving lawyer's new firm participate in a matter in which the lawyer personally and substantially participated if the personally disqualified lawyer is screened from the matter within the firm?
5. May screening be employed to avoid imputed disqualification in situations other than a laterally moving lawyer, such as firm mergers and multi-city firms?
6. What are the requirements of an ethical screen?

¹This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its board of governors, any persons or tribunals charged with regulatory responsibilities, or any member of the state bar..

ANSWERS

Answer No. 1 The Laterally Moving Lawyer

When a lawyer leaves one private firm² and joins another (*i.e.*, lateral movement of a lawyer in private practice), that lawyer is personally disqualified, and may not represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a former client represented by the former firm if:

- (1) the lawyer formerly represented the now adverse client while in the former firm, Rule³ 1.9(a); or
- (2) the lawyer otherwise acquired confidential information material to the matter while in the former firm, Rule 1.9(b),

unless the former client gives informed consent⁴, confirmed in writing.

This is the situation where the lawyer either personally represented Client A in case A v. B while the lawyer was with former firm, White & Brown, or otherwise acquired confidential information material to the matter while in the former firm. The lawyer then moves to firm Red & Green, which represents Client B in the same or a related case. In that situation, *the lawyer* cannot represent Client B in the new firm unless former Client A gives informed consent, confirmed in writing.

Note two important clarifications:

- (1) If the laterally moving lawyer had no role in the case at the former firm, and did not otherwise acquire confidential information material to the matter, the moving lawyer is not personally disqualified from representing Client B while in the new firm, Red & Green. ABA Model Rule 1.9(b), Comment [5]; and
- (2) Even if the laterally moving lawyer did represent Client A in case A v. B while the lawyer was with former firm, White & Brown, or otherwise acquired confidential information material to the matter while in the former

²"Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. Rule 1.0(c).

³All references to "Rule" are to the Nevada Rules of Professional Conduct, effective May 1, 2006.

⁴Defined in Rule 1.0(b).

firm – and is personally disqualified from representing Client B in the new firm – that disqualification may be removed by the informed consent of former Client A. Rules 1.9(a) and (b).

Answer No. 2 Imputed Disqualification of *All* Lawyers in the Laterally Moving Lawyer's New Firm

When a lawyer leaves one private firm and joins another (*i.e.*, lateral movement of a lawyer in private practice), and the moving lawyer is personally disqualified under Rule 1.9 from representing a person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a client of the moving lawyer's former firm, *all* lawyers in the new firm are also disqualified by imputation. None of the lawyers in the new firm may represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a former client represented by the former firm, unless the former client gives informed consent, confirmed in writing. Rule 1.10(a); *Brown v. Eighth Judicial District Court*, 116 Nev. 1200, 1204, 14 P.3d 1266, 1269 (2000); *Nevada Yellow Cab v. Eighth Judicial District Court*, 123 Nev. ____ (Adv. Op. 6), 152 P.3d 737, 742 (2007).

In this situation the *new firm*, Red & Green, cannot continue to represent Client B, unless former Client A gives informed consent, confirmed in writing.

Again, note two important clarifications:

- (1) Of course, there is no imputed disqualification affecting the firm unless the moving lawyer is personally disqualified. If the lawyer changing firms had no role in the case at the former firm, and did not otherwise acquire confidential information material to the matter, neither the moving lawyer, nor the new firm, are disqualified from representing Client B while in the new firm, Red & Green. ABA Model Rule 1.9(b), Comment [5]; and
- (2) Even if the laterally moving lawyer did represent Client A in case A v. B while the lawyer was with former firm, White & Brown, or otherwise acquired confidential information material to the matter while in the former firm – and the lawyer and the new firm are disqualified from representing Client B in the new firm – that disqualification may be removed by the informed consent of former Client A. Rules 1.9(a) and (b).

Answer No. 3

Imputed Disqualification of the Moving Lawyer's Former Firm

When a lawyer leaves⁵ a firm, the former *firm* may not represent a person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of a former client represented by the leaving lawyer while in the former firm, if *any* lawyer remaining in the former firm has confidential information that is material to the matter – unless the disqualification of the former firm is waived by the affected client under Rule 1.7. Rule 1.10(b) and (c).

This is the situation where the lawyer who personally represented Client A in case A v. B while the lawyer was with former firm, White & Brown, leaves the firm. In addition, Client A discharges White & Brown. The former firm, White & Brown, is then asked by Client B to represent Client B in the same or a substantially related case. In that situation, the former firm cannot represent Client B if *any* lawyer remaining in the former firm has confidential information that is material to the matter – unless the disqualification of the former firm is effectively waived by affected client under Rule 1.7⁶. Rule 1.10(c).

Answer No. 4

Screening in the Laterally Moving Lawyer's New Firm

The traditional rule has long prohibited screening of the personally disqualified lawyer as a means of the elimination of the imputed disqualification of the entire firm to whom the lawyer has laterally moved. ABA Model Rule 1.10; *Brown v. Eighth Judicial District Court*, 116 Nev. 1200, 1204 14 P.3d 1266, 1269 (2000).

However, in 2006 Nevada adopted Rule 1.10(c) which authorizes limited screening as a means of eliminating imputed disqualification. Under Rule 1.10(e), a limited exception to the imputed disqualification of all members of the *new* firm of a laterally moving lawyer may apply

⁵In this situation it does not matter whether the lawyer laterally moves to a new firm or retires, since the focus is on the former firm itself rather than the lawyer.

⁶Waiver under Rule 1.7 requires:

- (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

when:

- (1) The personally disqualified lawyer did not have a substantial role in, or primary responsibility for, the matter that causes the disqualification under Rule 1.9; and
- (2) The personally disqualified lawyer is timely screened from any participation in the matter; and
- (3) The personally disqualified lawyer is apportioned no part of the fee therefrom; and
- (4) Written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

This is a Nevada specific Rule not adopted by the ABA Model Rules.⁷

Significantly, screening is allowed to avoid imputed disqualification without the consent of the former client – even if the laterally moving lawyer possesses confidential information from the former firm so as to be personally disqualified under Rule 1.9(b) – but only if the laterally moving lawyer did not have a *substantial role in, or primary responsibility for*, the matter. When the laterally moving lawyer did have a substantial role in, or primary responsibility for, the matter, the ABA rule prohibiting screening applies.⁸

Thus, screening cannot remove the imputed disqualification bar against all of the members of the laterally moving lawyer's new firm if:

- (1) The personally disqualified lawyer had a substantial role in, or primary responsibility for, the matter that causes the disqualification under Rule 1.9; or
- (2) The personally disqualified lawyer is apportioned a part of the fee therefrom; or
- (3) Written notice is not promptly given to the affected former client to enable it to ascertain compliance with the provisions of this Rule.

⁷ABA Model Rule 1.10 has no subsection (e) authorizing screening. However, both the ABA and the Nevada Rules allow screening to remove imputed disqualification with respect to former judges, other adjudicative officers, law clerks to such a person, former arbitrators, mediators or other third-party neutrals, and former public officers or former government employees, who enter private practice in a firm. Rules 1.11 and 1.12.

⁸ ABA Model Rule 1.10.

For example, suppose the lawyer who was the lead or “2nd chair” counsel for Client A in case A v. B while the lawyer was with former firm, White & Brown, moves to firm Red & Green, which represents Client B in the same or a related case. In that situation, the lawyer’s new firm, Red & Green, cannot continue to represent Client B. In that situation, screening could not eliminate the imputed disqualification. However, even if screening did not remove the imputed disqualification, both the laterally moving lawyer and the new firm, Red & Green, could continue to represent Client B if Client A waives the conflict under Rule 1.7. Rule 1.10(c).

On the other hand, suppose the laterally moving lawyer had no direct role in case A v. B while the lawyer was with former firm, White & Brown – but did possess confidential information from the former firm so as to be personally disqualified under Rule 1.9(b) – and then moves to firm Red & Green, which represents Client B in the same or a related case. In that situation, the lawyer’s new firm, Red & Green, could continue to represent Client B without Client A consent if the personally disqualified lawyer is ethically screened from the case.

Finally, if the lawyer changing firms had neither a role in the case A v. B, nor the possession of confidential information about the case, then neither screening nor client consent is required for the lawyer and the new firm to represent the opposite party in the case.

Answer No. 5

Screening in Situations Other than a Laterally Moving Lawyer, Such as Firm Mergers and Multi-City Firms

The ABA rule prohibiting screening to remove imputed disqualification applies to all situations other than a laterally moving lawyer. In all other situations – such as law firm mergers and multi-city law firms – at least one lawyer in the merged or multi-city firm will necessarily have had a substantial role in, or primary responsibility for, the matter. Thus, in all other situations, the Nevada specific exception in Rule 1.10(e) cannot apply. Under the limited Nevada exception, screening can only apply to remove imputed disqualification from the new firm of a lawyer changing firms.

However, there is one other situation where screening is appropriate. Even when the disqualification is removed by the consent of the former client, all lawyers in possession of confidential information from the former representation are under a continuing obligation to protect and not reveal the information in the new representation. Rule 1.9(c). As a result, a voluntary ethical screen as described below in Answer No. 6, is a recommended “best practice”.

Answer No. 6

The Minimum Requirements of an Ethical Screen

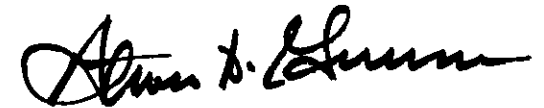
An ethical screen must isolate the personally disqualified lawyer from any participation in the matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under the Model Rules or other law. Rule 1.0(k).

The elements of an effective ethical screen should at a minimum include:

- a. the personally disqualified lawyer must agree in writing not to participate in the representation and not to discuss the matter with any employee of, or person affiliated with, the firm;
- b. all employees of, and persons affiliated with, the firm must be advised in writing that the personally disqualified lawyer is personally disqualified and screened from the matter and not to discuss the matter with the personally disqualified lawyer;
- c. the isolation of files, documentation, and communications, including electronic communications, relating to the matter from the personally disqualified lawyer. For example, with respect to files, they could be labeled on the outside something to the effect that "name of the personally disqualified lawyer is screened from this matter";
- d. the writings described in (1) and (2) above should be periodically resent so long as the screen is necessary; and
- e. at appropriate times the personally disqualified lawyer should swear or affirm to the tribunal, if any, that (s)he has not breached the agreement described in (1) above.

See, LaSalle v. County of Lake, 703 F.2d 252 (7th Cir. 1983); *Delaware River Port Authority v. Home Insurance Company*, 1994 WL 444710 (DC Pa. 1994); *Sufficiency of Screening Measures (Chinese Wall) Designed to Prevent Disqualification of Law Firm, Member of Which is Disqualified for Conflict of Interest*, 68 A.L.R. Fed. 687 (1984); Restatement of the Law Third, The Law Governing Lawyers, §124. In addition, the above minimum requirements of an ethical screen are consistent with those suggested by the Nevada Supreme Court for laterally moving nonlawyers (i.e., legal assistants, paralegals, investigators, etc.), which were announced prior to its passage of Rule 1.10(e) to allow laterally moving lawyers to be screened. *Liebowitz v. The Eighth Jud. Dist. Ct.*, 119 Nev. 523, 532 78 P.3d 515, 521 (2003).

EXHIBIT 21



CLERK OF THE COURT

1 **JOIN**
2 DAVID S. LEE, ESQ.
3 Nevada Bar No.: 6033
4 CHARLENE N. RENWICK, ESQ.
5 Nevada Bar No. 010165
6 LEE, HERNANDEZ, LANDRUM
7 & GAROFALO
8 7575 Vegas Drive, Suite 150
9 Las Vegas, Nevada 89128
10 (702) 880-9750
11 Fax; (702) 314-1210
12 dlee@lee-lawfirm.com
13 crenwick@lee-lawfirm.com

14 Attorneys for Defendants, GGP
15 MEADOWS MALL LLC, MYDATT
16 SERVICES, INC. dba VALOR
17 SECURITY SERVICES and
18 MARK WARNER

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 X'ZAVION HAWKINS,
14
15 Plaintiff,

15 vs.

16 GGP MEADOWS MALL LLC, a Delaware
17 Limited Liability Company; MYDATT
18 SERVICES, INC. dba VALOR SECURITY
19 SERVICES, an Ohio Corporation; MARK
20 WARNER, individually; DOES 1 through 10;
21 DOE SECURITY GUARDS 11 through 20;
22 and ROE ENTITIES 21 through 30,
23 inclusive,

24 Defendants.

CASE NO.: A-15-717577-C
DEPT. NO.: XXXI

**DEFENDANT GGP MEADOWS MALL
LLC'S SUPPLEMENTAL EXHIBIT TO
JOINDER TO DEFENDANTS'
MYDATT SERVICES, INC. AND
MARK WARNER'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

22 **COMES NOW** Defendant, GGP MEADOWS MALL LLC, by and through its attorneys,
23 LEE, HERNANDEZ, LANDRUM, GAROFALO, APC, and hereby files its Supplemental
24 Exhibit 1, a summary of Exemplar Testimony Demonstrating Plaintiff's Perjury, in support of its
25

26 ///

27 ///

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

joinder to Defendants Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's
Complaint.

DATED this 7th day of June, 2016

LEE, HERNANDEZ, LANDRUM &
GAROFALO

/s/ Charlene N. Renwick, Esq.

By:

DAVID S. LEE, ESQ.
Nevada Bar No. 6033
CHARLENE N. RENWICK, ESQ.
Nevada Bar No. 010165
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128
Attorneys for Defendants, GGP
MEADOWS MALL LLC, MYDATT
SERVICES, INC. dba VALOR SECURITY
SERVICES and MARK WARNER

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

HAWKINS v. GGP MEADOWS MALL, LLC

I HEREBY CERTIFY that on the 7th day of June, 2016, I served a copy of the above and foregoing DEFENDANT GGP MEADOWS MALL, LLC'S, SUPPLEMENTAL EXHIBIT TO JOINDER TO DEFENDANTS' MYDATT SERVICES, INC. AND MARK WARNER'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT by electronic filing service by transmitting via the Court's electronic services to the following counsel/person(s):

Jolene J. Manke, Esq.
David J. Churchill, Esq.
INJURY LAWYERS OF NEVADA
6900 W. Westcliff Dr. # 707
Las Vegas, NV 89145
(702) 868-8888
Fax: (702) 868-8889
Email: jolene@injurylawyersnv.com
Email: david@injurylawyersnv.com
Attorney for Plaintiff

David B. Avakian, Esq.
Harold J. Rosenthal, Esq.
Josh Cole Aicklen, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118
(702) 893-3383
Fax: (702) 893-3789
Email: David.Avakian@lewisbrisbois.com
Email: Harold.Rosenthal@lewisbrisbois.com
Email: Josh.aicklen@lewisbrisbois.com
**Co-Counsel for Mydatt Services, Inc. dba
Mydatt Services, Inc. And Mark Warner**

s/ Diane Meeter

By: _____
An employee of LEE, HERNANDEZ,
LANDRUM & GAROFALO

| Exemplar Testimony Demonstrating Plaintiff's Perjury | | | |
|--|--|---|--|
| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
| 1 | | <p>Q. So I want to go through some of the ground rules of the deposition process today. The oath that you just took is the same oath that you would take in a court of law, and it carries the same penalty of perjury. Do you understand that?</p> <p>A. <u>Yes.</u></p> <p>Q. So even though we're here in an informal environment in a conference room at the court reporter's office, this is just as if you were sitting in front of a judge and jury, and you're under oath. Do you understand?</p> <p>A. <u>Yes.</u></p> <p>Pages 6-7, lines 18-25; 1-5 (emphasis added).</p> <p>Q. All right, Mr. Hawkins. Do you understand that you're still under oath?</p> <p>A. "Under oath" meaning we're still talking?</p> <p>Q. No. That the answers that you're giving are under oath and under penalty of perjury.</p> <p>A. <u>Yes.</u></p> <p>Page 23, lines 16-21 (emphasis added).</p> | <p>DECLARATION UNDER PENALTY OF PERJURY</p> <p>I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.</p> <p>Signed this 31 day of March, 2016</p> <p>X'Zavion Hawkins</p> |
| 2 | <p>X. Hawkins: Meadows Mall, I was ah, I was ah standing in line for some Jordan's, I seen this guy, his name was ah, Ashley Christmas.</p> <p>Det. Majors: His name is what?</p> <p>X. Hawkins: <u>Ashley Christmas, known as Pooh Man.</u></p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Do you know what Pooh Man's real name is?</p> <p>A. <u>No.</u></p> <p>Page 16, lines 18-19</p> <p>Q. Do you know Pooh Man's real name?</p> <p>A. <u>No.</u></p> <p>Page 24, lines 23-25 (emphasis added).</p> | <p>Page No. 16, Line No. 19 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> <p>Page No. 24, Line No. 24 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> |
| 3 | <p>X. Hawkins: Meadows Mall, I was ah, I was ah standing in line for some Jordan's, <u>I seen this guy, his name was ah, Ashley Christmas.</u></p> <p>Det. Majors: His name is what?</p> <p>X. Hawkins: <u>Ashley Christmas, known as Pooh Man.</u></p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Do you know someone named Ashley Christmas?</p> <p>A. <u>No.</u></p> <p>Q. You have no idea who Ashley Christmas is?</p> <p>A. <u>I don't know an Ashley Christmas. Who is Ashley Christmas?</u></p> <p>Q. No, I'm asking you. You don't know who Ashley Christmas is?</p> <p>A. <u>No, I don't.</u></p> <p>Page 26, lines 12-19 (emphasis added).</p> | <p>Page No. 26, Line No. 13 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> <p>Page No. 26, Line No. 15-16 Change to: I don't have an independent recollection at this time, however, I believe at one time I believed Pooh-Man's real name was Ashley Christmas</p> <p>Reason for change: recollection refreshed</p> |

Exemplar Testimony Demonstrating Plaintiff's Perjury

| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
|---|--|--|--|
| 4 | <p>X. Hawkins: He, ah, got up, he acted like he was going to shake my hand, but the guy is very sneaky, and ah, we, we had (inaudible) but you know this ain't got nothing to do with this case right now. So he seen me and ah, he acted like he (inaudible) shake my hand and he ah, tried to sock me. I caught myself swinging back, he yelled out "Zak" (burps) oh, excuse me, (inaudible) he yelled out "Zak," Za-Zak came, ah I'm thinking they about to just jump me or something, <u>but Zak came like, I'm squarin' up with Zak, like, we, we squarin' up like,</u> you know, how, you know what square up means like.</p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. All right. So let's go back to when you first saw Pooh Man. When you first saw Pooh Man, was the shooter with him?</p> <p>A. <u>No, I didn't see the shooter.</u> I seen Pooh Man as people was telling him to go to the back of the line, because he was cutting. He was in a group or something. <u>I didn't see the shooter. I didn't see the shooter not one time. I didn't even see it coming.</u></p> <p>Page 17, lines 2-11 (emphasis added).</p> | Not referenced in Errata. |
| 5 | <p>X. Hawkins: He, ah, got up, he acted like he was going to shake my hand, but the guy is very sneaky, and ah, we, we had (inaudible) but you know this ain't got nothing to do with this case right now. So he seen me and ah, he acted like he (inaudible) shake my hand and he ah, tried to sock me. I caught myself swinging back, he yelled out "Zak" (burps) oh, excuse me, (inaudible) he yelled out "Zak," Za-Zak came, ah I'm thinking they about to just jump me or something, <u>but Zak came like, I'm squarin' up with Zak, like, we, we squarin' up like,</u> you know, how, you know what square up means like.</p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Can you describe the shooter for me?</p> <p>A. <u>I never seen him.</u></p> <p>Q. So at the time of the shooting you never saw the shooter?</p> <p>A. <u>No.</u></p> <p>Page 24, lines 2-5 (emphasis added).</p> | Not referenced in Errata. |

| Exemplar Testimony Demonstrating Plaintiff's Perjury | | | |
|--|--|---|---|
| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
| 6 | <p>X. Hawkins: Pooh Man, but Pooh Man, he asked him, he said <u>"Zak,"</u> <u>Zak came out of nowhere, I guess Zak is</u> <u>ah, he called his self, Little Pooh Man G. I'm not, I'm not sure if that's his ah, nickname, but I know he said Zak.</u></p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Do you know the shooter's name? A. <u>No.</u> Q. Do you know the shooter's nickname? A. <u>No.</u></p> <p>Page 24, 7-10</p> <p><u>See also</u> Plaintiff's Responses to Defendant Mydatt Services' First Set of Requests for Admissions, pages 2-3, lines 22-24; 1-2 (September 17, 2015)</p> <p>Request No. 4: Admit that you know the name of the person who shot you.</p> <p>Response to Request No. 4: <u>Deny</u></p> <p>(emphasis added).</p> | <p>Page No. 24, Line No. 10 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> |
| 7 | <p>Det. Majors: Ok, um, who threw the glass bottle? X. Hawkins: I did, oh, yeah, I, I didn't mention that, I, I did, I threw that. 'Cause he ah, came up tryin' to shake my hand and I was just so heated about my 150, <u>I had \$150 to my name that my dad had just sent me, I had \$60 in my pocket when he robbed me. Shit...</u> Det. Majors: <u>That was from before?</u> X. Hawkins: <u>Yeah,</u> they drew down on me and all that, I never let the cops know nothin' about that or whatever. I never let the cops knew nothin' about that, when he drew down on me, he went in my pocket, he called me a bitch, put it all on Facebook.</p> <p>Page 4 of 9 (emphasis added).</p> | <p>Q. The second man, the man named Pooh Man, the one that you went to school with -- had he robbed you before this incident? A. <u>No.</u> Well, just for the Play Station 3, the money that he didn't give to me, if you call that robbery.</p> <p>Pages 25-26, lines 25; 1-5 (emphasis added).</p> | <p>Not referenced in Errata.</p> |

| Exemplar Testimony Demonstrating Plaintiff's Perjury | | | |
|--|--|---|---|
| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
| 8 | <p>X. Hawkins: He, ah, got up, he acted like he was going to shake my hand, but the guy is very sneaky, and ah, we, we had (inaudible) but you know this ain't got nothing to do with this case right now. So he seen me and ah, he acted like he (inaudible) shake my hand and he ah, tried to sock me. I caught myself swinging back, he yelled out "Zak" (burps) oh, excuse me, (inaudible) he yelled out "Zak," Za-Zak came, ah I'm thinking they about to just jump me or something, <u>but Zak came like, I'm squarin' up with Zak, like, we, we squarin' up like, you know, how, you know what square up means like.</u></p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Did you square up with the shooter before he shot you?</p> <p>A. I was sitting down on the bench playing with my phone when he approached me.</p> <p>Q. So the answer is "no," you didn't square up with him before the shooting?</p> <p>A. <u>No.</u></p> <p>Page 25, lines 18-24 (emphasis added).</p> | <p>Page No. 25, Line No. 24 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> |
| 9 | <p>Det. Majors: <u>Ok, um, who threw the glass bottle?</u></p> <p>X. Hawkins: <u>I did, oh, yeah, I, I didn't mention that, I, I did, I threw that.</u> 'Cause he ah, came up tryin' to shake my hand and I was just so heated about my 150, I had \$150 to my name that my dad had just sent me, I had \$60 in my pocket when he robbed me. Shit...</p> <p>Page 4 of 9 (emphasis added).</p> | <p>Q. Did you throw a Snapple bottle at Ashley Christmas before the shooting?</p> <p>A. No.</p> <p>Q. Did you throw a Snapple bottle at the shooter before the shooting?</p> <p>A. No.</p> <p>...</p> <p>Q. So you did not throw a bottle at anyone before the shooting, correct?</p> <p>A. No.</p> <p>Q. Is that correct?</p> <p>A. No, I didn't throw a bottle at all.</p> <p>Pages 31-32, lines 8-13; 22-25; 1</p> | <p>Page No. 31, Line No. 10 Change to: I presently don't recall. However, I don't dispute that I threw a Snapple bottle to defend myself</p> <p>Reason for change: recollection refreshed</p> <p>Page No. 31, Line No. 24 Change to: I presently don't recall.</p> <p>Reason for change: recollection refreshed</p> |
| 10 | <p>Det. Majors: Pooh Man said "Zak, get 'em?"</p> <p>X. Hawkins: <u>He's like, yeah, he, he said it just like that, "Zak get 'em."</u></p> <p>Page 6 of 9 (emphasis added).</p> | <p>Q. Did anyone yell, "Zak, get him," before you were shot?</p> <p>A. I don't know. I don't know. I didn't hear that. I don't believe so. I'm not -- I don't know.</p> <p>Q. Is that "no," or you don't know?</p> <p>A. <u>That's "no."</u></p> <p>Page 28, lines 5-10 (emphasis added).</p> | <p>Page No. 28, Line No. 7-8 Change to: I don't have an independent recollection at this time, however, I believe at one time I believed that someone had said something similar to, "Zak, get him."</p> <p>Reason for change: recollection refreshed</p> |

Exemplar Testimony Demonstrating Plaintiff's Perjury

| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
|----|--|--|---|
| 11 | <p>X. Hawkins: Pooh Man, but Pooh Man, he asked him, he said "Zak," Zak came out of nowhere, <u>I guess Zak is ah, he called his self, Little Pooh Man G. I'm not, I'm not sure if that's his ah, nickname, but I know he said Zak.</u></p> <p>Page 2 of 9 (emphasis added.)</p> <p>Det. Majors: <u>Ok, um, who threw the glass bottle?</u></p> <p>X. Hawkins: I did, oh, yeah, I, I didn't mention that, I, I did, I threw that. 'Cause he ah, came up tryin' to shake my hand and I was just so heated about my 150, <u>I had \$150 to my name that my dad had just sent me, I had \$60 in my pocket when he robbed me. Shit...</u></p> <p>Page 4 of 9 (emphasis added).</p> | <p>Q. Did you tell Las Vegas Metropolitan Police that the shooter was Zak, who calls himself "Little Pooh Man G?"</p> <p>A. No. I don't remember that, and I don't believe I said that. So no.</p> <p>Q. Did you tell Las Vegas Metropolitan Police that the reason that these two men assaulted you was because they had robbed you two years before?</p> <p>A. No. I mean if you call not giving someone money, I guess that's a robbery. But I didn't -- no, <u>I didn't say it was a robbery.</u></p> <p>Pages 36-37, lines 24-25; 1-9 (emphasis added).</p> | <p>Page No. 37, Line No. 2-3 Change to: I don't presently recall, however I don't dispute that I said that.</p> <p>Reason for change: recollection refreshed</p> <p>Page No. 37, Line No. 7-8 Change to: I don't presently recall, however I don't dispute that I said that.</p> <p>Reason for change: recollection refreshed</p> |
| 12 | <p>X. Hawkins: Meadows Mall, I was ah, I was ah standing in line for some Jordan's, <u>I seen this guy, his name was ah, Ashley Christmas.</u></p> <p>Det. Majors: His name is what?</p> <p>X. Hawkins: <u>Ashley Christmas, known as Pooh Man.</u></p> <p>...</p> <p>X. Hawkins: Pooh Man, but Pooh Man, he asked him, he said "Zak," Zak came out of nowhere, <u>I guess Zak is ah, he called his self, Little Pooh Man G. I'm not, I'm not sure if that's his ah, nickname, but I know he said Zak.</u></p> <p>Page 2 of 9 (emphasis added).</p> | <p>Q. Well, do you know who Ashley Christmas is?</p> <p>A. <u>No, I don't even know who Ashley Christmas is.</u></p> <p>Q. Do you know who Zak is?</p> <p>A. <u>I don't know a Zak.</u> I answered that.</p> <p>Q. All right. Well, more specifically, do you know a Zacharias Berry?</p> <p>A. No.</p> <p>MR. CHURCHILL: Asked and answered like ten times.</p> <p>THE WITNESS: Yes, it has been. And I told you, <u>I don't know who he is, I'm being totally honest with you.</u> I don't know.</p> <p>Page 29, lines 11-23 (emphasis added).</p> | <p>Page No. 29, Line No. 12-13 Change to: I don't have an independent recollection at this time, however, I believe at one time I believed that Pooh Man's real name was Ashley Christmas.</p> <p>Reason for change: recollection refreshed</p> |

Exemplar Testimony Demonstrating Plaintiff's Perjury

| | Voluntary Stmt. 8/22/2013 (Attachment 1; See also Exhibit B to Motion to Dismiss Plaintiff's Complaint) | Deposition Testimony 2/12/2016 (Attachment 2; See also Exhibit C to Motion to Dismiss Plaintiff's Complaint) | Deposition Errata Sheet 3/31/2016 (Attachment 3; See also Exhibit E to Reply in Support of Motion to Dismiss Plaintiff's Complaint) |
|----|--|--|---|
| 13 | <p>Det. Majors: Do you know who he hangs with?</p> <p>X. Hawkins: Ah, no, actually I don't, all I know is Zak.</p> <p>Det. Majors: Uh-huh.</p> <p>X. Hawkins: <u>Some guy named ah, Wayne. Dewayne, Dewayne um, I wanna say Dewayne Cornwell</u></p> <p>Det. Majors: Dewayne Cornwell.</p> <p>X. Hawkins: Yeah.</p> <p>Page 3 of 9 (emphasis added).</p> | <p>Q. Do you know a DeWayne Cornwell?</p> <p>A. <u>No.</u></p> <p>Q. Do you know anyone named Cornwell?</p> <p>A. <u>No.</u></p> <p>Page 27, lines 4-7 (emphasis added).</p> | Not referenced in Errata. |

ATTACHMENT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #: 130817-0794
Statement Of: XZAVIAN HAWKINS

SPECIFIC CRIME: ATTEMPT MURDER

DATE OCCURRED: 8/17/13

TIME OCCURRED:

LOCATION OF OCCURRENCE:

☐ CITY OF LAS VEGAS

☐ CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: XZAVIAN HAWKINS

DOB:

SOCIAL SECURITY #:

RACE:

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by Detective W. Majors, P# 7089, LVMPD Violent Crimes on 8/22/13 at 0958 hours.

Det. Majors: Hello Operator, this is Detective W. Majors, Mary, Adam, John, Ocean, Robert, Sam, P# 7089 also present with me is Detective M. as in Mary, Menzie, P#.

Det. Menzie: 6830.

Det. Majors: Under Event #130817-0794, this is in reference to an ongoing investigation of Attempt Murder, um, which took place at the location of 4300 Meadows Lane, Las Vegas, NV 89107, um, today's date is 8/22/2013, the time is going to be 958 hours. Person being interviewed today is first name Xzavian, phonetically X-ray, Zebra, Adam, Victor, Ida, Ocean, Nora; last name, Hawkins; Henry, Adam, William, King, Ida, Nora, Sam. He has a date of birth of 12/28/92. This interview is being conducted at UMC Trauma, ICU, ah, Xzavian, do you understand this interview is being recorded?

X. Hawkins: Yes, I do.

Det. Majors: Could you speak up a little louder?

X. Hawkins: Yes I do.

Det. Majors: Ok, I want to take you back to August 17th, 2013 on Saturday.

X. Hawkins: Yes sir.

Det. Majors: Location was ah, Meadows Mall parking lot?

For Official Use Only

VSS007046

VOLUNTARY STATEMENT
(Continuation)

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

X. Hawkins: Meadows Mall, I was ah, I was ah standing in line for some Jordan's, I seen this guy, his name was ah, Ashley Christmas.

Det. Majors: His name is what?

X. Hawkins: Ashley Christmas, known as Pooh Man.

Det. Majors: Ok.

X. Hawkins: He, ah, got up, he acted like he was going to shake my hand, but the guy is very sneaky, and ah, we, we had (inaudible) but you know this ain't got nothing to do with this case right now. So he seen me and ah, he acted like he (inaudible) shake my hand and he ah, tried to sock me. I caught myself swinging back, he yelled out "Zak" (burps) oh, excuse me, (inaudible) he yelled out "Zak," Za-Zak came, ah I'm thinking they about to just jump me or something, but Zak came like, I'm squarin' up with Zak, like, we, we squarin' up like, you know, how, you know what square up means like.

Det. Majors: Right.

X. Hawkins: (inaudible)

Det. Majors: It's getting ready to fight.

X. Hawkins: Flight, right, and ah, he ah, shot me. In my like, I don't know, it felt like it was in my hip but I think that's where he got me in my stomach and all I was yellin' for was help, but he kept shootin' me. So help didn't come like, as if he was like, better nobody get back, this is serious. Boom, boom, boom, boom, boom, boom. Ah, I don't, I know like now I'm in pain, I know exactly where he shot me at and all that, but whatever, but, ah, I don't know, that's, that's exactly what happened.

Det. Majors: Ok.

X. Hawkins: Pooh Man, but Pooh Man, he asked him, he said "Zak," Zak came out of nowhere, I guess Zak is ah, he called his self, Little Pooh Man G. I'm not, I'm not sure if that's his ah, nickname, but I know he said Zak.

Det. Majors: Uh-huh.

X. Hawkins: Zak came and he shot me up real bad man. I was on the floor, I thought all this was gone, the way he shot me. I thought all this was gone. Like for real, for real, now I, I didn't even think that was there no more, it like, you know, moments later, Metro appeared and I ah, I was just, told Metro, I said, they asked me, did I know who had did it, I was like, I, I told them "No." I didn't at the time, he was like "Man, do you know who did this to you?" I, I barely could even speak. Like I just remembered at the end of the day is all I kept sayin' is "Can you please get me to the hospital." Information will be held when I'm better. That's, now I'm better, you know, and you know that's what happened (inaudible).

Det. Majors: Ok, I want to take you back, let's go back to the beginning. You were standing in line, right?

X. Hawkins: Ah, we had just got there actually.

Det. Majors: Ok. Were you by yourself?

X. Hawkins: I was with my cousin.

Det. Majors: And which cousin were you with?

X. Hawkins: Kesha.

VOLUNTARY STATEMENT
(Continuation)

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Ok. Um, now when, you said a guy by the name of Ash, Ashley? Christmas.

X. Hawkins: Ashley Christmas.

Det. Majors: About how old is he?

X. Hawkins: I don't know.

Det. Majors: Older?

X. Hawkins: He gotta be like, what 18? I don't know, he a youngster man.

Det. Majors: He's a youngster?

X. Hawkins: Yeah.

Det. Majors: Ok. Um, and can you describe him? What's he look like?

X. Hawkins: He, ah, he like, probably like, his height, brown, I don't know, like, he is (inaudible) like brown, got (inaudible) eyes.

Det. Majors: Is he heavy built? Thin built?

X. Hawkins: He like...

Det. Majors: Muscular?

X. Hawkins: thin built, wear nice clothes....

Det. Majors: And, ah...

X. Hawkins: (inaudible) in the face.

Det. Majors: Do you know who he hangs with?

X. Hawkins: Ah, no, actually I don't, all I know is Zak.

Det. Majors: Uh-huh.

X. Hawkins: Some guy named ah, Wayne. Dewayne, Dewayne um, I wanna say Dewayne Cornwell

Det. Majors: Dewayne Cornwell.

X. Hawkins: Yeah.

Det. Majors: Ok, and where does Dewayne Cornwell go to school, do you know?

X. Hawkins: No, I don't even know if the guy goes to school.

Det. Majors: How about Christmas.

X. Hawkins: I, I don't mess with these types of guys. Christmas...

Det. Majors: What school does he go to?

X. Hawkins: I think he, I think he graduated from like Centennial or something.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Centennial?

X. Hawkins: Yeah.

Det. Majors: Ok, and ...

X. Hawkins: You know, he say threats once before, sayin' how he was gonna kill me and stuff.

Det. Majors: Why does he want to kill you?

X. Hawkins: Why does he want to kill me, is because ah, a while back man, he, he robbed me. He, he robbed me and I ah, I just told him I want (inaudible)

Det. Majors: Ok.

X. Hawkins: When, when you see me, that's what I told him, so, he knew what he was when we seen him.

Det. Majors: Uh-huh.

X. Hawkins: It wasn't like I was actually like tryin' to scare the guy or nothing like that, 'cause I didn't even see him there at first. He said "What up," to me, I was walking up to the line, I didn't even see him, he made his self noticed.

Det. Majors: Was he already there?

X. Hawkins: He was already there, yeah.

Det. Majors: Ok, um, who threw the glass bottle?

X. Hawkins: I did, oh, yeah, I, I didn't mention that, I, I did, I threw that. 'Cause he ah, came up tryin' to shake my hand and I was just so heated about my 150, I had \$150 to my name that my dad had just sent me, I had \$60 in my pocket when he robbed me. Shit...

Det. Majors: That was from before?

X. Hawkins: Yeah, they drew down on me and all that, I never let the cops know nothin' about that or whatever. I never let the cops knew nothin' about that, when he drew down on me, he went in my pocket, he called me a bitch, put it all on Facebook.

Det. Majors: Ok.

X. Hawkins: All type of shit, you know.

Det. Majors: What was Christmas wearing?

X. Hawkins: Ah, he had on like this baseball, or wh-when, when he, when he shot me right?

Det. Majors: Who, wait a minute, Christmas or, or Zak shot you?

X. Hawkins: Christmas. Christmas. Zak shot me.

Det. Majors: Ok.

X. Hawkins: Zak was the shooter.

Det. Majors: Zak is the shooter. Let's just focus on Christmas right now. What color shoes was he wearing?

X. Hawkins: Ah, I'm not sure, but I know what color, color shirt he had on.

VSS007049 Page 4 of 9

0671

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: What was that?

X. Hawkins: It was um, you gotta remember man, the sun was just coming up.

Det. Majors: I understand.

X. Hawkins: Yeah, it was kinda dark still. He had on a, a, a baseball shirt, you know how they be wearin' those baseball shirts, the cut off...

Det. Majors: Uh-huh.

X. Hawkins: (inaudible).

Det. Majors: What color?

X. Hawkins: It was black, the sleeves was black and the a shirt was white, I don't know what he said but he...

Det. Majors: Ok.

X. Hawkins: Always (inaudible) the one who goes and buy a, what you call it, like shirts that have like different stuff on it, you know.

Det. Majors: Uh-huh.

X. Hawkins: Yeah, but ah, yeah man, he cracked off to fight, he dodged a bottle so good, ah, you knew that he was ready for whatever, like you could tell that...

Det. Majors: Like they planned this?

X. Hawkins: Naw, it wasn't like they planned it or nothin', 'cause I don't even go to the mall like that...

Det. Majors: Ok.

X. Hawkins: So if they wanted to plan some, they actually have to come to where I live, 'cause I don't even step foot up out my door.

Det. Majors: The, the reason why I'm asking...

X. Hawkins: I went, I went because my cousin, she was ah, she, the, the new Jordans they came out with those (inaudible) I'm not even into that type of stuff, you know, I'm tryin' find me a job, you know, hopefully marry my girl one day. That's, that's all I do (inaudible) shot me though and he gonna start by, I, I told him, as, as he was firin' his weapon man, I told him, just stop, just stop, just stop, just stop, (inaudible), just felt bullets all over man.

Det. Majors: Did someone punch you first before they fired at you?

X. Hawkins: Ah, no.

Det. Majors: Ok. When they fired, did they fire at you when you were standing?

X. Hawkins: They, ah, somebody, somebody did, actually tell, told me like after I got back from, I don't know who it was or whatever, I think it was my cousin, she said "Did he punch you or do something?" but I don't think he punched me, I think he pushed me down to the ground or something, but I was shot first before I was even pushed down to the ground and he was just shootin', shootin', shootin', shootin', shootin', Pooh Man, ah, he, I think he ran off or did something. He must have ran off or did something but ah, I, I, I hate the mother fucker, you know, I don't even wanna talk about his ass, I get upset every time I start talking about that mother fucker, so...

VSS007050 Page 5 of 9

0672

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Pooh Man said "Zak, get 'em?"

X. Hawkins: He's like, yeah, he, he said it just like that, "Zak get 'em."

Det. Majors: Ok, and how, let's talk about Zak now. How old do you think Zak is?

X. Hawkins: He's like, probably be like, (inaudible) 17, 16.

Det. Majors: If you saw his again, would you be able to identify him?

X. Hawkins: No I wouldn't, but if, if, if I seen a picture or something, if I seen him again, I probably would, I'm not sure man, I'm bad with faces.

Det. Majors: Ok.

X. Hawkins: But I swear, if I seen him or something, I probably be like yeah, you know that's him.

Det. Majors: Ok.

X. Hawkins: But I know how Pooh Man look though (inaudible).

Det. Majors: You can identify Pooh Man if you saw him again?

X. Hawkins: Yeah.

Det. Majors: Ok.

X. Hawkins: But ah, look, check this out, ah, I, I know Pooh Man, we went to school together, I would never thought he's (inaudible) some sneaky stuff, startin' off robbin' me when I ah, left, left Cheyenne. I never knew that he was going to be just that type of guy or whatever, you feel me? Whatever case might be. I just let my ah, my skeletons out my closet, just yesterday by tellin' my mom that stuff.

Det. Menzie: Were you in the same grade?

X. Hawkins: No we wasn't, I was um, I'm older than him?

Det. Menzie: Ok, so he was like a year younger, ah, a grade younger? Two grades?

X. Hawkins: Probably about, yeah.

Det. Menzie: And when did he go to that, what high school did he go to?

X. Hawkins: We went to, we went to the same school I graduated from.

Det. Menzie: What Centennial?

X. Hawkins: No, Cheyenne.

Det. Menzie: Cheyenne.

X. Hawkins: Right.

Det. Majors: Ok. Let me ask you this, um...

X. Hawkins: (inaudible).

VOLUNTARY STATEMENT
(Continuation)

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Christmas, is that his real name, or is that his nickname?

X. Hawkins: Ashley Christmas is his real name.

Det. Majors: And, and middle name Bernard?

X. Hawkins: Ah, yeah, I guess so. I don't know his middle name.

Det. Majors: Ok.

X. Hawkins: All I do know is his first and last name.

Det. Majors: Ok.

X. Hawkins: It's, and Pooh Man is just a name that everyone calls him.

Det. Majors: They ever call him other things besides Pooh Man?

Det. Menzie: Yeah leave that on.

X. Hawkins: PMG.

Det. Majors: Ok.

X. Hawkins: PMG, I think and you know what, I think honestly to be exact, that um, he go Little PMG, like that's his (inaudible) or whatever, I don't know how that shit goes man.

Det. Majors: Ok.

X. Hawkins: (inaudible) get his ass off the streets, (inaudible) I don't wanna be in shit, I don't wanna be killed, none of that, you know.

Det. Majors: About how many times did he shoot you?

X. Hawkins: Ah man, he shot me 8 times.

Det. Majors: Ok, and you were telling him to stop.

X. Hawkins: Ah, yeah, I was telling him to stop while he was shootin' me.

Det. Majors: Were you afraid for your life?

X. Hawkins: Yes I was.

Det. Majors: Ok, what I'm going to do is I got some...

X. Hawkins: You know what, check this out before you all even start doing...

(Cross Talk)

Det. Majors: Uh-huh.

X. Hawkins: (inaudible) God was on my side when that happened.

Det. Menzie: You what?

X. Hawkins: God was on my side when that happened.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Menzie: Yeah.

X. Hawkins: I was put on this earth for a reason, that's why I didn't die. For a person to survive (inaudible) gun wounds, you feel me? That's how the little mother fucker probably got the gun (inaudible) but ya'll got my voice on ah, this little tape recorder, phone, whatever that shit is...

Det. Menzie: Right.

X. Hawkins: Ah, I, I want, I want that mother fucker off the street man.

Det. Majors: With that being said, you do want to prosecute, correct?

X. Hawkins: I, I do, but I don't want to go to no court dates (inaudible).

Det. Majors: Well that's the only way we can prosecute.

X. Hawkins: (inaudible).

Det. Majors: Just so you know, you may be required to go to court and testify.

Det. Menzie: So here's this, are you, don't want to go to court 'cause you're afraid of retaliation from the same people?

X. Hawkins: Man, I can't, I can't live in Vegas. I can't live in Vegas, Vegas is my home.

Det. Menzie: Ok. You're scared..

(Cross Talk)

X. Hawkins: See that's what ya'll don't get, with a person, you come to a person and ah, knowin' people and all that extra stuff, that's what you all don't get, like...

Det. Menzie: You're scared of this guy or somebody he knows...

(Cross Talk)

X. Hawkins: And then movin' us away and all that extra shit, that shit don't, that shit don't play man. It's hard to even, that man, come on now, ya'll know what it is.

Det. Menzie: Let's stay focused on this, this interview right now.

(Cross Talk)

X. Hawkins: Yeah, we is, we is, I'm not gettin' mad, I'm not gettin' upset, but you know, my blood pressure, all that stuff is messed up, my body is fucked up and all I want is him off the street.

Det. Majors: But, what I'm, what I'm gonna do is, we're gonna do a photo line-up, ok?

X. Hawkins: Yeah.

Det. Majors: So I gotta read some things to you. You don't have to sign anything, we're just doing this on the tape, alright? In a moment I'm going to show you a group of photographs, this group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact the photos are being shown to you, should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as to identify those who are guilty. Please keep in mind, hairstyles, beards, mustaches are easily changed. Also, photographs do not always depict the true complexion of a person, it may be lighter or darker than shown in the

VSS007052 page 8 of 9

0675

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

photo. You should pay no attention to any markings, numbers that appear on the photos. Also, pay no attention to whether the photos are in color or black and white or any other difference, type or style...

X. Hawkins: Yeah, I know ah...

Det. Majors: Hold on, hold on...

X. Hawkins: Alright.

Det. Majors: Of photographs. You should study only the person shown in each photo, please do not talk to anyone other than police officers while viewing the photos. You must make up your own mind and not be influenced by witnesses, if any. If you had completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of that identification. Do not indicate to any other witnesses that you have or have not made identification. Do you understand?

X. Hawkins: Yeah.

Det. Majors: Ok.

X. Hawkins: (inaudible) papers shuffling.

Det. Majors: Alright. I want you to take a look at these photos here.

X. Hawkins: (inaudible).

Det. Majors: Anybody in those photos, resemble the shooter?

X. Hawkins: No, I don't think so, can you show me some more stuff, and I can keep this?

Det. Majors: Can't let you keep it.

X. Hawkins: Not keep it but, you know, well, here, here, just take it.

Det. Majors: So you can't...

X. Hawkins: You got more of those?

Det. Majors: I do. Nobody?

X. Hawkins: No.

Det. Majors: Ok. Anything you'd like to add at this time?

X. Hawkins: No, man that's all ya'll got?

Det. Majors: Ok. End of interview, same people present, date's the same. Time is going to be 1015 hours.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 1600 W. Charleston Blvd. ON THE 22nd DAY OF August, 2013, AT 1015 HOURS.

ATTACHMENT "2"

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

vs.

CASE NO. A-15-717577-C

GGP MEADOWS MALL LLC, a
Delaware Limited
Liability Company; MYDATT
SERVICES, INC., dba VALOR
SECURITY SERVICES, an
Ohio Corporation; MARK
WARNER, individually;
DOES 1 through 10; DOE
SECURITY GUARDS 11
through 20; and ROE
ENTITIES 21 through 30,
inclusive,

Defendants.

~ ~ ~ ~ ~

VIDEO DEPOSITION OF

X'ZAVION HAWKINS

Friday, February 12, 2016

10:24 a.m.

2300 W. Sahara Avenue

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR



1 deposition today. Do you understand that?

2 A. Yes.

3 Q. Have you ever given a deposition before?

4 A. No.

5 Q. Have you had a chance to speak to
6 Mr. Churchill about the process? I don't want to
7 know what you talked about, but have you had a chance
8 to speak with him?

9 A. No. As far as like --

10 Q. Here's the question, okay? I want to know
11 if you've been able to talk to Mr. Churchill about
12 today you are going to give your deposition.

13 A. Oh, yes. He told me I was coming to take
14 my deposition.

15 Q. That's all. I just wanted to make sure you
16 spoke with him. Okay?

17 A. Okay.

18 Q. So I want to go through some of the ground
19 rules of the deposition process today.

20 The oath that you just took is the
21 same oath that you would take in a court of law, and
22 it carries the same penalty of perjury.

23 Do you understand that?

24 A. Yes.

25 Q. So even though we're here in an informal

1 environment in a conference room at the court
2 reporter's office, this is just as if you were
3 sitting in front of a judge and jury, and you're
4 under oath. Do you understand?

5 A. Yes.

6 Q. Very good. Have you had any alcohol or
7 drugs in the last 12 hours, which might affect your
8 ability to give your best testimony today?

9 A. I had just my pain medication.

10 Q. What pain medication have you taken in the
11 last 12 hours.

12 A. Morphine, 100 milligrams. Hydrocodone,
13 that's 10 milligrams. Bacopin is 20 milligrams. And
14 also I have Gabapentin, also 600 milligrams.

15 Q. You said Gabapentin?

16 A. Yes, 600 milligrams.

17 Q. Okay. Are you able to answer the questions
18 using those pain medications? Are you going to be
19 able to give your best testimony today?

20 A. I probably won't be able to give my best
21 testimony. I forget sometimes, because of the
22 medication, but I'll be able to bear with it.

23 Q. Okay. So what I'm going to ask you to do
24 is if at any time during the process today you get to
25 the point where either because of pain or the

1 A. I understand. It's just that like it's
2 bringing back so many memories right now. It's kind
3 of messing with me.

4 Q. I understand.

5 During the five minutes that you
6 were talking with Pooh Man about the Play Station --

7 A. Hey, can we take a break?

8 Q. Okay.

9 A. I'm sorry.

10 VIDEOGRAPHER: The time is 10:44 a.m.
11 We're off the video record.

12 (Recess.)

13 VIDEOGRAPHER: The time is 10:54 a.m.
14 We are back on the video record.

15 BY MR. AICKLEN:

16 Q. All right, Mr. Hawkins. Do you understand
17 that you're still under oath?

18 A. "Under oath" meaning we're still talking?

19 Q. No. That the answers that you're giving
20 are under oath and under penalty of perjury.

21 A. Yes.

22 Q. Okay. Now, we know that you had seen Pooh
23 Man before.

24 How about the shooter? Had you
25 ever seen the shooter before that day?

1 Q. And you said people were telling Pooh Man.
2 Who is Pooh Man?

3 A. A guy that I used to trade video games with
4 at school. It wasn't just him. It was a group of
5 us.

6 Q. Okay. Was Pooh Man either the shooter, or
7 the second man with the shooter?

8 A. He is the guy that punched me and kicked me
9 when I fell to the ground, and then he had someone
10 shoot me.

11 Q. So Pooh Man is the second man, is that
12 correct?

13 A. Yes.

14 Q. What is Pooh Man's name?

15 A. We just called him Pooh Man. We just
16 traded games. It was at school. I didn't know him
17 like that. Everyone just called him Pooh Man.

18 Q. Do you know what Pooh Man's real name is?

19 A. No.

20 Q. When was the last time that you had spoken
21 with Pooh Man before the shooting incident?

22 A. We were still in high school, which was
23 2011 when I graduated.

24 Q. Was he in your same class -- Pooh Man?

25 A. No. He was just a guy that I would see

1 A. Not a day in my life.

2 Q. Can you describe the shooter for me?

3 A. I never seen him.

4 Q. So at the time of the shooting you never
5 saw the shooter?

6 A. No.

7 Q. Do you know the shooter's name?

8 A. No.

9 Q. Do you know the shooter's nickname?

10 A. No.

11 Q. So you had never spoken with the shooter
12 before the shooting, is that correct?

13 A. I had never seen him or spoken with him a
14 day in my life.

15 Q. Okay. Now, you said that the person that
16 you knew from high school was Pooh Man. Is that
17 person also known as "Little Pooh Man G?"

18 A. I'm not sure. He was just a guy that I
19 traded games with at school.

20 Q. Have you ever heard Pooh Man with any other
21 nicknames?

22 A. No.

23 Q. Do you know Pooh Man's real name?

24 A. No.

25 MR. CHURCHILL: Asked and answered.

1 one that you went to school with -- had he robbed you
2 before this incident?

3 A. No. Well, just for the Play Station 3, the
4 money that he didn't give to me, if you call that
5 robbery.

6 Q. How much did he owe you for the Play
7 Station 3?

8 A. \$150.

9 Q. That second man, Pooh Man -- had he ever
10 jumped you in the park and robbed you?

11 A. No.

12 Q. Do you know someone named Ashley Christmas?

13 A. No.

14 Q. You have no idea who Ashley Christmas is?

15 A. I don't know an Ashley Christmas. Who is
16 Ashley Christmas?

17 Q. No, I'm asking you. You don't know who
18 Ashley Christmas is?

19 A. No, I don't.

20 Q. Did Ashley Christmas go to high school with
21 you?

22 A. I don't know who Ashley Christmas is.

23 Q. Do you know someone with a nickname of PMG?

24 A. PMG? No. What does that stand for?

25 Q. Do you know someone with a nickname of

1 around school that I would trade games with.

2 Q. All right. So let's go back to when you
3 first saw Pooh Man. When you first saw Pooh Man, was
4 the shooter with him?

5 A. No, I didn't see the shooter. I seen Pooh
6 Man as people was telling him to go to the back of
7 the line, because he was cutting. He was in a group
8 or something.

9 I didn't see the shooter. I
10 didn't see the shooter not one time. I didn't even
11 see it coming.

12 Q. How long before the shooting did you see
13 Pooh Man and the shooter trying to cut into the line?

14 A. Really, I wasn't paying no attention,
15 because it was a group of people that were cutting in
16 line. Pooh Man was told to go to the back of the
17 line. That's how he seen me.

18 Q. You have no estimate of how long before the
19 shooting you first saw Pooh Man?

20 A. We talked for about five minutes about the
21 game and the money that he had owed me a while back,
22 and I guess that would be the estimate in time --
23 five minutes. I'm not sure.

24 Q. So you talked to Pooh Man before the
25 shooting occurred?

1 A. Not a day in my life.

2 Q. Can you describe the shooter for me?

3 A. I never seen him.

4 Q. So at the time of the shooting you never
5 saw the shooter?

6 A. No.

7 Q. Do you know the shooter's name?

8 A. No.

9 Q. Do you know the shooter's nickname?

10 A. No.

11 Q. So you had never spoken with the shooter
12 before the shooting, is that correct?

13 A. I had never seen him or spoken with him a
14 day in my life.

15 Q. Okay. Now, you said that the person that
16 you knew from high school was Pooh Man. Is that
17 person also known as "Little Pooh Man G?"

18 A. I'm not sure. He was just a guy that I
19 traded games with at school.

20 Q. Have you ever heard Pooh Man with any other
21 nicknames?

22 A. No.

23 Q. Do you know Pooh Man's real name?

24 A. No.

25 MR. CHURCHILL: Asked and answered.

1 BY MR. AICKLEN:

2 Q. If you looked at a picture of Pooh Man,
3 would you be able to identify him?

4 A. Yes.

5 Q. Did Pooh Man try to hit you before the
6 shooting?

7 A. Pooh Man did hit me before the shooting. I
8 dropped to the ground, and he kicked me. Then he had
9 someone shoot me. I answered that already.

10 Q. Did you try to hit Pooh Man before the
11 shooting?

12 A. No. I didn't even have a chance to. I
13 didn't have a chance to defend myself at all.

14 Q. Before the shooting did you get ready to
15 fight with the shooter?

16 A. No. I was sitting down on the bench
17 playing with my phone. I told you that already, too.

18 Q. Did you square up with the shooter before
19 he shot you?

20 A. I was sitting down on the bench playing
21 with my phone when he approached me.

22 Q. So the answer is "no," you didn't square up
23 with him before the shooting?

24 A. No.

25 Q. The second man, the man named Pooh Man, the

1 one that you went to school with -- had he robbed you
2 before this incident?

3 A. No. Well, just for the Play Station 3, the
4 money that he didn't give to me, if you call that
5 robbery.

6 Q. How much did he owe you for the Play
7 Station 3?

8 A. \$150.

9 Q. That second man, Pooh Man -- had he ever
10 jumped you in the park and robbed you?

11 A. No.

12 Q. Do you know someone named Ashley Christmas?

13 A. No.

14 Q. You have no idea who Ashley Christmas is?

15 A. I don't know an Ashley Christmas. Who is
16 Ashley Christmas?

17 Q. No, I'm asking you. You don't know who
18 Ashley Christmas is?

19 A. No, I don't.

20 Q. Did Ashley Christmas go to high school with
21 you?

22 A. I don't know who Ashley Christmas is.

23 Q. Do you know someone with a nickname of PMG?

24 A. PMG? No. What does that stand for?

25 Q. Do you know someone with a nickname of

1 phone, before the shooting?

2 A. I didn't have a chance to. Before the
3 shooting?

4 Q. Yes.

5 A. I didn't have a chance to. I was punched.
6 And when I fell on the ground, he kicked me. And
7 then I was shot.

8 Q. Did you throw a Snapple bottle at Ashley
9 Christmas before the shooting?

10 A. No.

11 Q. Did you throw a Snapple bottle at the
12 shooter before the shooting?

13 A. No.

14 Q. Did you have a bottle -- a glass bottle --
15 either a Snapple, or some other type of drink, in
16 your hand when you were sitting on the bench, before
17 the shooting?

18 A. I don't remember. I'm not sure. I didn't
19 have no -- no, I don't remember.

20 Q. Was that "no," or "I don't remember?"

21 A. "I don't remember."

22 Q. So you did not throw a bottle at anyone
23 before the shooting, correct?

24 A. No.

25 Q. Is that correct?

1 A. No, I didn't throw a bottle at all.

2 Q. You were asked some questions you were
3 asked to admit or deny, and I want to go through
4 those questions with you, just to make sure that
5 they're accurate. Okay? These are "Plaintiff's
6 Responses for Requests for Admissions."

7 You were asked, "Admit that you
8 know the person who shot you." Your answer was,
9 "Deny." Is that an accurate answer?

10 A. No. I told them that it was Pooh Man. I
11 didn't know who actually shot me. I just know that
12 he had something to do with it.

13 Q. Do you want to change that answer then?
14 Would you say when you were asked, "Admit that you
15 know the person who shot you" --

16 A. I don't know the person who actually shot
17 me. I just know Pooh Man had something to do with
18 it.

19 Q. Okay. You were asked, "Admit that you were
20 related to the person who shot you." You denied it.

21 Is that an accurate answer?

22 A. Yes. I'm not related to him. It was just
23 a guy that I traded games with at school. It was a
24 group of us. We all traded games together. Trade,
25 buy, whatever. It was little gamers.

1 Q. Who is Zak?

2 A. I don't know.

3 Q. Do you know a man named Zacharias Berry?

4 A. No.

5 Q. Did anyone yell, "Zak, get him," before you
6 were shot?

7 A. I don't know. I don't know. I didn't hear
8 that. I don't believe so. I'm not -- I don't know.

9 Q. Is that "no," or you don't know?

10 A. That's "no."

11 Q. Okay. Who is Kamiko McMorris?

12 A. That's my sister.

13 Q. Why did Kamiko McMorris tell the police
14 that Pooh Man was the trigger man? Where did she
15 learn that from?

16 A. I'm not sure.

17 Q. Do you know who owned the gray Dodge
18 Charger that was at the scene of the shooting?

19 A. No.

20 Q. Did you tell the police that the
21 assailants -- the shooter and the second man -- left
22 the scene in a gray Dodge Charger?

23 A. No.

24 Q. So you don't know someone named Zacharias
25 Berry?

1 know. I don't even know what his real name is.

2 MR. CHURCHILL: Hold on.

3 THE WITNESS: He goes by "Pooh Man."

4 MR. CHURCHILL: Hold on.

5 I'm lodging an objection. I've
6 got to say it's ten times you've asked that question.

7 Are we going to keep asking the
8 same questions over and over?

9 MR. AICKLEN: No. I won't ask that
10 question again.

11 MR. CHURCHILL: I would appreciate it.

12 THE WITNESS: Yeah. I don't know what
13 else to tell you.

14 BY MR. AICKLEN:

15 Q. I've asked you about these names, but I
16 want to ask a different question about these names.
17 Okay?

18 A. Okay.

19 Q. And if the answer is "no," then it's "no;"
20 and if it's "yes," it's "yes."

21 Have you ever heard of a person
22 named Zak, who called himself "Little Pooh Man G?"

23 A. No.

24 Q. Did you tell Las Vegas Metropolitan Police
25 that the shooter was Zak, who calls himself "Little

1 Pooh Man G?"

2 A. No. I don't remember that, and I don't
3 believe I said that. So no.

4 Q. Did you tell Las Vegas Metropolitan Police
5 that the reason that these two men assaulted you was
6 because they had robbed you two years before?

7 A. No. I mean if you call not giving someone
8 money, I guess that's a robbery. But I didn't -- no,
9 I didn't say it was a robbery.

10 Q. When you were at Cheyenne High School, who
11 was the group of people that would trade video games?

12 A. I didn't know everyone's name like that. I
13 don't remember.

14 Q. Do you remember --

15 A. It's been years ago.

16 Q. Do you remember any of the names of the
17 persons who would trade video games when you were at
18 Cheyenne High School?

19 A. Patrick.

20 Q. Do you know Patrick's last name?

21 A. No.

22 Q. Who else would you trade video games with?

23 A. I don't remember. Like I said, it was so
24 many years ago. It was just a group of us.

25 Q. Was DeWayne Cornwell one of the people that

1 A. I don't.

2 Q. Or Little Zak, or Zak?

3 A. No.

4 Q. Have you ever heard that nickname, "Zak,"
5 or "Little Zak?"

6 A. No.

7 Q. Did you tell the police that before you
8 were shot Ashley Christmas yelled out, "Get him,
9 Zak?"

10 A. I don't remember.

11 Q. Well, do you know who Ashley Christmas is?

12 A. No, I don't even know who Ashley Christmas
13 is.

14 Q. Do you know who Zak is?

15 A. I don't know a Zak. I answered that.

16 Q. All right. Well, more specifically, do you
17 know a Zacharias Berry?

18 A. No.

19 MR. CHURCHILL: Asked and answered like
20 ten times.

21 THE WITNESS: Yes, it has been. And I
22 told you, I don't know who he is. I'm being totally
23 honest with you. I don't know.

24 MR. CHURCHILL: There's no question.

25

1 **RESP**
2 **DAVID J. CHURCHILL (SBN: 7308)**
3 **JOLENE J. MANKE (SBN: 7436)**
4 **INJURY LAWYERS OF NEVADA**
5 6900 Westcliff Drive, Suite 707
6 Las Vegas, Nevada 89145
7 T: 702-868-8888
8 F: 702-868-8889
9 david@injurylawyersnv.com
10 jolene@injurylawyersnv.com
11 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **X'ZAVION HAWKINS,**

10 **Plaintiff,**

11 **vs.**

12 **GGP MEADOWS MALL LLC, a Delaware**
13 **Limited Liability Company; MYDATT**
14 **SERVICES, INC. d/b/a VALOR SECURITY**
15 **SERVICES, an Ohio Corporation; MARK**
16 **WARNER, individually; DOES 1 through 10;**
17 **DOE SECURITY GUARDS 11 through 20; and**
18 **ROE ENTITIES 21 through 30, inclusive,**

19 **Defendants.**

CASE NO.: A-15-717577-C
DEPT. NO.: XXXI

PLAINTIFF'S RESPONSES TO
DEFENDANT MYDATT SERVICES'
FIRST SET OF REQUESTS FOR
ADMISSION TO PLAINTIFF

17 **TO: MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES; and**

18 **TO: BRIAN A. GONSALVES, ESQ., of RESNICK & LOUIS, P.C., attorney for Defendant.**

19 **COMES NOW, Plaintiff X'ZAVION HAWKINS by and through his counsel of record, David J.**
20 **Churchill, Esq. and Jolene J. Manke, Esq. of INJURY LAWYERS OF NEVADA, and hereby responds**
21 **to Defendant MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES's First Set of**
22 **Requests for Admissions as follows:**

24 **///**

25 **///**

26 **///**

27 **///**

1 These responses are made solely for the purpose of, and in relation to, this action. Each response
2 is given subject to all appropriate objections (including, but not limited to, objections concerning
3 competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of
4 any statement contained herein if the request were asked of, or any statement contained herein were
5 made by, a witness present and testifying in court. All such objections and grounds therefore are
6 reserved and may be interposed at time of trial.
7

8 REQUESTS

9 REQUEST NO. 1:

10 Admit that you know the person who shot you.

11 RESPONSE TO REQUEST NO. 1:

12 Deny.

13 REQUEST NO. 2:

14 Admit that you are related to the person who shot you.

15 RESPONSE TO REQUEST NO. 2:

16 Deny.

17 REQUEST NO. 3:

18 Admit that the person who shot you is your cousin.

19 RESPONSE TO REQUEST NO. 3:

20 Deny.

21 REQUEST NO. 4:

22 Admit that you know the name of the person who shot you.

23 ///

24 ///

25 ///

1 RESPONSE TO REQUEST NO. 4:

2 Deny.

3 REQUEST NO. 5:

4 Admit that the person who shot you goes by the name of Poohman.

5 RESPONSE TO REQUEST NO. 5:

6 Plaintiff is without sufficient information to either admit or deny this Request, and on this basis,

7 Deny.

8 REQUEST NO. 6:

9 Admit that there have never been any incidents of violence at Meadows Mall during a shoe
10 launch event for the four years prior to the date you were shot.

11 RESPONSE TO REQUEST NO. 6:

12 Plaintiff is without sufficient information to either admit or deny this Request, and on this basis,

13 Deny.

14 REQUEST NO. 7:


15 Admit that there have never been any incidents of violence at Meadows Mall during a shoe
16 launch event ever.

17 RESPONSE TO REQUEST NO. 7:

18 Deny.

19 DATED this 17th day of September, 2015.

20 INJURY LAWYERS OF NEVADA

21
22
23
24 
25 DAVID J. CHURCHILL (SBN: 7308)
26 JOLENE J. MANKE (SBN: 7436)
27 6900 Westcliff Drive, Suite 707
28 Las Vegas, NV 89145
Attorneys for Plaintiff

1/11

John Lewis

CERTIFICATE OF E-SERVICE

Pursuant to NRCp 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 17 day of September, 2015, I served the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANT MYDATT SERVICES' FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF** on the following parties via Electronic Service, as follows:

PHILIP GOODHART (SBN: 5332)
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, Nevada 89101
E-mail: png@thorndal.com
Attorneys for Defendant
GGP MEADOWS MALL, LLC;

BRIAN A. GONSALVES (SBN: 9815)
RESNICK & LOUIS, P.C.
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
Email: bgonsalves@rlattorneys.com
Attorneys for Defendants
MYDATT SERVICES, INC.
d/b/a VALOR SECURITY SERVICES and
and MARK WARNER

DAVID S. LEE (SBN: 6033)
CHARLENE N. RENWICK (SBN: 10165)
LEE, HERNANDEZ, LANDRUM &
GAROFALO
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128
E-Mail: dlee@leelawfirm.com
crenwick@lee-lawfirm.com
Co-Attorneys for Defendants
MYDATT SERVICES, INC.
d/b/a VALOR SECURITY SERVICES and
and MARK WARNER


an employee of Injury Lawyers of Nevada

ATTACHMENT "3"

DEPOSITION ERRATA SHEET

File No. J0263337

Case Caption: Hawkins vs. GGP Meadows Mall, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed this 31 day of March, 2016.

X'ZAVION J HAWKINS

X'ZAVION HAWKINS

3/31/2016

DEPOSITION ERRATA SHEET

- 1
2 Page No. 16 Line No. 19 Change to: I PRESENTLY DON'T RECALL.
3 Reason for change: RECOLLECTION REFRESHED.
4 Page No. 24 Line No. 10 Change to: I PRESENTLY DON'T RECALL.
5 Reason for change: RECOLLECTION REFRESHED.
6 Page No. 24 Line No. 24 Change to: I PRESENTLY DON'T RECALL.
7 Reason for change: RECOLLECTION REFRESHED.
8 Page No. 25 Line No. 24 Change to: I PRESENTLY DON'T RECALL.
9 Reason for change: RECOLLECTION REFRESHED.
10 Page No. 26 Line No. 13 Change to: I PRESENTLY DON'T RECALL.
11 Reason for change: RECOLLECTION REFRESHED.
12 Page No. 26 Line No. 15-16 Change to: I DON'T HAVE AN INDEPENDENT
13 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
Reason for change: POOR MAN'S REAL NAME WAS ASHLEY CHRISTMAS
RECOLLECTION REFRESHED
14 Page No. 28 Line No. 7-8 Change to: I DON'T HAVE AN INDEPENDENT
15 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED THAT
Reason for change: SOMEONE HAS SAID SOMETHING SIMILAR TO, "ZAK, LET HIM."
RECOLLECTION REFRESHED
16 Page No. 29 Line No. 12-13 Change to: I DON'T HAVE AN INDEPENDENT
17 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
Reason for change: POOR MAN'S REAL NAME WAS ASHLEY CHRISTMAS.
RECOLLECTION REFRESHED
18 Page No. 31 Line No. 16 Change to: I PRESENTLY DON'T RECALL,
19 HOWEVER, I DON'T DISPUTE THAT I THREW A SHARPLE KICK TO DEFEND MYSELF
Reason for change:
RECOLLECTION REFRESHED
20 Page No. 31 Line No. 24 Change to: I PRESENTLY DON'T RECALL
21 Reason for change: RECOLLECTION REFRESHED
22
23
24 SIGNATURE: X'ZAVION I. HAWKINS DATE: 3/31/2016
25 X'ZAVION HAWKINS

DEPOSITION ERRATA SHEET

- 1
2 Page No. 32 Line No. 1 Change to: I PRESENTLY DON'T RECALL,
3 HOWEVER, I DON'T DISPUTE THAT I THREW A SHOTGLASS BOTTLE TO DEFEND MYSELF
4 Reason for change: RECOLLECTION REQUESTED
5
6 Page No. 35 Line No. 23 Change to: I PRESENTLY DON'T RECALL
7 HOW I VERIFIED POOH-MAN'S REAL NAME.
8 Reason for change: RECOLLECTION REQUESTED
9
10 Page No. 35 36 Line No. 25 Change to: I DON'T HAVE AN INDEPENDENT
11 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
12 Reason for change: POOH-MAN'S REAL NAME WAS ASHLEY CHRISTMAS
13 RECOLLECTION REQUESTED
14
15 Page No. 37 Line No. 23 Change to: I DON'T PRESENTLY RECALL.
16 HOWEVER, I DON'T DISPUTE THAT I SAID THAT
17 Reason for change: RECOLLECTION REQUESTED
18
19 Page No. 37 Line No. 7-8 Change to: I DON'T PRESENTLY RECALL,
20 HOWEVER, I DON'T DISPUTE THAT I SAID THAT.
21 Reason for change: RECOLLECTION REQUESTED
22
23 Page No. 38 Line No. 11 Change to: I DON'T PRESENTLY RECALL.
24 Reason for change: RECOLLECTION REQUESTED
25
26 Page No. 38 Line No. 21-22 Change to: I DON'T PRESENTLY RECALL,
27 HOWEVER, I DON'T DISPUTE THAT I SAID THAT.
28 Reason for change: RECOLLECTION REQUESTED
29
30 Page No. 39 Line No. 21-23 Change to: I PRESENTLY DON'T RECALL,
31 HOWEVER, I DON'T DISPUTE THAT I THREW A SHOTGLASS BOTTLE TO DEFEND MYSELF
32 Reason for change: RECOLLECTION REQUESTED
33
34 Page No. 40-41 Line No. 24-25 Change to: I DON'T HAVE AN INDEPENDENT
35 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE
36 & AT ONE TIME I BELIEVED SOMEONE SAID, "ZAK, GEEFMAN"
37 Reason for change: RECOLLECTION REQUESTED
38
39 Page No. 42 Line No. 18 Change to: I DON'T HAVE AN INDEPENDENT
40 RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
41 Reason for change: POOH-MAN'S REAL NAME WAS ASHLEY CHRISTMAS
42 RECOLLECTION REQUESTED
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

SIGNATURE:

X'ZAVION HAWKINS

DATE:

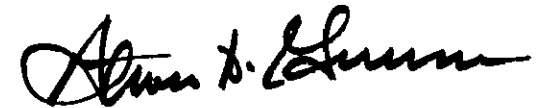
2/13/2016

63

DEPOSITION ERRATA SHEET

- 1
- 2 Page No. 42 Line No. 20-21 Change to: I DON'T HAVE AN INDEPENDENT
RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
- 3 Reason for change: POK-MON'S REAL NAME WAS ASHLEY CHRISTMAS
RECOLLECTION REQUESTED
- 4 Page No. 42 Line No. 24 Change to: I DON'T HAVE AN INDEPENDENT
RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
- 5 Reason for change: POK-MON'S REAL NAME WAS ASHLEY CHRISTMAS.
RECOLLECTION REQUESTED
- 6 Page No. 44 Line No. 7-8 Change to: I PRESENTLY DON'T REMEMBER
WHAT I TOLD THE POLICE, HOWEVER, I AM WILLING TO TESTIFY ALMOST ANY
- 7 Reason for change: RECOLLECTION REQUESTED
- 8 Page No. 55 Line No. 5 Change to: I PRESENTLY DON'T REMEMBER.
- 9 Reason for change: RECOLLECTION REQUESTED
- 10 Page No. 56 Line No. 22 Change to: I DON'T HAVE AN INDEPENDENT
RECOLLECTION AT THIS TIME, HOWEVER, I BELIEVE AT ONE TIME I BELIEVED
- 11 Reason for change: SOMEONE SAID, "ZAK, NOT HIM."
RECOLLECTION REQUESTED
- 12 Page No. Line No. Change to:
- 13 Reason for change:
- 14 Page No. Line No. Change to:
- 15 Reason for change:
- 16 Page No. Line No. Change to:
- 17 Reason for change:
- 18 Page No. Line No. Change to:
- 19 Reason for change:
- 20 Page No. Line No. Change to:
- 21 Reason for change:
- 22
- 23
- 24 SIGNATURE: X'ZAVION J HAWKINS 3/31/2016 DATE:
- 25 K'ZAVION HAWKINS

EXHIBIT 22



CLERK OF THE COURT

1 SUBT
JOSH COLE AICKLEN
2 Nevada Bar No. 007254
Josh.aicklen@lewisbrisbois.com
3 DAVID B. AVAKIAN
Nevada Bar No. 009502
4 David.avakian@lewisbrisbois.com
HAROLD J. ROSENTHAL
5 Nevada Bar No. 010208
Harold.Rosenthal@lewisbrisbois.com
6 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
7 Las Vegas, Nevada 89118
702.893.3383
8 FAX: 702.893.3789
Attorneys for Defendants
9 MYDATT SERVICES, INC. d/b/a MYDATT
SERVICES, INC. and MARK WARNER

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

14 X'ZAVION HAWKINS,
15 Plaintiff,

16 vs.

17 GGP MEADOW MALL LLC, a Delaware
Limited Liability Company; MYDATT
18 SERVICES, INC. d/b/a VALOR
SECURITY SERVICES, an Ohio
19 Corporation; MARK WARNER,
individually; DOES 1 through 10; DOE
20 SECURITY GUARDS 11 through 20; and
ROE ENTITIES 21 through 30,
21 INCLUSIVE,

22 Defendants.

Case No. A717577
Dept. No. XXXI

25 SUBSTITUTION OF ATTORNEYS

26 Defendants MYDATT SERVICES, INC. d/b/a MYDATT SERVICES, INC. and
27 MARK WARNER hereby substitute Edgar Carranza, Esq. of BACKUS, CARRANZA &
28 BURDEN as attorney of record for said Defendants in the place and stead of LEWIS

1 BRISBOIS BISGAARD & SMITH, LLP in the above-entitled matter.

2 Dated this ___ day of June, 2016.

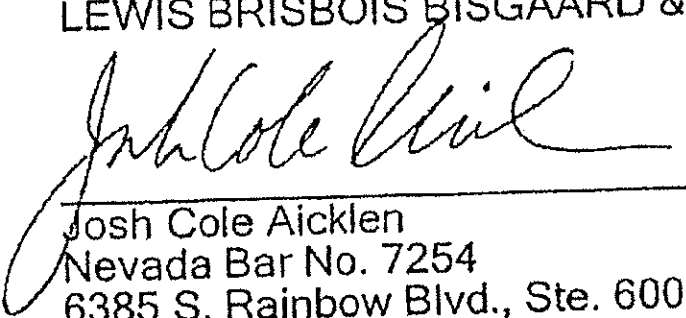
3 By 
4 MYDATT SERVICES, INC.

5 By _____
6 MARK WARNER

7
8 CONSENT TO SUBSTITUTION

9 LEWIS BRISBOIS BISGAARD & SMITH, LLP hereby agrees and consents to the
10 substitution of Edgar Carranza, Esq. of BACKUS, CARRANZA & BURDEN as the
11 attorney of record for Defendants MYDATT SERVICES, INC. d/b/a MYDATT SERVICES,
12 INC. and MARK WARNER in the above-entitled action.

13 Dated this 30th day of June, 2016.

14 LEWIS BRISBOIS BISGAARD & SMITH, LLP
15 By 
16 Josh Cole Aicklen
17 Nevada Bar No. 7254
18 6385 S. Rainbow Blvd., Ste. 600
19 Las Vegas, NV 89118

1 BRISBOIS BISGAARD & SMITH, LLP in the above-entitled matter.

2 Dated this ___ day of June, 2016.

3

4

By _____
MYDATT SERVICES, INC.

5

6

By Mark S. Warner
MARK WARNER

7

8

CONSENT TO SUBSTITUTION

9 LEWIS BRISBOIS BISGAARD & SMITH, LLP hereby agrees and consents to the
10 substitution of Edgar Carranza, Esq. of BACKUS, CARRANZA & BURDEN as the
11 attorney of record for Defendants MYDATT SERVICES, INC. d/b/a MYDATT SERVICES,
12 INC. and MARK WARNER in the above-entitled action.

13 Dated this 30th day of June, 2016.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By

Josh Cole Aicklen
Josh Cole Aicklen
Nevada Bar No. 7254
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


ACCEPTANCE OF SUBSTITUTION

Edgar Carranza, Esq. of BACKUS, CARRANZA & BURDEN hereby accepts the substitution as attorney of record for Defendants MYDATT SERVICES, INC. d/b/a MYDATT SERVICES, INC. and MARK WARNER in the above-entitled action.

Dated this 30th day of June, 2016.

BACKUS, CARRANZA & BURDEN

By



Edgar Carranza
Nevada Bar No. 5902
3050 S. Durango Dr.
Las Vegas, NV 89117

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 6th day of June, 2016, I did cause a true copy of SUBSTITUTION OF ATTORNEYS be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

David J. Churchill
Jolene J. Manke
INJURY LAWYERS OF NEVADA
6900 Westcliff Dr., Ste. 707
Las Vegas, NV 89145
P: 702-868-8888
F: 702-868-8889
david@injurylawyersnv.com
jolene@injurylawyersnv.com
Attorneys for Plaintiff
X'ZAVION HAWKINS

David S. Lee
Charlene N. Renwick
LEE, HERNANDEZ, LANDRUM &
GAROFALO
7575 Vegas Dr., Ste. 150
Las Vegas, NV 89128
dlee@leelawfirm.com
crenwick@lee-lawfirm.com
Attorneys for Defendants MYDATT
SERVICES, INC. d/b/a VALOR SECUIRTY
SERVICES and MARK WARNER

Edgar Carranza
BACKUS, CARRANZA & BURDEN
3050 S. Durango Dr.
Las Vegas, NV 89117

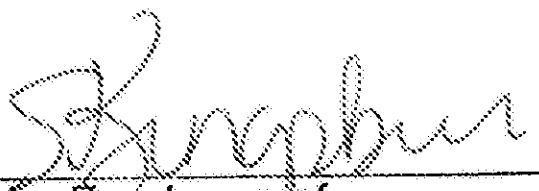
By 
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT “E”


CLERK OF THE COURT

1 **ANSC**
2 **RESNICK & LOUIS, P.C.**
3 Mitchell Resnick, Esq., SBN: 12074
4 Jenny L. Foley, PhD., Esq., SBN: 9017
5 mresnick@rlattorneys.com
6 Jfoley@rlattorneys.com
7 5940 S. Rainbow Blvd.
8 Las Vegas, NV 89118
9 Telephone: (702) 997-3800
10 Facsimile: (702) 997-3800

11 *Attorneys for Valor Security Services and Mark Warner*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 X'ZAVION HAWKINS, individually,
15
16 Plaintiff,
17
18 v.

CASE NO.: A-15-717577-C

DEPT: XII

**DEFENDANT MARK WARNER'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

14 GGP MEADOWS MALL LLC, a Delaware
15 Limited Liability Company; MYDATT
16 SERVICES, INC. d/b/a VALOR SECURITY
17 SERVICES, an Ohio Corporation; MARK
18 WARNER, individually; DOES 1 through 10;
19 DOE SECURITY GUARDS 11 through 20;
20 and ROE ENTITIES 21 through 30, inclusive,
21
22 Defendants.

23 Defendant, Mark Warner (referred to herein as "Mr. Warner"), by and through
24 undersigned counsel, Mitchell Resnick, of the law firm Resnick & Louis, P.C., hereby responds
25 to Plaintiff X'Zavion Hawkins' Complaint as follows:

JURISDICTION

26 1. Mr. Warner is without sufficient information to either admit or deny the allegations
27 contained in paragraph 1 of Plaintiff's Complaint and on that basis denies same.
28

1 2. Mr. Warner is without sufficient information to either admit or deny the allegations
2 contained in paragraph 2 of Plaintiff's Complaint and on that basis denies same.

3 3. Mr. Warner is without sufficient information to either admit or deny the allegations
4 contained in paragraph 3 of Plaintiff's Complaint and on that basis denies same.

5 4. Mr. Warner is without sufficient information to either admit or deny the allegations
6 contained in paragraph 4 of Plaintiff's Complaint and on that basis denies same.

7 5. The allegations contained in paragraph 5 of Plaintiff's Complaint are vague and/or call
8 for a legal conclusion, on this basis Mr. Warner is without sufficient information to either admit
9 or deny the allegations contained in paragraph 5 of Plaintiff's Complaint and therefore denies
10 same.

11 6. Mr. Warner admits that he was and is a resident of Nevada and was previously employed
12 as the is without sufficient information to either admit or deny the allegations contained in
13 paragraph 6 of Plaintiff's Complaint and on that basis denies same.

14 7. Mr. Warner admits that the shooting incident that is the subject of this lawsuit occurred in
15 Clark County Nevada. Mr. Warner is without sufficient information to either admit or deny the
16 remaining allegations contained in paragraph 7 of Plaintiff's Complaint and on that basis denies
17 same.

18 8. Mr. Warner is without sufficient information to either admit or deny the allegations
19 contained in paragraph 8 of Plaintiff's Complaint and on that basis denies same.

20 9. Mr. Warner is without sufficient information to either admit or deny the allegations
21 contained in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 10. Mr. Warner is without sufficient information to either admit or deny the allegations
24 contained in paragraph 10 of Plaintiff's Complaint and on that basis denies same.

25 11. Mr. Warner denies notice that violence, including but not limited to, fights and/or
26 slayings over Air Jordan and other professional athlete-endorsed shoes and/or the launch of other
27
28

1 professional athlete-endorsed shoes are not uncommon locally. Mr. Warner is without sufficient
2 information to either admit or deny the remaining allegations contained in paragraph 11 of
3 Plaintiff's Complaint and on that basis denies same.

4 12. Mr. Warner admits that he knew that there would be a shoe launch on the morning of
5 August 17, 2013 at the Meadows Mall. Mr. Warner is without sufficient information to either
6 admit or deny the allegations contained in paragraph 12 of Plaintiff's Complaint and on that
7 basis denies same.

8 13. Mr. Warner admits he knew patrons seeking to purchase shoes at the shoe launch would
9 arrive before the mall opened. Mr. Warner is without sufficient information to either admit or
10 deny the remaining allegations contained in paragraph 13 of Plaintiff's Complaint and on that
11 basis denies same.

12 14. Mr. Warner affirmatively alleges that he satisfied any duties he owed to the Meadows
13 Mall patrons. Mr. Warner is without sufficient information to either admit or deny the remaining
14 allegations contained in paragraph 14 of Plaintiff's Complaint and on that basis denies same.

15 15. Mr. Warner is without sufficient information to either admit or deny the allegations
16 contained in paragraph 15 of Plaintiff's Complaint and on that basis denies same.

17 16. Mr. Warner is without sufficient information to either admit or deny the allegations
18 contained in paragraph 16 of Plaintiff's Complaint and on that basis denies same.

19 17. Valor is without sufficient information to either admit or deny the allegations contained
20 in paragraph 17 of Plaintiff's Complaint and on that basis denies same.

21 18. Mr. Warner is without sufficient information to either admit or deny the allegations
22 contained in paragraph 18 of Plaintiff's Complaint and on that basis denies same.

23 19. Mr. Warner is without sufficient information to either admit or deny the allegations
24 contained in paragraph 19 of Plaintiff's Complaint and on that basis denies same.

25 20. Mr. Warner is without sufficient information to either admit or deny the allegations
26 contained in paragraph 20 of Plaintiff's Complaint and on that basis denies same.
27
28

1 21. Mr. Warner is without sufficient information to either admit or deny the allegations
2 contained in paragraph 21 of Plaintiff's Complaint and on that basis denies same.

3 22. Mr. Warner is without sufficient information to either admit or deny the allegations
4 contained in paragraph 22 of Plaintiff's Complaint and on that basis denies same.

5 23. Mr. Warner is without sufficient information to either admit or deny the allegations
6 contained in paragraph 23 of Plaintiff's Complaint and on that basis denies same.

7 24. Mr. Warner is without sufficient information to either admit or deny the allegations
8 contained in paragraph 24 of Plaintiff's Complaint and on that basis denies same.

9 25. Mr. Warner is without sufficient information to either admit or deny the allegations
10 contained in paragraph 25 of Plaintiff's Complaint and on that basis denies same.

11 **FIRST CAUSE OF ACTION**

12 **(Negligence)**

13 26. Mr. Warner hereby repeats, re-alleges and incorporates by reference each and every
14 response to the Plaintiff's allegations set forth in the above paragraphs as though each were set
15 forth herein verbatim. In so far as this Court determines that paragraph 26 contains allegations,
16 Mr. Warner hereby denies same.

17 27. Mr. Warner affirmatively alleges he satisfied any applicable duties that he owed to
18 Meadows Mall patrons. Mr. Warner denies any allegations in paragraph 27 of Plaintiff's
19 Complaint that call for a legal conclusion. Mr. Warner is without sufficient information to either
20 admit or deny the remaining allegations contained in paragraph 27 of Plaintiff's Complaint and
21 therefore denies same.

22 28. Mr. Warner denies that he created an unreasonably dangerous and unsafe condition. Mr.
23 Warner is without sufficient information to either admit or deny the remaining allegations
24 contained in paragraph 28 of Plaintiff's Complaint and on that basis denies same.

25 29. Mr. Warner is without sufficient information to either admit or deny the allegations
26 contained in paragraph 29 of Plaintiff's Complaint and on that basis denies same.
27
28

1 30. Mr. Warner affirmatively alleges that at all relevant times he satisfied any and all
2 applicable duties he owed to Plaintiff. Mr. Warner denies the allegations contained in paragraph
3 30 of Plaintiff's Complaint and further denies each allegation in subparts a-h to paragraph 30 of
4 Plaintiff's Complaint.

5 31. Mr. Warner affirmatively alleges that at all relevant times he satisfied any and all
6 applicable duties he owed to Plaintiff. Mr. Warner is without sufficient information to either
7 admit or deny the remaining allegations contained within paragraph 31 of Plaintiff's Complaint
8 and on that basis denies same.

9 32. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
10 all applicable duties owed to Plaintiff. Mr. Warner affirmatively alleges that during the 5 years
11 he worked at the Meadows Mall there were no violent acts during shoe launches. Mr. Warner is
12 without sufficient information to either admit or deny the remaining allegations contained within
13 paragraph 32 of Plaintiff's Complaint and on that basis denies same.

14 33. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
15 all applicable duties he owed to Plaintiff. Mr. Warner affirmatively alleges that during the 5
16 years he worked at the Meadows Mall there were no violent acts during shoe launches. Mr.
17 Warner is without sufficient information to either admit or deny the remaining allegations
18 contained within paragraph 33 of Plaintiff's Complaint and on that basis denies same.

19 34. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
20 all applicable duties he owed to Plaintiff. Mr. Warner is without sufficient information to either
21 admit or deny the remaining allegations contained within paragraph 34 of Plaintiff's Complaint
22 and on that basis denies same.

23 35. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
24 all applicable duties he owed to Plaintiff. Mr. Warner denies that Plaintiff's alleged injuries were
25 the result of any act or inaction by Mr. Warner. Mr. Warner is without sufficient information to
26

1 either admit or deny the allegations contained within paragraph 35 of Plaintiff's Complaint and
2 on that basis denies same.

3 36. Mr. Warner is without sufficient information to either admit or deny the allegations
4 contained within paragraph 36 of Plaintiff's Complaint and on that basis denies same.

5 37. Mr. Warner is without sufficient information to either admit or deny the allegations
6 contained within paragraph 37 of Plaintiff's Complaint and on that basis denies same.

7 38. Mr. Warner is without sufficient information to either admit or deny the allegations
8 contained within paragraph 38 of Plaintiff's Complaint and on that basis denies same.

9 39. Mr. Warner denies that Plaintiff is entitled to attorney's fees. Mr. Warner is without
10 sufficient information to either admit or deny the remaining allegations contained within
11 paragraph 39 of Plaintiff's Complaint and on that basis denies same.

12 **SECOND CAUSE OF ACTION**

13 **(Respondeat Superior)**

14 40. Mr. Warner hereby repeats, re-alleges and incorporates by reference each and every
15 response to the Plaintiff's allegations set forth in the above paragraphs as though each were set
16 forth herein verbatim. In so far as this Court determines that paragraph 40 contains allegations
17 Mr. Warner hereby denies same.

18 41. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
19 all applicable duties he owed to Plaintiff. Mr. Warner is without sufficient information to either
20 admit or deny the allegations contained within paragraph 41 of Plaintiff's Complaint and on that
21 basis denies same.

22 42. Mr. Warner is without sufficient information to either admit or deny the allegations
23 contained within paragraph 42 of Plaintiff's Complaint and on that basis denies same.

24 43. Mr. Warner is without sufficient information to either admit or deny the allegations
25 contained within paragraph 43 of Plaintiff's Complaint and on that basis denies same.
26
27
28

1 44. Mr. Warner is without sufficient information to either admit or deny the allegations
2 contained within paragraph 44 of Plaintiff's Complaint and on that basis denies same.

3 45. Mr. Warner is without sufficient information to either admit or deny the allegations
4 contained within paragraph 45 of Plaintiff's Complaint and on that basis denies same.

5 46. Mr. Warner is without sufficient information to either admit or deny the allegations
6 contained within paragraph 46 of Plaintiff's Complaint and on that basis denies same.

7 47. Mr. Warner is without sufficient information to either admit or deny the allegations
8 contained within paragraph 47 of Plaintiff's Complaint and on that basis denies same.

9 **THIRD CAUSE OF ACTION**

10 **(Gross Negligence)**

11 48. Mr. Warner hereby repeats, re-alleges and incorporates by reference each and every
12 response to the Plaintiff's allegations set forth in the above paragraphs as though each were set
13 forth herein verbatim. In so far as this Court determines that paragraph 48 contains allegations,
14 Mr. Warner hereby denies same.

15 49. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
16 all applicable duties he owed to Plaintiff. Mr. Warner denies the allegations contained in
17 paragraph 49 of Plaintiff's Complaint.

18 50. Mr. Warner affirmatively alleges that at all relevant times Mr. Warner satisfied any and
19 all applicable duties he owed to Plaintiff. Mr. Warner denies the allegations contained in
20 paragraph 50 of Plaintiff's Complaint.

21 51. Mr. Warner denies the allegations contained in paragraph 51 of Plaintiff's Complaint.

22 52. Mr. Warner denies the allegations contained in paragraph 52 of Plaintiff's Complaint.

23 53. Mr. Warner denies that he was negligent. Mr. Warner denies that any acts by Mr. Warner
24 directly and proximately caused Plaintiff's injuries. Mr. Warner is without sufficient information
25 to either admit or deny the remaining allegations contained within paragraph 43 of Plaintiff's
26 Complaint and on that basis denies same.
27
28

1 54. Mr. Warner denies the allegations in paragraph 54 of Plaintiff's Complaint.

2 **FURTHER RESPONSES/GENERAL DENIAL**

3 55. As for Mr. Warner's further responses, Mr. Warner denies each and every allegation not
4 expressly admitted, denied or otherwise qualified

5 **AFFIRMATIVE DEFENSES**

6 1. Mr. Warner alleges that the Complaint and each and every Claim for Relief stated therein
7 fails to state facts or other allegations sufficient to constitute a Claim for Relief, or any Claim for
8 Relief, as against Mr. Warner.

9 2. Mr. Warner alleges that at all times mentioned herein, if Plaintiff was damaged, it was
10 proximately caused by the independent conduct of third parties or entities, both known and
11 unknown, and each of them, were negligent, careless and reckless and unlawfully conducted
12 themselves so as to substantially contribute to Plaintiff's purported damages, and said
13 negligence, if any, either bars in whole or in part damages sought herein against Defendant, and
14 any potential recovery against Mr. Warner must therefore be reduced accordingly.

15 3. Mr. Warner alleges that if it should be found that Mr. Warner is in any manner legally
16 responsible for the injury or damages, if any, sought by Plaintiff, which supposition is not
17 admitted but merely stated for the purpose of pleading this action, then any such injuries or
18 damages were proximately caused or contributed to by Plaintiff, and/or any other persons or
19 entities not parties to this action, and it is necessary that the proportionate degree of negligence,
20 fault or unreasonable conduct of each of said persons or entities, whether parties to this action or
21 not, be determined.

22 4. Mr. Warner alleges that the injuries and damages complained of in the Complaint, if any,
23 were proximately caused by an intervening or superseding action and/or inaction of others over
24
25
26
27
28

1 which Mr. Warner had no control, which intervening and superseding action and/or inaction bars
2 and/or diminishes Plaintiff's recovery, if any, against Mr. Warner.

3 5. Mr. Warner alleges that Plaintiff, through his own acts and omissions, waived the right to
4 recover damages from Defendant.

5 6. Mr. Warner alleges that the subject Complaint is barred by the applicable Statute of
6 Limitations and/or Repose.

7 7. Mr. Warner alleges that Plaintiff has not sustained any damages or injuries which have
8 been proximately caused by any purported act, omission, or breach of any duty on the part of Mr.
9 Warner.
10

11 8. Mr. Warner alleges that the events, injuries, losses and damages complained of in the
12 Complaint, if any, were the result of and solely caused by an irresistible, superhuman act which
13 no person could control and/or anticipate, to wit: an unusual and unprecedented event which
14 caused the purported accident alleged in the Complaint.
15

16 9. Mr. Warner alleges that Plaintiff, by the exercise of reasonable effort and/or care, could
17 have mitigated that amount of damages alleged to have been suffered, but that Plaintiff failed,
18 neglected and refused, and continue to fail and refuse, to exercise a reasonable effort to mitigate
19 the alleged damages.
20

21 10. Mr. Warner alleges that at all times relevant to the allegations contained in Plaintiff's
22 Complaint, Mr. Warner acted with the due care and circumspection in the performance of any
23 and all duties imposed on it.

24 11. Mr. Warner alleges that he had no control over, or possession of, the area where Plaintiff
25 allege its damages took place.

26 12. The perils or dangers, if any, existing at the time of Plaintiff's alleged injuries, if any,
27 were open and obvious and known to Plaintiff's who nevertheless conducted herself in such a
28

1 manner so as to expose herself to said perils and dangers, if any, and by so doing, assumed all the
2 risks attendant thereto.

3 13. Mr. Warner alleges that Plaintiff, by virtue of his own acts and omissions, is estopped
4 from recovering damages from Mr. Warner.

5 14. Mr. Warner alleges that Plaintiff's claims are barred by virtue of his own failure to join
6 necessary and indispensable parties to this lawsuit.

7 15. Mr. Warner alleges that this action is barred by the equitable doctrine of unclean hands.

8 16. Mr. Warner alleges that all damages sustained by Plaintiff, if any, by reason of the
9 matters referred to in the Complaint, resulted solely from unreasonable and improper use, and
10 misuse, of the products, machines, premises, conditions, facilities, or systems involved.

11 17. Prior to commencement of this action, Mr. Warner duly performed, satisfied and
12 discharged all duties and obligations it may have owed to Plaintiff arising out of any and all
13 purported agreements, representations or contracts made by it or on behalf of Mr. Warner and
14 this action is therefore barred.

15 18. Mr. Warner alleges that Plaintiff have failed to set forth facts sufficient to support an
16 award for attorney's fees or extra-contractual damages, and that accordingly any alleged claims
17 for attorney's fees or extra-contractual damages are barred.

18 19. Mr. Warner alleges that it has been necessary to employ the services of an attorney to
19 defend it in this action and a reasonable sum should be allowed Mr. Warner for attorney's fees,
20 together with costs of suit incurred herein.

21 20. Mr. Warner hereby incorporates by reference those affirmative defenses enumerated in
22 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
23 investigation or discovery reveals the applicability of any such defenses, Mr. Warner reserves the
24

1 right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses
2 are herein incorporated by reference for the specific purpose of not waiving same.

3 21. Pursuant to NRCP 11, Mr. Warner presently has insufficient knowledge or information
4 on which to form a belief as to whether it has additional, as yet unstated affirmative defenses
5 available. Mr. Warner hereby reserves its right to insert additional affirmative defenses in the
6 event discovery and investigation indicate they would be appropriate.

7 WHEREFORE, having fully answered Plaintiff's Complaint, Mr. Warner respectfully
8 requests the following relief:
9

10 A. That Plaintiff takes nothing by virtue of his Complaint;

11 B. That the Complaint is dismissed with prejudice and that Mr. Warner is awarded
12 judgment in this action;

13 C. That Mr. Warner is awarded his costs incurred herein;

14 D. That Mr. Warner be awarded his attorneys' fees; and

15 E. For such other and further relief as the Court deems just and proper.

16 DATED this 28th day of May, 2015.

17 **RESNICK & LOUIS, P.C.**

18
19 By: /s/ Mitch Resnick

20 Mitchell J. Resnick., Esq.

21 Jenny Foley, PhD, Esq.

22 5940 S. Rainbow Blvd.

23 Las Vegas, NV 89118

24 Telephone: (702) 997-3800

25 Facsimile: (702) 997-3800

26 *Attorneys for Defendant Mydatt Services, Inc. d/b/a*

27 *Mr. Warner Services*
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **ANSWER** was served this 30 day
of May, 2015, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with
postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada,
addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax
number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a).
A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick
& Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set
forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing
services the document(s) listed above to the Counsel set forth on the service list on this
date pursuant to EDCR Rule 7.26(c)(4).

/s/ Lily Richardson
An Employee of Resnick & Louis, P.C.

EXHIBIT “F”

1 AFFIDAVIT OF JOSH COLE AICKLEN, ESQ. IN OPPOSITION TO PLAINTIFF
2 X'ZAVION HAWKINS' MOTION TO DISQUALIFY LEWIS BRISBOIS BISGAARD &
3 SMITH, LLP AND FOR SANCTIONS

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF CLARK)

6 JOSH COLE AICKLEN, ESQ., being first duly sworn, deposes and states as
7 follows:

8 1. I am an attorney duly licensed and authorized to practice law in the state of
9 Nevada, and am a partner of LEWIS BRISBOIS BISGAARD & SMITH, LLP, attorneys for
10 Defendants herein. If called as a witness in this matter, I could and would competently
11 testify to the following facts which are personally known to me.

12 2. In August, 2014, then associate and now partner, Paul A. Shpirt, left LEWIS
13 BRISBOIS BISGAARD & SMITH, LLP to go to work with the Eglet Law Firm. In early
14 July, 2015, I was contacted by both Mr. Shpirt and Tracy Eglet, the managing partner of
15 the Eglet Law Firm, stating that Mr. Shpirt was interested in returning to LEWIS
16 BRISBOIS BISGAARD & SMITH, LLP.

17 3. Throughout July, discussions were had between Mr. Shpirt and I which
18 culminated on July 13, 2015 with Mr. Shpirt returning to LEWIS BRISBOIS BISGAARD &
19 SMITH, LLP as a partner. There were cases that were present at LEWIS BRISBOIS
20 BISGAARD & SMITH, LLP prior to Mr. Shpirt leaving for the Eglet Law Firm, and there
21 were cases that were at the Eglet Law Firm after Mr. Shpirt left and before he returned to
22 LEWIS BRISBOIS BISGAARD & SMITH, LLP. So on August 7, 2015, the managing
23 partner of LEWIS BRISBOIS BISGAARD & SMITH, LLP, Darrell D. Dennis, sent Plaintiff's
24 counsel, Tracy Eglet, a letter (at my direction) listing eight (8) cases that Mr. Shpirt would
25 be blocked at LEWIS BRISBOIS BISGAARD & SMITH, LLP by an ethical wall. Attached
26 hereto is a true and correct copy of that August 7, 2015 letter to Tracy Eglet.

1 4. Upon his return, Mr. Shpirt did not discuss these matters with other
2 attorneys at the firm, have access to the files, receive any of the fees for the matters, nor
3 did he participate in any of these matters.

4 5. On October 14, 2015, I was contacted by Starr Insurance Company, the
5 excess policy for SMS Holdings, Inc., about being retained as monitoring counsel for the
6 Hawkins matter. Before I had even sent the matter for a conflict check, Mr. Shpirt
7 informed me that in December, 2014, he had met with X'Zavion Hawkins, Mr. Hawkins'
8 mother, Jason Barrus, Lloyd Baker, Tracy Eglet and an intake specialist at the Eglet Law
9 Firm regarding the possibility of Eglet Law Firm representing Mr. Hawkins. Mr. Shpirt told
10 me that other than that approximately one hour meeting, he did no work on that case and
11 that the Eglet Law Firm had declined representation of Mr. Hawkins.

12 6. As a result, even before I ran the conflicts check, I informed my office
13 manager that Paul A. Shpirt would need to be screened off of the Hawkins vs. GGP
14 Meadows Mall, LLC, et. al. matter. Thereafter, Mr. Shpirt was screened off from the
15 matter. He did not participate in any way in this case, did not discuss it with the attorneys
16 at the firm, did not access any of the pleadings or letters, as a non-equity partner, he did
17 not receive any fees from the case. Nor did he participate in any way in the defense of
18 Hawkins vs. GGP Meadows Mall, LLC, et. al.

19 7. The deposition of Plaintiff was moved at Plaintiff's Counsel's request
20 because Mr. Hawkins was ill, this necessitated that I move Detective Majors' deposition.
21 Detective Majors' deposition was moved as second time at the request of Detective
22 Majors because he had training on the day I scheduled his depositions. The depositions
23 were not moved to gain some litigation advantage due to non-existent information told me
24 by Paul A. Shpirt.

25 8. Ms. Manke's suggestion in her Affidavit and also in her Motion that I
26 communicated with Paul A. Shpirt about the substance of the Hawkins case is false. I
27 have never had any discussions with Mr. Shpirt regarding any aspect of the Hawkins
28

1 case. I have never asked him what occurred in the meeting. He has never volunteered
2 any information. In sum, we have had no discussions of the Hawkins matter.

3 9. When Mr. Shpirt told me about the one hour Hawkins meeting, he did not
4 tell me that he signed a fee sharing agreement. He did not tell me that materials had
5 been provided to the Eglet Law Firm to review for their possible representation of Mr.
6 Hawkins. Mr. Shpirt explains this in his own affidavit.

7 10. It is my understanding that the Eglet Law Firm informed Jason Barrus in
8 March, 2015 that they would not be representing Mr. Hawkins in this lawsuit. Thereafter,
9 according to the Docket, on April 7, 2015, Jolene Manke and David Churchill filed the
10 instant lawsuit. It was not filed by Jason Barrus nor the Eglet Law Firm. As Mr. Shpirt
11 had never worked for Jolene Manke, the Churchill Law Firm nor Jason Barrus, and Mr.
12 Shpirt did not have any substantial involvement in this case, I did not write a letter to
13 Tracy Eglet. I did not believe that there was a concurrent conflict of interest. However, as
14 previously stated, Mr. Shpirt was and has remained screened off from every aspect of the
15 Hawkins case.

16 11. Plaintiff's claim in their Motion and Affidavit that I learned attorney client
17 privileged information from Mr. Shpirt related to statements that Mr. Hawkins made to the
18 police is false. I have never discussed any aspect of the Hawkins case with Mr. Shpirt.

19 12. Further, the first I learned of Mr. Hawkins' statements to the police were
20 when I spoke with Charlene Renwick, of Lee, Hernandez, Landrum & Garofalo. Ms.
21 Renwick told me that in early November, 2015 that she had spoken with Detective Lee
22 Majors of the Las Vegas Metropolitan Police Department. Detective Majors told Ms.
23 Renwick that he had interviewed X'Zavion Hawkins in the hospital after the shooting, and
24 that Mr. Hawkins knew his assailants. Ms. Renwick also told me that Detective Majors
25 had informed her that Mr. Hawkins had later refused to cooperate in the prosecution of
26 the case against his assailants.

27 13. Due to the complexity of this case, on November 12, 2015, Starr Insurance
28 requested that I associate in as co-counsel with Charlene Renwick, Esq. of Lee,

1 Hernandez, Landrum & Garofalo. The formal association was filed on November 16,
2 2015.

3 14. Thereafter, on January 28, 2016, Ms. Renwick and I met with Detective
4 Majors. (That was the meeting that was fully discussed in Plaintiff's Counter-Motion for
5 Sanctions and Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint for
6 Discovery Abuses.) I first looked at Detective Majors' file materials on January 28, 2016.
7 This was the first I learned of the depth of Mr. Hawkins' knowledge regarding the
8 assailants, their names, their nicknames, and that the motive for the shootings was a
9 strong arm robbery that had occurred two (2) years before.

10 15. I did not learn this information from Paul A. Shpirt, nor have I ever
11 discussed any aspect of the defense of this case with Mr. Shpirt.

12 FURTHER AFFIANT SAYETH NAUGHT.

13
14 
JOSH COLE AICKLEN, ESQ.

15 SUBSCRIBED AND SWORN to before me
16 this 18th day of May, 2016.

17 
18 NOTARY PUBLIC
19 In and for said County and State
20
21
22
23
24
25
26
27
28

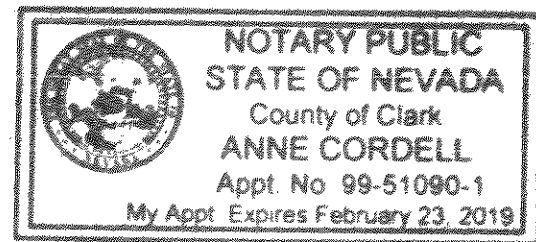


EXHIBIT “G”

**LEWIS
BRISBOIS
BISGAARD
& SMITH LLP**

ATTORNEYS AT LAW

6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702.893.3383
Fax: 702.893.3789
www.lewisbrisbois.com

DARRELL D. DENNIS
DIRECT DIAL: 702.693.4368
DARRELL.DENNIS@LEWISBRISBOIS.COM

August 7, 2015

VIA U.S. MAIL AND E-MAIL:
teglet@egletlaw.com

Tracy Eglet
EGLET PRINCE
400 S. 7th St. #400
Las Vegas NV 89101

Dear Ms. Eglet:

As you know, we recently re-hired your former partner Paul A. Shpirt (Mr. Shpirt) as a partner at Lewis Brisbois Bisgaard and Smith LLP in our Las Vegas Rainbow office. Your office was serving as counsel for Plaintiffs in the following matters while Mr. Shpirt was at your firm:

- Paredes v. Ceva Freight & Frank R. Muniz
- Yates, Charis, et al. v. Narconon Fresh Start, et al.
- McClure, Ronald, et al. v. Narconon Fresh Start, et al.
- Koslow, Stephen, et al. v. Narconon Fresh Start, et al.
- Tino, Michael, et al. v. Narconon Fresh Start, et al.
- Harry Geanacopulos, et al. v. Narconon Fresh Start, et al.
- Welch, David, et al. v. Narconon Fresh Start, et al.
- Prater, Cheryl, et al. v. Southwest Auto, Inc., et al.

There may be a conflict of interest as your offices' representation was directly adverse to our representation. See, Nevada Rule of Professional Conduct 1.7. However, Mr. Shpirt did not have a substantial role or primary responsibility for the above matters. See, Nevada Rule of Professional Conduct 1.10(e). In an abundance of caution and in order to avoid any appearance of impropriety, we will be establishing an ethical wall in the above matters. In particular, we will create an ethical wall to prevent Mr. Shpirt from:

- Discussing the above matters with other attorneys at our office who are working on the above matters;
- Having access to the above matters' files;

Tracy Eglet
August 7, 2015
Page 2

- Receiving any part of the above matters' fee(s); and
- Having any participation in the above matters.

See, Nevada Rule of Professional Conduct 1.10.

Please let us know if you have any questions or concerns regarding the above, and thank you for your courtesy.

Sincerely,



Darrell D. Dennis of
LEWIS BRISBOIS BISGAARD & SMITH LLP

JCA/sk

cc: Josh Cole Aicklen

EXHIBIT “H”

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Back](#) Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS
CASE NO. A-15-717577-C

| | | |
|--|---|--|
| X'Zavion Hawkins, Plaintiff(s) vs. GGP Meadows Mall, LLC, Defendant(s) | § | Case Type: Negligence - Premises Liability |
| | § | Date Filed: 04/27/2015 |
| | § | Location: Department 31 |
| | § | Cross-Reference Case Number: A717577 |
| | § | |
| | § | |
| | § | |

| PARTY INFORMATION | | |
|-------------------|--|---|
| | | Lead Attorneys |
| Defendant | GGP Meadows Mall, LLC | David S Lee <i>Retained</i> 702-880-9750(W) |
| Defendant | Mydatt Services Inc <i>Doing Business As</i> Valor Security Services | David S Lee <i>Retained</i> 702-880-9750(W) |
| Defendant | Warner, Mark | Mitchell J. Resnick <i>Retained</i> 702-997-3800(W) |
| Plaintiff | Hawkins, X'Zavion | David J. Churchill <i>Retained</i> 702-868-8888(W) |

| EVENTS & ORDERS OF THE COURT | |
|------------------------------|---|
| DISPOSITIONS | |
| 07/22/2015 | Dismissal Pursuant to NRCP 41 (Judicial Officer: Kishner, Joanna S.) Debtors: Mydatt Services Inc (Cross Defendant) Creditors: GGP Meadows Mall, LLC (Cross Claimant) Judgment: 07/22/2015, Docketed: 07/29/2015 |
| 07/23/2015 | Dismissal Pursuant to NRCP 41 (Judicial Officer: Kishner, Joanna S.) Debtors: Mark Warner (Cross Defendant) Creditors: GGP Meadows Mall, LLC (Cross Claimant) Judgment: 07/23/2015, Docketed: 07/29/2015 |
| 02/04/2016 | Order of Dismissal With Prejudice (Judicial Officer: Kishner, Joanna S.) Debtors: GGP Meadows Mall, LLC (Defendant), Mydatt Services Inc (Defendant), Mark Warner (Defendant) Creditors: X'Zavion Hawkins (Plaintiff) Judgment: 02/04/2016, Docketed: 02/11/2016 Comment: Certain Claims |
| OTHER EVENTS AND HEARINGS | |
| 04/27/2015 | Case Opened |
| 04/27/2015 | Complaint <i>Complaint</i> |
| 05/11/2015 | Affidavit of Service <i>Affidavit of Service - Mydatt Services Inc dba Valor Security Services</i> |
| 05/15/2015 | Affidavit of Service <i>Affidavit of Service - GGP Meadows Mall LLC</i> |
| 05/20/2015 | Answer to Complaint <i>Defendant Mydatt Services Inc dba Valor Security Services Answer to Plaintiff's Complaint</i> |
| 05/20/2015 | Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i> |
| 05/20/2015 | Demand for Jury Trial <i>Demand for Jury Trial</i> |

| | |
|------------|--|
| 05/20/2015 | Answer and Crossclaim <i>Defendant GGP Meadows Mall, LLC's Answer and Cross-Claims</i> |
| 05/20/2015 | Initial Appearance Fee Disclosure <i>Defendant GGP Meadows Mall, LLC's Initial Appearance Fee Disclosure</i> |
| 05/29/2015 | Affidavit of Service <i>Affidavit of Service - Mark Warner</i> |
| 05/30/2015 | Answer to Complaint <i>Defendant Mark Warner's Answer to Plaintiff's Complaint</i> |
| 05/30/2015 | Demand for Jury Trial <i>Demand for Jury Trial</i> |
| 05/31/2015 | Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i> |
| 06/01/2015 | Notice of Department Reassignment <i>Notice of Department Reassignment</i> |
| 06/01/2015 | Peremptory Challenge <i>Plaintiff's Peremptory Challenge of Judge Michelle Leavitt</i> |
| 06/03/2015 | Notice of Early Case Conference <i>Notice of Early Case Conference</i> |
| 06/22/2015 | Amended Notice of Early Case Conference <i>Amended Notice of Early Case Conference</i> |
| 06/23/2015 | Early Case Conference List of Witnesses & Production of Docs <i>Plaintiff's Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 06/25/2015 | Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i> |
| 07/08/2015 | Notice <i>Notice of Change of Handling Attorney Within Firm</i> |
| 07/10/2015 | Notice of Medicaid Lien <i>Notice of Medicaid Lien (NRS 422.293)</i> |
| 07/21/2015 | Individual Case Conference Report <i>Plaintiff X'Zavion Hawkins' Individual Case Conference Report</i> |
| 07/22/2015 | Notice of Voluntary Dismissal <i>Defendant/Cross-Claimant GGP Meadows Mall, LLC's Notice of Voluntary Dismissal of Cross-Claims as to Defendant/Cross-Defendant Mydatt Services, Inc. d/b/a Valor Security Services</i> |
| 07/23/2015 | NRCP 16.1 Initial List of Witnesses and Documents <i>Defendants Mydatt Services' and Mark Warner's Initial Disclosure of Information Pursuant to NRCP 16.1</i> |
| 07/23/2015 | Notice of Voluntary Dismissal <i>DefendantCross-Claimant GGP Meadows Mall, LLC's Notice of Voluntary Dismissal of Cross-Claims as to Defendants/Cross-Defendants Mark Warner, Does 1 Through 10, Doe Security Guards 11 Through 20, and Roe Entities 21 Through 30</i> |
| 07/23/2015 | Demand for Jury Trial <i>Defendant GGP Meadows Mall, LLC's Demand for Jury Trial</i> |
| 07/23/2015 | Joint Case Conference Report <i>Joint Defense Case Conference Report Filed on Behalf of All Defendants</i> |
| 07/29/2015 | Amended Notice <i>Amended Notice of Deposition of Custodian of Records-Dispatch Research Department -Las Vegas Metropolitan Police Department</i> |
| 08/05/2015 | Supplemental Disclosure of Witnesses & Documents <i>Plaintiff's First Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 08/12/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Second Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 08/19/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Third Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 08/21/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Fourth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 09/01/2015 | Notice to Appear for Discovery Conference <i>Notice to Appear for Discovery Conference</i> |
| 09/01/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Fifth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 09/09/2015 | Notice of Appearance <i>Notice of Appearance</i> |
| 09/14/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Sixth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 09/15/2015 | Discovery Conference (9:30 AM) (Judicial Officer Bulla, Bonnie) <u>Parties Present</u> <u>Minutes</u> Result: Scheduling Order Will Issue |
| 09/16/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Seventh Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 09/17/2015 | Notice of Deposition <i>Notice of Deposition of DeAndre M. Thompson</i> |
| 09/21/2015 | Application for Issuance of Commission to Take Deposition <i>Application for Issuance of Commission to Take Deposition Outside State of Nevada</i> |
| 09/21/2015 | Notice of Appearance <i>Notice of Appearance</i> |
| 09/22/2015 | Substitution of Attorney <i>Substitution of Counsel</i> |

| | |
|------------|---|
| 09/23/2015 | Commission to Take Deposition Outside the State of Nevada <i>Commission to Take Deposition Outside State of Nevada RE: DeAndre M. Thompson</i> |
| 09/24/2015 | Scheduling Order <i>Scheduling Order</i> |
| 09/28/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Eight Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 09/30/2015 | Notice <i>Notice of Disassociation of Counsel</i> |
| 10/06/2015 | Supplement to Early Case Conference List <i>Plaintiff's Ninth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 10/15/2015 | Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order Setting Civil Jury Trial, Pre-Trial, and Conference, Calendar Call and Status Check</i> |
| 11/16/2015 | Notice of Association of Counsel <i>Notice of Association of Counsel</i> |
| 11/16/2015 | Certificate of Service <i>Certificate of Service</i> |
| 11/25/2015 | Affidavit of Service <i>Affidavit of Service</i> |
| 12/10/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Tenth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 12/15/2015 | Supplement to List of Witnesses & Documents <i>Plaintiff's Eleventh Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 01/04/2016 | Supplement to Early Case Conference List <i>Plaintiff's Twelfth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 01/20/2016 | Supplement to List of Witnesses & Documents <i>Plaintiff's Thirteenth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 01/26/2016 | Subpoena <i>Subpoena for Deposition (Personal Appearance) Detective Majors</i> |
| 02/04/2016 | Stipulation and Order <i>Stipulation and Order to Dismiss Plaintiff's Wage Loss Claims</i> |
| 02/04/2016 | Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order to Dismiss Plaintiff's Wage Loss Claims</i> |
| 02/12/2016 | Stipulation and Order <i>Stipulation and Order for Extension of Discovery (First Request)</i> |
| 02/17/2016 | Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order for Extension of Discovery (First Request)</i> |
| 02/18/2016 | Objection <i>Plaintiff's Objection to Defendants MyDatt Services, Inc.'s dba Valor Security Services and Mark Warer's NRCP 16.1(A) Third Supplement to Early Case Conference Linst of Witnesses and Production of Documents</i> |
| 02/25/2016 | Supplement to List of Witnesses & Documents <i>Plaintiff's Fourteenth Supplement to Early Case Conference Disclosure of Witnesses and Exhibits</i> |
| 03/01/2016 | Notice of Taking Deposition <i>Notice of Taking Deposition of the Custodian of Records for Facebook, Inc.</i> |
| 03/01/2016 | Application for Issuance of Commission to Take Deposition <i>Application for Issuance of Commission to Take Out of State Deposition of the Custodian of Records for Facebook, Inc.</i> |
| 03/02/2016 | Subpoena Duces Tecum <i>Subpoena Duces Tecum (Custodian of Records for Facebook, Inc.)</i> |
| 03/02/2016 | Amended Notice of Taking Deposition <i>First Amended Notice of Taking Deposition of the Custodian of Records for Facebook, Inc.</i> |
| 03/02/2016 | Amended <i>Amended Application for Issuance of Commission to take Out of State Deposition of the Custodian of Records for Facebook, Inc.</i> |
| 03/07/2016 | Amended Notice of Taking Deposition <i>Second Amended Notice of Taking Deposition of Custodian of Records for Facebook, Inc.</i> |
| 03/07/2016 | Application for Issuance of Commission to Take Deposition <i>Application for Issuance of Commission to Take Out of State Deposition of the Custodian of Records for Facebook, Inc.</i> |
| 03/07/2016 | Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call and Status Check</i> |
| 03/07/2016 | Subpoena Duces Tecum <i>Amended Subpoena Duces Tecum (Custodian of Records for Facebook, Inc.)</i> |
| 03/11/2016 | Notice of Deposition <i>Notice of Deposition of Defendant Mydatt Security Services, Inc. d/b/a Valor Security Services' PMK(S) Pursuant to NRCP 30(b)(6)</i> |
| 03/11/2016 | Notice of Deposition <i>Notice of Deposition of Defendant GGP Meadows Mall LLC's PMK(S) Pursuant to NRCP 30(b)(6)</i> |
| 03/14/2016 | Commission to Take Deposition Outside the State of Nevada <i>Commission to Take Out of State Deposition of The Custodian of Records for Facebook, Inc.</i> |
| 03/23/2016 | Motion for Leave to File <i>Defendants, GGP Meadows Mall LLC, Mydatt Services, Inc., DBA Valor Security Services, and Mark Warner's Motion for Leave to File Third-Party Complaint</i> |
| 03/23/2016 | Motion to Dismiss <i>Defendants' Motion to Dismiss Plaintiff's Complaint</i> |
| 03/24/2016 | Supplemental List of Documents <i>Defendants' Supplemental Exhibits of Audio and Video Discs in Support of Motion to Dismiss Plaintiff's Complaint</i> |
| 04/01/2016 | Joinder To Motion <i>Defendant GGP Meadows Mall LLC's Joinder to Defendants' Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint</i> |

04/11/2016 **Opposition and Countermotion**
Plaintiff's Opposition to Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion for Leave to File Third-Party Complaint, and, Alternatively, Counter Motion to Bifurcate Trial

04/11/2016 **Opposition and Countermotion**
Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Sanctions

04/11/2016 **Notice**
Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Notice of Vacating Inspection Pursuant to Rule 34

04/12/2016 **Affidavit of Service**
Affidavit of Service of Subpoena (Custodian of Records for Las Vegas Metropolitan Police Department)

04/12/2016 **Affidavit of Service**
Affidavit of Service of Subpoena

04/19/2016 **Affidavit of Service**
Affidavit of Service Subpoena - Custodian of Records, Las Vegas Metro Police Department

04/26/2016 **Reply**
Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Opposition to Plaintiff's Countermotion for Sanctions

04/26/2016 **Reply in Support**
Defendants, GGP Meadows Mall, LLC, Mydatt Services, Inc., DBA Valor Security Services, and Mark Warner's Reply In Support of Motion for Leave to File Third-Party Complaint and Opposition To Plaintiff's Countermotion to Bifurcate Trial

04/27/2016 **Motion to Extend**
Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion to Extend Security Expert Disclosure Deadlines

04/28/2016 **Certificate of Service**
Certificate of Service

04/28/2016 **Amended Certificate of Service**
Amended Certificate of Service

05/03/2016 **Motion for Leave** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Defendants, GGP Meadows Mall LLC, Mydatt Services, Inc., DBA Valor Security Services, and Mark Warner's Motion for Leave to File Third-Party Complaint
 05/03/2016 Reset by Court to 05/03/2016
 Result: Granted

05/03/2016 **Motion to Dismiss** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Defendants' Motion to Dismiss Plaintiff's Complaint
 Result: Hearing Set

05/03/2016 **Joinder** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Defendant GGP Meadows Mall LLC's Joinder to Defendants' Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint
 Result: Hearing Set

05/03/2016 **Opposition and Countermotion** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Plaintiff's Opposition to Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion for Leave to File Third-Party Complaint, and, Alternatively, Counter Motion to Bifurcate Trial
 05/03/2016 Reset by Court to 05/03/2016
 Result: Denied Without Prejudice

05/03/2016 **Opposition and Countermotion** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Sanctions
 Result: Hearing Set

05/03/2016 **Affidavit of Service**
Affidavit of Service Subpoena Duces Tecum - Custodian of Records, Clark County School District

05/03/2016 **All Pending Motions** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Parties Present
Minutes
 Result: Matter Heard

05/04/2016 **Certificate of Mailing**
Certificate of Mailing

05/11/2016 **Motion to Disqualify Attorney**
Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time

05/11/2016 **Receipt of Copy**
Receipt of Copy of Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time

05/16/2016 **Order**
Proposed Order on Defendants' Motion to Dismiss Plaintiff's Complaint and Plaintiff's Counter-Motion for Sanctions; Defendants' Motion for Leave to File Third-Party Complaint; and Plaintiff's Counter-Motion to Bifurcate Trial

05/17/2016 **Notice of Entry**
Notice of Entry

05/20/2016 **Status Check** (3:00 AM) (Judicial Officer Kishner, Joanna S.)
Status Check: Order 5/3/16

05/26/2016 **Evidentiary Hearing** (1:00 PM) (Judicial Officer Kishner, Joanna S.)
Evidentiary Hearing: Defendants' Motion to Dismiss Plaintiff's Complaint / Defendant GGP Meadows Mall LLC's Joinder to Defendants' Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint / Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint

05/26/2016 **Motion to Disqualify Attorney** (1:00 PM) (Judicial Officer Kishner, Joanna S.)
Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time

05/31/2016 **Motion** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion to Extend Security Expert Disclosure Deadlines

07/07/2016 **CANCELED Status Check** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - per Commissioner

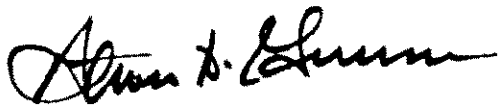
08/04/2016 **CANCELED Pre Trial Conference** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - per Commissioner

| | | | |
|------------|--|--|--|
| 08/30/2016 | CANCELED Calendar Call (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated - per Commissioner</i> | | |
| 09/06/2016 | CANCELED Jury Trial (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated - per Commissioner</i> | | |
| 09/08/2016 | Status Check (9:00 AM) (Judicial Officer Kishner, Joanna S.) | | |
| 10/13/2016 | Pre Trial Conference (10:15 AM) (Judicial Officer Kishner, Joanna S.) | | |
| 11/08/2016 | Calendar Call (9:00 AM) (Judicial Officer Kishner, Joanna S.) | | |
| 11/14/2016 | Jury Trial (9:00 AM) (Judicial Officer Kishner, Joanna S.) | | |

FINANCIAL INFORMATION

| | | | |
|---|------------------------|----------------------------|--------------------------------|
| Cross Claimant GGP Meadows Mall, LLC | | | |
| Total Financial Assessment | | | 223.00 |
| Total Payments and Credits | | | 223.00 |
| Balance Due as of 05/18/2016 | | | 0.00 |
| 05/20/2015 | Transaction Assessment | | 223.00 |
| 05/20/2015 | Wiznet | Receipt # 2015-53289-CCCLK | GGP Meadows Mall, LLC (223.00) |
| Cross Defendant Mydatt Services Inc | | | |
| Total Financial Assessment | | | 223.00 |
| Total Payments and Credits | | | 223.00 |
| Balance Due as of 05/18/2016 | | | 0.00 |
| 05/20/2015 | Transaction Assessment | | 223.00 |
| 05/20/2015 | Wiznet | Receipt # 2015-52829-CCCLK | Mydatt Services Inc (223.00) |
| Cross Defendant Warner, Mark | | | |
| Total Financial Assessment | | | 223.00 |
| Total Payments and Credits | | | 223.00 |
| Balance Due as of 05/18/2016 | | | 0.00 |
| 06/01/2015 | Transaction Assessment | | 223.00 |
| 06/01/2015 | Wiznet | Receipt # 2015-56760-CCCLK | Warner, Mark (223.00) |
| Plaintiff Hawkins, X'Zavion | | | |
| Total Financial Assessment | | | 720.00 |
| Total Payments and Credits | | | 720.00 |
| Balance Due as of 05/18/2016 | | | 0.00 |
| 04/28/2015 | Transaction Assessment | | 270.00 |
| 04/28/2015 | Wiznet | Receipt # 2015-44027-CCCLK | Hawkins, X'Zavion (270.00) |
| 06/02/2015 | Transaction Assessment | | 450.00 |
| 06/02/2015 | Wiznet | Receipt # 2015-57360-CCCLK | Hawkins, X'Zavion (450.00) |

EXHIBIT “I”



CLERK OF THE COURT

1 **ICCR**
2 DAVID J. CHURCHILL (SBN: 7308)
3 JOLENE J. MANKE (SBN: 7436)
4 **INJURY LAWYERS OF NEVADA**
5 6900 Westcliff Drive, Suite 707
6 Las Vegas, Nevada 89145
7 T: 702-868-8888
8 F: 702-868-8889
9 david@injurylawyersnv.com
10 jolene@injurylawyersnv.com
11 Attorneys for Plaintiff

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 X'ZAVION HAWKINS,
10 Plaintiff,

11 vs.

12 GGP MEADOWS MALL LLC, a Delaware
13 Limited Liability Company; MYDATT
14 SERVICES, INC. d/b/a VALOR SECURITY
15 SERVICES, an Ohio Corporation; MARK
16 WARNER, individually; DOES 1 through 10;
DOE SECURITY GUARDS 11 through 20; and
ROE ENTITIES 21 through 30, inclusive,
Defendants.

CASE NO.: A-15-717577-C
DEPT. NO.: XXXI

17 **PLAINTIFF X'ZAVION HAWKINS' INDIVIDUAL CASE CONFERENCE REPORT**

18 DISCOVERY PLANNING/DISPUTE CONFERENCE REQUESTED: YES X NO

19 SETTLEMENT CONFERENCE REQUESTED: YES X NO

20 The parties previously agreed to participate in a Settlement Conference between the deadline for
21 initial expert disclosures (03/23/2016), and the deadline for rebuttal expert disclosures (04/22/2016).

22 **I. PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT:**

23 **A. DATE OF FILING OF COMPLAINT:** 04/27/2015

24 **B. DATE OF FILING OF ANSWER TO COMPLAINT BY -**

25 **DEFENDANT GGP MEADOWS MALL, LLC:** 05/20/2015

26 **DEFENDANT MYDATT SERVICES, INC.**
27 **d/b/a VALOR SECURITY SERVICES:** 05/20/2015

1 **DEFENDANT MARK WARNER:**

05/30/2015

2 **C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO**

3 **ATTENDED:**

06/23/2015

4 Jolene J. Manke, Esq. for Plaintiff and Jenny L. Foley, Ph.D., Esq. for Defendants GGP
5
6 MEADOWS MALL LLC; MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
7 MARK WARNER.

8 Plaintiff e-mailed the proposed JCCR to defense counsel on June 26, 2015. Plaintiff's counsel
9 called defense counsel on July 7, 2015, and sent an e-mail that same day inquiring about Defendants'
10 initial disclosures and whether the language of the proposed JCCR was acceptable. On July 8, 2015, the
11 defense filed a notice of change of handling attorney within the firm. Based on this change, that same
12 day, Plaintiff's counsel called and left a voicemail message for the new handling attorney. Plaintiff's
13 counsel also sent an e-mail to the new attorney inquiring about the status of Defendants' initial
14 disclosures and whether the language of the proposed JCCR was acceptable. On July 15, 2015,
15 Plaintiff's counsel spoke with an assistant at defense counsel's office. On July 16, 2015, Plaintiff's
16 counsel received an e-mail from another attorney at defense counsel's office indicating the matter has
17 been reassigned. That same day, Plaintiff's counsel inquired about the status of a substitution of
18 attorney for Defendant Meadows Mall, initial disclosures from the defense and whether the proposed
19 language of the JCCR was acceptable. On July 17, 2015, Plaintiff's counsel resent the proposed JCCR
20 to the new defense attorney handling the matter. On July 21, 2015, Plaintiff's counsel spoke with
21 defense counsel to advise that perhaps Plaintiff should move forward with filing an individual case
22 conference report because the defense needed time to evaluate the matter to make initial disclosures and
23 analyze the proposed joint case conference report.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **II. A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM**
2 **FOR RELIEF OR DEFENSE:**

3 **A. DESCRIPTION OF THE ACTION:**

4 On or about August 17, 2013, the Air Jordan 4 "Green Glow" shoe launch took place at
5 Meadows Mall. Patrons participating in the show launch had to arrive at Meadows Mall very early
6 before the entrance doors opened to increase their chance of obtaining a pair of the limited quantity of
7 shoes. Plaintiff X'ZAVION HAWKINS (hereinafter "X'Zavion") accompanied his minor female
8 cousin to Meadows Mall to participate in the shoe launch. They arrived at Meadows Mall during the
9 early morning hours to wait with other patrons participating in the show launch. After they arrived, they
10 found a place near the south entrance where all the other patrons had gathered to wait for the doors to
11 open. While they were waiting, they stood in the area of the entrance or sat on a bench near the
12 entrance.

13 At no time did X'Zavion observe any individuals who appeared to be associated with security for
14 Meadows Mall. At no time did X'Zavion observe any police cars or individuals who appeared to be
15 associated with law enforcement assisting with crowd control or keeping the peace.

16 While it was still dark outside and several hours remained before the entrance doors would open,
17 a group of young men present for the show launch approached X'Zavion and his minor female cousin.
18 One of the young men in the group started at X'Zavion and rushed toward him in a threatening manner.
19 X'Zavion was first physically assaulted by one of the young men in the group and knocked to the
20 ground. X'Zavion then heard the young man yell to one of the other young men in the group something
21 that sounded like, "Get him, Zach!"

22 X'Zavion then recalls hearing a number of gun shots ring out and X'Zavion suffered multiple
23 gunshot sounds. X'Zavion recalls being assisted by another patron who had been waiting in line for the
24 shoe launch. X'Zavion then recalls that police officers arrived at the scene and emergency personnel
25 transported him from the scene. The shooting incident caused X'Zavion to suffer serious injury to his
26 abdomen, right leg and spine. As a result of the spine injury, X'Zavion has permanent loss of lower
27 extremity movement and sensation.
28

1 **B. CLAIMS FOR RELIEF:**

- 2 1. Negligence;
- 3 2. Respondeat Superior; and
- 4 3. Gross Negligence.

5 **C. DEFENSES:**

6 *See* Defendant GGP MEADOWS MALL LLC's Answer to Plaintiff's Complaint on file

7 with the Court; Defendant MYDATT SERVICES, INC. d/b/a VALOR SECURITY

8 SERVICES' Answer to Plaintiff's Complaint on file with the Court; and Defendant

9 MARK WARNER's Answer to Plaintiff's Complaint on file with the Court.

10 **III. LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN**

11 **THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE**

12 **IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A**

13 **RESULT THEREOF:**

14 **A. PLAINTIFF:**

15 *See* Plaintiff's Early Case Conference List of Witnesses and Documents Pursuant to

16 NRCP 16.1, attached hereto as "Exhibit 1."

17 **B. DEFENDANT(S):**

18 Defendants have not made initial disclosures.

19 The parties reserve all rights to object to the authenticity, genuineness, reasonableness and

20 necessity of any and all documents offered by any party to this suit.

21 ///

22 ///

23 ///

24 ///

1 **IV. LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE**
2 **INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING**
3 **IMPEACHMENT OR REBUTTAL WITNESSES:**

4 **A. PLAINTIFF:**

5 See Plaintiff's Early Case Conference List of Witnesses and Documents Pursuant to
6 NRCP 16.1, attached hereto as "Exhibit 1."
7

8 **B. DEFENDANT(S):**

9 Defendants have not made initial disclosures.

10 **V. DISCOVERY PLAN:**

11 **A. WHAT CHANGES, IF ANY, SHOULD BE MADE IN THE TIMING, FORM OR**
12 **REQUIREMENTS FOR DISCLOSURES UNDER 16.1(a):**

- 13 1. Plaintiff's view: None.
14 2. Defendants' view: None.
15

16 **B. WHEN DISCLOSURES UNDER 16.1(a)(1) WERE MADE OR WILL BE MADE:**

- 17 1. Plaintiff's disclosures: 06/23/2015.
18 2. Defendants' disclosures: Defendants have not made initial disclosures.
19

20 **C. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED:**

- 21 1. Plaintiff's view: Liability and Damages.
22 2. Defendants' view: Liability and damages.
23

24 **D. SHOULD DISCOVERY BE CONDUCTED IN PHASES OR LIMITED TO OR**
25 **FOCUSED UPON PARTICULAR ISSUES?**

- 26 1. Plaintiff's view: No.
27 2. Defendants' view: No.
28

1 **E. WHAT CHANGES, IF ANY, SHOULD BE MADE IN LIMITATIONS ON**
2 **DISCOVERY IMPOSED UNDER THESE RULES AND WHAT, IF ANY, OTHER**
3 **LIMITATIONS SHOULD BE IMPOSED?**

- 4 1. Plaintiff's view: None.
5 2. Defendants' view: None.

6 **F. WHAT, IF ANY, OTHER ORDERS SHOULD BE ENTERED BY COURT**
7 **UNDER RULE 26(c) OR RULE 16(b) AND (c):**

- 8 1. Plaintiffs' view: None.
9 2. Defendants' view:

10 **G. ESTIMATED TIME FOR TRIAL:**

- 11 1. Plaintiff's view: 10 days
12 2. Defendants' view: 15-20 days

13 **VI. DISCOVERY AND MOTION DATES:**

14 **A. DATES AGREED BY THE PARTIES:**

- 15 1. Close of discovery: 06/23/2016
16 2. Final date to file motions to amend pleadings
17 or add parties (without a further court order): 03/23/2016
18 3. Final dates for expert disclosures:
19 i. Initial disclosures: 03/23/2016
20 ii. Rebuttal disclosures: 04/22/2016
21 4. Final date to file dispositive motions: 07/22/2016

22 ///

23 ///

24 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

and Defendant MARK WARNER on 05/30/2015

DATED this 21st day of July, 2015.

DAVID J. CHURCHILL (SBN: 7308)
JOLENE J. MANKE (SBN: 7436)
6900 Westcliff Drive, Suite 707
Las Vegas, NV 89145
Attorneys for Plaintiff

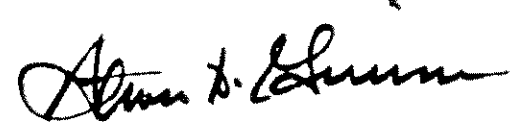
CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 21 day of July, 2015, I served the foregoing **PLAINTIFF X'ZAVION HAWKINS' INDIVIDUAL CASE CONFERENCE REPORT** on the following parties via Electronic Service, as follows:

BRIAN GONSALVES (SBN: 9815)
RESNICK & LOUIS, P.C.
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
E-mail: bgonsalves@rlattorneys.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER


an employee of Injury Lawyers of Nevada

EXHIBIT “J”



CLERK OF THE COURT

JCCR
RESNICK & LOUIS, P.C.
Brian A. Gonsalves, Esq. SBN: 9815
bgonsalves@rlattorneys.com
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
*Attorneys for Defendants Mydatt Services, Inc., and
Mark Warner*

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS, individually,

Plaintiff,

v.

GGP MEADOWS MALL LLC, a Delaware
Limited Liability Company; MYDATT
SERVICES, INC. d/b/a VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually; DOES 1 through 10;
DOE SECURITY GUARDS 11 through 20;
and ROE ENTITIES 21 through 30, inclusive,

Defendants.

CASE NO.: A-15-717577-C

DEPT: XXXI

**JOINT DEFENSE CASE
CONFERENCE REPORT FILED ON
BEHALF OF ALL DEFENDANTS**

Defendants MYDATT SERVICES and MARK WARNER by and through their attorney,
Brian A. Gonsalves, Esq. of the law firm of RESNICK & LOUIS, P.C., and Defendant GGP
MEADOWS MALL LLC by and through its attorney Philip Goodhart, Esq., of the law firm of
Thorndal Armstrong Delk Balkenbush & Eisinger, submit the following *Joint Defense Case
Conference Report Filed on Behalf of All Defendants*:

DISPUTE RESOLUTION CONFERENCE REQUIRED:

YES X NO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SETTLEMENT CONFERENCE

REQUESTED:

YES X NO

If yes, list five dates that parties are available to attend a Settlement Conference (provide dates that are at least 90 days after the filing of the Case Conference Report - all Settlement Conferences will be set at 10:30 a.m., Tuesdays through Fridays):

The parties have agreed to participate in a Settlement Conference between the deadline for initial expert disclosures (03/23/2016), and the deadline for rebuttal expert disclosures (04/22/2016).

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. DATE OF FILING OF COMPLAINT: April 27, 2015.
- B. DATE OF FILING OF ANSWER BY EACH DEFENDANT:
 - Defendant GGP Meadows Mall, LLC: May 20, 2015.
 - Defendant Mydatt Services, Inc.: May 20, 2015.
 - Defendant Mark Warner: May 30, 2015.
- C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO

ATTENDED: June 23, 2015.
Jolene J. Manke, Esq., for Plaintiff, and Jenny L. Foley, Ph.D., Esq., for Defendants GGP Meadows Mall, Mydatt Services, and Mark Warner.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM

FOR RELIEF OR DEFENSE: [16.1(c)(1)]

1 A. Description of the action:

2 On or about August 17, 2013, the Air Jordan 4 "Green Glow" shoe launch took
3 place at Meadows Mall. Patrons participating in the shoe launch had to arrive at
4 Meadows Mall very early before the entrance doors opened to increase their chance of
5 obtaining a pair of the limited quantity of shoes. Plaintiff X'Zavion Hawkins
6 accompanied his minor female cousin to Meadows Mall to participate in the shoe
7 launch. They arrived at Meadows Mall during the early morning hours to wait with other
8 patrons participating in the shoe launch. A dispute arose between Plaintiff and a group
9 of individuals. Plaintiff was ultimately shot by one of the individuals in that group.
10 Plaintiff then filed suit against Meadows Mall, Mydatt Services (the company that
11 provides security services to the Mall), and Mark Warner (security director at Meadows
12 Mall and an employee of Mydatt Services).

13
14 Defendant GGP Meadows Mall subsequently asserted a cross-claim against
15 Defendants Mydatt Services and Mark Warner seeking indemnity and contribution. The
16 cross-claim has been voluntarily dismissed as to Mydatt Services. It is expected that
17 the remainder of the cross-claim will be voluntarily dismissed within the next few days.
18

19 B. Claims for relief:

- 20 1. Negligence,
21 2. Respondeat Superior, and
22 3. Gross Negligence.
23

24 C. Defenses:

25 See *Defendants GGP Meadows Mall, LLC's Answer and Cross-Claims,*
26 *Defendant Mydatt Services, Inc. d/b/a Valor Security Services' Answer to Plaintiff's*
27 *Complaint, and Defendant Mark Warner's Answer to Plaintiff's Complaint,* all of which
28

1 are on file with the Court.

2 III.

3 LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN
4 THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE
5 IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A
6 RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

7 A. Plaintiff: See *Plaintiff's Early Case Conference Disclosure of Witnesses*
8 *and Exhibits* attached to *Plaintiff X'Zavion Hawkins' Individual Case Conference Report*.

10 B. Defendant:

11 See *Defendants Mydatt Services' and Mark Warner's NRCP 16.1(A) Initial*
12 *Disclosure of Information Pursuant to NRCP 16.1* attached hereto as Exhibit 1.

13 Defendant GGP Meadows Mall's initial disclosures are expected to be served on
14 July 23, 2015, by its current counsel Philip Goodhart, Esq., of the law firm of Thorndal
15 Armstrong Delk Balkenbush & Eisinger.

17 IV.

18 LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE
19 INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT
20 OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

21 A. Plaintiff: See *Plaintiff's Early Case Conference Disclosure of Witnesses*
22 *and Exhibits* attached to *Plaintiff X'Zavion Hawkins' Individual Case Conference Report*.

24 B. Defendants:

25 See *Defendants Mydatt Services' and Mark Warner's NRCP 16.1(A) Initial*
26 *Disclosure of Information Pursuant to NRCP 16.1* attached hereto as Exhibit 1.

27 Defendant GGP Meadows Mall's initial disclosures are expected to be served on
28

1 July 23, 2015, by its current counsel Philip Goodhart, Esq., of the law firm of Thorndal
2 Armstrong Delk Balkenbush & Eisinger.

3 V.

4 DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]

5 A. What changes, if any, should be made in the timing, form or requirements
6 for disclosures under 16.1(a):

7 1. Plaintiff's view: None.

8 2. Defendants' view: None.

9
10 When disclosures under 16.1(a)(1) were made or will be made:

11 1. Plaintiff's disclosures: June 23, 2015.
12 enter calendar date

13 2. Defendants' disclosures: July 23, 2015
14 enter calendar date

15 B. Subjects on which discovery may be needed:

16 1. Plaintiff's view: Liability and damages.

17 2. Defendants' view: Liability and damages.

18 C. Should discovery be conducted in phases or limited to or focused upon
19 particular issues?

20 1. Plaintiff's view: No.

21 2. Defendant's view: No.

22 D. What changes, if any, should be made in limitations on discovery imposed
23 under these rules and what, if any, other limitations should be imposed?
24

25 1. Plaintiff's view: None.

26 2. Defendant's view: None.

1 E. What, if any, other orders should be entered by court under Rule 26(c) or
2 Rule 16(b) and (c):

3 1. Plaintiff's view: None.

4 2. Defendant's view: None.

5 F. Estimated time for trial:

6 1. Plaintiff's view: 10 days
7 (number of court days)

8 2. Defendants' view: 15 to 20 days
9 (number of court days)

VI.

10 DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

11 A. Dates agreed by the parties:

12 1. Close of discovery: June 23, 2016
13 enter calendar date

14 2. Final date to file motions to amend pleadings or add parties (without a
15 further court order): March 23, 2016

16 enter calendar date
17 (Not later than 90 days
before close of discovery)

18 3. Final dates for expert disclosures:

19 i. initial disclosure: March 23, 2016
20 enter calendar date
(Not later than 90 days
before discovery cut-off date)

21 ii. rebuttal disclosures: April 22, 2016
22 enter calendar date
(Not later than 30 days after
initial disclosure of experts)

23 4. Final date to file dispositive motions:

24 July 22, 2016
25 enter calendar date
(Not later than 30 days
after discovery cut-off date)

26 VII.

27 JURY DEMAND [16.1(c)(10)]

1 A jury demand has been filed: Yes.
(Yes/No)

2 VIII.

3 INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

4 None. However, the parties hereby reserve the right to make all applicable
5 evidentiary objections during the course of discovery and at trial to all documents and
6 witnesses disclosed or that may be disclosed pursuant to the rules of civil procedure
7 and the rules of evidence.
8

9
10 This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil
11 Procedure. Each signature constitutes a certification that to the best of the signer's
12 knowledge, information and belief, formed after a reasonable inquiry, the disclosures
13 made by the signer are complete and correct as of this time.
14

15 DATED this 23rd day of July, 2015.

16 **RESNICK & LOUIS, P.C.**

17 

18 By: _____
19 Brian A. Gonsalves, Esq.
20 *Attorneys for Defendants Mydatt Services, Inc., and*
Mark Warner

21 DATED this 23rd day of July, 2015.

22 **THORNDAL ARMSTRONG DELK**
23 **BALKENBUSH & EISINGER**

24 By: _____
25 Philip Goodhart, Esq.
26 *Attorneys for Defendant GGP Meadows Mall, LLC*
27
28

1 A jury demand has been filed: Yes.
(Yes/No)

2 VIII.

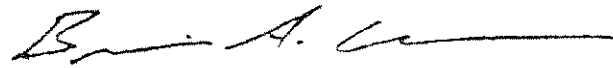
3 INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

4 None. However, the parties hereby reserve the right to make all applicable
5 evidentiary objections during the course of discovery and at trial to all documents and
6 witnesses disclosed or that may be disclosed pursuant to the rules of civil procedure
7 and the rules of evidence.
8

9
10 This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil
11 Procedure. Each signature constitutes a certification that to the best of the signer's
12 knowledge, information and belief, formed after a reasonable inquiry, the disclosures
13 made by the signer are complete and correct as of this time.
14

15 DATED this 23rd day of July, 2015.

16 RESNICK & LOUIS, P.C.

17 

18 By:

19 Brian A. Gonsalves, Esq.
20 Attorneys for Defendants Mydatt Services, Inc., and
Mark Warner

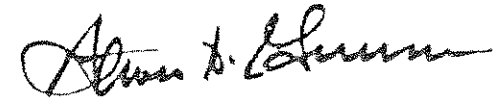
21 DATED this 23rd day of July, 2015.

22 THORNDAL ARMSTRONG DELK
23 BALKENBUSH & EISINGER

24 By:

25 
Philip Goodhart, Esq.
26 Attorneys for Defendant GGP Meadows Mall, LLC
27
28

EXHIBIT 1



CLERK OF THE COURT

1 **NLWD**
2 **RESNICK & LOUIS, P.C.**
3 Brian A. Gonsalves, Esq. SBN: 9815
4 bgonsalves@rlattorneys.com
5 5940 S. Rainbow Blvd.
6 Las Vegas, NV 89118
7 Telephone: (702) 997-3800
8 Facsimile: (702) 997-3800
9 *Attorneys for Defendants Mydatt Services, Inc., and*
10 *Mark Warner*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 X'ZAVION HAWKINS, individually,

12 Plaintiff,

13 v.

14 GGP MEADOWS MALL LLC, a Delaware
15 Limited Liability Company; MYDATT
16 SERVICES, INC. d/b/a VALOR SECURITY
17 SERVICES, an Ohio Corporation; MARK
18 WARNER, individually; DOES 1 through 10;
19 DOE SECURITY GUARDS 11 through 20;
20 and ROE ENTITIES 21 through 30, inclusive,

21 Defendants.

CASE NO.: A-15-717577-C

DEPT: XXXI

**DEFENDANTS MYDATT SERVICES'
AND MARK WARNER'S INITIAL
DISCLOSURE OF INFORMATION
PURSUANT TO NRCP 16.1**

22 Pursuant to NRCP 16.1(a)(1), Defendants MYDATT SERVICES and MARK WARNER
23 by and through their attorney, Brian A. Gonsalves, Esq. of the law firm of RESNICK & LOUIS,
24 P.C., hereby submit the following information:

25 **A. PERSONS WITH KNOWLEDGE**

- 26 1. Person(s) Most Knowledgeable
27 VALOR SECURITY SERVICES
28 c/o Brian A. Gonsalves, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, Nevada 89118
702-997-3800

1 Defendant is expected to testify regarding the facts and circumstances personally known
2 to him/her regarding the subject matter of this litigation.

3 2. X'ZAVION HAWKINS
4 c/o INJURY LAWYERS OF NEVADA
5 6900 Westcliff Drive, Suite 707
6 Las Vegas, NV 89145

7 Plaintiff is expected to testify regarding the facts and circumstances personally known to
8 him/her regarding the subject matter of this litigation.

9 3. WANDA PERKINS
10 4356 Vornsand Drive, Apt. 3
11 Las Vegas, NV 89115

12 This witness is Plaintiff X'ZAVION HAWKINS' mother and is expected to testify
13 regarding the facts and circumstances personally known to him/her regarding the subject matter
14 of this litigation.

15 4. Person(s) Most Knowledgeable
16 For Defendant GGP MEADOWS MALL, LLC
17 c/o THORNDAL, ARMSTRONG, DELK, BALENBUSH & EISINGER
18 1100 E. Bridger Avenue
19 Las Vegas, NV 89101

20 The Person Most Knowledgeable for Defendant GGP MEADOWS MALL, LLC is
21 expected to testify regarding the facts and circumstances personally known to him/her regarding
22 the subject matter of this litigation as well as the policies and procedures of Meadows Mall,
23 including, but not limited to, hiring, firing, training, and overall security operations.

24 5. Officer Renfer, Badge #13122
25 c/o Las Vegas Metropolitan Police Department
26 400 S. Martin Luther King Blvd.
27 Las Vegas, NV 89106

28 Officer Renfer is anticipated to testify as to his/her education, professional training,
experience, the facts and circumstances regarding the investigation of subject accident, his/her
conversations with drivers, passengers, and witnesses, his/her observations of the parties, the
securing or taking of evidence, and the contemporaneous creation of notes, memoranda,
photographs, diagrams, measurements, and the traffic accident report or other investigative

1 reports, declaration of arrest, or affidavits, in the ordinary course of the business of his/her
2 department.

3
4 6. KEISHA LOVE
4142 Walnut Road
5 Las Vegas, NV 89115

6 This witness is Plaintiff X'ZAVION HAWKINS' cousin and is expected to testify
7 regarding the facts and circumstances personally known to him/her regarding the subject matter
8 of this litigation.

9
10 7. MARIO PENA
Address Unknown

11 This witness was present at the time of the subject incident and is expected to testify
12 regarding the facts and circumstances personally known to him/her regarding the subject matter
13 of this litigation.

14
15 8. DEANDRE MICHAEL THOMPSON
9039 Sheep Ranch Court
16 Las Vegas, NV 89143

17 This witness was present at the time of the subject incident and is expected to testify
18 regarding the facts and circumstances personally known to him/her regarding the subject matter
19 of this litigation.

20
21 9. DARRELLONDA ALDENA PETERSON
4578 Sky Bolt Street
22 Las Vegas, NV

23 This witness was present at the time of the subject incident and is expected to testify
24 regarding the facts and circumstances personally known to him/her regarding the subject matter
25 of this litigation.

26
27 10. The Person(s) Most Knowledgeable and/or Custodian of Records for
Las Vegas Fire and Rescue
28 500 N. Casino Center Blvd.
Las Vegas, NV 89101

- 1 11. The Person(s) Most Knowledgeable and/or Custodian of Records for
2 University Medical Center
3 1800 W. Charleston Blvd.
 Las Vegas, NV 89102
- 4 12. The Person(s) Most Knowledgeable and/or Custodian of Records for
5 Desert Radiologists
6 2020 Palomino Lane
 Las Vegas, NV 89106
- 7 13. The Person(s) Most Knowledgeable and/or Custodian of Records for
8 Steve Evans, M.D.
9 Atlantic Anesthesia Consultants
 1815 Village Center Circle
 Las Vegas, NV 89144
- 10 14. The Person(s) Most Knowledgeable and/or Custodian of Records for
11 Sahara Surgery Center
12 2401 Paseo Del Prado
 Las Vegas, NV 89102
- 13 15. The Person(s) Most Knowledgeable and/or Custodian of Records for
14 Western Regional Center for Brain and Spine Surgery
 3061 Maryland Parkway
 Las Vegas, NV
- 15 16. The Person(s) Most Knowledgeable and/or Custodian of Records for
16 Laboratory Medicine Consultants
17 3059 S. Maryland Parkway, Suite 100
 Las Vegas, NV 89109
- 18 17. The Person(s) Most Knowledgeable and/or Custodian of Records for
19 Michael T. Monroe, M.D.
20 3233 W. Charleston Blvd., Suite 101
 Las Vegas, NV 89102
- 21 18. The Person(s) Most Knowledgeable and/or Custodian of Records for
22 Soheil Goravanchi, D.O.
 7326 W. Cheyenne Avenue
 Las Vegas, NV 89129

23 It is anticipated that the Person Most Knowledgeable and/or Custodian of Records will
24 testify to the creation and maintenance of medical and billing records in the ordinary course of
25 the company's business. The medical providers, persons most knowledgeable, and/or custodian
26 of records participated in the provision of medical care to the Plaintiffs and it is anticipated that
27 they will testify to their own observations, examination, treatment, diagnosis, and prognosis
28

1 regarding the Plaintiffs, their own medical records relating directly thereto, and to the creation
2 and maintenance of medical and billing records in the ordinary course of the company's
3 business.

4 19. Any and all witnesses named by any other party in this action.

5 20. Any individual or corporation which is identified through discovery as possessing
6 information or documents which may reasonably lead to the discovery of relevant information
7 pertaining to Plaintiff's claims, or Defendants' defenses.

8 21. Any experts identified by Plaintiff or any other party in this action.

9 22. Rebuttal witnesses, if necessary.

10 23. Defendant hereby reserves the right to supplement the above list of witnesses as
11 discovery continues in this litigation and specifically incorporates herein any individuals later
12 identified in any documents produced.

13 **B. DOCUMENTS / TANGIBLE THINGS– NRCP 16.1(a)(1)(B)**

- | | |
|--|---------------------|
| 14 1. Complaint | VSS000001-VSS000010 |
| 15 2. Answer | VSS000011-VSS000023 |
| 16 3. Police Report and Witness Statements | VSS000024-VSS000040 |

17 **C. COMPUTATION OF DAMAGES – NRCP 16.1(a)(1)(C)**

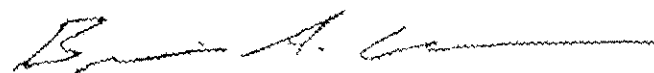
18 Not applicable to these Defendants.

19 **D. INSURING AGREEMENT – NRCP 16.1(a)(1)(D)**

20 General liability policy issued to named insured, Mydatt Services Inc., dba Valor
21 Security Services, Policy No. SE-CGL-0000008133-02.

22 DATED this 23rd day of July, 2015.

23 **RESNICK & LOUIS, P.C.**

24 

25 By: _____
26 Brian A. Gonsalves, Esq.
27 Attorneys for Defendants Mydatt Services, Inc., and
28 Mark Warner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of *Defendants Mydatt Services' and Mark Warner's NRCP 16.1(A) Initial Disclosure of Information Pursuant to NRCP 16.1* was served this 23rd day of July, 2015, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

/s/ Michelle Wade
An Employee of Resnick & Louis, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of *Joint Defense Case Conference Report Filed on Behalf of All Defendants* was served on July 23, 2015, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

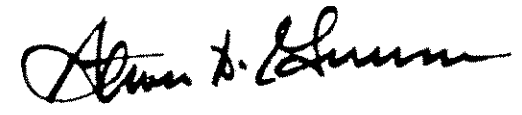
☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

/s/ Michelle Wade
An Employee of Resnick & Louis, P.C.

EXHIBIT “K”



CLERK OF THE COURT

1 NOTA
2 DAVID S. LEE, ESQ.
3 Nevada Bar No.: 6033
4 CHARLENE N. RENWICK, ESQ.
5 Nevada Bar No. 010165
6 LEE, HERNANDEZ, LANDRUM
7 & GAROFALO
8 7575 Vegas Drive, Suite 150
9 Las Vegas, Nevada 89128
10 (702) 880-9750
11 Fax; (702) 314-1210
12 dlee@lee-lawfirm.com
13 crenwick@leelawfirm.com

14 Attorneys for Defendant,
15 MYDATT SERVICES d/b/a
16 VALOR SECURITY SERVICES and
17 MARK WARNER

18 DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 X'ZAVION HAWKINS,

21 Plaintiff,

22 vs.

23 GGP MEADOWS MALL LLC, a Delaware
24 Limited Liability Company; MYDATT
25 SERVICES, INC. d/b/a VALOR SECURITY
26 SERVICES, an Ohio Corporation; MARK
27 WARNER, individually; DOES 1 through 10;
28 DOE SECURITY GUARDS 11 through 20;
29 and ROE ENTITIES 21 through 30,
30 inclusive,

31 Defendants.

CASE NO.: A-15-717577-C
DEPT. NO.: XXXI

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that David S. Lee, Esq. and Charlene N. Renwick, Esq. of the law firm of LEE, HERNANDEZ, LANDRUM & GAROFALO, hereby give their notice of

...

1 appearance as counsel of record on behalf of Defendant, MYDATT SERVICES, INC. d/b/a
2 VALOR SECURITY and MARK WARNER, in the above-entitled action.

3 DATED this 7 day of September, 2015

4 LEE, HERNANDEZ, LANDRUM &
5 GAROFALO

6 By: 

7 DAVID S. LEE, ESQ.

8 Nevada Bar No. 6033

9 CHARLENE R. RENWICK, ESQ.

10 Nevada Bar No. 010165

11 7575 Vegas Drive, Suite 150

12 Las Vegas, NV 89128

13 Attorneys for Defendant, MYDATT
14 SERVICES, INC. d/b/a VALOR
15 SECURITY SERVICES and MARK
16 WARNER

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

EXHIBIT “L”

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

AFFD

DAVID S. LEE, ESQ.
Nevada Bar No.: 6033
CHARLENE N. RENWICK, ESQ.
Nevada Bar No. 010165
LEE, HERNANDEZ, LANDRUM
& GAROFALO
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128
(702) 880-9750
Fax; (702) 314-1210
dlee@lee-lawfirm.com
crenwick@lee-lawfirm.com

Attorneys for Defendants, GGP
MEADOWS MALL LLC, MYDATT
SERVICES, INC. dba VALOR
SECURITY SERVICES and
MARK WARNER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

X'ZAVION HAWKINS,
Plaintiff,

vs.

GGP MEADOWS MALL LLC, a Delaware
Limited Liability Company; MYDATT
SERVICES, INC. dba VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually; DOES 1 through 10;
DOE SECURITY GUARDS 11 through 20;
and ROE ENTITIES 21 through 30,
inclusive,

Defendants.

CASE NO.: A-15-717577-C
DEPT. NO.: XXXI

**AFFIDAVIT OF CHARLENE N.
RENWICK, ESQ. IN SUPPORT OF
MYDATT SERVICES, INC., DBA
VALOR SECURITY SERVICES AND
MARK WARNER'S OPPOSITION TO
PLAINTIFF'S MOTION TO
DISQUALIFY LEWIS BRISBOIS
BISGAARD & SMITH AND FOR
SANCTIONS**

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, CHARLENE N. RENWICK, ESQ., deposes and states under oath as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada and am
an associate at the law firm of LEE, HERNANDEZ, LANDRUM & GAROFALO.

// /

1 2. That I am an attorney of record for Defendants GGP Meadows Mall, LLC,
2 MYDATT SERVICES, INC. dba VALOR SECURITY SERVICES, and MARK WARNER, in
3 the instant matter, and have personal knowledge of the facts set forth herein, except those stated
4 upon information and belief, which are based upon my knowledge and belief of their veracity, and
5 am competent to testify thereto.

6 3. Until reviewing Plaintiff's underlying Motion to Disqualify Lewis Brisbois
7 Bisgaard & Smith and for Sanctions on May 11, 2016, I was unaware that Paul A. Shpirt, Esq.
8 was a practicing attorney in Las Vegas, Nevada, let alone that he is currently employed with
9 Lewis Brisbois Bisgaard & Smith, that he was previously employed with Eglet Law Group or that
10 he ever met with Plaintiff in this matter.

11 4. My first meeting and communication with Paul A. Shpirt, Esq. was on May 17,
12 2016, at a visual inspection on Fremont Street, related to the litigation entitled *Sortino v. Granite*
13 *Properties II, LLC, et al.*, Eighth Judicial District Court Case No. A-13-688818-C. Prior to this
14 date, I had never communicated with Mr. Shpirt, either verbally or in written format.

15 5. On October 20, 2015, I contacted the Las Vegas Metropolitan Police Department's
16 non-emergency phone line, (702) 828-3111 and requested the name and contact information for
17 the investigating detective on Case Report Number LLV130817000794, regarding the shooting of
18 Plaintiff in this matter, wherein I was provided with the name and phone number of Detective
19 William Majors, with the Convention Center Area Command.

20 6. On October 21, 2015, I spoke to Detective Majors on the telephone and asked him
21 if he could provide me information regarding his investigation of Plaintiff's shooting, and he
22 informed me of the following: 1) the shooting of Plaintiff was gang related and Plaintiff was in a
23 gang; 2) he interviewed Plaintiff following the shooting and Plaintiff admitted to knowing who
24 shot him; 3) immediately following his recorded interview of Plaintiff, the Plaintiff told Detective
25 Majors that he would not assist the Detective in the investigation; 4) that Plaintiff's mother
26 directed her family members to not cooperate with Detective Majors in his investigation of the
27 shooting. Detective Majors further informed me that our office would need to serve him with a

28 ///

1 subpoena for deposition before he would be able to communicate with me any further on the
2 details of the investigation.

3 7. Based on my prior discussion with Detective Majors, on or about January 8, 2016,
4 I issued a Subpocna for the deposition to Detective Majors, directing him to appear for deposition
5 on February 18, 2016.

6 8. I originally noticed Plaintiff's deposition for January 8, 2016, and then
7 subsequently re-noticed the same for January 15, 2016, due to a scheduling conflict for co-
8 counsel.

9 9. On January 14, 2016, Plaintiff's counsel, Jolene Manke, Esq., requested that we
10 move Plaintiff's deposition to early February, due to Plaintiff being hospitalized for an infection.
11 As such, we re-scheduled Plaintiff's deposition for February 12, 2016.

12 10. On January 28, 2016, Josh Aicklen, Esq. and I met with Detective Majors at the
13 Detective's office to discuss his investigation of Plaintiff's shooting.

14 11. During our meeting with Detective Majors, he reviewed and read his investigation
15 notes to us, but did not provide Mr. Aicklen or myself with a copy and stated that he would bring
16 his file with him to his deposition. He did provide us with copies of the recorded statement of
17 Plaintiff, and witnesses Keisha Love and Darrelonda Peterson, along with transcripts of said
18 statements.

19 12. Detective Majors subsequently requested that I move his deposition date due to a
20 training conflict that he had on February 18, 2016, and I re-noticed his deposition for February 25,
21 2016.

22 13. During his deposition, Plaintiff's counsel, David Churchill, Esq., questioned
23 Detective Majors as to why his deposition was moved from February 18, 2016 to February 25,
24 2016 and he testified that his deposition was moved because he double booked as he was taking a
25

26
27 ///

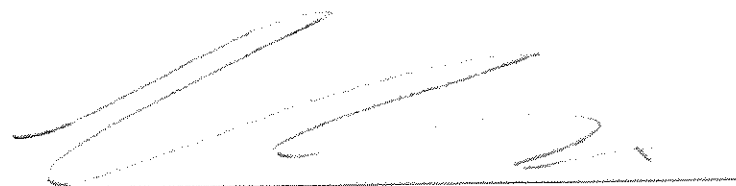
28 ///

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9750

1 counter terrorism class that day that he put in for 3 months ago, and he finally got into the class
2 and really wanted to take it.

3 FURTHER THIS AFFIANT SAYETH NAUGHT.

4 DATED this 18th day of May, 2016.

5
6 
7 CHARLENE N. RENWICK, ESQ.

8 SUBSCRIBED AND SWORN to before
9 me this 18th day of May, 2016.

10 
11 NOTARY PUBLIC in and for said
12 county and state.

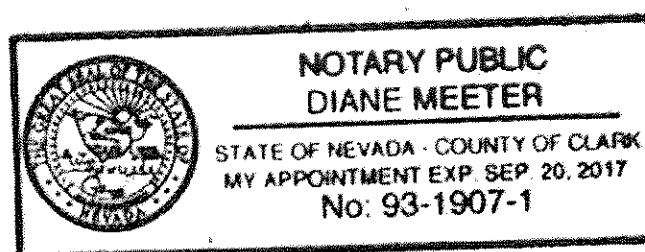
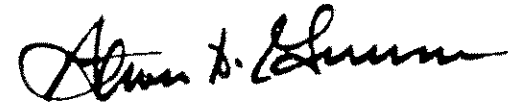


EXHIBIT “M”

DSO



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

v.

CASE NO. A717577

DEPT NO. XXXI

GGP MEADOWS MALL LLC, a Delaware
Limited Liability Company; MYDATT
SERVICES, INC. d/b/a VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually; DOES 1
through 10; DOE SECURITY GUARDS 11
through 20; and ROE ENTITIES 21
through 30, inclusive,

Defendants.

AND RELATED CROSS-CLAIM.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Personal injury - negligent security**

DATE OF FILING CASE CONFERENCE REPORT(S): **7/21/15; 7/23/15**

TIME REQUIRED FOR TRIAL: **10-15 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiff:

Jolene J. Manke, Esq., Injury Lawyers of Nevada

Counsel for Defendants:

**Charlene R. Renwick, Esq., Lee, Hernandez, Landrum &
Garofalo**

Counsel for Defendants MYDATT SERVICES, INC./MARK WARNER:

Brian A. Gonsalves, Esq., Resnick & Louis

. . .

RECEIVED

SEP 24 2015

CLERK OF THE COURT

DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

0628

1 Counsel representing all parties have been heard and after
2 consideration by the Discovery Commissioner,

3 IT IS HEREBY ORDERED:

4 1. all parties shall complete discovery on or before
5 6/23/16.

6
7 2. all parties shall file motions to amend pleadings or
8 add parties on or before 3/23/16.

9 3. all parties shall make initial expert disclosures
10 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/23/16.

11 4. all parties shall make rebuttal expert disclosures
12 pursuant to N.R.C.P. 16.1(a)(2) on or before 4/22/16.

13 5. all parties shall file dispositive motions on or
14 before 7/22/16.

15
16 Certain dates from your case conference report(s) may have
17 been changed to bring them into compliance with N.R.C.P. 16.1.

18 Within 60 days from the date of this Scheduling Order, the
19 Court shall notify counsel for the parties as to the date of
20 trial, as well as any further pretrial requirements in addition
21 to those set forth above.

22 Unless otherwise directed by the court, all pretrial
23 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
24 least 30 days before trial.

25
26 . . .
27 . . .
28 . . .

DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

0629

1 Motions for extensions of discovery shall be made to the
2 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
3 Discovery is completed on the day responses are due or the day a
4 deposition begins.

5 Unless otherwise ordered, all discovery disputes (except
6 disputes presented at a pre-trial conference or at trial) must
7 first be heard by the Discovery Commissioner.
8

9 Dated this 23 day of September, 2015.

10
11 
12 _____
DISCOVERY COMMISSIONER

13 CERTIFICATE OF SERVICE

14 I hereby certify that on the date filed, I placed a copy of
15 the foregoing DISCOVERY SCHEDULING ORDER in the attorney
16 folder(s), mailed or e-served as follows:

17 Jolene J. Manke, Esq.
18 Charlene R. Renwick, Esq.
19 Brian A. Gonsalves, Esq.

20
21 
22 _____
23 COMMISSIONER DESIGNEE
24
25
26
27
28

EXHIBIT “N”


CLERK OF THE COURT

NOTC
RESNICK & LOUIS, P.C.
Brian A. Gonsalves, Esq., SBN: 9815
Laura Boezeman-Farias, Esq., SBN: 8380
bgonsalves@rlattorneys.com
lbfarias@rlattorneys.com
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Defendants Mydatt Services, Inc. and
Mark Warner

DISTRICT COURT
CLARK COUNTY, NEVADA

X'ZAVION HAWKINS, individually,

Plaintiff,

v.

GGP MEADOWS MALL LLC, a Delaware
Limited Liability Company; MYDATT
SERVICES, INC. d/b/a VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually; DOES 1 through 10;
DOE SECURITY GUARDS 11 through 20;
and ROE ENTITIES 21 through 30, inclusive,

Defendants.

CASE NO.: A-15-717577-C

DEPT: XII

**NOTICE OF DISASSOCIATION OF
COUNSEL**

PLEASE TAKE NOTICE that LAURA BOEZEMAN-FARIAS, ESQ., and BRIAN
GONSALVES, ESQ., of the law firm of RESNICK & LOUIS, P.C., hereby give notice that they
are withdrawing their association of counsel in the above-captioned matter, for representation of
Defendants MYDATT SERVICES, INC., and MARK WARNER..

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Please update your services lists accordingly.

DATED this 30th day of September, 2015

RESNICK & LOUIS, P.C.

By: /s/ Brian A. Gonsalves, Esq.
Laura Boezeman-Farias, Esq. [SBN 8380]
Brian Gonsalves, Esq. [SBN 9815]
*Attorneys for Defendants Mydatt Services,
Inc. and Mark Warner*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **NOTICE OF DISASSOCIATION OF COUNSEL**, was served this 30th day of September, 2015, by:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

By: *Yvonne N. Teller*
An Employee of Resnick & Louis, P.C.

Case No.

IN THE SUPREME COURT OF THE STATE OF NEVADA

X'ZAVION HAWKINS, an Individual,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE HONORABLE Joanna Kishner, DISTRICT JUDGE,

Respondent,

-and-

GGP MEADOWS MALL, a Delaware Limited Liability Company; MYDATT
SERVICES, INC. D/B/A VALOR SECURITY SERVICES, an Ohio Corporation; and
MARK WARNER, an Individual.

Real Parties in Interest.

District Court Case No. A-15-717577-C

PETITION'S APPENDIX VOLUME III

DAVID J. CHURCHILL, Nev. Bar No. 7301

JOLENE J. MANKE, Nev. Bar No. 7436

INJURY LAWYERS OF NEVADA

6900 Westcliff Drive, Suite 707

Las Vegas, Nevada 89145

Telephone: 702-868-8888

Facsimile: 702-868-8889

david@injurylawyersnv.com

jolene@injurylawyersnv.com

Attorneys for Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

| <u>Ex.</u> | <u>Title</u> | <u>Vol.</u> | <u>Pages</u> |
|-------------------|--|--------------------|---------------------|
| 1. | Complaint: Hawkins v. GGP Meadows Mall, LLC, et al.; Case No. A-14-717577-C, filed April 27, 2015 | 1 | 0001-0012 |
| 2. | Defendant Mydatt Services Inc. d/b/a Valor Security Services' Answer to Plaintiff's Complaint, filed on May 20, 2015 | 1 | 0013-0025 |
| 3. | Defendant GGP Meadows Mall, LLC's Answer and Cross Claims, filed on May 20, 2015 | 1 | 0026-0038 |
| 4. | Defendant Mark Warner's Answer to Plaintiff's Complaint, filed on May 30, 2015 | 1 | 0039-0050 |
| 5. | Defendant/Cross-Claimant GGP Meadows Mall, LLC's Notice of Voluntary Dismissal of Cross-Claims as to Defendant/Cross-Defendant Mydatt Services, Inc. d/b/a Valor Security Services, filed on July 22, 2015 | 1 | 0051-0053 |
| 6. | Notice of Appearance, filed on September 9, 2015 | 1 | 0054-0055 |
| 7. | Notice of Appearance, filed on September 21, 2015 | 1 | 0056-0057 |
| 8. | Substitution of Counsel, filed on September 22, 2015 | 1 | 0058-0059 |
| 9. | Notice of Disassociation of Counsel, filed on September 30, 2015 | 1 | 0060-0062 |
| 10. | Notice of Association of Counsel, filed on November 16, 2015 | 1 | 0063-0065 |
| 11. | Defendants' Motion to Dismiss Plaintiff's Complaint, filed March 23, 2016 | 1 | 0066-0190 |
| 12. | Defendants' Supplemental Exhibits of Audio and Video Discs in Support of Motion to Dismiss Plaintiff's Complaint, filed on March 24, 2016 | 1 | 0191-0194 |
| 13. | Defendant GGP Meadows Mall, LLC's Joinder to Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion to Dismiss Plaintiff's Complaint, filed on April 1, 2016 | 1 | 0195-0197 |

| <u>Ex.</u> | <u>Title</u> | <u>Vol.</u> | <u>Pages</u> |
|-------------------|--|--------------------|---------------------|
| 14. | Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Sanctions, filed on April 11, 2016 | 2 | 0198-0338 |
| 15. | Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Opposition to Plaintiff's Countermotion for Sanctions, filed on April 26, 2016 | 2 | 0339-0453 |
| 16. | Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 11, 2016 | 2 | 0454-0489 |
| 17. | Proposed Order on Defendants' Motion to Dismiss Plaintiff's Complaint and Plaintiff's Countermotion for Sanctions; Defendants' Motion for Leave to File Third-Party Complaint; and Plaintiff's Countermotion to Bifurcate Trial, filed on May 16, 2016 | 2 | 0490-0493 |
| 18. | Notice of Entry of Order, filed on May 17, 2016 | 2 | 0494-0500 |
| 19. | Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Opposition to Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 18, 2016 | 3 | 0501-0641 |
| 20. | Plaintiff's Reply in Support of Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 20, 2016 | 3 | 0642-0657 |
| 21. | Defendant GGP Meadows Mall, LLC's Supplemental Exhibit to Joinder to Defendants Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint, filed on June 7, 2016 | 3 | 0658-704 |
| 22. | Substitution of Attorneys, filed on July 6, 2016 | 3 | 0705-0709 |
| 23. | Defendants' Motion for Attorneys Fees and Costs, filed on August 19, 2016 | 4 | 0710-0814 |
| 24. | Order Granting in Part and Denying in Part Motion to Dismiss, filed on August 24, 2016 | 4 | 0815-0822 |

| <u>Ex.</u> | <u>Title</u> | <u>Vol.</u> | <u>Pages</u> |
|-------------------|---|--------------------|---------------------|
| 25. | Findings of Fact, Conclusions of Law and Order re: Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on August 30, 2016 | 4 | 0823-0829 |
| 26. | Notice of Entry of Order, filed on September 7, 2016 | 4 | 0830-0838 |
| 27. | Plaintiff's Opposition to Defendants' Motion for Attorneys Fees and Costs and Countermotion for Attorneys Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard & Smith, filed on September 7, 2016 | 4 | 0839-0852 |
| 28. | Defendants' Opposition to Plaintiff's Countermotion for Attorneys Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard & Smith, filed on September 13, 2016 | 4 | 0853-0868 |
| 29. | Defendants' Reply to Plaintiff's Opposition to Motion for Attorney's Fees and Costs, filed on September 13, 2016 | 4 | 0869-0888 |
| 30. | Plaintiff's Supplemental Brief in Opposition to Defendants' Motion for Attorneys Fees and Costs, filed on September 26, 2016 | 4 | 0889-0921 |
| 31. | Defendants' Mydatt Services, Inc. and Mark Warner's Reply to Plaintiff's Supplemental Brief in Opposition to Motion for Attorney's Fees and Costs, filed on October 3, 2016 | 4 | 0922-0931 |
| 32. | Order re: Defendants' Motion for Attorney's Fees and Costs, filed on October 3, 2016 | 4 | 0932-0937 |
| 33. | Notice of Entry of Order re: Defendants' Motion for Attorney's Fees and Costs, filed on October 4, 2016 | 4 | 0938-0947 |
| 34. | Order Denying in Part and Granting in Part Motion for Attorney's Fees and Costs Related to Motion to Dismiss, filed on October 17, 2016 | 4 | 0948-0951 |
| 35. | Notice of Entry of Order, filed on October 18, 2016 | 4 | 0952-0959 |
| 36. | Defendants, Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner, Motion to Strike Plaintiff's Complaint and Dismissal, filed on November 18 2016 | 4 | 0960-0987 |

| <u>Ex.</u> | <u>Title</u> | <u>Vol.</u> | <u>Pages</u> |
|-------------------|--|--------------------|---------------------|
| 37. | Reporter's Transcript of Proceedings All Pending Motions, from May 3, 2016 | 5 | 0988-1029 |
| 38. | Reporter's Transcript re: Evidentiary Hearing: Defendants' Motion to Dismiss Plaintiff's Complaint/Defendant GGP Meadows Mall LLC's Joinder to Defendants' Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint/Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, from June 8, 2016 | 5 | 1030-1129 |
| 39. | Reporter's Transcript of Proceedings – Evidentiary Hearing: Defendants' Motion to Dismiss Plaintiff's Complaint/Defendant GGP Meadows Mall, LLC's Joinder to Defendants Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint/Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint, from July 21, 2016 | 6 | 1130-1331 |
| 40. | Reporter's Transcript of Proceedings on Defendants' Motion for Attorneys' Fees and Costs; Plaintiff's Opposition to Defendants' Motion for Attorneys' Fees and Costs and Countermotion for Attorneys' Fees and Costs re: Motion to Disqualify Lewis, Brisbois, Bisgaard & Smith, from September 20, 2016 | 6 | 1332-1359 |

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

| | |
|--|-------------------|
| HON. JOANNA KISHNER DEPARTMENT XXXI Eighth Judicial District Court Regional Justice Center 200 Lewis Avenue Las Vegas, NV 89155 | <i>Respondent</i> |
|--|-------------------|

Respondent

Email:
dlee@lee-lawfirm.com

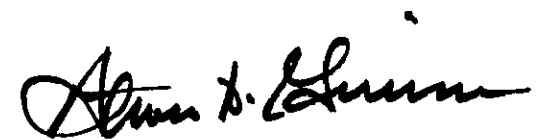
Attorneys for Real Parties in Interest
GGP MEADOWS MALL, LLP,
MYDATT SECURITY SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES and MARK WARNER

Email:
edgarcarranza@backuslaw.com

Attorneys for Real Parties in Interest
MYDATT SECURITY SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES and MARK WARNER

Employee of INJURY LAWYERS OF NEVADA

EXHIBIT 19



CLERK OF THE COURT

1 **OPPS**
2 JOSH COLE AICKLEN
3 Nevada Bar No. 007254
4 Josh.aicklen@lewisbrisbois.com
5 MARC S. CWIK
6 Nevada Bar No. 006946
7 Marc.Cwik@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 702.893.3383
12 FAX: 702.893.3789
13 Attorneys for Defendants
14 *MYDATT SERVICES, INC. d/b/a VALOR*
15 *SECURITY SERVICES and MARK WARNER*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 X'ZAVION HAWKINS,
13 Plaintiff,

14 vs.

15 GGP MEADOW MALL LLC, a Delaware
16 Limited Liability Company; MYDATT
17 SERVICES, INC. d/b/a VALOR SECURITY
18 SERVICES, an Ohio Corporation; MARK
19 WARNER, individually; DOES 1 through 10;
20 DOE SECURITY GUARDS 11 through 20;
21 and ROE ENTITITES 21 through 30,
22 INCLUSIVE,

23 Defendants.

Case No. A717577
Dept. No. XXXI

**DEFENDANTS MYDATT SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES AND MARK WARNER'S
OPPOSITION TO MOTION TO
DISQUALIFY LEWIS BRISBOIS
BISGAARD & SMITH AND FOR
SANCTIONS ON ORDER SHORTENING
TIME**

Date: May 26, 2016

Time: 1:00 p.m.

22 COME NOW, Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY
23 SERVICES and MARK WARNER, by and through their attorneys Josh Cole Aicklen, Esq and
24 Marc S. Cwik, Esq. of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and hereby file their
25 Opposition to Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and For
26 Sanctions on Order Shortening Time.

27 ///

28 ///

1 This Opposition is based on the following Memorandum of Points and Authorities, all
2 Affidavits submitted, all papers on file with this Court, and any oral argument this Court may
3 entertain at the time of hearing of this matter.

4 DATED this 18th day of May, 2016.

Respectfully Submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 Bv



JOSH COLE AICKLEN

Nevada Bar No. 007254

MARC S. CWIK

Nevada Bar No. 006946

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Defendants MYDATT SERVICES,
INC. d/b/a VALOR SECURITY SERVICES and
MARK WARNER*

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 As this Court is aware, the instant lawsuit arises out of a gang-related shooting involving
19 Plaintiff X'Zavion Hawkins ("Plaintiff") that occurred at the Meadows Mall in Las Vegas, Nevada
20 on August 17, 2013. The instant lawsuit also involves a clear case of perjury by Plaintiff,
21 committed multiple times during discovery, concerning his knowledge of his assailants and the
22 underlying facts surrounding the subject shooting. As a result of Plaintiff clearly having perjured
23 himself, Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner
24 (hereinafter "Defendants") filed a Motion to Dismiss Plaintiff's Complaint pursuant to NRCP 37.
25 This Court, obviously concerned with the actions of Plaintiff, has scheduled an evidentiary hearing
26 on May 26, 2016 at 1:00 p.m. for the purpose of ruling upon Defendants' Motion to Dismiss.

27 Plaintiff, now clearly backed into a corner as a result of having perjured himself in this
28 matter, and having no factual/substantive defense to his actions, has sprung on this Court an

1 unfounded procedural maneuver seeking the disqualification of Lewis Brisbois Bisgaard & Smith
2 LLP (“LBBS”) and for sanctions (either the striking of the Defendants’ Answer, or striking the first
3 volume of Plaintiff’s deposition with an award of attorney’s fees and costs) upon the erroneous
4 allegations that (1) LBBS has disregarded ethical obligations under the Nevada Rules of
5 Professional Conduct with regard to the employment of attorney Paul A. Shpirt and (2) LBBS has
6 usurped upon Plaintiff’s attorney-client privilege. Plaintiff’s procedural gamesmanship and the
7 fallacy of Plaintiff’s arguments should be seen by this Court for what they are, and Plaintiff’s
8 Motion should be denied in its entirety, with prejudice.

9 **II.**

10 **FACTUAL BACKGROUND**

11 Plaintiff’s Motion to Disqualify LBBS (the “Motion”) is laden with nothing more than
12 inaccurate beliefs and wild suppositions claimed to be “facts” concerning the background and
13 history of events pertinent to resolution of the motion. To fully assist the Court with timely
14 resolution of Plaintiff’s motion, the following sets forth a complete and accurate summary of the
15 real facts from which this Court can clearly draw the conclusion that no impropriety has been
16 committed by LBBS and that Plaintiff’s Motion should be denied in its entirety, with prejudice.

17 **The Shooting**

18 1. On August 17, 2013, Plaintiff was at Meadows Mall in Las Vegas, Nevada with his
19 cousin, Kesha Love, for a Michael Jordan Nike shoe release. While waiting in line to enter the
20 Mall, he was approached by two men, where a fight ensued and he was shot multiple times. *See*
21 Plaintiff’s Complaint, *generally*, **Exhibit A**.

22 2. W. Majors, a detective with the Las Vegas Metropolitan Police Department
23 (“LVMPD”), investigated the shooting. On August 22, 2013, while at UMC Hospital, Plaintiff
24 gave Detective Majors a voluntary recorded statement explaining the events leading up to the
25 shooting, identifying his two assailants, Ashley Christmas and “Zak” (one being the shooter), and
26 describing a history of violence between the three. *See* Recorded Statement of Plaintiff, **Exhibit**
27 **B**.

28 *///*

3. Plaintiff told Detective Majors that he knew Ashley Christmas before the shooting and had been robbed at gunpoint by Mr. Christmas and “Zak.” These same two men had robbed him of \$150 in an armed robbery two years before and that was the catalyst for the confrontation and ultimately the shooting at Meadows Mall. *See Id.*

Pre-Lawsuit Facts

4. Plaintiff initially retained attorneys Lloyd Baker and Jason Barrus of Lloyd Baker Injury Attorneys concerning his alleged injuries. *See* Plaintiff's Motion at Exhibit 3, para. 1.

5. Attorney Paul A. Shpirt is a Nevada licensed attorney. In August 2014, he left his employment at LBBS to work at the Eglet Law Group (now known as Eglet Prince). *See* Shpirt Affidavit at para. 2, **Exhibit C**.

6. While employed at Eglet Law Group, Mr. Shpirt served as a litigation attorney only and in that role did not handle analysis or evaluation of pre-litigation claims. *See Id.* at para. 5.

7. On December 18, 2014, attorneys Lloyd Baker and Jason Barrus of Lloyd Baker Injury Attorneys sought to refer Plaintiff's matter to the Eglet Law Group, and a meeting was held. *See* Plaintiff's Motion at Exhibit 3, para. 3.

8. The attendees at the December 18, 2014 meeting were Plaintiff, Plaintiff's mother, attorney Lloyd Baker, attorney Jason Barrus, attorney Tracy Eglet, Johanna (last name unknown, who was at an intake specialist at Eglet Law Group), and Mr. Shpirt. The meeting lasted about one hour. *See* Shpirt Affidavit at para. 3, **Exhibit C**.

9. After the meeting, Mr. Shpirt was directed to execute a fee splitting agreement on behalf of Eglet Law Group with Lloyd Baker Injury Attorneys. It was Mr. Shpirt's understanding that the intake staff with senior partners of the firm would review the materials and make a decision on whether to accept assignment or send it back to Mr. Baker and Mr. Barrus. *See Id.* at para. 4.

10. Due to the volume of potential clients Mr. Shpirt met with while employed at the Eglet Law Group, he remembers little, if anything from the meeting concerning Plaintiff's matter. Mr. Shpirt does recall that after the meeting, attorney Jason Barrus sent him a copy of Lloyd Baker Injury Attorney's file on a .ZIP drive, which Mr. Shpirt immediately sent to the intake team for

1 review and did not open or review the drive himself. *See Id.* at para. 6.

2 11. Mr. Shpirt thereafter did not work on Plaintiff's file after the December 18, 2014
3 meeting. *See Id.* at para. 5.

4 12. In March 2015, attorney Tracy Eglet and other senior partners of Eglet Law Group
5 decided not to accept assignment of Plaintiff's case. Mr. Shpirt was not involved in any way with
6 that decision. *See Id.* at para. 7.

7 13. Ms. Eglet did, however, request that Mr. Shpirt contact attorney Jason Barrus
8 concerning Eglet Law Group's decision to decline the case. Mr. Shpirt complied and called Mr.
9 Barrus on March 16, 2015 and also sent him an email. Mr. Barrus requested return of his .ZIP
10 drive. Since Mr. Shpirt was not in possession of it, he directed his staff to locate it and it was
11 returned to Mr. Barrus. *See Id.* at paras. 8-9.

12 Commencement of Suit

13 14. On April 27, 2015, Plaintiff filed his Complaint against the Defendants (and also
14 GGP Meadow Mall LLC) alleging claims for negligence, *respondeat superior* and gross
15 negligence. The Complaint was filed by attorneys David J. Churchill and Jolene J. Manke of
16 Injury Lawyers of Nevada. *See* Complaint, **Exhibit A**.

17 15. On May 20, 2015, an Answer was filed on behalf of Defendant Mydatt Services,
18 Inc. d/b/a Valor Security Services by attorneys Mitchell Resnick and Jenny L. Foley, Ph.D. of the
19 law firm of Resnick & Louis, P.C. *See* Answer, **Exhibit D**. On May 30, 2015, the same attorneys
20 filed an Answer on behalf of Defendant Mark Warner. *See* Answer, **Exhibit E**.

21 Attorney Paul A. Shpirt's Change of Employment

22 16. In the summer of 2015, Mr. Shpirt left Eglet Law Group and returned to
23 employment at LBBS on July 13, 2015. *See* Shpirt Affidavit at para. 10, **Exhibit C**. *See* Aicklen
24 Affidavit at para. 3, **Exhibit F**.

25 17. Shortly after leaving Eglet Law Group, Mr. Shpirt met attorney Jason Barrus at the
26 Court House, where Mr. Shpirt disclosed that he had returned to work at LBBS. *See* Shpirt
27 Affidavit at para. 11, **Exhibit C**.

28 ///

1 18. Because there were cases that were present at LBBS prior to Mr. Shpirt leaving for
2 the Eglet Law Firm, and there were cases that were at the Eglet Law Firm after Mr. Shpirt left and
3 before he returned to LBBS, on August 7, 2015, the managing partner of LBBS, Darrell D.
4 Dennis, sent Plaintiff's counsel, Tracy Eglet, a letter at the direction of LBBS attorney Josh Cole
5 Aicklen listing eight (8) cases that Mr. Shpirt would be blocked at LBBS with an ethical wall (i.e.,
6 screening would be implemented). *See*, true and correct copy of August 7, 2015 letter to Tracy
7 Eglet, **Exhibit G**. *See, also*, Aicklen Affidavit at para. 3, **Exhibit F**.

8 19. Upon Mr. Shpirt's return to LBBS, he did not discuss these any of these eight (8)
9 matters with other attorneys at LBBS, have access to the files, receive any of the fees for the
10 matters, nor did he participate in any of these matters. *Id.* at para. 4.

11 20. At the time Darrell D. Dennis' letter was sent, the Eglet Law Group was not
12 counsel of record for Plaintiff in this matter. *See* Plaintiff's Complaint, **Exhibit A**.

13 21. LBBS was not counsel of record for any of the Defendants in this matter during the
14 summer of 2015. *See* Register of Actions, **Exhibit H**.

15 **Commencement of Discovery and Defendants' Retention of Lee,**
16 **Hernandez, Landrum & Garofalo**

17 22. On June 23, 2015, the Parties, through their then counsel of record, attended an
18 Early Case Conference ("ECC").¹ On July 21, 2015, Plaintiff filed his own Individual Case
19 Conference Report ("ICCR"). *See* ICCR, **Exhibit I**. On July 23, 2015, the Defendants jointly
20 filed a Joint Defense Case Conference Report ("JDCCR"). *See* JDCCR, **Exhibit J**. Plaintiff also
21 served seven (7) supplements to his initial case conference disclosures. *See, generally*, Register of
22 Actions, **Exhibit H**.

23 23. On September 9, 2015, attorneys David S. Lee and Charlene N. Renwick of the law
24 firm of Lee, Hernandez, Landrum & Garofalo filed a Notice of Appearance on behalf of
25 Defendants GGP Meadow Mall LLC and Mydatt Services, Inc. d/b/a Valor Security Services and
26

27 ¹ Since LBBS was not counsel at the time for Defendants, obviously no attorney from LBBS attended the ECC.
28

1 Defendant Mark Warner. *See* Notice of Appearance, **Exhibit K**. Prior to Plaintiff filing their
2 motion at bar, Ms. Renwick was unaware of Mr. Shpirt being a practicing attorney in Las Vegas,
3 Nevada, let alone anything about his employment history. *See* Renwick Affidavit at para. 3,
4 **Exhibit L**.

5 24. On September 24, 2015, the Court issued a Scheduling Order and the parties began
6 discovery. *See* Scheduling Order, **Exhibit M**.

7 25. On September 30, 2015, the law firm of Resnick & Louis, P.C. disassociated as
8 counsel for attorneys Mitchell Resnick and Jenny L. Foley, Ph.D. of the law firm of Resnick &
9 Louis, P.C. as counsel of record for Defendant Mydatt Services, Inc. d/b/a Valor Security Services
10 and Defendant Mark Warner. *See* Notice of Disassociation, **Exhibit N**.

11 **Retention of LBBS and Immediate Screening of Attorney Paul A. Shpirt**

12 26. On October 14, 2015, LBBS attorney Josh Cole Aicklen was contacted by Starr
13 Insurance Company, the excess carrier for Defendant Mydatt Services, Inc. d/b/a Valor Security
14 Services, about being retained as monitoring counsel for Plaintiff's matter. *See* Aicklen Affidavit
15 at para. 5, **Exhibit F**.

16 27. Before Mr. Aicklen even ran a conflicts check, Mr. Shpirt (who had stumbled upon
17 a conversation between Josh Cole Aicklen and another LBBS lawyer discussing this new case to
18 be assigned to LBBS) informed Mr. Aicklen that in December 2014, he had met with Plaintiff,
19 Mr. Plaintiff's mother, attorney Jason Barrus, attorney Lloyd Baker, attorney Tracy Eglet and an
20 intake specialist at the Eglet Law Group regarding the possibility of Eglet Law Group representing
21 Mr. Hawkins. *See Id.* at para. 5; and Shpirt Affidavit at para. 12, **Exhibit C**. Mr. Shpirt told Mr.
22 Aicklen that other than that approximately one hour meeting, he did no work on that case and that
23 the Eglet Law Group had declined representation of Mr. Hawkins. *See* Aicklen Affidavit at para.
24 5, **Exhibit F**. At that time, Mr. Shpirt did not recall that he had been instructed to execute a fee
25 agreement. *See* Shpirt Affidavit at para. 12, **Exhibit C**.

26 28. Mr. Shpirt did not have any substantive communications with Mr. Aicklen at that
27 time, nor at any time in this case. *See* Aicklen Affidavit at para. 8, **Exhibit F**. Mr. Shpirt also has
28 not provided any information about Plaintiff's case to anyone at LBBS. *See* Shpirt Affidavit at

1 para. 13, **Exhibit C**. See Aicklen Affidavit at para. 11, **Exhibit F**.

2 29. On October 14, 2015, Mr. Aicklen immediately took steps to have Mr. Shpirt
3 screened off of the case at bar. Thereafter, Mr. Shpirt has had no involvement in the case and has
4 not at any time received, created, read or accessed any documents or information concerning the
5 case. *Id.* at para. 6; and Shpirt Affidavit at para. 13, **Exhibit C**. Mr. Shpirt also has not received
6 any fees with regard to LBBS' representation of the Defendants. See Aicken Affidavit at para. 6,
7 **Exhibit F**.

8 30. It is Mr. Aicklen's understanding that the Eglet Law Group informed Jason Barrus
9 in March 2015 that it would not be representing Mr. Hawkins in this lawsuit, which was supported
10 by the fact that according to the Docket, on April 7, 2015, attorneys Jolene Manke and David
11 Churchill filed the instant lawsuit, not Jason Barrus or the Eglet Law Firm. Since Mr. Shpirt had
12 never worked for Jolene Manke, the Churchill Law Firm, or Jason Barrus, and Mr. Shpirt did not
13 have any substantial involvement in Plaintiff's case, Mr. Aicklen did not write a letter to Tracy
14 Eglet. Mr. Aicklen did not believe that there was a concurrent conflict of interest under these
15 facts. However, Mr. Shpirt had still been screened off the case and has remained screened off
16 from every aspect of the case. *Id.* at para. 10.

17 **Ms. Renwick's Initial Investigation Into the LVMPD's**
18 **Investigation of the Subject Shooting**

19 31. On October 20, 2015, attorney Charlene N. Renwick contacted the Las Vegas
20 Metropolitan Police Department's non-emergency phone line, (702) 828-3111, and requested the
21 name and contact information for the investigating detective on Case Report Number
22 LLV130817000794, regarding the shooting of Plaintiff in this matter, wherein she was provided
23 with the name and phone number of Detective William Majors, with the Convention Center Area
24 Command. See Renwick Affidavit at para. 5, **Exhibit L**.

25 32. On October 21, 2015, attorney Charlene N. Renwick spoke to Detective Majors on
26 the telephone and asked him if he could provide her with information regarding his investigation
27 of Plaintiff's shooting. Majors informed her of the following: (1) the shooting of Plaintiff was
28 gang related and Plaintiff was in a gang; (2) he interviewed Plaintiff following the shooting and

1 Plaintiff admitted to knowing who shot him; (3) immediately following his recorded interview of
2 Plaintiff, the Plaintiff told Detective Majors that he would not assist the Detective in the
3 investigation; and (4) that Plaintiff's mother directed her family members to not cooperate with
4 Detective Majors in his investigation of the shooting. Detective Majors further informed Renwick
5 that her law office would need to serve him with a subpoena for deposition before he would be
6 able to communicate with her any further on the details of the investigation. *Id.* at para. 6.

7 33. Mr. Aicklen was not present when Ms. Renwick spoke to Detective Majors on
8 October 21, 2015. *See* Aicklen Affidavit at para. 12, **Exhibit F**.

9 **LBBS Makes an Appearance in the Case**

10 34. On November 12, 2015, due to the complexity of the case, Starr Insurance
11 requested that Mr. Aicklen associate into the case as co-counsel with Ms. Renwick. Around that
12 time, Ms. Renwick disclosed to Mr. Aicklen the information she had learned from Detective
13 Majors. *Id.* at paras. 12-13.

14 35. On November 16, 2015, LBBS filed a Notice of Association of Counsel on behalf
15 of Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner. *See* Notice
16 of Association of Counsel, **Exhibit O**.

17 **Discovery is Performed in the Case and Plaintiff Commits Multiple Acts of Perjury**

18 36. Based on attorney Charlene N. Renwick's prior discussion with Detective Majors,
19 on or about January 8, 2016, she issued a Subpoena for the deposition to Detective Majors,
20 directing him to appear for deposition on February 18, 2016. *See* Renwick Affidavit at para. 7,
21 **Exhibit L**.

22 37. Ms. Renwick originally noticed Plaintiff's deposition for January 8, 2016, and then
23 subsequently re-noticed the same for January 15, 2016, due to a scheduling conflict for counsel for
24 LBBS. *Id.* at 8.

25 38. On January 14, 2016, Plaintiff's counsel, Jolene Manke, Esq., requested that the
26 deposition of Plaintiff be moved to early February, due to Plaintiff being hospitalized for an
27 infection. As such, Plaintiff's deposition was rescheduled for February 12, 2016. *Id.* at 9. *See,*
28 *also,* Aicklen Affidavit at para. 7, **Exhibit F**.

1 39. On January 28, 2016, Ms. Renwick and Mr. Aicklen met with Detective Majors at
2 the Detective's office to discuss his investigation of Plaintiff's shooting. *See* Renwick Affidavit at
3 para. 10, **Exhibit L**. *See, also*, Aicklen Affidavit at para. 14, **Exhibit F**.

4 40. During the meeting with Detective Majors, he reviewed and read his investigation
5 notes to Ms. Renwick and Mr. Aicklen, but did not provide either of them with a copy and stated
6 that he would bring his file with him to his deposition. He did provide them with copies of the
7 recorded statement of Plaintiff, and witnesses Keisha Love and Darrelonda Peterson, along with
8 transcripts of said statements. *See* Renwick Affidavit at para. 11, **Exhibit L**.

9 41. The first time that Mr. Aicklen had ever seen Detective Majors' file materials was
10 at the meeting on January 28, 2016. This was also the first time that Mr. Aicklen learned of the
11 depth of Mr. Hawkins' knowledge regarding the assailants, their names, their nicknames, and that
12 the motive for the shootings was a strong arm robbery that had occurred two (2) years before. Mr.
13 Aicklen did not learn this information from Paul A. Shpirt, nor has he ever discussed any aspect of
14 the defense of this case with Mr. Shpirt. *See* Aicklen Affidavit at paras. 14-15, **Exhibit F**.

15 42. Detective Majors subsequently requested that Ms. Renwick move his deposition
16 date due to a training conflict that he had on February 18, 2016, and Mr. Renwick re-noticed his
17 deposition for February 25, 2016. *See* Renwick Affidavit at para. 12, **Exhibit L**; and Aicklen
18 Affidavit at para. 7, **Exhibit F**.

19 43. During Detective Major's deposition, Plaintiff's counsel, David Churchill, Esq.,
20 questioned Detective Majors as to why his deposition was moved from February 18, 2016 to
21 February 25, 2016 and he testified that his deposition was moved because he double booked as he
22 was taking a counter terrorism class that day that he put in for 3 months ago, and he finally got
23 into the class and really wanted to take it. *See* Renwick Affidavit at para. 13; and Majors'
24 Deposition Transcript at pp. 104-105, **Exhibit P**.

25 44. As set forth at length in the Defendants Motion to Dismiss Plaintiff's Complaint
26 and the Reply Brief in support thereof (filed on March 23, 2016 and April 26, 2016, respectively),
27 during several discovery procedures employed in this case (i.e., responses to requests for
28 admissions, deposition testimony), in violation of the sacrosanct obligation of a litigant to tell the

1 truth, Plaintiff on multiple occasions perjured himself by telling a story about the events leading
2 up to the subject shooting much different than what he previously had disclosed to Detective
3 Majors. Unlike before, Plaintiff portrayed himself as the victim of a random shooting by unknown
4 assailants drawn to the Mall for the shoe release.²

5 45. The Defendants' Motion to Dismiss came on for hearing on May 3, 2016, at which
6 time the Court scheduled an evidentiary hearing for May 26, 2016 to resolve the Motion. *See*
7 Order, **Exhibit Q**.

8 46. On May 11, 2016, faced with the prospect of dismissal of his case, Plaintiff filed
9 the present Motion to Disqualify LBBS. *See* Motion. This was the first time that attorney
10 Charlene N. Renwick ever learned of the existence of attorney Paul A Shpirt as a Nevada
11 practicing attorney. She had never previously met with, spoken to, or exchanged correspondence
12 with Mr. Shpirt with respect to Plaintiff's case or any other matter. *See* Renwick Affidavit at
13 paras. 3-4 [met him yesterday at site inspection.], **Exhibit L**.

14 **III.**

15 **ARGUMENT**

16 Suffice it to say that LBBS is wholly offended by the false and self-serving accusations set
17 forth in Plaintiff's motion. The transparency of Plaintiff's tactics is evident. Plaintiff knows that
18 he is seriously facing the dismissal of his lawsuit for perjuring himself in this matter, a knowing
19 wrongful act which is a personal affront on the integrity of our legal system. With no defense to
20 his perjury and in advance of the May 26, 2016 evidentiary hearing scheduled to determine
21 whether the Defendants' Motion to Dismiss Pursuant to NRCP 37 will be granted, Plaintiff has
22 decided to lodge at this late hour unfounded ethical violation claims at LBBS, arguing that LBBS
23 (1) has violated Plaintiff's attorney client privilege as defined by NRS 49.045 through 49.095 and
24 NRPC 1.9(c) ; (2) has violated NRPC 1.9(a); and (3) has violated NRPC 1.10(e), all in an attempt
25 to avoid the real issue before the court: namely, whether Plaintiff's lawsuit should be dismissed

26
27 ² Since these motion papers are filed documents in this case and due to their size, they are not being attached hereto as
28 Exhibits but are incorporated herein by this reference.

1 under NRCP 37. Such a ploy by Plaintiff should be wholly rejected by this Court.

2 **A. LBBS Has Not Violated NRPC 1.9 in This Matter, Nor Has LBBS Violated**
3 **Plaintiff's Attorney Client Privilege in This Matter.**

4 As thoroughly demonstrated in the factual discussion above and the accompanying
5 Affidavits, immediately upon learning that LBBS was going to represent Defendants in this matter
6 and before LBBS made an appearance in this matter, Mr. Shpirt disclosed to Mr. Aicklen that
7 while employed at the Eglet Law Group, he had attended an approximately one hour meeting with
8 Plaintiff and that he should be screened from the case; Mr. Aicklen did not obtain any other
9 information from Mr. Shpirt about Plaintiff's case and he immediately took steps to establish a
10 screen. Thus, Mr. Shpirt immediately recognized the ethical import of NRPC 1.9(a) (i.e., that he
11 personally could not represent the Defendants in the case in any capacity) and took immediate
12 steps to have himself screened off of the case. Likewise, Mr. Aicklen immediately acknowledged
13 the prohibition under NRPC 1.9(a) of having Mr. Shpirt represent the Defendants in any capacity
14 in the case and took steps to prevent anyone within LBBS from having any communications with
15 Mr. Shpirt concerning Plaintiff's case. Since Mr. Shpirt has never been involved in any capacity
16 in defense of this matter and at all times has been screened from the case, Mr. Shpirt has not
17 personally represented any party in this matter in violation of NRPC 1.9. Simply put, no rule
18 violation has ever occurred.

19 Moreover, as is evident from the supposed "facts" alleged in Plaintiff's Motion, Plaintiff's
20 claim of a violation of his attorney-client privilege is based upon nothing more than pure
21 speculation and conjecture. LBBS has set forth extensive facts demonstrating the complete fallacy
22 of Plaintiff's claims. These facts demonstrate why Plaintiff's Motion should summarily be denied.

23 First, Mr. Shpirt's only involvement with Plaintiff's case was attending the approximately
24 one hour meeting on December 18, 2014, communicating Eglet Law Group's decision to decline
25 the case, and the return of the .ZIP drive to Mr. Barrus. After he returned to LBBS, Mr. Shpirt
26 immediately notified Mr. Aicklen that he needed to be screened from the case and Mr. Aicklen
27 immediately took steps to have him screened from the case. (*See* paras. 8 through 13 in Section
28 II, *supra*.) Thus, at no time did Mr. Shpirt ever play a substantial role in Plaintiff's case.

1 Moreover, as set forth in the Affidavits of both Mr. Aicklen and Ms. Renwick, Mr. Shpirt at no
2 time has every communicated with either of them concerning Plaintiff's case, and Ms. Renwick
3 only learned of the existence of Mr. Shpirt as a Nevada lawyer when reviewing Plaintiff's present
4 motion. *See* Section II, *supra*, at paras. 28-29 and 46. Simply put, from the outset of the case at
5 bar, there has never been any exchange of information upon which Plaintiff's claimed attorney-
6 client privilege with regard to Mr. Shpirt can have been violated.

7 Second, it was attorney Charlene N. Renwick (of a different law firm), not attorney Josh
8 Cole Aicklen of LBBS, who initially communicated with Detective Majors concerning his
9 investigation of the subject shooting. *See* Section II, *supra*, at paras. 33 through 34. Mr. Aicklen
10 did not meet with Detective Majors until January 28, 2016. *See* Section II, *supra*, at paras. 33 and
11 41. At that meeting, Detective Majors did not provide copies of his investigation notes to Mr.
12 Aicklen and Ms. Renwick, because he said he was going to bring his file with him to his
13 deposition. *See* Section II, *supra*, at para. 40. This Court is also already aware from oral
14 argument on the Defendants' Motion to Dismiss that Mr. Aicklen believed that Detective Majors
15 had already given documents to attorney Jason Barrus and that Plaintiff's claim of concerning
16 Detective Majors' documents is unfounded. Thus, no impropriety took place whatsoever at the
17 meeting with Detective Majors, not to mention that attorneys are most certainly allowed to meet
18 with witnesses to discuss their knowledge of facts and to review documents in their possession
19 without the threat of being accused of impropriety. In fact, Nevada cloaks such meetings within
20 the Litigation Privilege (a/k/a the Absolute Privilege), barring claims against the attorney related
21 to communications with a witness so long as the communication have a relation is some way to
22 contemplated or pending legal proceedings. *See Knox v. Dick*, 99 Nev. 514, 665 P.2d 267 (1983).
23 Plaintiff cites no authorities that would deem the meeting with Detective Majors to have been
24 unethical. All that Plaintiff presents is a conclusory argument that Mr. Aicklen and Ms. Renwick
25 violated Plaintiff's attorney client privilege because of the mere fact that Mr. Shpirt changed law
26 firms, but such claim is wholly based upon clear and unfounded supposition. Simply put, Plaintiff
27 has failed to demonstrate any reasonable basis to conclude that Plaintiff's attorney-client privilege
28 has been violated. As such, the present case is clearly not one which presents any doubt that

1 would require this Court to order disqualification. Plaintiff's Motion should be denied in its
2 entirety, with prejudice.

3 **B. Imputed Disqualification of LBBS Under NRPC 1.10 Did Not Exist in This**
4 **Matter.**

5 Plaintiff argues that the disqualification of an attorney practicing at a firm is generally
6 imputed to the other lawyers at the firm. *See* Motion at 14:1-2 (*citing Nevada Yellow Cab*, 152
7 P.3d at 741). Plaintiff further argues LBBS's alleged disqualification cannot be cured in this
8 matter when taking into account NRPC 1.10(e), which permits screening. *Id.* at 14:2-4. Plaintiff's
9 arguments should be wholly rejected by this Court.

10 In Nevada, imputed disqualification is considered a harsh remedy that "should be invoked
11 if, and only if, the [c]ourt is satisfied that real harm is likely to result from failing to invoke it."
12 *See Leibowitz v. Eighth Jud. Dist. Ct.*, 119 Nev. 523, 532, 78 P.3d 515, 521 (2003) (*citing Hayes*
13 *v. Central States Orthopedic*, 51 P.3d 562, 565 (Okla. 2002)). "This stringent standard is based on
14 a client's right to counsel of the client's choosing and the likelihood of prejudice and economic
15 harm to the client when severance of the attorney-client relationship is ordered." *Id.* (*citing*
16 *Cronin v. District Court*, 105 Nev. 635, 642 (1989); and *Hayes*, 51 P.3d at 565). In conformance
17 with this strong public policy, the Nevada Supreme Court has cited with approval the holding of
18 the Seventh Circuit Court of Appeals intended to caution against improper application of imputed
19 disqualification:

20 **...disqualification, as a prophylactic device for protecting the attorney-client relationship, is a**
21 **drastic measure which courts should hesitate to impose except when absolutely necessary.** A
22 disqualification of counsel, while protecting the attorney-client relationship, also serves to destroy a
23 relationship by depriving a party of representation of their own choosing...We do not mean to infer
that motions to disqualify counsel may not be legitimate, for there obviously are situations where
they are both legitimate-and necessary; nonetheless, **such motions should be viewed with extreme**
caution for they can be misused as techniques of harassment.

24 *See Ryan's Express Transportation Services, Inc. v. Amador Stage Lines, Inc.*, 128 Nev. Adv. Op.
25 27, 279 P.3d 166, fn. 3 (2012) (*citing Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715,
26 721-22 (7th Cir. 1982)) (emphasis added).

27 ///

28 ///

1 In 2006, so as to counter the harshness of imputed disqualification and to promote the right
2 of a client to be represented by counsel of his/her choosing, Nevada adopted NRPC 1.10(e). This
3 new, Nevada specific rule,³ authorizes screening as a means of eliminating imputed
4 disqualification, and provides the following:

5 (e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly
6 represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

7 (1) The personally disqualified lawyer did not have a substantial role in or primary
8 responsibility for the matter that causes the disqualification under Rule 1.9;

9 (2) The personally disqualified lawyer is timely screened from any participation in the
10 matter and is apportioned no part of the fee therefrom; and

11 (3) Written notice is promptly given to any affected former client to enable it to ascertain
12 compliance with the provisions of this Rule.

13 As will be demonstrated below, analysis of each of the provisions of NRPC 1.10(e) leads to the
14 unequivocal conclusion that LBBS should not be disqualified from this matter,

15 **1. Mr. Shpirt Has Never Had a Substantial Role in Plaintiff's Case.**

16 With regard to subsection (1) of NRPC 1.10(e), it is clear that Mr. Shpirt cannot be said to
17 have had a "substantial role" with regard to Plaintiff's case. Mr. Shpirt's involvement with
18 Plaintiff's case involved an approximately one hour meeting with Plaintiff, execution of a fee
19 sharing agreement at the direction of a senior partner at Eglet Law Group, and communications
20 with attorney Jason Barrus regarding Eglet Law Group's decision not to take Plaintiff's case after
21 others within the firm reviewed the matter. *See* Section II, *supra*, at paras. 8 to 13. Eglet Law
22 Group never took the case and never prepared or filed the Complaint in this matter. *See* Section II,
23 *supra*, at paras. 12 and 14. In fact, Mr. Shpirt never did any work up of Plaintiff's case at Eglet
24 Law Group, which explains why at the time he told Mr. Aicklen about the case in October 2015
25 that he did not remember at that time that he had been directed to sign the fee sharing agreement.
26 *See* Section II, *supra*, at paras. 12 and 14.

27 After Eglet Law Group declined to take the case, Mr. Shpirt had no communications with
28 Injury Lawyers of Nevada, the law firm that ultimately took Plaintiff's case and filed Plaintiff's

³ Model Rule of Professional Conduct 1.10 does not include subsection (e).

1 Complaint. The Affidavit of attorney Jason Barrus at Exhibit 3 of Plaintiff's Motion does not
2 indicate a single actual, substantive fact or impression of Mr. Shpirt concerning Plaintiff's case;
3 rather, the Affidavit merely claims in conclusory fashion that "I believe Mr. Shpirt engaged in
4 privileged communication with Ms. Eglet and others at Eglet Law Group to develop strategy and
5 analyze strengths and weaknesses relating to X'Zavion's matter . . ." See para. 7 of Mr. Barrus'
6 Affidavit. An Affidavit based upon on belief alone is insufficient to establish a material fact. See
7 *Cermetek, Inc. v. Butler Avpak, Inc.*, 573 F.2d 1370, 1377 (9th Cir. 1978) (holding that "those
8 facts alleged on "understanding" like those based on "belief" or on "information and belief", are
9 not sufficient to create a genuine issue of fact" (citing *Automatic Radio Mfg. Co. v. Hazeltine*
10 *Research Inc.*, 339 U.S. 827, 831, 70 S.Ct. 894, 896 (1950); and *State of Washington v. Maricopa*
11 *County*, 143 F.2d 871 (9th Cir. 1944)). See, also, *Jameson v. Jameson*, 176 F.2d 58, 60 (D.C. Cir.
12 1949) (holding that "[b]elief, no matter how sincere, is not equivalent to knowledge"). Thus, Mr.
13 Barrus' Affidavit is fatal to Plaintiff's claim that Mr. Shpirt played a substantial role in Plaintiff's
14 case.

15 Based upon the above, it is clear that Mr. Shpirt cannot possibly be said to have ever had a
16 substantial role in Plaintiff's case. The term "substantial" has been defined in the law in such
17 ways as "material," "essential," "considerable in amount," and "large in volume and number." See
18 Black's Law Dictionary (10th ed. 2014). When the facts of this matter are weighed against such
19 terms, it is clear that Mr. Shpirt has never played a substantial role in Plaintiff's case. Therefore,
20 no conflict of interest can be imputed to LBBS under subsection (1) of NRPC 1.10 (e).

21 **2. LBBS Timely Screened Mr. Shpirt from Plaintiff's Case and He Has**
22 **Never Been Apportioned Any Part of Attorney's Fees in This Matter.**

23 With regard to subsection (2) of NRPC 1.10(e), imputation of a conflict of interest to a law
24 firm does not occur where a disqualified attorney is timely screened from a case and is
25 apportioned no part of the fee therefrom. Both of these requirements have clearly been met in this
26 matter.

27 As set forth above, before LBBS made an appearance in this matter on November 16,
28 2015, Mr. Shpirt brought to attorney Josh Cole Aicklen's attention his prior involvement in

1 Plaintiff's case during the limited time it was with the Eglet Law Group and reviewed by the
2 senior partners and intake staff of that firm. Upon learning of such involvement, although Mr.
3 Aicklen did not believe he had to send a letter to the Eglet Law Group (since it was not counsel of
4 record for Plaintiff), Mr. Aicklen still immediately took steps to have Mr. Shpirt screened from the
5 case (to avoid any potential impropriety from taking place). *See* Section II, *supra*, at paras. 29 to
6 30. Moreover, Mr. Shpirt has never been apportioned any part of the fee to be earned in the case
7 at LBBS (where he is screened off and cannot be paid fees for any time worked on the case). *See*
8 Section II, *supra*, at para. 29. Therefore, no conflict of interest can be imputed to LBBS under
9 subsection (2) of NRPC 1.10 (e).

10 **3. While LBBS Did Not Provide Written Notice to Plaintiff Under**
11 **NRPC 1.10(e), State Bar of Nevada Formal Opinion No. 39, Nevada's**
12 **Recognition of the Doctrine of Substantial Compliance, and the**
Doctrine of Waiver Provide This Court With Ample Discretion to Deny
Imputed Disqualification of LBBS.

13 Subsection (3) of NRPC 1.10(e) indicates that a law firm can avoid imputation of
14 disqualification by giving the party in issue written notice of the law firm's actions under NRPC
15 1.10(e) so that compliance can be ascertained. Because of the fact that the law firm which filed
16 the Complaint in this matter was not Eglet Law Group and because at the time Mr. Shpirt
17 disclosed his limited procedural involvement in this case to Mr. Aicklen he had very little memory
18 of Plaintiff's case, Mr. Aicklen reasonably believed at that time that he had no obligation to send
19 written notice. *See* Section II, *supra*, at para. 30. While Mr. Aicklen certainly would have sent
20 written notice had more information been recalled by Mr. Shpirt at the time, despite Plaintiff's
21 contentions, the absence of written notice in this case is not fatal to LBBS being permitted to
22 represent the Defendants in this matter. This is proved by Mr. Aicklen having directed that a letter
23 be sent to Tracy Eglet regarding eight (8) other cases. *See* Exhibit G.

24 In 2008, the State Bar of Nevada Standing Committee on Ethics and Professional
25 Responsibility issued Formal Opinion No. 39, which answered several questions concerning
26 interpretation of the Nevada Rules of Professional Conduct when lawyers leave private law firms.
27 Question No. 4 addressed screening of an attorney who participated "personally and substantially"
28 in a matter while at a former law firm, to wit:

1 4. Does imputed disqualification apply to all members of the firm of a laterally moving lawyer who
2 formerly participated personally and substantially in a matter? For example, can other members of
3 the laterally moving lawyer's new firm participate in a matter in which the lawyer personally and
substantially participated if the personally disqualified lawyer is screened from the matter within the
firm?

4 The State Bar of Nevada concluded that an attorney who did participate "personally and
5 substantially" in a matter for Client A at another law firm could not be screened at his new law
6 firm with regard to representation of Client B, consistent with ABA Model Rule 1.10, absent a
7 waiver of the conflict by Client A. However, the State Bar of Nevada did not draw the same
8 conclusion where a lawyer had no "direct role" in a case while with a former law firm. Rather, the
9 State Bar of Nevada concluded that if an attorney had no "direct role" in a case while with a
10 former law firm, even where s/he possesses confidential information about Client A from the
11 former firm, his/her new law firm could continue to represent Client B in a case "without Client A
12 consent if the personally disqualified lawyer is ethically screened from the case." See Opinion at
13 p. 6.

14 Based upon this guidance from the State Bar of Nevada, this Court is not required to
15 disqualify LBBS, even if no written notice was provided to Plaintiff. The State Bar of Nevada's
16 primary focus in enforcing conflict rules is ensuring that the subject attorney had no "direct role"
17 in representing Client A at his former firm (a clear invocation of determining under subsection (1)
18 of NRPC 1.10(e) that an attorney did not have a "substantial role" in a case, since if one had a
19 direct role in representing a client, such role would be substantial by nature), and that the subject
20 lawyer has been ethically screened from the case (a clear invocation of determining under
21 subsection (2) of NRPC 1.10(e) that an attorney was promptly screened from the case). By noting
22 that consent was not required where screening and no "direct role" were in place (and consent
23 would require a writing), the State Bar of Nevada clearly did not believe that the absence of
24 written notice must result in disqualification. What the State Bar of Nevada is directing is that it
25 should be clear that Client A will not suffer prejudice by the attorney's new law firm being
26 involved in Client A's case.

27 ///

28 ///

1 In the case at bar, as demonstrated above, Plaintiff has suffered absolutely no prejudice
2 with regard to LBBS's involvement as defense counsel in this case. No attorney on the defense
3 side has engaged in any impropriety toward Plaintiff and Plaintiff's attorney-client privilege has
4 never been usurped by any defense attorney in this case.

5 Even if this Court were to disagree with the above interpretation of the State Bar of
6 Nevada's directive, the fact remains that LBBS screened Mr. Shpirt and protected Plaintiff's
7 attorney-client privilege. Even if Plaintiff had been given written notice, Plaintiff would have
8 learned the very same facts now submitted to this Court by LBBS, negating any basis to disqualify
9 LBBS, due to LBBS's compliance with the balance of NRPC 1.10(e). LBBS's substantial
10 compliance with the rule does not warrant disqualification. The **doctrine of substantial**
11 **compliance** is an equitable one which is utilized "to avoid the harsh consequences that flow from
12 technically inadequate actions that nonetheless meet a statute's underlying purpose." *See County*
13 *of Hudson v. State, Dept. of Corrections*, 26 A.3d 363, 375 (N.J. 2011). Nevada law recognizes
14 that substantial compliance with a statute or rule is sufficient to avoid adverse action being taken
15 against a party where the overall purpose of the statute or rule is met. *See Derouen v. City of*
16 *Reno*, 87 Nev. 606, 491 P.2d 989 (1971) (citing *Hansen-Neiderhauser, Inc. v. Nev. Tax Comm.*, 81
17 Nev. 307, 402 P.2d 480 (1965); and *City of Reno v. Fields*, 69 Nev. 300, 250 P.2d 140 (1952)).
18 The District of Nevada federal court noted in *Fortis Benefits Ins. Co. v. Johnson*, 966 F.Supp. 987
19 (D.Nev. 1997) that "the doctrine of substantial compliance is recognized in Nevada in a wide
20 range of contexts."⁴ The case at bar is certainly an appropriate case in which the doctrine of

21
22 ⁴ In support of this proposition, the District of Nevada cited the following examples:

23 *See, e.g., Derouen v. City of Reno*, 87 Nev. 606, 491 P.2d 989 (1971) (substantial compliance with
24 statute governing tort claims against a city sufficient to allow plaintiff to proceed); *Las Vegas*
25 *Plywood and Lumber, Inc. v. D & D Enterprises*, 98 Nev. 378, 649 P.2d 1367 (1982) (substantial
26 compliance with notice provision of mechanic's lien statute sufficient to perfect the liens); *Harris v.*
27 *State*, 104 Nev. 246, 756 P.2d 556 (1988) (substantial compliance with notice provision of bail bond
28 statute sufficed for court's forfeiture order); *Dunes Hotel, Inc. v. Schmutzer*, 78 Nev. 208, 370 P.2d
685 (1962) (substantial compliance with terms of landscaping contract entitled landscaper to his
fee); *Sharp v. Twin Lakes Corporation*, 71 Nev. 162, 283 P.2d 611 (1955) (substantial compliance
with lease provision obligating lessee to improve premises building contract) *See also* John D.
Calamari & Joseph M. Perillo, *The Law of Contracts* §§ 11–15 at 454 (3d ed. 1987) ("If a party has
substantially performed, it follows that any breach he may have committed is immaterial.")

(footnote continued)

1 substantial compliance can and should be applied.

2 Nevada adopted NRPC 1.10(e) for the main purpose of permitting screening where a
3 lawyer did not have a “substantial role” in a case at a former firm and consent of the former client
4 is not necessary for the former client’s protection. It is clear in the case at bar that LBBS
5 substantially complied with NRPC 1.10(e). LBBS sent a letter to Tracy Eglet with regard to eight
6 (8) cases triggered by the rule and the fact that the Eglet Law Group declined Plaintiff’s case and
7 Mr. Shpirt had little memory of Plaintiff’s case at the time he disclosed his very limited
8 involvement to Mr. Aicklen resulted in no written notice being sent to Plaintiff. This shows LBBS
9 substantially complied with NRPC 1.10(e). LBBS even screened Mr. Shpirt from Plaintiff’s case,
10 further demonstrating substantial compliance with NRPC 1.10(e). Through all of the written
11 materials and Affidavits submitted to the Court by all defense counsel, this Court can clearly see
12 that no impropriety has taken place. Plaintiff’s claims are based upon nothing more than
13 erroneous beliefs and suppositions, and are nothing more a strategic ploy trying to avoid the
14 consequences of his perjury and dismissal of Plaintiff’s Complaint. Since Nevada recognizes the
15 doctrine of substantial compliance and Nevada also promotes the strong public policy that persons
16 should be permitted to employ the counsel of their choosing, justice clearly would not be served in
17 this case by imputing disqualification to LBBS. Under Formal Opinion No. 39 and the doctrine of
18 substantial compliance, this Court is certainly left with the discretion to rule that imputed
19 disqualification of LBBS is not appropriate.

20 Finally, conveniently absent from Plaintiff’s Motion is the date that Plaintiff’s counsel,
21 Jolene J. Manke, claims she was notified by attorney Jason Barrus that attorney Paul A. Shpirt is
22 employed at LBBS. *See* Affidavit of Jolene J. Manke at p. 3 of Plaintiff’s Motion. What is clear,
23 however, is that Mr. Barrus learned of Mr. Shpirt’s return to LBBS in the Summer of 2015 when

24

25 Furthermore, it is clear that Nevada courts apply the doctrine in the insurance context. *See, e.g.,*
26 *Walker v. American Bankers Insurance Group*, 108 Nev. 533, 836 P.2d 59 (1992) (substantial
27 compliance with proof of loss provision of homeowner’s insurance policy sufficient for coverage).
28 In light of the cited Nevada cases applying the substantial compliance doctrine, the court concludes
a Nevada court would apply the doctrine to a contractual change of beneficiary clause in a life
insurance policy in an appropriate case.”

1 they met each other in at the Court house. *See* Section II, *supra*, at para. 17. Mr. Barrus' affidavit
2 was obviously written by Ms. Manke, as can be gleaned by the unique footer at the bottom of the
3 pages which matches the footer style on all pages of Plaintiff's motion, and conveniently leaves
4 out this important fact. Moreover, Ms. Manke's communications with Mr. Barrus demonstrate
5 that Mr. Barrus is still involved in Plaintiff's case, thereby demonstrating that his knowledge of
6 Mr. Shpirt's return to LBBS is clearly imputed to Plaintiff. As such, any alleged failure of LBBS
7 to have given written notice to Plaintiff is harmless, due to Mr. Barrus' knowledge in the summer
8 of 2015 that Mr. Shpirt had returned to LBBS. Plaintiff's Motion seeking to disqualify LBBS was
9 not filed until May 11, 2016, nearly a year after Mr. Barrus learned of Mr. Shpirt's return to
10 LBBS. A party who fails to timely file a motion to disqualify waives his right to seek
11 disqualification of an attorney. *See Vaughn v. Walther*, 875 S.W.2d 690 (Tex. 1994). [C]ourts
12 must adhere to an exacting standard when considering motions to disqualify counsel so as to
13 discourage their use as a dilatory trial tactic." *See Spears v. Fourth Court of Appeals*, 797 S.W.2d
14 654, 656 (Tex.1990). The clear delay in Plaintiff's filing of his Motion, coupled with the timing
15 of his Motion as an obvious means to try to avoid dismissal of his Complaint, amounts to a waiver
16 by Plaintiff of any right he now claims for seeking the disqualification of LBBS. A party cannot
17 wait until he sees how a case is turning out before moving to disqualify a lawyer and Plaintiff's
18 timing of his Motion exposes his true motive (i.e., to defend against his otherwise indefensible act
19 of committing perjury).

20 For all of the above reasons, this Court should find that imputation of disqualification to
21 LBBS under NRPC 1.10 has never occurred in this matter and Plaintiff's Motion should be denied
22 in its entirety, with prejudice.

23 **C. Striking the Defendants' Answers in This Matter are Not Proper and Would Be**
24 **Contrary to Nevada Law.**

25 Plaintiff requests, upon its meritless factual assumptions (which are based upon mere
26 supposition, as demonstrated above), that the Defendants respective answers be stricken in this
27 matter as a sanction for LBBS's alleged misconduct. Plaintiff bases this request upon citation to
28 one sentence concerning sanction for a party's "willful and recalcitrant disregard of the judicial

1 process” in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990). Such
2 claim is fatally flawed and should summarily be rejected by this Court.

3 First, the *Young* case involved a party who fabricated evidence and then declined to
4 remedy the problem when given the chance to do so by the court.⁵ Under such circumstances, the
5 Nevada Supreme Court held that such party could be subject to the sanction of dismissal of his
6 complaint, since this is a listed sanction under NRCP 37 (Nevada’s discovery abuse rule) for a
7 discovery abuse such as the one committed by the party. *Young*, 106 Nev. at 92, 787 P.2d at 779.
8 The *Young* case did not deal with alleged violations of Nevada’s professional conduct rules. In the
9 case at bar, the core issue before the court is not about alleged violation of Nevada’s discovery
10 rules, but about alleged violation of Nevada’s professional conduct rules. As such, the *Young*
11 opinion makes no provision for striking the Defendants’ answers in this case and its holding is
12 wholly inapplicable.

13 Second, striking a pleading is generally viewed as a severe measure looked upon with
14 disfavor by courts. *See Germaine Music v. Universal Songs of Polygram*, 275 F.Supp.2d 1288
15 (D.Nev. 2003). This is because a party’s right to due process limits a trial court’s authority to
16 strike a pleading. A trial court generally may not impose the ultimate sanction of striking a party’s
17 pleading without expressly finding that the party has obstructed discovery. *See, e.g., Montgomery*
18 *Ward & Co., Inc. v. Superior Court In and For County of Maricopa*, 863 P.2d 911 (Ariz. Ct. App.
19 1993). Moreover, the Nevada Supreme Court holds that entering a default against a party (which
20 would be the effect of striking the Defendants answers) is a sanction to be used only in the most
21 extreme cases. *See Blanco v. Blanco*, 129 Adv. Op. 77, 311 P.3d 1170, 1174 (2013) (*citing*
22 *Nevada Power Co. v. Fluor Ill.*, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992)). In the case at
23 bar, the conduct at issue involves alleged acts of LBBS attorneys, not acts by the Defendants
24 themselves. As a result, the Defendants themselves cannot have committed any discovery abuses
25 under NRCP 37, hence, the Defendants’ answers cannot be stricken under NRCP 37. Even if,

26
27 ⁵ Much like the Plaintiff in this case.

1 however, the acts could be imputed to the Defendants by agency principles, such alleged unethical
2 acts (if taken as true, which they are not) still could not possibly rise to the level of being
3 considered a “most extreme case” such that the ultimate sanction of striking of answers would be
4 warranted. Ample evidence exists to demonstrate that LBBS took measures to comply with
5 NRPC 1.9 and 1.10. Simply put, Plaintiff’s requests sanction of the striking of the Defendants’
6 answer must be denied.

7 **D. Striking Volume I Plaintiff’s Deposition Transcript and Awarding Plaintiff Fees**
8 **and Costs From the Time LBBS Made an Appearance in This Matter Would Not Be**
9 **Proper Under the Law, Due to Plaintiff’s Independent Obligation to Testify**
10 **Truthfully.**

11 Striking Volume I of Plaintiff’s deposition transcript and awarding Plaintiff fees and costs
12 from the time that LBBS made an appearance in this matter would not be proper under Nevada
13 law and would reap a windfall to Plaintiff for his illegal and improper conduct in this matter.
14 Parties in Nevada have an obligation to tell the truth when giving testimony in court proceedings.
15 This duty is independent of any duty that might exist as to anyone else involved in litigation, such
16 as the lawyers, court reporter, judge, court staff, etc.

17 In particular, NRS 50.035(1) provides the following:

18 Before testifying, every witness shall be required to declare that he or she will testify truthfully, by
19 oath or affirmation administered in a form calculated to awaken his or her conscience and impress
20 his or her mind with the duty to do so.

21 Nevada’s requirement that an oath or affirmation to tell the truth be taken is very similar to its
22 Federal counterpart:

23 Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a
24 form designed to impress that duty on the witness’s conscience.

25 *See* Fed. R. Evid. 603. It has been said about the Federal Rule that it adopts the position that
26 “[t]he true purpose of the oath is *not to exclude* any competent witness, but merely to add a
27 stimulus to truthfulness wherever such a stimulus is feasible.” *See* Wigmore, Evidence § 1827 at
28 413–14 (Chadbourn rev.1976) (emphasis added). A witness is competent to testify where s/he has
knowledge of the matter (in issue in litigation). *See* NRS 50.025(1)(a). *See, also*, NRS 50.015,
generally. Plaintiff certainly has knowledge of pertinent facts in this matter, making him

1 competent to testify, and obligating him to tell the truth. It is clearly the intent of Nevada law not
2 to exclude testimony of a witness taken under an oath or affirmation to tell the truth, such as
3 Plaintiff. This legal principle applies to depositions as well, as a deposition is without question a
4 court proceeding. *See* NRCP 30(c); and *GMAC Bank v. HTFC Corp.*, 248 F.R.D. 182, 185
5 (E.D.Penn. 2008) (holding that depositions “are an integral part of the Court’s procedures and the
6 staple of modern litigation”). Moreover, NRCP 30(c) sets forth that a deponent is to give
7 testimony under oath or affirmation to tell the truth, as follows:

8 Examination and cross-examination of witnesses may proceed as permitted at the trial under the
9 provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the
10 witness on oath or affirmation and shall personally, or by someone acting under the officer’s
11 direction and in the officer’s presence, record the testimony of the witness.

12 The above principles also apply to answers to interrogatories, as NRCP 33(b) provides the
13 following, in pertinent part:

14 (1) Each interrogatory shall be answered separately and fully *in writing under oath*, unless it is
15 objected to, in which event the objecting party shall state the reasons for objection and shall answer
16 to the extent the interrogatory is not objectionable. The answers shall first set forth each
17 interrogatory asked, followed by the answer or response of the party.

18 (2) The answers *are to be signed by the person* making them, and the objections signed by the
19 attorney making them.

20 (Emphasis added).

21 Based upon the above, it is clear that independent of any alleged violations of the Nevada
22 Rules of Professional Conduct, which LBBS denies, Plaintiff had (and continues to have) a duty to
23 tell the truth during all forms of testimony given in this matter. LBBS did not make Plaintiff
24 commit perjury. Once Plaintiff was under oath, the perjury committed by Plaintiff was wholly of
25 his own free will and doing. What Plaintiff did is a crime in Nevada. Pursuant to NRS 199.120:

26 A person, having taken a lawful oath or made affirmation in a judicial proceeding or in any other
27 matter where, by law, an oath or affirmation is required and no other penalty is prescribed, who:

28 . . .
2. Swears or affirms willfully and falsely in a matter material to the issue or point in question;

. . .
is guilty of perjury or subornation of perjury, as the case may be, which is a category D felony and
shall be punished as provided in NRS 193.130.

29 Therefore, in light of Nevada procedural law coupled with Nevada criminal law, it clearly follows
30 that striking Volume I of Plaintiff’s deposition and awarding fees and costs to Plaintiff from the

1 time that LBBS made an appearance in this matter is not authorized and would clearly be
2 unwarranted in this matter. Such requested sanctions should summarily be denied by this Court.

3 IV.

4 CONCLUSION

5 Both the factual absurdity of Plaintiff's allegations in his Motion and the clear absence of
6 any factual or legal basis under the unique facts of this case warrant that LBBS not be disqualified
7 from continued representation of the Defendants in this matter. Plaintiff's entire Motion is
8 nothing more than a pretext to avoid dismissal of his Complaint for his own clear misconduct,
9 namely, his commission of multiple counts of perjury, acts which go against the very fabric of our
10 legal system.

11 WHEREFORE, Plaintiff's Motion should be denied in its entirety with prejudice,
12 disqualification should not be ordered and no requested sanctions of any kind should be issued by
13 this Court against the Defendants or their counsel.

14 DATED this 18th day of May, 2016.

15 Respectfully submitted,

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17
18
19 By


20 JOSH COLE AICKLEN

Nevada Bar No. 007254

21 MARC S. CWIK

22 Nevada Bar No. 006946

6385 S. Rainbow Boulevard, Suite 600

23 Las Vegas, Nevada 89118

24 Tel. 702.893.3383

25 *Attorneys for Defendants MYDATT SERVICES,*
26 *INC. d/b/a VALOR SECURITY SERVICES and*
27 *MARK WARNER*
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard &
3 Smith LLP and that on this 18 day of May, 2016, I did cause a true copy of **DEFENDANTS**
4 **MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES AND MARK**
5 **WARNER'S OPPOSITION TO MOTION TO DISQUALIFY LEWIS BRISBOIS**
6 **BISGAARD & SMITH AND FOR SANCTIONS ON ORDER SHORTENING TIME** to be
7 served via the Court's electronic filing system ("Wiznet") to all parties on the current service list
8 as follows:

9 David J. Churchill
10 Jolene J. Manke
11 INJURY LAWYERS OF NEVADA
12 6900 Westcliff Dr., Ste. 707
13 Las Vegas, NV 89145
14 P: 702-868-8888
F: 702-868-8889
david@injurylawyersnv.com
jolene@injurylawyersnv.com
Attorneys for Plaintiff
X'ZAVION HAWKINS

David S. Lee
Charlene N. Renwick
LEE, HERNANDEZ, LANDRUM &
GAROFALO
7575 Vegas Dr., Ste. 150
Las Vegas, NV 89128
dlee@leelawfirm.com
crenwick@lee-lawfirm.com
Attorneys for Defendants MYDATT
SERVICES, INC. d/b/a VALOR SECUIRTY
SERVICES and MARK WARNER

15
16
17
18 By 
19 An Employee of
20 LEWIS BRISBOIS BISGAARD & SMITH LLP
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF EXHIBITS

| EXHIBIT: | DESCRIPTION: |
|-----------------|--|
| A | Plaintiff's Complaint |
| B | Recorded Statement of Plaintiff |
| C | Affidavit of Attorney Paul A. Shpirt |
| D | Answer of Defendant Mydatt Services, Inc. d/b/a Valor Security Services |
| E | Answer of Defendant Mark Warner |
| F | Affidavit of Josh Cole Aicklen |
| G | Letter from Darrell D. Dennis to Tracy Eglet (August 7, 2015) |
| H | Register of Actions |
| I | Plaintiff's Individual Case Conference Report |
| J | Defendants' Joint Defense Case Conference Report |
| K | Notice of Appearance of David S. Lee and Charlene N. Renwick of the law firm of Lee, Hernandez, Landrum & Garofalo |
| L | Affidavit of Charlene N. Renwick |
| M | Scheduling Order |
| N | Notice of Disassociation of the law firm of Resnick & Louis, P.C. |
| O | LBBS's Notice of Association of Counsel |
| P | Deposition Transcript of Detective Majors (Portion) |
| Q | Order re: Scheduling of Evidentiary Hearing |

EXHIBIT “A”


CLERK OF THE COURT

1 **COMP**
2 DAVID J. CHURCHILL (SBN: 7308)
3 JOLENE J. MANKE (SBN: 7436)
4 **INJURY LAWYERS OF NEVADA**
5 6900 Westcliff Drive, Suite 707
6 Las Vegas, Nevada 89145
7 T: 702-868-8888
8 F: 702-868-8889
9 david@injurylawyersnv.com
10 jolene@injurylawyersnv.com
11 Attorneys for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 X'ZAVION HAWKINS,
10 Plaintiff,

11 vs.

12 GGP MEADOWS MALL LLC, a Delaware
13 Limited Liability Company; MYDATT
14 SERVICES, INC. d/b/a VALOR SECURITY
15 SERVICES, an Ohio Corporation; MARK
16 WARNER, individually; DOES 1 through 10;
DOE SECURITY GUARDS 11 through 20; and
ROE ENTITIES 21 through 30, inclusive,
Defendants.

CASE NO.: A- 15- 717577- C
DEPT. NO.:

COMPLAINT XI I

17 Plaintiff X'ZAVION HAWKINS, by and through his counsel, INJURY LAWYERS OF
18 NEVADA, complains and alleges against Defendants, and each of them, as follows:

19 **JURISDICTION**

20 1. That at all times relevant herein, Plaintiff X'ZAVION HAWKINS, (hereinafter referred
21 to as "Plaintiff") was and is a resident of Clark County, Nevada.

22 2. That at all times relevant hereto, Defendant GGP MEADOWS MALL LLC (hereinafter
23 referred to as "Defendant GGP") was and is a Delaware Limited Liability Company registered in
24 Nevada, in good standing, and licensed to conduct business in Clark County.

25 3. That at all times relevant hereto, Defendant MYDATT SERVICES, INC. d/b/a VALOR
26 SECURITY SERVICES (hereinafter referred to as "Defendant Valor") was and is an Ohio corporation
27
28

1 registered in Nevada, in good standing, doing business in Clark County Nevada as VALOR
2 SECURITY SERVICES.

3 4. That at all times relevant hereto, Defendant GGP owned, operated and leased a portion
4 of the real property located at or near 4300 Meadows Lane in Las Vegas, Nevada, commonly known as
5 Meadows Mall, as a commercial venue open to the public for retail shopping, dining and entertainment.

6 5. That at all times relevant hereto, Defendant Valor was in charge of keeping the patrons
7 of Meadows Mall safe from unreasonable harm and threat of harm while on the premises.

8 6. Upon information and belief, at all times relevant hereto, Defendant MARK WARNER
9 (hereinafter referred to as "Defendant WARNER"), an individual, was and is a resident of Nevada
10 employed as the Head Security Director of Meadows Mall and was responsible for keeping the patrons
11 of Meadows Mall safe from unreasonable harm and threat of harm while on the premises.

12 7. All the facts and circumstances that give rise to the subject lawsuit occurred in Clark
13 County, Nevada.

14 8. On information and belief, each of the Defendants, including those designated herein as
15 DOES 1 through 10, DOE SECURITY GUARDS 11 through 20, and ROE ENTITIES 21 through 30,
16 are legally responsible for the events and happenings stated in this Complaint, and, thus, proximately
17 caused the injuries and damages to Plaintiff for negligently, or in some other actionable manner,
18 proximately causing Plaintiff's injuries and damages as herein alleged for failing to provide adequate
19 protections and security, acting in a way which invited crime to the premises and failing to keep the
20 premises free from dangerous and harmful conditions, including, but not limited to, crowd control for
21 the shoe launch. At such time that Plaintiff determines the true identities of the DOE and DOE
22 SECURITY GUARDS and ROE ENTITIES, Plaintiff will seek leave of this Court to amend this
23 Complaint to set forth the proper names of those Defendants as well as asserting appropriate charging
24 allegations.
25
26

27 ///

28 ///

1 9. On information and belief, DOES 1 through 10, DOE SECURITY GUARDS 11 through
2 20 and ROE ENTITIES 21 through 30 were involved in the initiation, approval, support or execution of
3 the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff, of which
4 Plaintiff is presently unaware.

5 **FACTS COMMON TO ALL CAUSES OF ACTION**

6 10. Defendants all had notice that Meadows Mall is located in a dangerous high crime area,
7 that numerous crimes had previously occurred on the property, that criminals from the community
8 came onto the premises and committed violent criminal acts, and that a stronger security presence, or
9 any security presence for that matter, was required to keep patrons of Meadows Mall safe.

10 11. Defendants all had notice that violence, including, but not limited to, fights and/or
11 slayings over Air Jordan and other professional athlete-endorsed shoes and/or the launch of Air Jordan
12 and other professional athlete-endorsed shoes and are not uncommon both locally and nationally.

13 12. On or about August 17, 2013, Defendants all knew that the Air Jordan 4 "Green Glow"
14 shoe launch would be taking place at Meadows Mall.

15 13. Based on previous experience, Defendants knew or should have known patrons
16 participating in the Air Jordan 4 "Green Glow" shoe launch would arrive at Meadows Mall very early
17 before the entrance doors opened to increase their chance of obtaining a pair of the limited quantity of
18 shoes.

19 14. Defendants negligently failed to take action to keep Meadows Mall patrons participating
20 in the shoe launch free from unreasonable harm or threat of harm while on the premises.

21 15. On or about August 17, 2013, Plaintiff's minor female cousin wanted to go to Meadows
22 mall to participate in the shoe launch.

23 16. Plaintiff accompanied his minor female cousin to Meadows Mall during the early
24 morning hours to wait with other patrons participating in the shoe launch.

1 17. After Plaintiff and his minor female cousin arrived at Meadows Mall they found a place
2 near the south entrance where all the other patrons had gathered to wait for the doors to open. While
3 they were waiting, they stood in the area of the entrance or sat on a bench near the entrance.

4 18. At no time did Plaintiff observe any individuals who appeared to be associated with
5 security for Meadows Mall.
6

7 19. At no time did Plaintiff observe any police cars or individuals who appeared to be
8 associated with law enforcement assisting with crowd control or keeping the peace.

9 20. While it was still dark outside and several hours remained before the entrance doors
10 would open, a group of young men present for the shoe launch approached Plaintiff and his minor
11 female cousin.

12 21. One of the young men in the group stared at Plaintiff and rushed toward him in a
13 threatening manner.
14

15 22. Plaintiff was first physically assaulted by one of the young men in the group and
16 knocked to the ground. Plaintiff then heard the young man yell to one of the other young men in the
17 group something that sounded like, "Get him, Zach!"

18 23. Plaintiff then recalls hearing a number of gun shots ring out and Plaintiff suffered
19 multiple gun shot wounds.
20

21 24. Plaintiff recalls being assisted by another patron who had been waiting in line for the
22 shoe launch.

23 25. Plaintiff then recalls that police officers arrived at the scene and emergency personnel
24 transported him from the scene.

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

(Negligence)

26. Plaintiff hereby repeats, re-alleges and incorporates by reference each and every allegation set forth in the above paragraphs as though each were set forth herein verbatim.

27. Defendants, and each of them, owed a duty of care to Plaintiff to keep the premises free of unreasonably dangerous and unsafe conditions during the shoe launch, to take reasonable steps to reduce or curtail the amount of crime at the premises during the shoe launch, and to avoid acting in a way to invite crime to the premises during the shoe launch.

28. Defendants, and each of them, created an unreasonably dangerous and unsafe condition by failing to exercise reasonable crowd control at the time of the shoe launch.

29. Defendants, and each of them, allowed the Meadows Mall patrons waiting for the shoe launch to wait unattended for hours outside the locked doors.

30. Defendants, and each of them, breached their duties owed to Plaintiff by their negligence, carelessness, lack of due care and prudence by failing to provide adequate security, including, but not limited to, the following:

a. Failing to provide adequate security to Meadows Mall patrons during the shoe launch;

b. Failing to take adequate measures to ensure the safety of Meadows Mall patrons during the shoe launch;

c. Failing to provide an adequate number of guards and/or patrols at Meadows Mall during the shoe launch;

d. Failing to properly, responsibly and prudently hire and train security personnel;

e. Failing to properly, responsibly and prudently manage the premises;

///

1 f. Failing to properly, responsibly and prudently supervise and/or manage security
2 personnel once they were hired;

3 g. Failing to properly, responsibly and prudently train security personnel or instruct
4 them as to their duties; and

5 h. Actively or passively allowing criminal activities to take place on the premises.

6
7 31. Upon information and belief, Defendants knew or should have known that Meadows
8 Mall is and was located in a high crime area, and needed added security measures to deal with the
9 same.

10 32. Upon information and belief, Defendants knew or should have known Meadows Mall
11 where Plaintiff was injured had numerous past incidents which were the same or substantially similar in
12 nature as to put Defendants on notice that the area and location was prone to violent criminal acts
13 against Meadows Mall's patrons and third parties.

14
15 33. Upon information and belief, Defendants knew or should have known that Meadows
16 Mall needed added security measures to handle crowd control during the shoe launch because such
17 shoe launches were and are prone to violent criminal acts against shoe launch participants.

18 34. Defendants owed Plaintiff the duty to exercise due care not to subject Plaintiff to a
19 foreseeable risk of harm.

20 35. As a direct and proximate result of the negligent actions of Defendants, Plaintiff
21 sustained bodily injury, some of which are severe, chronic, debilitating and permanent in nature.

22 36. As a further and direct and proximate result of Defendants' actions, Plaintiff suffered
23 multiple gunshot wounds resulting in scarring, disfigurement and permanent paralysis from the waist
24 down. He cannot walk or care for his daily needs without assistance from family and friends. He will
25 likely never be able to work or maintain any employment for the rest of his life.

26
27 ///

37. As a further direct and proximate result of Defendants' actions, Plaintiff suffered and will continue to suffer mental and physical pain in an amount in excess of Ten Thousand Dollars (\$10,000.00).

38. As a further direct and proximate result of Defendants' actions, Plaintiff has incurred, and will continue to incur, obligations and expenses for medical and associated treatment all to his damage in an amount in excess of Ten Thousand Dollars (\$10,000.00). Plaintiff prays for leave of the Court to insert all said damages herein when the same have been fully ascertained or proven at the time of trial of this matter.

39. As a further direct and proximate result of Defendants' actions, Plaintiff incurred and may continue to incur, court costs and attorney's fees in a continuing amount, and he should be entitled to reasonable attorney's fees and costs in a continuing amount to be proven at trial.

SECOND CAUSE OF ACTION

(Respondent Superior)

40. Plaintiff hereby repeats, re-alleges and incorporates by reference each and every allegation set forth in the above paragraphs as though each were set forth herein verbatim.

41. Defendant WARNER, as Head Security Director for Meadows Mall, was acting in the course and scope of his employment with Defendant GGP when he breached his duty of due care to Plaintiff, and, accordingly, Defendant GGP is liable for the negligent acts of its employee under the doctrine of respondeat superior.

42. Upon information and belief, DOE SECURITY GUARDS 11 through 20 were acting in the course and scope of their employment with Defendant Valor as security personnel at Meadows Mall when they breached their duty of due care to Plaintiff, and, accordingly, Defendant Valor is liable for the negligent acts of its employees under the doctrine of respondeat superior.

///

1 43. At all times relevant herein, Defendants WARNER and DOE SECURITY GUARDS 11
2 through 20 were acting in the furtherance of Meadows Mall and each other Defendant's official and/or
3 business interests.

4 44. The bad acts of Defendants WARNER and DOE SECURITY GUARDS 11 through 20
5 detailed herein were likely, probable, and/or foreseeable, and committed while committed while "on the
6 clock."
7

8 45. Accordingly, Defendants GGP and Defendant Valor are vicariously liable for the
9 intentional, reckless, and/or negligent acts of their employees, which were the actual and proximate
10 cause of Plaintiff's injuries and damages.

11 46. That as a direct and proximate result of the negligence, carelessness and/or recklessness
12 of Defendants WARNER and DOE SECURITY GUARDS 11 through 20, Plaintiff sustained great
13 emotional distress and bodily trauma, all or some of which may be permanent and disabling in nature,
14 including permanent paralysis from the waist down, all to his general and compensatory damage in an
15 amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).
16

17 47. Plaintiff has been required to incur attorney's fees and costs in brining this action for
18 respondeat superior, and requests that the Court grant reasonable attorney's fees and costs in a
19 continuing amount to be proven at trial.
20

21 **THIRD CAUSE OF ACTION**

22 **(Gross Negligence)**

23 48. Plaintiff hereby repeats, re-alleges and incorporates by reference each and every
24 allegation set forth in the above paragraphs as though each were set forth herein verbatim.

25 ///

26 ///

27 ///

1 49. In committing the negligence mentioned above, Defendants engaged in despicable
2 conduct with a conscious disregard for the rights or safety of others and/or Defendants acted with the
3 knowledge of the probable harmful consequences of their wrongful acts and willfully and deliberately
4 failed to act to avoid those consequences.

5 50. Defendant's failure to take action to eliminate the hazardous condition created by the
6 lack of crowd control during the shoe launch is so reckless that it demonstrates a substantial lack of
7 concern for whether an injury will result.

8 51. Defendants' conduct described herein was done with a conscious disregard of the rights
9 and safety of the public, including Plaintiff, with the intent to vex, injure and annoy the Plaintiff, such
10 as to constitute oppression, malice or fraud and/or wanton and/or willful disregard of Plaintiff's rights
11 as set forth and defined under the laws of the State of Nevada, entitling Plaintiff to punitive damages in
12 an amount appropriate to punish or set an example of the Defendants.

13 52. Defendants knew and/or should have known to a substantial degree of certainty that their
14 actions would result in injury to Plaintiff or other patrons waiting for the shoe launch. Accordingly,
15 Defendants are liable for punitive damages.

16 53. That as a direct and proximate result of the Defendants' negligent acts, Plaintiff was
17 permanently paralyzed from the waist down, which has caused him great suffering, and he will
18 continue to experience pain, suffering, emotional distress, loss of enjoyment and medical expenses, all
19 to his special and general damage in an amount in excess of Ten Thousand Dollars (\$10,000.00).

20 54. That as a further direct and proximate result of the recklessness, carelessness and
21 negligence of Defendants, Plaintiff has been required to retain the services of counsel to represent him
22 in the above-entitled matter, and he should be entitled to reasonable attorney's fees and costs to be
23 proven at trial.

24
25
26
27
28
///

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff X'ZAVION HAWKINS, reserving the right to amend this Complaint
3 at the time of trial to include all items of damages not yet ascertained, prays for judgment against
4 Defendants, and each of them, as follows:

- 5 1. For damages in excess of \$10,000.00 for past, present and future medical expenses;
6 2. For past, present and future pain and suffering in excess of \$10,000.00;
7 3. For hedonic damages in excess of \$10,000.00;
8 4. For loss of income, wages and ability to work, as well as other economic damages in
9 excess of \$10,000.00;
10 5. For punitive and exemplary damages in excess of \$10,000.00;
11 6. For attorneys' fees and costs of suit incurred herein; and
12 7. For such other and further relief as this Court may deem just and proper.
13

14 DATED this 27th day of April, 2015.

15 INJURY LAWYERS OF NEVADA


16
17 
18 DAVID J. CHURCHILL (SBN: 7308)
19 JOLENE J. MANKE (SBN: 7436)
20 6900 Westcliff Drive, Suite 707
21 Las Vegas, Nevada 89145
22 Attorneys for Plaintiff
23
24
25
26
27
28

EXHIBIT “B”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

Event #: 130817-0794

Statement Of: XZAVIAN HAWKINS

SPECIFIC CRIME: ATTEMPT MURDER

DATE OCCURRED: 8/17/13

TIME OCCURRED:

LOCATION OF OCCURRENCE:

☐ CITY OF LAS VEGAS☐ CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: XZAVIAN HAWKINS

DOB:

SOCIAL SECURITY #:

RACE:

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by Detective W. Majors, P# 7089, LVMPD Violent Crimes on 8/22/13 at 0958 hours.

Det. Majors: Hello Operator, this is Detective W. Majors, Mary, Adam, John, Ocean, Robert, Sam, P# 7089 also present with me is Detective M. as in Mary, Menzie, P#.

Det. Menzie: 6830.

Det. Majors: Under Event #130817-0794, this is in reference to an ongoing investigation of Attempt Murder, um, which took place at the location of 4300 Meadows Lane, Las Vegas, NV 89107, um, today's date is 8/22/2013, the time is going to be 958 hours. Person being interviewed today is first name Xzavian, phonetically X-ray, Zebra, Adam, Victor, Ida, Ocean, Nora; last name, Hawkins; Henry, Adam, William, King, Ida, Nora, Sam. He has a date of birth of 12/28/92. This interview is being conducted at UMC Trauma, ICU, ah, Xzavian, do you understand this interview is being recorded?

X. Hawkins: Yes, I do.

Det. Majors: Could you speak up a little louder?

X. Hawkins: Yes I do.

Det. Majors: Ok, I want to take you back to August 17th, 2013 on Saturday.

X. Hawkins: Yes sir.

Det. Majors: Location was ah, Meadows Mall parking lot?

For Official Use Only

VSS007046

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

X. Hawkins: Meadows Mall, I was ah, I was ah standing in line for some Jordan's, I seen this guy, his name was ah, Ashley Christmas.

Det. Majors: His name is what?

X. Hawkins: Ashley Christmas, known as Pooh Man.

Det. Majors: Ok.

X. Hawkins: He, ah, got up, he acted like he was going to shake my hand, but the guy is very sneaky, and ah, we, we had (inaudible) but you know this ain't got nothing to do with this case right now. So he seen me and ah, he acted like he (inaudible) shake my hand and he ah, tried to sock me. I caught myself swinging back, he yelled out "Zak" (burps) oh, excuse me, (inaudible) he yelled out "Zak," Za-Zak came, ah I'm thinking they about to just jump me or something, but Zak came like, I'm squarin' up with Zak, like, we, we squarin' up like, you know, how, you know what square up means like.

Det. Majors: Right.

X. Hawkins: (inaudible)

Det. Majors: It's getting ready to fight.

X. Hawkins: Fight, right, and ah, he ah, shot me. In my like, I don't know, it felt like it was in my hip but I think that's where he got me in my stomach and all I was yellin' for was help, but he kept shootin' me. So help didn't come like, as if he was like, better nobody get back, this is serious. Boom, boom, boom, boom, boom, boom. Ah, I don't, I know like now I'm in pain, I know exactly where he shot me at and all that, but whatever, but, ah, I don't know, that's, that's exactly what happened.

Det. Majors: Ok.

X. Hawkins: Pooh Man, but Pooh Man, he asked him, he said "Zak," Zak came out of nowhere, I guess Zak is ah, he called his self, Little Pooh Man G. I'm not, I'm not sure if that's his ah, nickname, but I know he said Zak.

Det. Majors: Uh-huh.

X. Hawkins: Zak came and he shot me up real bad man. I was on the floor, I thought all this was gone, the way he shot me. I thought all this was gone. Like for real, for real, now I, I didn't even think that was there no more, it like, you know, moments later, Metro appeared and I ah, I was just, told Metro, I said, they asked me, did I know who had did it, I was like, I, I told them "No." I didn't at the time, he was like "Man, do you know who did this to you?" I, I barely could even speak. Like I just remembered at the end of the day is all I kept sayin' is "Can you please get me to the hospital." Information will be held when I'm better. That's, now I'm better, you know, and you know that's what happened (inaudible).

Det. Majors: Ok, I want to take you back, let's go back to the beginning. You were standing in line, right?

X. Hawkins: Ah, we had just got there actually.

Det. Majors: Ok. Were you by yourself?

X. Hawkins: I was with my cousin.

Det. Majors: And which cousin were you with?

X. Hawkins: Kesha.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Ok. Um, now when, you said a guy by the name of Ash, Ashley? Christmas.

X. Hawkins: Ashley Christmas.

Det. Majors: About how old is he?

X. Hawkins: I don't know.

Det. Majors: Older?

X. Hawkins: He gotta be like, what 18? I don't know, he a youngster man.

Det. Majors: He's a youngster?

X. Hawkins: Yeah.

Det. Majors: Ok. Um, and can you describe him? What's he look like?

X. Hawkins: He, ah, he like, probably like, his height, brown, I don't know, like, he is (inaudible) like brown, got (inaudible) eyes.

Det. Majors: Is he heavy built? Thin built?

X. Hawkins: He like...

Det. Majors: Muscular?

X. Hawkins: thin built, wear nice clothes....

Det. Majors: And, ah...

X. Hawkins: (inaudible) in the face.

Det. Majors: Do you know who he hangs with?

X. Hawkins: Ah, no, actually I don't, all I know is Zak.

Det. Majors: Uh-huh.

X. Hawkins: Some guy named ah, Wayne. Dewayne, Dewayne um, I wanna say Dewayne Cornwell

Det. Majors: Dewayne Cornwell.

X. Hawkins: Yeah.

Det. Majors: Ok, and where does Dewayne Cornwell go to school, do you know?

X. Hawkins: No, I don't even know if the guy goes to school.

Det. Majors: How about Christmas.

X. Hawkins: I, I don't mess with these types of guys. Christmas...

Det. Majors: What school does he go to?

X. Hawkins: I think he, I think he graduated from like Centennial or something.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: **XZAVIAN HAWKINS**

Event #: 130817-0794

Det. Majors: Centennial?

X. Hawkins: Yeah.

Det. Majors: Ok, and ...

X. Hawkins: You know, he say threats once before, sayin' how he was gonna kill me and stuff.

Det. Majors: Why does he want to kill you?

X. Hawkins: Why does he want to kill me, is because ah, a while back man, he, he robbed me. He, he robbed me and I ah, I just told him I want (inaudible)

Det. Majors: Ok.

X. Hawkins: When, when you see me, that's what I told him, so, he knew what he was when we seen him.

Det. Majors: Uh-huh.

X. Hawkins: It wasn't like I was actually like tryin' to scare the guy or nothing like that, 'cause I didn't even see him there at first. He said "What up," to me, I was walking up to the line, I didn't even see him, he made his self noticed.

Det. Majors: Was he already there?

X. Hawkins: He was already there, yeah.

Det. Majors: Ok, um, who threw the glass bottle?

X. Hawkins: I did, oh, yeah, I, I didn't mention that, I, I did, I threw that. 'Cause he ah, came up tryin' to shake my hand and I was just so heated about my 150, I had \$150 to my name that my dad had just sent me, I had \$60 in my pocket when he robbed me. Shit...

Det. Majors: That was from before?

X. Hawkins: Yeah, they drew down on me and all that, I never let the cops know nothin' about that or whatever. I never let the cops knew nothin' about that, when he drew down on me, he went in my pocket, he called me a bitch, put it all on Facebook.

Det. Majors: Ok.

X. Hawkins: All type of shit, you know.

Det. Majors: What was Christmas wearing?

X. Hawkins: Ah, he had on like this baseball, or wh-when, when he, when he shot me right?

Det. Majors: Who, wait a minute, Christmas or, or Zak shot you?

X. Hawkins: Christmas. Christmas. Zak shot me.

Det. Majors: Ok.

X. Hawkins: Zak was the shooter.

Det. Majors: Zak is the shooter. Let's just focus on Christmas right now. What color shoes was he wearing?

X. Hawkins: Ah, I'm not sure, but I know what color, color shirt he had on.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: What was that?

X. Hawkins: It was um, you gotta remember man, the sun was just coming up.

Det. Majors: I understand.

X. Hawkins: Yeah, it was kinda dark still. He had on a, a, a baseball shirt, you know how they be wearin' those baseball shirts, the cut off...

Det. Majors: Uh-huh.

X. Hawkins: (inaudible).

Det. Majors: What color?

X. Hawkins: It was black, the sleeves was black and the a shirt was white, I don't know what he said but he...

Det. Majors: Ok.

X. Hawkins: Always (inaudible) the one who goes and buy a, what you call it, like shirts that have like different stuff on it, you know.

Det. Majors: Uh-huh.

X. Hawkins: Yeah, but ah, yeah man, he cracked off to fight, he dodged a bottle so good, ah, you knew that he was ready for whatever, like you could tell that...

Det. Majors: Like they planned this?

X. Hawkins: Naw, it wasn't like they planned it or nothin', 'cause I don't even go to the mall like that...

Det. Majors: Ok.

X. Hawkins: So if they wanted to plan some, they actually have to come to where I live, 'cause I don't even step foot up out my door.

Det. Majors: The, the reason why I'm asking...

X. Hawkins: I went, I went because my cousin, she was ah, she, the, the new Jordans they came out with those (inaudible) I'm not even into that type of stuff, you know, I'm tryin' find me a job, you know, hopefully marry my girl one day. That's, that's all I do (inaudible) shot me though and he gonna start by, I, I told him, as, as he was firin' his weapon man, I told him, just stop, just stop, just stop, just stop, (inaudible), just felt bullets all over man.

Det. Majors: Did someone punch you first before they fired at you?

X. Hawkins: Ah, no.

Det. Majors: Ok. When they fired, did they fire at you when you were standing?

X. Hawkins: They, ah, somebody, somebody did, actually tell, told me like after I got back from, I don't know who it was or whatever, I think it was my cousin, she said "Did he punch you or do something?" but I don't think he punched me, I think he pushed me down to the ground or something, but I was shot first before I was even pushed down to the ground and he was just shootin', shootin', shootin', shootin', shootin', Pooh Man, ah, he, I think he ran off or did something. He must have ran off or did something but ah, I, I, hate the mother fucker, you know, I don't even wanna talk about his ass, I get upset every time I start talking about that mother fucker, so...

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Pooh Man said "Zak, get 'em?"

X. Hawkins: He's like, yeah, he, he said it just like that, "Zak get 'em."

Det. Majors: Ok, and how, let's talk about Zak now. How old do you think Zak is?

X. Hawkins: He's like, probably be like, (inaudible) 17, 16.

Det. Majors: If you saw his again, would you be able to identify him?

X. Hawkins: No I wouldn't, but if, if, if I seen a picture or something, if I seen him again, I probably would, I'm not sure man, I'm bad with faces.

Det. Majors: Ok.

X. Hawkins: But I swear, if I seen him or something, I probably be like yeah, you know that's him.

Det. Majors: Ok.

X. Hawkins: But I know how Pooh Man look though (inaudible).

Det. Majors: You can identify Pooh Man if you saw him again?

X. Hawkins: Yeah.

Det. Majors: Ok.

X. Hawkins: But ah, look, check this out, ah, I, I know Pooh Man, we went to school together, I would never thought he's (inaudible) some sneaky stuff, startin' off robbin' me when I ah, left, left Cheyenne. I never knew that he was going to be just that type of guy or whatever, you feel me? Whatever case might be. I just let my ah, my skeletons out my closet, just yesterday by tellin' my mom that stuff.

Det. Menzie: Were you in the same grade?

X. Hawkins: No we wasn't, I was um, I'm older than him?

Det. Menzie: Ok, so he was like a year younger, ah, a grade younger? Two grades?

X. Hawkins: Probably about, yeah.

Det. Menzie: And when did he go to that, what high school did he go to?

X. Hawkins: We went to, we went to the same school I graduated from.

Det. Menzie: What Centennial?

X. Hawkins: No, Cheyenne.

Det. Menzie: Cheyenne.

X. Hawkins: Right.

Det. Majors: Ok. Let me ask you this, um...

X. Hawkins: (inaudible).

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Majors: Christmas, is that his real name, or is that his nickname?

X. Hawkins: Ashley Christmas is his real name.

Det. Majors: And, and middle name Bernard?

X. Hawkins: Ah, yeah, I guess so. I don't know his middle name.

Det. Majors: Ok.

X. Hawkins: All I do know is his first and last name.

Det. Majors: Ok.

X. Hawkins: It's, and Pooh Man is just a name that everyone calls him.

Det. Majors: They ever call him other things besides Pooh Man?

Det. Menzie: Yeah leave that on.

X. Hawkins: PMG.

Det. Majors: Ok.

X. Hawkins: PMG, I think and you know what, I think honestly to be exact, that um, he go Little PMG, like that's his (inaudible) or whatever, I don't know how that shit goes man.

Det. Majors: Ok.

X. Hawkins: (inaudible) get his ass off the streets. (inaudible) I don't wanna be in shit, I don't wanna be killed, none of that, you know.

Det. Majors: About how many times did he shoot you?

X. Hawkins: Ah man, he shot me 8 times.

Det. Majors: Ok, and you were telling him to stop.

X. Hawkins: Ah, yeah, I was telling him to stop while he was shootin' me.

Det. Majors: Were you afraid for your life?

X. Hawkins: Yes I was.

Det. Majors: Ok, what I'm going to do is I got some...

X. Hawkins: You know what, check this out before you all even start doing...

(Cross Talk)

Det. Majors: Uh-huh.

X. Hawkins: (inaudible) God was on my side when that happened.

Det. Menzie: You what?

X. Hawkins: God was on my side when that happened.

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

Det. Menzie: Yeah.

X. Hawkins: I was put on this earth for a reason, that's why I didn't die. For a person to survive (inaudible) gun wounds, you feel me? That's how the little mother fucker probably got the gun (inaudible) but ya'll got my voice on ah, this little tape recorder, phone, whatever that shit is...

Det. Menzie: Right.

X. Hawkins: Ah, I, I want, I want that mother fucker off the street man.

Det. Majors: With that being said, you do want to prosecute, correct?

X. Hawkins: I, I do, but I don't want to go to no court dates (inaudible).

Det. Majors: Well that's the only way we can prosecute.

X. Hawkins: (inaudible).

Det. Majors: Just so you know, you may be required to go to court and testify.

Det. Menzie: So here's this, are you, don't want to go to court 'cause you're afraid of retaliation from the same people?

X. Hawkins: Man, I can't, I can't live in Vegas. I can't live in Vegas, Vegas is my home.

Det. Menzie: Ok. You're scared..

(Cross Talk)

X. Hawkins: See that's what ya'll don't get, with a person, you come to a person and ah, knowin' people and all that extra stuff, that's what you all don't get, like...

Det. Menzie: You're scared of this guy or somebody he knows...

(Cross Talk)

X. Hawkins: And then movin' us away and all that extra shit, that shit don't, that shit don't play man. It's hard to even, that man, come on now, ya'll know what it is.

Det. Menzie: Let's stay focused on this, this interview right now.

(Cross Talk)

X. Hawkins: Yeah, we is, we is, I'm not gettin' mad, I'm not gettin' upset, but you know, my blood pressure, all that stuff is messed up, my body is fucked up and all I want is him off the street.

Det. Majors: But, what I'm, what I'm gonna do is, we're gonna do a photo line-up, ok?

X. Hawkins: Yeah.

Det. Majors: So I gotta read some things to you. You don't have to sign anything, we're just doing this on the tape, alright? In a moment I'm going to show you a group of photographs, this group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact the photos are being shown to you, should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as to identify those who are guilty. Please keep in mind, hairstyles, beards, mustaches are easily changed. Also, photographs do not always depict the true complexion of a person, it may be lighter or darker than shown in the

**VOLUNTARY STATEMENT
(Continuation)**

Statement Of: XZAVIAN HAWKINS

Event #: 130817-0794

photo. You should pay no attention to any markings, numbers that appear on the photos. Also, pay no attention to whether the photos are in color or black and white or any other difference, type or style...

X. Hawkins: Yeah, I know ah...

Det. Majors: Hold on, hold on...

X. Hawkins: Alright.

Det. Majors: Of photographs. You should study only the person shown in each photo, please do not talk to anyone other than police officers while viewing the photos. You must make up your own mind and not be influenced by witnesses, if any. If you had completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of that identification. Do not indicate to any other witnesses that you have or have not made identification. Do you understand?

X. Hawkins: Yeah.

Det. Majors: Ok.

X. Hawkins: (inaudible) papers shuffling.

Det. Majors: Alright. I want you to take a look at these photos here.

X. Hawkins: (inaudible).

Det. Majors: Anybody in those photos, resemble the shooter?

X. Hawkins: No, I don't think so, can you show me some more stuff, and I can keep this?

Det. Majors: Can't let you keep it.

X. Hawkins: Not keep it but, you know, well, here, here, just take it.

Det. Majors: So you can't...

X. Hawkins: You got more of those?

Det. Majors: I do. Nobody?

X. Hawkins: No.

Det. Majors: Ok. Anything you'd like to add at this time?

X. Hawkins: No, man that's all ya'll got?

Det. Majors: Ok. End of interview, same people present, date's the same. Time is going to be 1015 hours.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 1800 W. Charleston Blvd. ON THE 22nd DAY OF August, 2013, AT 1015 HOURS.

EXHIBIT “C”

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15
16
17
18
19
20
21
22
23
24
25
26
27
28

18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

23
24
25
26
27
28

27

28

9. Mr. Barrus requested his zip drive back, and since I did not have it, I directed my staff to look for it. I was told that the zip drive was ultimately returned to Mr. Barrus.

10. I left Eglet Prince (Formerly Eglet Law Group) and returned to LEWIS
BRISBOIS BISGAARD & SMITH, LLP. on July 13, 2015.

11. Shortly thereafter, I met Plaintiff's counsel, Jason Barrus, at the Court house and we discussed my leaving Eglet Prince and returning to LEWIS BRISBOIS BISGAARD & SMITH, LLP.

12. In October of 2015, while walking by one of the attorney offices, I overheard Josh Cole Aicklen discussing a case that he was about to start working on. I quickly recognized that the case involved X'Zavion Hawkins. I immediately told Mr. Aicklen that I met with Mr. Hawkins and my prior firm did not take the case. I did not recall signing a fee agreement and I knew I did not work on the case other than meeting with the client for approximately one hour.

13. Since then, I have had no involvement in the case. I did not receive, create, read or access any documents in the case and I did not provide any information about the case to anyone at LEWIS BRISBOIS BISGAARD & SMITH, LLP.

14. I prepared this Affidavit in response to Plaintiff's Motion to Disqualify LEWIS
BRISBOIS BISGAARD & SMITH, LLP.

FURTHER AFFIANT SAYETH NAUGHT.

PAUL A. SHPIRT, ESQ.

SUBSCRIBED AND SWORN to before me
this 18 day of May, 2016.

NOTARY PUBLIC
In and for said County and State

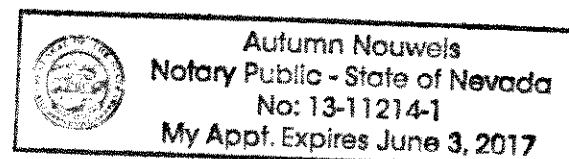
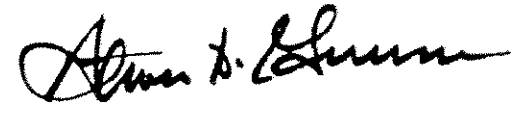


EXHIBIT “D”



CLERK OF THE COURT

1 **ANSC**
2 **RESNICK & LOUIS, P.C.**
3 Mitchell Resnick, Esq., SBN: 12074
4 Jenny L. Foley, PhD., Esq., SBN: 9017
5 mresnick@rlattorneys.com
6 Jfoley@rlattorneys.com
7 5940 S. Rainbow Blvd.
8 Las Vegas, NV 89118
9 Telephone: (702) 997-3800
10 Facsimile: (702) 997-3800

11 *Attorneys for Valor Security Services*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 X'ZAVION HAWKINS, individually,

15 Plaintiff,

16 v.

17 GGP MEADOWS MALL LLC, a Delaware
18 Limited Liability Company; MYDATT
19 SERVICES, INC. d/b/a VALOR SECURITY
20 SERVICES, an Ohio Corporation; MARK
21 WARNER, individually; DOES 1 through 10;
22 DOE SECURITY GUARDS 11 through 20;
23 and ROE ENTITIES 21 through 30, inclusive,

24 Defendants.

CASE NO.: A-15-717577-C

DEPT: XII

**DEFENDANT MYDATT SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES' ANSWER TO
PLAINTIFF'S COMPLAINT**

25 Defendant, Mydatt Services, Inc. d/b/a Valor Security Services (referred to herein as
26 "Valor Security"), by and through undersigned counsel, Mitchell Resnick, of the law firm
27 Resnick & Louis, P.C., hereby responds to Plaintiff X'Zavion Hawkins' Complaint as follows:

28 **JURISDICTION**

1. Valor Security is without sufficient information to either admit or deny the allegations
contained in paragraph 1 of Plaintiff's Complaint and on that basis denies same.

1 2. Valor Security is without sufficient information to either admit or deny the allegations
2 contained in paragraph 2 of Plaintiff's Complaint and on that basis denies same.

3 3. Valor Security denies the allegations contained in paragraph 3 of Plaintiff's Complaint in
4 that Mydatt Services d/b/a Valor Security Services no longer conducts business in Clark County
5 Nevada. Mydatt Services d/b/a Valor Security Services was purchased by Universal Protection
6 Service, a division of Universal Services of America Services of America, on or around, January
7 2015.

8 4. Valor Security is without sufficient information to either admit or deny the allegations
9 contained in paragraph 4 of Plaintiff's Complaint and on that basis denies same.

10 5. The allegations contained in paragraph 5 of Plaintiff's Complaint are vague and/or call
11 for a legal conclusion, on this basis Valor Security is without sufficient information to either
12 admit or deny the allegations contained in paragraph 5 of Plaintiff's Complaint and therefore
13 denies same.

14 6. Valor Security is without sufficient information to either admit or deny the allegations
15 contained in paragraph 6 of Plaintiff's Complaint and on that basis denies same.

16 7. Valor Security admits that the shooting incident that is the subject of this lawsuit
17 occurred in Clark County Nevada. Valor Security is without sufficient information to either
18 admit or deny the remaining allegations contained in paragraph 7 of Plaintiff's Complaint and on
19 that basis denies same.

20 8. Valor Security is without sufficient information to either admit or deny the allegations
21 contained in paragraph 8 of Plaintiff's Complaint and on that basis denies same.

22 9. Valor Security is without sufficient information to either admit or deny the allegations
23 contained in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

24 **FACTS COMMON TO ALL CAUSES OF ACTION**

25 10. Valor Security is without sufficient information to either admit or deny the allegations
26 contained in paragraph 10 of Plaintiff's Complaint and on that basis denies same.
27
28

1 11. Valor Security is without sufficient information to either admit or deny the allegations
2 contained in paragraph 11 of Plaintiff's Complaint and on that basis denies same.

3 12. Valor Security is without sufficient information to either admit or deny the allegations
4 contained in paragraph 12 of Plaintiff's Complaint and on that basis denies same.

5 13. Valor Security is without sufficient information to either admit or deny the allegations
6 contained in paragraph 13 of Plaintiff's Complaint and on that basis denies same.

7 14. Valor Security is without sufficient information to either admit or deny the allegations
8 contained in paragraph 14 of Plaintiff's Complaint and on that basis denies same.

9 15. Valor Security is without sufficient information to either admit or deny the allegations
10 contained in paragraph 15 of Plaintiff's Complaint and on that basis denies same.

11 16. Valor Security is without sufficient information to either admit or deny the allegations
12 contained in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

13 17. Valor is without sufficient information to either admit or deny the allegations contained
14 in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

15 18. Valor Security is without sufficient information to either admit or deny the allegations
16 contained in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

17 19. Valor Security is without sufficient information to either admit or deny the allegations
18 contained in paragraph 9 of Plaintiff's Complaint and on that basis denies same.

19 20. Valor Security is without sufficient information to either admit or deny the allegations
20 contained in paragraph 20 of Plaintiff's Complaint and on that basis denies same.

21 21. Valor Security is without sufficient information to either admit or deny the allegations
22 contained in paragraph 21 of Plaintiff's Complaint and on that basis denies same.

23 22. Valor Security is without sufficient information to either admit or deny the allegations
24 contained in paragraph 22 of Plaintiff's Complaint and on that basis denies same.

25 23. Valor Security is without sufficient information to either admit or deny the allegations
26 contained in paragraph 23 of Plaintiff's Complaint and on that basis denies same.
27
28

1 24. Valor Security is without sufficient information to either admit or deny the allegations
2 contained in paragraph 24 of Plaintiff's Complaint and on that basis denies same.

3 25. Valor Security is without sufficient information to either admit or deny the allegations
4 contained in paragraph 25 of Plaintiff's Complaint and on that basis denies same.

5 **FIRST CAUSE OF ACTION**

6 **(Negligence)**

7 26. Valor Security hereby repeats, re-alleges and incorporates by reference each and every
8 response to the Plaintiff's allegations set forth in the above paragraphs as though each were set
9 forth herein verbatim. In so far as this Court determines that paragraph 26 contains allegations,
10 Valor Security hereby denies same.

11 27. Valor Security denies the allegations in paragraph 27 of Plaintiff's Complaint that call for
12 a legal conclusion and Valor is without sufficient information to either admit or deny the
13 remaining allegations contained in paragraph 27 of Plaintiff's Complaint and therefore denies
14 same.

15 28. Valor Security is without sufficient information to either admit or deny the allegations
16 contained in paragraph 28 of Plaintiff's Complaint and on that basis denies same.

17 29. Valor Security is without sufficient information to either admit or deny the allegations
18 contained in paragraph 29 of Plaintiff's Complaint and on that basis denies same.

19 30. Valor Security affirmatively alleges that at all relevant times Valor Security satisfied any
20 and all applicable duties owed to Plaintiff. Valor Security denies the allegations contained in
21 paragraph 30 of Plaintiff's Complaint and further denies the allegations in subparts a-h to
22 paragraph 30 of Plaintiff's Complaint.

23 31. Valor Security affirmatively alleges that at all relevant times Valor satisfied any and all
24 applicable duties owed to Plaintiff. Valor Security is without sufficient information to either
25 admit or deny the remaining allegations contained within paragraph 31 of Plaintiff's Complaint
26 and on that basis denies same.
27
28

1 32. Valor Security affirmatively alleges that at all relevant times Valor Security satisfied any
2 and all applicable duties owed to Plaintiff. Valor Security is without sufficient information to
3 either admit or deny the remaining allegations contained within paragraph 32 of Plaintiff's
4 Complaint and on that basis denies same.

5 33. Valor Security affirmatively alleges that at all relevant times Valor satisfied any and all
6 applicable duties owed to Plaintiff. Valor Security is without sufficient information to either
7 admit or deny the remaining allegations contained within paragraph 33 of Plaintiff's Complaint
8 and on that basis denies same.

9 34. Valor Security affirmatively alleges that at all relevant times Valor Security satisfied any
10 and all applicable duties owed to Plaintiff. Valor Security is without sufficient information to
11 either admit or deny the remaining allegations contained within paragraph 34 of Plaintiff's
12 Complaint and on that basis denies same.

13 35. Valor Security is without sufficient information to either admit or deny the allegations
14 contained within paragraph 35 of Plaintiff's Complaint and on that basis denies same.

15 36. Valor Security is without sufficient information to either admit or deny the allegations
16 contained within paragraph 36 of Plaintiff's Complaint and on that basis denies same.

17 37. Valor Security is without sufficient information to either admit or deny the allegations
18 contained within paragraph 37 of Plaintiff's Complaint and on that basis denies same.

19 38. Valor Security is without sufficient information to either admit or deny the allegations
20 contained within paragraph 38 of Plaintiff's Complaint and on that basis denies same.

21 39. Valor Security denies that Plaintiff is entitled to attorney's fees. Valor Security is without
22 sufficient information to either admit or deny the remaining allegations contained within
23 paragraph 39 of Plaintiff's Complaint and on that basis denies same.
24

25 ///

26 ///

27 ///

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

7
8

9
1011
12

13

14

16

18

20
21

22

23

24
25
26
27

1 49. Valor Security denies the allegations contained in paragraph 49 of Plaintiff's Complaint
2 as they apply to Valor Security.

3 50. Valor Security denies the allegations contained in paragraph 50 of Plaintiff's Complaint
4 as they apply to Valor Security.

5 51. Valor Security denies the allegations contained in paragraph 51 of Plaintiff's Complaint
6 as they apply to Valor Security.

7 52. Valor Security denies the allegations contained in paragraph 52 of Plaintiff's Complaint
8 as they may apply to Valor Security.

9 53. Valor Security denies that it was negligent. Valor Security denies that any acts by Valor
10 Security directly and proximately caused Plaintiff's injuries. Valor Security is without sufficient
11 information to either admit or deny the remaining allegations contained within paragraph 43 of
12 Plaintiff's Complaint and on that basis denies same.

13 54. Valor Security denies the allegations in paragraph 54 of Plaintiff's Complaint.
14

15 **FURTHER RESPONSES/GENERAL DENIAL**

16 55. As for Valor Security's further responses, Valor Security denies each and every
17 allegation not expressly admitted, denied or otherwise qualified

18 **FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
19 **(Failure to State a Claim for Relief)**

20 Valor Security alleges that the Complaint and each and every Claim for Relief stated
21 therein fails to state facts or other allegations sufficient to constitute a Claim for Relief, or any
22 Claim for Relief, as against Valor Security.

23 **SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
24 **(Negligence of Others/Breaches of Obligations by Others)**

25 Valor Security alleges that at all times mentioned herein, if Plaintiff was damaged, it was
26 proximately caused by the independent conduct of third parties or entities, both known and
27 unknown, and each of them, were negligent, careless and reckless and unlawfully conducted
28

1 themselves so as to substantially contribute to Plaintiff's purported damages, and said
2 negligence, if any, either bars in whole or in part damages sought herein against Defendant, and
3 any potential recovery against Valor Security must therefore be reduced accordingly.

4 **THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
5 **(Reduction to Percentage of Fault)**

6 Valor Security alleges that if it should be found that Valor Security is in any manner
7 legally responsible for the injury or damages, if any, sought by Plaintiff, which supposition is not
8 admitted but merely stated for the purpose of pleading this action, then any such injuries or
9 damages were proximately caused or contributed to by Plaintiff, and/or any other persons or
10 entities not parties to this action, and it is necessary that the proportionate degree of negligence,
11 fault or unreasonable conduct of each of said persons or entities, whether parties to this action or
12 not, be determined.

13 **FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
14 **(Intervening or Superseding Cause)**

15 Valor Security alleges that the injuries and damages complained of in the Complaint, if
16 any, were proximately caused by an intervening or superseding action and/or inaction of others
17 over which Valor Security had no control, which intervening and superseding action and/or
18 inaction bars and/or diminishes Plaintiff's recovery, if any, against Valor Security.

19 **SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
20 **(Waiver)**

21 Valor Security alleges that Plaintiff, through her own acts and omissions, waived the
22 right to recover damages from Defendant.

23 **SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
24 **(Statute of Limitations and/or Repose)**

25 Valor Security alleges that the subject Complaint is barred by the applicable Statute of
26 Limitations and/or Repose.
27
28

1 **EIGHTH SEPARATE DISTINCT AFFIRMATIVE DEFENSE**
2 **(No Proximal Causation)**

3 Valor Security alleges that Plaintiff has not sustained any damages or injuries which have
4 been proximately caused by any purported act, omission, or breach of any duty on the part of
5 Valor Security.

6 **NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
7 **(Uncontrollable Event)**

8 Valor Security alleges that the events, injuries, losses and damages complained of in the
9 Complaint, if any, were the result of and solely caused by an irresistible, superhuman act which
10 no person could control and/or anticipate, to wit: an unusual and unprecedented event which
11 caused the purported accident alleged in the Complaint.

12 **TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
13 **(Failure to Mitigate Damages)**

14 Valor Security alleges that Plaintiff, by the exercise of reasonable effort and/or care,
15 could have mitigated that amount of damages alleged to have been suffered, but that Plaintiff
16 failed, neglected and refused, and continue to fail and refuse, to exercise a reasonable effort to
17 mitigate the alleged damages.

18 **ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
19 **(Due Care and Circumspection)**

20 Valor Security alleges that at all times relevant to the allegations contained in Plaintiff's
21 Complaint, Valor Security acted with the due care and circumspection in the performance of any
22 and all duties imposed on it.

23 **TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
24 **(No Control or Possession)**

25 Valor Security alleges that it had no control over, or possession of, the area where
26 Plaintiff allege its damages took place.

27 ///

1 **THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
2 **(Assumption of Risk)**

3 The perils or dangers, if any, existing at the time of Plaintiff's alleged injuries, if any,
4 were open and obvious and known to Plaintiff's who nevertheless conducted herself in such a
5 manner so as to expose herself to said perils and dangers, if any, and by so doing, assumed all the
6 risks attendant thereto.

7 **FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
8 **(Estoppel)**

9 Valor Security alleges that Plaintiff, by virtue of his own acts and omissions, is estopped
10 from recovering damages from Valor Security.

11 **FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
12 **(Failure to Join)**

13 Valor Security alleges that Plaintiff's claims are barred by virtue of his own failure to
14 join necessary and indispensable parties to this lawsuit.

15 **SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
16 **(Unclean Hands)**

17 Valor Security alleges that this action is barred by the equitable doctrine of unclean
18 hands.

19 **SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
20 **(Misuse)**

21 Valor Security alleges that all damages sustained by Plaintiff, if any, by reason of the
22 matters referred to in the Complaint, resulted solely from unreasonable and improper use, and
23 misuse, of the products, machines, premises, conditions, facilities, or systems involved.

24 **EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
25 **(Discharge of Duties)**

26 Prior to commencement of this action, Valor Security duly performed, satisfied and
27 discharged all duties and obligations it may have owed to Plaintiff arising out of any and all
28

1 purported agreements, representations or contracts made by it or on behalf of Valor Security and
2 this action is therefore barred.

3 **NINETEENTH SEPARATE AND DISTINCT**
4 **AFFIRMATIVE DEFENSE**
5 **(Claim for Attorney's Fees Barred)**

6 Valor Security alleges that Plaintiff have failed to set forth facts sufficient to support an
7 award for attorney's fees or extra-contractual damages, and that accordingly any alleged claims
8 for attorney's fees or extra-contractual damages are barred.

9 **TWENTIETH SEPARATE AND DISTINCT**
10 **AFFIRMATIVE DEFENSE**
11 **(Attorney's Fees)**

12 Valor Security alleges that it has been necessary to employ the services of an attorney to
13 defend it in this action and a reasonable sum should be allowed Valor Security for attorney's
14 fees, together with costs of suit incurred herein.

15 **TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
16 **(NRCF Rule 8 Defenses)**

17 Valor Security hereby incorporates by reference those affirmative defenses enumerated in
18 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
19 investigation or discovery reveals the applicability of any such defenses, Valor Security reserves
20 the right to seek leave of Court to amend its Answer to specifically assert the same. Such
21 defenses are herein incorporated by reference for the specific purpose of not waiving same.

22 **TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
23 **(Right to Amend)**

24 Pursuant to NRCF 11, Valor Security presently has insufficient knowledge or information
25 on which to form a belief as to whether it has additional, as yet unstated affirmative defenses
26 available. Valor Security hereby reserves its right to insert additional affirmative defenses in the
27 event discovery and investigation indicate they would be appropriate.
28

1 WHEREFORE, having fully answered Plaintiff's Complaint, Valor Security respectfully
2 requests the following relief:

3 A. That Plaintiff takes nothing by virtue of his Complaint;

4 B. That the Complaint is dismissed with prejudice and that Valor Security is awarded
5 judgment in this action;

6 C. That Valor Security is awarded its costs incurred herein;

7 D. That Valor Security be awarded its attorneys' fees; and

8 E. For such other and further relief as the Court deems just and proper.

9 DATED this 19th day of May, 2015.

10 **RESNICK & LOUIS, P.C.**

11
12 By: /s/ Mitch Resnick

13 Mitchell J. Resnick., Esq.

14 Jenny Foley, PhD, Esq.

15 5940 S. Rainbow Blvd.

16 Las Vegas, NV 89118

17 Telephone: (702) 997-3800

18 Facsimile: (702) 997-3800

19 *Attorneys for Defendant Mydatt Services, Inc. d/b/a*

20 *Valor Security Services*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **ANSWER** was served this 19th day of May, 2015, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

/s/ Lily Richardson
An Employee of Resnick & Louis, P.C.