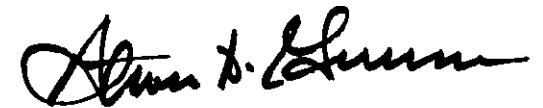


EXHIBIT 31



CLERK OF THE COURT

RPLY

Edgar Carranza, Esq.

Nevada State Bar No. 5902

BACKUS, CARRANZA & BURDEN

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Attorneys for Defendants

MYDATT SERVICES, INC. d/b/a VALOR

SECURITY SERVICES and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

Case No. A717577

Dept. XXXI

**DEFENDANTS', MYDATT SERVICES, INC. AND MARK WARNER,
REPLY TO PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION
TO MOTION FOR ATTORNEY'S FEES AND COSTS**

Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES

(hereinafter referred to as "Mydatt") and MARK WARNER (hereinafter referred to as "Mr.

Warner"), by and through counsel, Edgar Carranza, Esq. of the law firm of BACKUS, CARRANZA &

BURDEN and David Lee, Esq. and Charlene Renwick, Esq. of the law firm Lee, Hernandez,

Landrum & Garofalo, hereby file the instant reply to Plaintiff's Supplemental Brief in Opposition

BACKUS, CARRANZA & BURDEN

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LAS VEGAS, NEVADA 89117

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1 to Defendants' Motion for Attorney's Fees and Costs related to the motion to dismiss. As
2 expected, Plaintiff's claim that no attorney's fees should be included in the sanction against him
3 from the Lewis Brisbois Bisgaard & Smith law firm simply because they were disqualified is
4 unsupported by the case attached to the supplemental brief. The California appellate decision is
5 not "on point" and is wholly distinguishable from the circumstances involved in this case.
6

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 On July 21, 2016, an evidentiary hearing was held to consider Defendants' motion to
10 dismiss Plaintiff's complaint as a result of the documented discovery abuses. At the conclusion of
11 the hearing, this honorable Court denied the requested dismissal, but agreed that the discovery
12 abuses were so egregious and pervasive that sanctions were warranted, including an award of
13 attorney's fees and costs related to the motion to dismiss.
14

15 On August 19, 2016, Defendants filed their motion for attorney's fees and costs in
16 compliance with this Court's order, which included fees and costs related to work performed by
17 the three law firms involved with the motion to dismiss: 1) Lewis Brisbois Bisgaard & Smith; 2)
18 Lee, Hernandez, Landrum & Garofalo; and 3) BACKUS, CARRANZA & BURDEN which detailed the
19 work from each law firm related to the motion to dismiss. On September 7, 2016 Plaintiff filed
20 his opposition and on September 13, 2016, the Defendants filed their reply to the opposition.
21

22 On September 20, 2016, the parties were before this honorable Court for oral arguments
23 related to the pending motion for attorney's fees and costs. During the oral argument Plaintiff
24 claimed to have discovered the seminal case on the matter which was "directly on point." He
25 attempted to introduce the case to this Court without first having provided it to all parties. In an
26 abundance of caution, this Court delayed its decision on the pending motion for attorney's fees to
27
28

1 allow Plaintiff the opportunity to introduce only the case he claimed to be “directly on point”¹ and
2 allow the Defendants the opportunity to respond.

3 As it turns out, the delay was unnecessary. The case which Plaintiff claimed to be
4 “directly on point” was in fact, not on point at all. As discussed below, the case does not involve
5 the same circumstances involved in this case and is wholly distinguishable.
6

7 II. POINTS AND AUTHORITIES

8 A. PLAINTIFF’S SUPPLEMENTAL BRIEF SHOULD BE LIMITED ONLY TO THE *SHEPPARD*, 9 *MULLIN* CASE.

10 Plaintiff’s eight (8) page supplemental brief includes authority and argument beyond what
11 was permitted by this Court and essentially is an unauthorized sur-reply to Defendants’ reply to
12 the opposition to the motion for attorney’s fees. As such, the superfluous authority and argument
13 should be ignored.

14 On September 20, 2016, the parties were before this Court for oral arguments related to the
15 pending motion for attorney’s fees and costs. During the oral argument Plaintiff claimed to have
16 discovered the seminal case on the matter which was “directly on point.” In an abundance of
17 caution, this Court delayed its decision on the pending motion for attorney’s fees to allow Plaintiff
18 the opportunity to introduce only the case he claimed to be “directly on point” and allow the
19 Defendants the opportunity to respond.²
20

21 Rather than comply with this Court’s order, Plaintiff opted to take advantage of the
22 situation by including an 8 page brief full of unrelated legal authority. As has been his practice,
23 Plaintiff seeks to confuse this Court by including arguments and authority unrelated to the issue at
24 hand in an effort to muddy the waters as this Court decides the amount of the sanctions it ordered
25 following the July 21, 2016 evidentiary hearing. This Court should not allow itself to be duped by
26 Plaintiff. Because the supplemental brief goes well beyond what was permitted, the additional
27

28
¹ Order re: Defendants’ Motion for Attorney’s Fees and Costs.

² Order re: Defendants’ Motion for Attorney’s Fees and Costs.

1 argument and legal authority, while completely off base, should be ignored.

2 **B. THE *SHEPPARD MULLIN* CASE IS NON-CONTROLLING AND NOT NEW CASE LAW.**

3 As an initial matter, the *Sheppard Mullin* case is an appellate decision from a foreign
4 jurisdiction- California. As such, it has no controlling affect in our Nevada courts.

5 Further, was published on January 29, 2016, and was therefore available at the time
6 Plaintiff filed his opposition to the motion for attorney's fees and costs on September 7, 2016.
7 The fact that Plaintiff failed to include it in his opposition is of his own doing and further warrants
8 not considering the California authority.
9

10 **C. THE *SHEPPARD MULLIN* CASE IS NOT "DIRECTLY ON POINT" AND COMPLETELY
11 DISTINGUISHABLE FROM THE CIRCUMSTANCES INVOLVED IN THIS CASE.**

12 The case Plaintiff claimed to be "directly on point" is, in fact, not even close to being on
13 the same continent as "directly on point." The case provided, *Sheppard, Mullin, Richter &*
14 *Hampton, LLP v. J-M Manufacturing Co., Inc.*, does not involve court ordered sanctions in the
15 form of attorney's fees against a party for discovery abuses. It does not involve an award of fees
16 for the benefit of the parties against whom the abuse was directed. Instead, it focuses on a law
17 firm's efforts to receive payment for legal services provided to a client after it was disqualified for
18 a conflict of interest. Thus, the analysis about the appropriateness of an award of attorney's fees
19 in the *Sheppard Mullin* case is inapplicable to this matter as the two cases involve drastically
20 different circumstances.
21

22 Its non-controlling and untimely nature aside, the case presented by Plaintiff is also wholly
23 distinguishable from the circumstances involved in this case and therefore should be given no
24 credence. As described by Plaintiff in his supplemental brief, the *Sheppard Mullin* case involved a
25 law firm's lawsuit against a former client, J-M Manufacturing Co., Inc., after the client failed to
26 pay for legal services provided in a case the law firm was defending on behalf of the client. In the
27 underlying case, the law firm was disqualified after an adverse party, South Tahoe Public Utility
28

1 District, filed a motion to disqualify it for a conflict of interest, as the law firm was representing
2 South Tahoe in an unrelated matter. On appeal, the California appellate court overturned the
3 arbitration award finding that the law firm failed to secure a written informed consent from South
4 Tahoe and in essence finding that the attorney's duty of undivided loyalty trumped the law firm's
5 efforts to secure payment for services rendered. That is wholly different from the circumstances
6 before this Court in this case for several reasons.

7
8 First, in this case, unlike the *Sheppard Mullin* case, the Lewis Brisbois law firm is not
9 suing Plaintiff for payment of attorney's fees. Rather, it is this Court which has ordered that
10 Plaintiff pay attorney's fees and costs incurred by the defense as a monetary sanction. Were this
11 case one where Lewis Brisbois was suing its former clients, Mydatt and Mr. Warner, for fees
12 owed, then arguably the *Sheppard Mullin* case analysis might be applicable. It is not.

13
14 Along those same lines, Plaintiff is not in the same position as the successful party in the
15 *Sheppard Mullin* case. In that case, it was J-M Manufacturing, not South Tahoe, that were seeking
16 relief from attorney's fees being sought by the law firm. South Tahoe was the client who filed the
17 successful motion to disqualify. In this case, Plaintiff is the party that successfully sought the
18 disqualification, and thus it stands in South Tahoe's position, while Mydatt and Mr. Warner are
19 the clients who would owe Lewis Brisbois attorney's fees for worked performed on their behalf.
20 Plaintiff's position in this case is not analogous to position of the J-M Manufacturing party.

21
22 Third, the attorney's fees in this case are not meant to reward the Lewis Brisbois law firm
23 or compensate it for its work in representing their former clients, as was the case in the *Sheppard*
24 *Mullin* decision. Despite his incessant declarations to the contrary, Lewis Brisbois is not "looking
25 to [Plaintiff] for any compensation."³ The attorney's fees at issue here are meant as a monetary
26 sanction against Plaintiff and *in favor of the defending parties*, Mydatt, Mark Warner and GGP
27
28

³ Plaintiff's Supplemental Brief in Opposition to Defendants' Motion for Attorney's Fees and Costs, 7:7-9.

1 Meadows Mall. As such the policy considerations involved in the *Sheppard Mullin* decision do
2 not apply here.

3 Fourth, it is well settled in Nevada that the selection of a particular sanction for discovery
4 abuses under NRCP 37 is generally a matter committed to the sound discretion of the district
5 court.⁴ And that the Nevada Supreme Court has repeatedly held that it will only “set aside a
6 sanction order only upon an abuse of that discretion.”⁵ In this case, an all-day evidentiary hearing
7 was held on July 21, 2016, to address the motion to dismiss and Plaintiff’s discovery abuses.
8 After conclusion of the same, this Court agreed that repeated discovery abuses had been
9 committed by Plaintiff and that Plaintiff’s attempted justifications were not credible, but stopped
10 short of granting the requested dismissal of Plaintiff’s Complaint. Instead, it ordered sanctions,
11 including an award of all attorney’s fees and costs related to the motion to dismiss. It did so
12 recognizing that multiple law firms were involved on the defense⁶ and without limitation to the
13 different law firms involved.⁷ This Court never limited its award to only attorney’s fees incurred
14 by the Lee Hernandez and BACKUS, CARRANZA & BURDEN law firms, or otherwise excluded any
15 fees from the Lewis Brisbois law firm. Plaintiff should not benefit from any imagined limitation.
16

17 Finally, it cannot be understated that it was Plaintiff’s own discovery abuses which led to
18 this Court’s award of attorney’s fees against him. And it is worth remembering that the attorney’s
19 fees award is not the relief the Defendants were seeking when they filed the Motion to Dismiss - -
20 dismissal of Plaintiff’s Complaint was the relief Defendants felt was warranted in light of the
21 discovery abuses. The attorney’s fees at issue were this Court’s attempt to address the discovery
22 abuses several steps short of a dismissal. It is well settled that “the purposes of sanctions are to
23
24

25
26
27 ⁴ See, e.g., *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 649, 747 P.2d 911, 912 (1987); *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980).

28 ⁵ See, *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995).

⁶ Exhibit I, 183:9-22 (“And unfortunately for you, you got two sets of defense counsel, but that’s the way it is. Nothing negative. I’m just saying *you sue multiple people, you get multiple defense counsel.*”) (Emphasis added).

⁷ Order Denying in Part and Granting in Part the Motion to Dismiss.

1 deter, to punish, to compensate and to educate.”⁸ Plaintiff was able to dodge the requested
2 dismissal after the evidentiary hearing. He should not be allowed to further avoid the
3 consequences of his actions by minimizing the sanctions imposed by whittling away the fees
4 incurred by the Lewis Brisbois law firm. Plaintiff cannot be allowed to continue to avoid the
5 consequences of his own actions.
6

7 III. CONCLUSION

8 As expected, Plaintiff’s claim to have discovered a controlling case that was “directly on
9 point” to support his previously unsupported argument that attorney’s fees from a disqualified law
10 firm should not be included as part of the sanctions imposed against him was completely untrue.
11 The *Sheppard Mullin* case provided by Plaintiff in his supplemental brief is wholly distinguishable
12 from the circumstances involved in this case and is in no way supportive of his argument. Instead,
13 his delay tactics have done nothing more than further prejudice Defendants from realizing the
14 remedy fashioned by this Court following the all-day evidentiary hearing on July 21, 2016.
15 Enough is enough.
16

17 Significant fees were incurred by all three law firms involved in the defense of this case in
18 order to address and attempt to ameliorate Plaintiff’s abusive discovery tactics. Had Plaintiff not
19 engaged in the abusive conduct, the efforts of the three law firms would not have been necessary
20 and he would not be facing an award of fees and costs that he is now so desperately trying to
21 avoid. Accordingly, Defendants respectfully request that the **\$54,325.00** in attorney’s fees and
22 **\$208.00** in costs detailed in the opening motion be awarded and that Plaintiff be ordered to pay
23 these amounts within **14 days of this Court’s order**. In addition, Defendants respectfully request
24 that an additional **\$3,000** in attorney’s fees be awarded to Defendants for needlessly having to
25 appear for the September 20, 2016 hearing, for having to review and analyze Plaintiff’s
26
27
28

⁸ *Wash. Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wash. 2d 299, 356, 858 P.2d 1054 (1993).

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1 inappropriate supplemental brief and for having to respond to the supplemental brief. The
2 additional \$3,000 in attorney's fees should be made payable within the same 14-day time period.

3
4 Dated this 3rd day of October, 2016.

BACKUS, CARRANZA & BURDEN

By: 

Edgar Carranza, Esq.
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Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

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CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On October 3, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

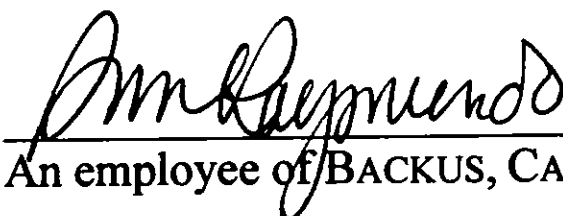
VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

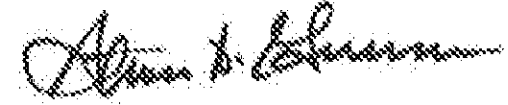

An employee of BACKUS, CARRANZA & BURDEN

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EXHIBIT 32



CLERK OF THE COURT

1 **ORD**
2 DAVID S. LEE, ESQ.
3 Nevada Bar No.: 6033
4 CHARLENE N. RENWICK, ESQ.
5 Nevada Bar No. 010165
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17 SERVICES, INC. dba VALOR
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19 MARK WARNER

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15 Attorneys for Defendants,
16 MYDATT SERVICES, INC. dba VALOR
17 SECURITY SERVICES and
18 MARK WARNER

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

19 X'ZAVION HAWKINS,
20
21 Plaintiff,

21 vs.

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

27 Defendants.
28 GGP MEADOWS MALL LLC, a Delaware

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

**ORDER RE: DEFENDANTS' MOTION
FOR ATTORNEY'S FEES AND COSTS**

Date: September 20, 2016
Time: 9:00 A.M.

Limited Liability Company; MYDATT
SERVICES, INC. dba VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually,

Third Party Plaintiffs,

vs.

ASHLEY CHRISTMAS, individually;
ZACCHAEUS BERRY, aka ZAK BERRY,
aka ZACHARY BERRY, aka ZACHARIAS
BERRY individually; DOES 1 through 10;
and ROE ENTITIES 11 through 20,
inclusive,

Third Party Defendants.

ORDER RE: DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS

This matter having come for hearing on the 20th day of September, 2016, at 9:00 a.m., the Honorable Joanna S. Kishner presiding; Charlene Renwick, Esq. appearing on behalf of Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. dba Valor Security Services and Mark Warner (collectively "Defendants"), Edgar Carranza, Esq. appearing on behalf of Defendants Mydatt Services, Inc. dba Valor Security Services and Mark Warner, and David Churchill, Esq. appearing on behalf of Plaintiff X'Zavion Hawkins ("Plaintiff"); Defendants having moved the Court for an award of attorney's fees and costs related to Defendants' Motion to Dismiss, and the July 21, 2016 evidentiary hearing on the same; the Court having considered the Motion, Countermotion, Oppositions, and Reply, and oral arguments presented at the hearing, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court will issue its ruling on Defendants' underlying Motion for Attorney's Fees and Costs, in Chambers, on October 7, 2016;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that additional voluntary briefing shall be permitted as follows: (1) Plaintiff may submit a supplemental brief related to the single California case raised by Plaintiff's counsel at the time of the hearing, by 5:00 p.m. on

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7575 VEGAS DRIVE, SUITE 150
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1 September 26, 2016; and (2) Defendants' may submit a responsive brief by 5:00 p.m. on October
2 3, 2016;

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED the Plaintiff's Counter-
4 Motion for Attorney's Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard Smith. is
5 denied without prejudice; and

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Parties are ordered
7 to participate in a mandatory Settlement Conference, with each party, or its
8 representative/insurance carrier, with full settlement authority, to appear in person.

9
10 DATED this 29 day of September, 2016.

11  JOANNA S. KISHNER
12 DISTRICT COURT JUDGE

13 Respectfully Submitted by:

14 LEE, HERNANDEZ, LANDRUM
15 & GAROFALO, APC

16 By:


17 DAVID S. LEE, ESQ.

18 Nevada Bar No. 6033

19 CHARLENE N. RENWICK, ESQ.

20 Nevada Bar No. 010165

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22 Las Vegas, Nevada 89128

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25 dlee@lee-lawfirm.com

26 crenwick@lee-lawfirm.com

27 Attorneys for Defendants, GGP MEADOWS

28 MALL LLC, MYDATT SERVICES, INC.

dba VALOR SECURITY SERVICES and MARK WARNER

///

///

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1 Approved as to Form and Content:

2 BACKUS, CARRANZA & BURDEN
3

4 By: 

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Attorneys for Defendants
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9
10 INJURY LAWYERS OF NEVADA

11
12 By:


DAVID J. CHURCHILL, ESQ.
Nevada Bar No. 7308
JOLENE J. MANKIE, ESQ.
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Attorneys for Plaintiff X ZAVION HAWKINS

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1 Approved as to Form and Content:

2 BACKUS, CARRANZA & BURDEN

3
4 By: _____

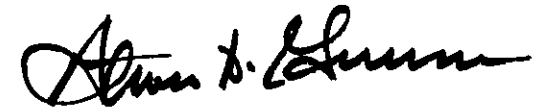
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8 Las Vegas, Nevada 89117
9 Attorneys for Defendants
10 MYDATT SERVICES, INC. d/b/a VALOR
11 SECURITY SERVICES and MARK WARNER

12 INJURY LAWYERS OF NEVADA

13
14 By: _____

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19 Las Vegas, Nevada 89145
20 Attorneys for Plaintiff X'ZAVION HAWKINS

EXHIBIT 33



CLERK OF THE COURT

1 **NOE**
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4 CHARLENE N. RENWICK, ESQ.
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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 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

**NOTICE OF ENTRY OF ORDER RE:
DEFENDANTS' MOTION FOR
ATTORNEY'S FEES AND COSTS**

25 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that the ORDER RE: DEFENDANTS' MOTION FOR
27 ATTORNEY'S FEES AND COSTS was filed on October 3, 2016 a true and correct copy of
28

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LAS VEGAS, NV 89128
(702) 880-9750

1 which is attached hereto as Exhibit "A."

2 DATED this 4th day of October, 2016

3 LEE, HERNANDEZ, LANDRUM &
4 GAROFALO

5 /s/ *Charlene N. Renwick, Esq.*

6 By:

7 DAVID S. LEE, ESQ.
8 Nevada Bar No. 6033
9 CHARLENE N. RENWICK, ESQ.
10 Nevada Bar No. 010165
11 7575 Vegas Drive, Suite 150
12 Las Vegas, NV 89128
13 Attorneys for Defendants, GGP
14 MEADOWS MALL LLC, MYDATT
15 SERVICES, INC. dba VALOR SECURITY
16 SERVICES and MARK WARNER
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit "A"

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 4th day of October, 2016, I served a copy of the above and foregoing NOTICE OF ENTRY OF ORDER RE: DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS by electronic filing service by transmitting via the Court's electronic services to the following counsel/person(s):

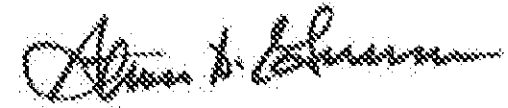
Jolene J. Manke, Esq.
David J. Churchill, Esq.
INJURY LAWYERS OF NEVADA
6900 W. Westcliff Dr. # 707
Las Vegas, NV 89145
(702) 868-8888
Fax: (702) 868-8889
Email: jolene@injurylawyersnv.com
Email: david@injurylawyersnv.com
Attorney for Plaintiff

Edgar Carranza, Esq.
BACKUS, CARRANZA & BURDEN
3050 S. Durango
Las Vegas, NV 89117
(702) 872-5555
Fax: (702) 872-5545
Email: ecarranza@backuslaw.com
Co-Counsel for Mydatt Services, Inc.
Db a Valor Security Services and
Mark Warner

s/ Diane Meeter

By:

An employee of LEE, HERNANDEZ,
LANDRUM & GAROFALO



CLERK OF THE COURT

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

11 EDGAR CARRANZA, ESQ.
12 Nevada State Bar No. 5902
13 BACKUS, CARRANZA & BURDEN
14 3050 S. Durango Drive
15 Las Vegas, Nevada 89117
16 (702) 872-5555
17 Fax: (702) 872-5545
18 ecarranza@backuslaw.com

15 Attorneys for Defendants,
16 MYDATT SERVICES, INC. dba VALOR
17 SECURITY SERVICES and
18 MARK WARNER

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

19 X'ZAVION HAWKINS,
20
21 Plaintiff,

21 vs.

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

27 Defendants.
28 GGP MEADOWS MALL LLC, a Delaware

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

**ORDER RE: DEFENDANTS' MOTION
FOR ATTORNEY'S FEES AND COSTS**

Date: September 20, 2016
Time: 9:00 A.M.

Limited Liability Company; MYDATT
SERVICES, INC. dba VALOR SECURITY
SERVICES, an Ohio Corporation; MARK
WARNER, individually,

Third Party Plaintiffs,

vs.

ASHLEY CHRISTMAS, individually;
ZACCHAEUS BERRY, aka ZAK BERRY,
aka ZACHARY BERRY, aka ZACHARIAS
BERRY individually; DOES 1 through 10;
and ROE ENTITIES 11 through 20,
inclusive,

Third Party Defendants.

ORDER RE: DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS

This matter having come for hearing on the 20th day of September, 2016, at 9:00 a.m., the Honorable Joanna S. Kishner presiding; Charlene Renwick, Esq. appearing on behalf of Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. dba Valor Security Services and Mark Warner (collectively "Defendants"), Edgar Carranza, Esq. appearing on behalf of Defendants Mydatt Services, Inc. dba Valor Security Services and Mark Warner, and David Churchill, Esq. appearing on behalf of Plaintiff X'Zavion Hawkins ("Plaintiff"); Defendants having moved the Court for an award of attorney's fees and costs related to Defendants' Motion to Dismiss, and the July 21, 2016 evidentiary hearing on the same; the Court having considered the Motion, Countermotion, Oppositions, and Reply, and oral arguments presented at the hearing, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court will issue its ruling on Defendants' underlying Motion for Attorney's Fees and Costs, in Chambers, on October 7, 2016;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that additional voluntary briefing shall be permitted as follows: (1) Plaintiff may submit a supplemental brief related to the single California case raised by Plaintiff's counsel at the time of the hearing, by 5:00 p.m. on

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

1 September 26, 2016; and (2) Defendants' may submit a responsive brief by 5:00 p.m. on October
2 3, 2016;

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED the Plaintiff's Counter-
4 Motion for Attorney's Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard Smith. is
5 denied without prejudice; and

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Parties are ordered
7 to participate in a mandatory Settlement Conference, with each party, or its
8 representative/insurance carrier, with full settlement authority, to appear in person.


9
10 DATED this 29 day of September, 2016.

11  JOANNA S. KISHNER
12 DISTRICT COURT JUDGE

13 Respectfully Submitted by:

14 LEE, HERNANDEZ, LANDRUM
15 & GAROFALO, APC

16 By:


17 DAVID S. LEE, ESQ.

18 Nevada Bar No. 6033

19 CHARLENE N. RENWICK, ESQ.

20 Nevada Bar No. 010165

21 7575 Vegas Drive, Suite 150

22 Las Vegas, Nevada 89128

23 (702) 880-9750

24 Fax; (702) 314-1210

25 dlee@lee-lawfirm.com

26 crenwick@lee-lawfirm.com

27 Attorneys for Defendants, GGP MEADOWS

28 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) 889-9759

1 Approved as to Form and Content:

2 BACKUS, CARRANZA & BURDEN

3
4 By: 

5 EDGAR CARRANZA, Esq.

6 Nevada Bar No. 5902

7 3050 South Durango Drive

8 Las Vegas, Nevada 89117

9 Attorneys for Defendants

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

11 SECURITY SERVICES and MARK WARNER.

12 INJURY LAWYERS OF NEVADA

13 By:

14 DAVID J. CHURCHILL, ESQ.

15 Nevada Bar No. 7308

16 JOLENE J. MANKIE, ESQ.

17 6900 Westcliff Drive, Suite 707

18 Las Vegas, Nevada 89145


19 Attorneys for Plaintiff X ZAVION HAWKINS

1 Approved as to Form and Content:

2 BACKUS, CARRANZA & BURDEN
3

4 By: _____
5 EDGAR CARRANZA, Esq.
6 Nevada Bar No. 5902
7 3050 South Durango Drive
8 Las Vegas, Nevada 89117
9 Attorneys for Defendants
10 MYDATT SERVICES, INC. d/b/a VALOR
11 SECURITY SERVICES and MARK WARNER

12 INJURY LAWYERS OF NEVADA

13 By:  _____
14 DAVID J. CHURCHILL, ESQ.
15 Nevada Bar No. 7308
16 JOLENE J. MANKE, ESQ. (NV BAR # 7436)
17 6900 Westcliff Drive, Suite 707
18 Las Vegas, Nevada 89145
19 Attorneys for Plaintiff X'ZAVION HAWKINS
20
21
22
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24
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28

LEE, HERNANDEZ, LANDRUM & CAROVALO
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LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 100
LAS VEGAS, NV 89129
(702) 880-9750

1 Approved as to Form and Content:

2 BACKUS, CARRANZA & BURDEN

3
4 By: _____

5 EDGAR CARRANZA, Esq.
6 Nevada Bar No. 5902
7 3050 South Durango Drive
8 Las Vegas, Nevada 89117
9 Attorneys for Defendants
10 MYDATT SERVICES, INC. d/b/a VALOR
11 SECURITY SERVICES and MARK WARNER

12 INJURY LAWYERS OF NEVADA

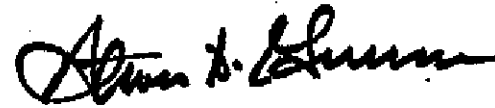
13
14 By: _____

15 DAVID J. CHURCHILL, ESQ.
16 Nevada Bar No. 7308
17 JOLENE J. MANKE, ESQ.
18 6900 Westcliff Drive, Suite 707
19 Las Vegas, Nevada 89145
20 Attorneys for Plaintiff X'ZAVION HAWKINS

EXHIBIT 34

ORDER

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ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

Case No. A717577

Dept. XXXI

**ORDER DENYING IN PART AND GRANTING IN PART MOTION
FOR ATTORNEY'S FEES AND COSTS RELATED TO MOTION TO DISMISS**

Date of hearing: n/a

Time of hearing: n/a

Defendants', MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
MARK WARNER (collectively referred to herein as "Mydatt") and Defendant, GGP MEADOW
MALL LLC (referred to herein as "GGP"), Motion for Attorney's Fees and Costs, filed on August
19, 2016, Plaintiff, X'ZAVION HAWKINS' (hereinafter referred to as "Plaintiff") Opposition to

10-11-16 A07:56 IN

0948

1 the Motion to For Attorney's Fees and Costs and Counter Motion for Fees and Costs re: the
2 Motion to Disqualify , filed on September 7, 2016, Mydatt's reply to opposition and opposition to
3 counter motion, filed on September 13, 2016, Plaintiff's Supplemental brief in Opposition to the
4 Motion for Attorney's Fees and Costs and Mydatt's Reply to Plaintiff's Supplemental Brief, along
5 with arguments made by each party during the hearing before this Court on September 20, 2016
6 have been reviewed and considered. This honorable Court having reviewed the pleadings filed,
7 authority submitted and oral arguments from the parties hereby grants and denies the Motion to for
8 Attorney's Fees and Costs finding as follows:

10 1. This Court considered whether there was any authority that allowed or precluded
11 the sanction award against Plaintiff and found that, as it had already made a ruling after a full
12 consideration of the record including conducting an Evidentiary Hearing, that there exists an
13 appropriate basis to award sanctions in the form of fees and costs against Plaintiff for his conduct.
14 It further found that although Plaintiff contends that, *inter alia*, *Sheppard Mullin Richter &*
15 *Hampton, LLP v. J.M. Mfg. Co., Inc.*, 198 Cal Rptr. 3d 253 (Cal. App. 4th) (2016), precludes the
16 Court from awarding any fees related to the work performed by the Lewis Brisbois law firm, the
17 Court adopts the arguments set forth in Defendants' Supplemental Brief and rejects Plaintiff's
18 contention.
19

20 2. The Court further finds that there is a proper basis to award as a sanction, the fees
21 and costs reasonably incurred by all three law firms involved with the defense, relying on, *inter*
22 *alia*, NRCP 37, the Court's own inherent powers, Nevada case law, including *Shuette V. Beazer*
23 *Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005); *Brunzell v. Golden Gate National*
24 *Bank*, 85 Nev. 345, 350, 455 P.2d 31 (1969), as well as the other basis set forth in the record.
25

26 3. The Court further finds that, *inter alia*, the rates charged by each counsel, their
27 skills and expertise, as well as the result obtained, all merit granting their fee request consistent
28 with the Court's prior Order. However, the Court also finds that given the number of lawyers and

BACKUS, CARRANZA & BURDEN
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LAS VEGAS, NEVADA 89117
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1 law firms involved in the Motion and Hearing at issue, it is appropriate to reduce the fee amount
2 of each of the respective firms to be consistent with the nature and scope of the record and
3 applicable law. Accordingly, the Court finds that an award for attorney's fees totaling \$41,635.00
4 is appropriate comprised of the following amounts:

- 5 A. Lewis Brisbois fees in the amount of \$19,846.00;
6 B. Lee Hernandez fees in the amount of \$11,629.50; and
7 C. BACKUS, CARRANZA & BURDEN fees in the amount of \$10,159.50.

8
9 4. The Court further finds that the additional fees requested by Defendants in the
10 original motion and supplemental filings for \$3,000 related to work required as a result of
11 Plaintiff's supplemental filings is not appropriate in this context as this decision relates only to the
12 appropriate sanctions related to the motion to dismiss, and thus the request is denied without
13 prejudice.
14

15 5. The Court also finds that although one of the mileage cost entries, in the amount of
16 \$11.34, was not properly supported as being related to the underlying Motion, the rest of the costs
17 were properly supported and thereby award costs in the amount of \$196.66.

18 Accordingly, with respect to the pending motion for attorney's fees and costs, this
19 honorable Court orders as follows:

20 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that Defendants' Motion for
21 Attorney's Fees and Costs is hereby DENIED, in part, and GRANTED, in part.

22 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Defendants' are hereby
23 awarded attorney's fees totaling \$41,635.00 and costs totaling \$196.66, for a total award of
24 \$41,831.66.
25

26

27


1 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Plaintiff shall make the
2 above payment to Defendants within 30 days of the Notice of Entry of this Order by the Court.
3

4 DATED this 13 day of October, 2016.
5

6
7 
8 DISTRICT COURT JUDGE
9 *cks*

10 Submitted by:

11 BACKUS, CARRANZA & BURDEN

12 
13 Edgar Carranza, Esq.
14 Nevada Bar No. 5902
15 3050 South Durango Drive
16 Las Vegas, Nevada 89117
17 Attorneys for Defendants
18 MYDATT SERVICES, INC. d/b/a VALOR
19 SECURITY SERVICES and MARK WARNER
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BACKUS, CARRANZA & BURDEN

3050 SOUTH DURANGO DRIVE

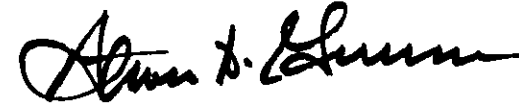
LAS VEGAS, NEVADA 89117

TELE: (702) 872-5555 FAX: (702) 872-5545

EXHIBIT 35

1 **NEO**
2 Edgar Carranza, Esq.
3 Nevada State Bar No. 5902
4 **BACKUS, CARRANZA & BURDEN**
5 3050 S. Durango Drive
6 Las Vegas, NV 89117
7 (702) 872-5555
8 (702) 872-5545 facsimile
9 ecarranza@backuslaw.com
10 Attorneys for Defendants
11 MYDATT SERVICES, INC. d/b/a VALOR
12 SECURITY SERVICES and MARK WARNER

Electronically Filed
10/18/2016 12:19:10 PM



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 X'ZAVION HAWKINS,

12 Plaintiffs,

13 vs.

14
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 I through 10;
20 DOE SECURITY GUARDS 11 through 20; and
21 ROE ENTITIES 21 through 30, Inclusive,

22 Defendants.

)
) **Case No. A717577**

)
) **Dept. XXXI**

23 **NOTICE OF ENTRY OF ORDER**

24 PLEASE TAKE NOTICE THAT an Order Denying in Part and Granting in Part Motion
25 for Attorney's Fees and Costs Related to Motion to Dismiss was signed by District Court Judge,
26 Joanne Kishner, on October 13, 2016, and filed in the above-referenced matter on October 17,

27

28

.....

1 2016, a copy of which is attached hereto.

2
3 Dated this 17th day of October, 2016.

4 **BACKUS, CARRANZA & BURDEN**

5
6 By: 

7 Edgar Carranza, Esq.
8 Nevada Bar No. 5902
9 3050 South Durango Drive
10 Las Vegas, Nevada 89117
11 Attorneys for Defendants
12 MYDATT SERVICES, INC. d/b/a VALOR
13 SECURITY SERVICES and MARK
14 WARNER
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BACKUS, CARRANZA & BURDEN

3050 SOUTH DURANGO DRIVE

LAS VEGAS, NEVADA 89117

TELE: (702) 872-5555 FAX: (702) 872-5545

CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On October 18th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.


VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

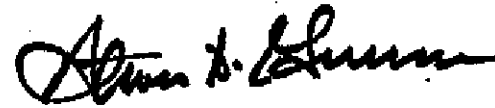
BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com	Attorney for Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means
David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com	Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means

ORDER

Edgar Carranza, Esq.
Nevada State Bar No. 5902
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Las Vegas, NV 89117
(702) 872-5555
(702) 872-5545 facsimile
ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

Case No. A717577

Dept. XXXI

**ORDER DENYING IN PART AND GRANTING IN PART MOTION
FOR ATTORNEY'S FEES AND COSTS RELATED TO MOTION TO DISMISS**

Date of hearing: n/a

Time of hearing: n/a

Defendants', MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
MARK WARNER (collectively referred to herein as "Mydatt") and Defendant, GGP MEADOW
MALL LLC (referred to herein as "GGP"), Motion for Attorney's Fees and Costs, filed on August
19, 2016, Plaintiff, X'ZAVION HAWKINS' (hereinafter referred to as "Plaintiff") Opposition to

10-11-16 A07:56 IN

0956

1 the Motion to For Attorney's Fees and Costs and Counter Motion for Fees and Costs re: the
2 Motion to Disqualify , filed on September 7, 2016, Mydatt's reply to opposition and opposition to
3 counter motion, filed on September 13, 2016, Plaintiff's Supplemental brief in Opposition to the
4 Motion for Attorney's Fees and Costs and Mydatt's Reply to Plaintiff's Supplemental Brief, along
5 with arguments made by each party during the hearing before this Court on September 20, 2016
6 have been reviewed and considered. This honorable Court having reviewed the pleadings filed,
7 authority submitted and oral arguments from the parties hereby grants and denies the Motion to for
8 Attorney's Fees and Costs finding as follows:

10 1. This Court considered whether there was any authority that allowed or precluded
11 the sanction award against Plaintiff and found that, as it had already made a ruling after a full
12 consideration of the record including conducting an Evidentiary Hearing, that there exists an
13 appropriate basis to award sanctions in the form of fees and costs against Plaintiff for his conduct.
14 It further found that although Plaintiff contends that, *inter alia*, *Sheppard Mullin Richter &*
15 *Hampton, LLP v. J.M. Mfg. Co., Inc.*, 198 Cal Rptr. 3d 253 (Cal. App. 4th) (2016), precludes the
16 Court from awarding any fees related to the work performed by the Lewis Brisbois law firm, the
17 Court adopts the arguments set forth in Defendants' Supplemental Brief and rejects Plaintiff's
18 contention.
19

20 2. The Court further finds that there is a proper basis to award as a sanction, the fees
21 and costs reasonably incurred by all three law firms involved with the defense, relying on, *inter*
22 *alia*, NRCP 37, the Court's own inherent powers, Nevada case law, including *Shuette V. Beazer*
23 *Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005); *Brunzell v. Golden Gate National*
24 *Bank*, 85 Nev. 345, 350, 455 P.2d 31 (1969), as well as the other basis set forth in the record.
25

26 3. The Court further finds that, *inter alia*, the rates charged by each counsel, their
27 skills and expertise, as well as the result obtained, all merit granting their fee request consistent
28 with the Court's prior Order. However, the Court also finds that given the number of lawyers and

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LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 law firms involved in the Motion and Hearing at issue, it is appropriate to reduce the fee amount
2 of each of the respective firms to be consistent with the nature and scope of the record and
3 applicable law. Accordingly, the Court finds that an award for attorney's fees totaling \$41,635.00
4 is appropriate comprised of the following amounts:

- 5 A. Lewis Brisbois fees in the amount of \$19,846.00;
6 B. Lee Hernandez fees in the amount of \$11,629.50; and
7 C. BACKUS, CARRANZA & BURDEN fees in the amount of \$10,159.50.

8
9 4. The Court further finds that the additional fees requested by Defendants in the
10 original motion and supplemental filings for \$3,000 related to work required as a result of
11 Plaintiff's supplemental filings is not appropriate in this context as this decision relates only to the
12 appropriate sanctions related to the motion to dismiss, and thus the request is denied without
13 prejudice.
14

15 5. The Court also finds that although one of the mileage cost entries, in the amount of
16 \$11.34, was not properly supported as being related to the underlying Motion, the rest of the costs
17 were properly supported and thereby award costs in the amount of \$196.66.

18 Accordingly, with respect to the pending motion for attorney's fees and costs, this
19 honorable Court orders as follows:

20 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that Defendants' Motion for
21 Attorney's Fees and Costs is hereby DENIED, in part, and GRANTED, in part.

22 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Defendants' are hereby
23 awarded attorney's fees totaling \$41,635.00 and costs totaling \$196.66, for a total award of
24 \$41,831.66.
25

26

27


1 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Plaintiff shall make the
2 above payment to Defendants within 30 days of the Notice of Entry of this Order by the Court.
3

4 DATED this 13 day of October, 2016.
5

6
7 
8 DISTRICT COURT JUDGE
9 *cks*

10 Submitted by:

11 BACKUS, CARRANZA & BURDEN

12 
13 Edgar Carranza, Esq.
14 Nevada Bar No. 5902
15 3050 South Durango Drive
16 Las Vegas, Nevada 89117
17 Attorneys for Defendants
18 MYDATT SERVICES, INC. d/b/a VALOR
19 SECURITY SERVICES and MARK WARNER
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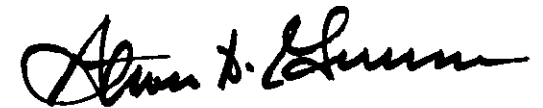
BACKUS, CARRANZA & BURDEN

3050 SOUTH DURANGO DRIVE

LAS VEGAS, NEVADA 89117

TELE: (702) 872-5555 FAX: (702) 872-5545

EXHIBIT 36



CLERK OF THE COURT

MSTR
Edgar Carranza, Esq.
Nevada State Bar No. 5902
BACKUS, CARRANZA & BURDEN
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Las Vegas, NV 89117
(702) 872-5555
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ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

)
) **Case No. A717577**

)
) **Dept. XXXI**

**DEFENDANTS', MYDATT SERVICES, INC. D/B/A VALOR SECURITY
SERVICES AND MARK WARNER, MOTION TO STRIKE PLAINTIFF'S
COMPLAINT AND DISMISSAL**

Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
MARK WARNER (collectively referred to as "Mydatt"), by and through counsel, Edgar Carranza,
Esq. of the law firm of BACKUS, CARRANZA & BURDEN and David S. Lee, Esq. and Charlene
Renwick, Esq. of the Lee, Hernandez, Landrum & Garofalo law firm, hereby file the instant

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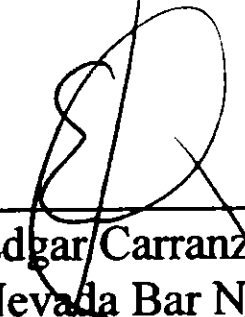
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1 motion to dismiss Plaintiff's Complaint pursuant to NRCP 1, 37(b) and this Court's own inherent
2 authority as a result on Plaintiff's refusal to comply with this Court's order requiring payment of
3 attorney's fees and costs as the sanctions imposed against him as a result of his repeated and
4 intentional discovery abuses. Plaintiff's continued refusal to abide by this Court's orders and rules
5 cannot continue to be tolerated. This motion is supported by the following Memorandum of
6 Points and Authorities, exhibits and affidavits, if any, attached herewith.
7

8 NOTICE OF MOTION

10 PLEASE TAKE NOTICE that Defendants' Motion to Strike Plaintiff's Complaint and
11 Dismissal shall be heard before the Honorable Kishner on the 20 day of December, 2016,
12 at 9:00 a.m. in Dept. 31, Courtroom 12B.

13 DATED this 18th day of November, 2016.



Edgar Carranza, Esq.
Nevada Bar No. 5902
3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

21 MEMORANDUM OF POINTS AND AUTHORITIES

22 I. INTRODUCTION

23
24 On July 21, 2016, an evidentiary hearing was held after Defendants uncovered Plaintiff's
25 misrepresentations in discovery of information readily at his disposal. These discovery abuses
26 included, *inter alia*, Plaintiff's failure to disclose information about the identity of one of the
27 assailants as part of his NRCP 16.1 disclosures, failure to accurately respond to written discovery
28 and repeated untruthful responses to inquiries during his sworn deposition. After the all-day

1 evidentiary hearing, this Court disagreed with Plaintiff's attempts to justify the misrepresentations
2 and ordered that sanctions were warranted against Plaintiff, including an award of attorney's fees
3 and costs related to the motion to dismiss.¹

4 After the parties submitted their respective briefs related to the request for fees and costs,
5 this Court ordered that Plaintiff pay to Defendants \$41,635.00 in attorney's fees and \$196.66 in
6 costs for a total award of **\$41,831.66**.² This Court further ordered that the sanctions be paid
7
8 "**within 30 days** of the Notice of Entry of this Order by the Court."³

9 The order was entered on October 18, 2016,⁴ making the sanctions due to be paid no later
10 than November 17, 2016. The November 17, 2016 date came and went without any payment from
11 Plaintiff. it is this order and without any communication from Plaintiff about the payment.
12 Plaintiff's failure to comply with this Court's order is the basis of this motion.

13 II. POINTS AND AUTHORITIES

14 Plaintiff has refused to comply with this Court's order pursuant to NRCP 37(b) to pay the
15 Defendants attorney's fees and costs incurred resulting from the repeated discovery abuses proven
16 at the evidentiary hearing held on July 21, 2016. Pursuant to NRCP 1, NRCP 37(b) and this
17 Court's own inherent authority over its docket of cases, striking Plaintiff's Complaint and
18 dismissing this action is appropriate.

19
20 Our rules of procedure provide trial courts the basis for sanctioning a party, including the
21 dismissal of an action, for failing to comply with the orders of the courts. Specifically, NRCP
22 37(b) provides as follows:

23
24 ////

25
26 ////

27 ¹ Exhibit A, Order Granting in Part and denying in Part Motion to Dismiss.

28 ² Exhibit B, Order denying in Part and Granting in Part Motion for Attorney's Fees and Costs Related to Motion to Dismiss, 3:22-25.

³ Exhibit B, 4:1-2 (Emphasis added).

⁴ Exhibit C, Notice of Entry of Order.

1 (b) Failure to Comply With Order.

2
3 (2) Sanctions—Party. *If a party* or an officer, director, or managing agent
4 of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on
5 behalf of a party *fails to obey an order* to provide or permit discovery,
6 including an order made under subdivision (a) of this rule or Rule 35, or if a
7 party fails to obey an order entered under Rules 16, 16.1, and 16.2, *the court*
8 in which the action is pending *may make such orders in regard to the failure*
9 *as are just*, and among others the following:

10
11 (C) *An order striking out pleadings* or parts thereof, or staying
12 further proceedings until the order is obeyed, or *dismissing the action*
13 or proceeding or any part thereof, or rendering a judgment by default
14 against the disobedient party;

15
16 In lieu of any of the foregoing orders or in addition thereto, *the court shall require*
17 *the party failing to obey the order or the attorney advising that party or both to pay*
18 *the reasonable expenses, including attorney's fees*, caused by the failure, unless the
19 court finds that the failure was substantially justified or that other circumstances
20 make an award of expenses unjust.⁵

21 The rules of procedure are meant to be construed and administered to insure the just and
22 speedy determination of every action.⁶ In Nevada, this includes trial courts having the inherent
23 equitable power to dismiss an action for abusive litigation practice.⁷ NRCP 37(b) empowers the
24 district court with a broad range of sanctions that may be invoked when a party fails to comply
25 with an order of the court, including striking a party's pleading.⁸ Generally, willful
26 noncompliance with a court order justifies sanctions, including dismissal, upon thoughtful
27 consideration of all the factors involved.⁹

28 In this case, thoughtful consideration of all factors involved soundly support the requested
dismissal. Plaintiff has repeatedly demonstrated his complete disregard for both the rules and

⁵ Emphasis added.

⁶ NRCP 1.

⁷ See, *Johnny Ribiero Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

⁸ See, *Temora Trading Co. v. Perry*, 98 Nev. 229, 645 P.2d 436, cert. denied, 459 U.S. 1070, 103 S. Ct. 489, 74 L.Ed. 2d 632 (1982).

⁹ See, *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).

1 orders of this Court. In this latest instance, he simply chose to willfully ignore the order of this
2 Court and refuse to pay the attorney's fees and costs determined by this Court were appropriate to
3 address his prior well documented discovery abuses.

4 On July 21, 2016, after an all-day evidentiary hearing, this Court ordered that sanctions
5 were warranted against Plaintiff, including an award of attorney's fees and costs related to the
6 motion to dismiss, based on his repeated discovery abuses.¹⁰ The documented discovery abuses
7 included, but were not limited to, the following:
8

- 9 1. Plaintiff's failure to disclose information about the identity of one of the assailants
10 as part of his NRCP 16.1 disclosures despite knowing the name of one of his
11 assailant and despite including the name in the body of his Complaint;¹¹
- 12 2. Plaintiff's failure to respond to written discovery accurately to include identifying
13 information about his assailants;¹² and
- 14 3. Plaintiff's repeated failure to truthfully respond to countless inquiries during his
15 sworn deposition about the events leading up to the assault, the assault itself, the
16 identity of his assailants and the prior armed robbery committed against him by one
17 of his assailants, despite prior voluntary statement to police.¹³

18 This Court agreed with the defense, and found that Plaintiff failed to provide the readily
19 available information¹⁴ and that Plaintiff's attempted explanation of memory lapses was not
20 credible.¹⁵ As a result, it ordered that "Plaintiff shall pay, reasonable attorney's fees and costs in
21 an amount to be determined by this Court after proper submissions by all parties."¹⁶

22 In response to the Court's order, the Defendants filed their motion seeking attorney's fees
23 and costs on August 19, 2016. After the briefing schedule and oral arguments were presented, on
24 October 17, 2016, this Court ordered that Plaintiff pay to Defendants \$41,635.00 in attorney's fees
25

26 ¹⁰ Exhibit A, Order Granting in Part and denying in Part Motion to Dismiss.

27 ¹¹ Exhibit A, 5:8-9.

¹² Exhibit A, 5:10-13.

¹³ Exhibit A, 5:13-18.

28 ¹⁴ Exhibit A, 4:23-5:7.

¹⁵ Exhibit A, 5:19-20.

¹⁶ Exhibit A, 6:16-18.

1 and \$196.66 in costs for a total award of \$41,831.66.¹⁷ This Court further ordered that the
2 sanctions be paid “*within 30 days* of the Notice of Entry of this Order by the Court.”¹⁸

3 Despite this Court’s clear order, Plaintiff has refused to pay the required sanctions within
4 the prescribed time period. Moreover, Plaintiff has not contacted Defendants to request additional
5 time to pay the sanctions, nor sought an order from this Court to modify the period to pay.
6 Instead, as has been his practice throughout this case, Plaintiff has simply chosen to willfully
7 ignore this Court’s order relying that this Court will once again show him leniency despite his
8 well-worn abuses. Plaintiff’s repeated behavior and willful refusal to comply with this Court’s
9 orders should not be rewarded.
10

11 Mydatt respectfully requests that Plaintiff’s Complaint be stricken and that this matter be
12 dismissed with prejudice.
13

14 III. CONCLUSION

15 As he has throughout the life of this case, Plaintiff again shows no respect for the rules and
16 orders of this Court. This time, he flagrantly has refused to comply with this Court’s order
17 requiring that he pay the defense a total of \$41,831.66 in attorney’s fees and costs as a result of his
18 discovery abuses, entered on October 17, 2016. Plaintiff had until November 17, 2016, to comply
19 with the order. The deadline has come and gone without the payment or a word from Plaintiff
20 about the payment.

21 Plaintiff has already demonstrated his complete disregard for the rules and orders of this
22 Court. His litigious practices, his discovery abuses and refusal to comply with this Court’s order
23 all support striking of his Complaint and dismissal of this action. This Court has already provided
24 its admonitions and imposed lesser sanctions which have gone unheeded. The time has come to
25 put an end to Plaintiff’s abusive tactics and terminate this already tenuous case. To do anything
26
27

28 ¹⁷ Exhibit B, Order denying in Part and Granting in Part Motion for Attorney’s Fees and Costs Related to Motion to Dismiss, 3:22-25.

¹⁸ Exhibit B, 4:1-2 (Emphasis added).

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less will simply reward Plaintiff and send the wrong message to other litigants.

Dated this 18th day of November, 2016.

BACKUS, CARRANZA & BURDEN

By: 

Edgar Carranza, Esq.
Nevada Bar No. 5902
3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

BACKUS, CARRANZA & BURDEN
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TELE: (702) 872-5555 FAX: (702) 872-5545

CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On November 18th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

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SERVICE LIST

David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com	Attorney for Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means
David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com	Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means

EXHIBIT A

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 X'ZAVION HAWKINS,

5 Plaintiffs,

6 vs.

7
8 GGP MEADOW MALL LLC, a Delaware
9 Limited Liability Company; MYDATT
10 SERVICES, INC. d/b/a VALOR SECURITY
11 SERVICES, an Ohio Corporation; MARK
12 WARNER, individually; DOES I through 10;
13 DOE SECURITY GUARDS 11 through 20;
and ROE ENTITES 21 through 30, Inclusive,

Defendants.

) **Case No. A717577**

) Electronically Filed
) **Dept. XXXI** 08/24/2016 11:56:29 AM



CLERK OF THE COURT

14
15 **ORDER DENYING IN PART AND GRANITING**
16 **IN PART MOTION TO DISMISS**

17 Date of hearing: 07-21-16

18 Time of hearing: 9:30 a.m.

19 Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY

20 SERVICES and MARK WARNER's (collectively referred to herein as "Mydatt")

21 Motion to Dismiss, filed on March 23, 2016; Defendant, GGP MEADOW MALL

22 LLC's (referred to herein as "GGP") Joinder, filed on April 1, 2016; Plaintiff,

23 X'ZAVION HAWKINS' (hereinafter referred to as "Plaintiff") Opposition to the

24 Motion to Dismiss and Countermotion for Sanctions, filed on March 8, 2016; and

25 Mydatt's reply to Opposition and Countermotion, filed on April 26, 2016; came on

26 for hearing before this Court on May 3, 2016, and an Evidentiary Hearing July 21,

1 2016. This honorable Court having reviewed the pleadings filed, the evidence
2 admitted, witness testimony presented and oral arguments from the parties
3 hereby grants and denies the Motion to Dismiss finding as follows:

4 1. Nevada Rule of Civil Procedure ("NRCP") 37(a)(2)(B) allows the
5 Court to grant sanctions, upon motion by a party, for discovery abuses as
6 follows:
7

8 (B) If a deponent fails to answer a question propounded or
9 submitted under Rules 30 or 31, or a corporation or other entity
10 fails to make a designation under Rule 30(b)(6) or 31(a), or a
11 party fails to answer an interrogatory submitted under Rule 33, or
12 if a party, in response to a request for inspection submitted under
13 Rule 34, fails to respond that inspection will be permitted as
14 requested or fails to permit inspection as requested, the
15 discovering party may move for an order compelling an answer, or
16 a designation, or an order compelling inspection in accordance
17 with the request. The motion must include a certification that the
18 movant has in good faith conferred or attempted to confer with the
19 person or party failing to make the discovery in an effort to secure
20 the information or material without court action. When taking a
21 deposition on oral examination, the proponent of the question may
22 complete or adjourn the examination before applying for an Order.
23
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1 2. NRCP 37(a)(4) allows an award of fees and costs in response to a
2 motion under Rule 37:

3 (A) If the motion is granted or if the disclosure or requested
4 discovery is provided after the motion was filed, the court shall,
5 after affording an opportunity to be heard, require the party or
6 deponent whose conduct necessitated the motion or the party or
7 attorney advising such conduct or both of them to pay to the
8 moving party the reasonable expenses incurred in making the
9 motion, including attorney's fees, unless the court finds that the
10 motion was filed without the movant's first making a good faith
11 effort to obtain the disclosure or discovery without court action, or
12 that the opposing party's nondisclosure, response or objection
13 was substantially justified, or that other circumstances make an
14 award of expenses unjust.

15
16 (C) If the motion is granted in part and denied in part, the court
17 may enter any protective order authorized under Rule 26(c) and
18 may, after affording an opportunity to be heard, apportion the
19 reasonable expenses incurred in relation to the motion among the
20 parties and persons in a just manner.

21 3. NRCP 37(b) allows for additional sanctions against a party as
22 follows:

23 (2) Sanctions—Party. If a party or an officer, director, or
24 managing agent of a party or a person designated under Rule
25 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
26 order to provide or permit discovery, including an order made
27 under subdivision (a) of this rule or Rule 35, or if a party fails to
28 obey an order entered under Rules 16, 16.1, and 16.2, the court in
which the action is pending may make such orders in regard to
the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was
made or any other designated facts shall be taken to be
established for the purposes of the action in accordance with
the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support
or oppose designated claims or defenses, or prohibiting that
party from introducing designated matters in evidence;

1 (C) An order striking out pleadings or parts thereof, or staying
2 further proceedings until the order is obeyed, or dismissing
3 the action or proceeding or any part thereof, or rendering a
4 judgment by default against the disobedient party;

5 (D) In lieu of any of the foregoing orders or in addition
6 thereto, an order treating as a contempt of court the failure to
7 obey any orders except an order to submit to a physical or
8 mental examination;

9 (E) Where a party has failed to comply with an order under
10 Rule 35(a) requiring that party to produce another for
11 examination, such orders as are listed in subparagraphs (A),
12 (B), and (C) of this subdivision, unless the party failing to
13 comply shows that that party is unable to produce such
14 person for examination.

15 In lieu of any of the foregoing orders or in addition thereto, the
16 court shall require the party failing to obey the order or the
17 attorney advising that party or both to pay the reasonable
18 expenses, including attorney's fees, caused by the failure,
19 unless the court finds that the failure was substantially justified
20 or that other circumstances make an award of expenses
21 unjust.

22 4. Courts are empowered, pursuant to the unclean hands doctrine, to
23 close the doors to the courthouse to a litigant who is "tainted with inequity
24 or bad faith relative to the matter in which he seeks relief."¹

25 5. NRCP 1 provides courts the inherent discretion to construe and
26 administer the rules of civil procedure "to secure the just, speedy, and
27 inexpensive determination of every action."

28 6. This Court finds that after a full evidentiary hearing where both
parties were able to provide witness testimony and evidence, Plaintiff failed to
provide information requested by Mydatt in the written discovery and by Mydatt

¹ See, *Precision Instrument Manufacturing Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 804, 814-15 (1945).

1 and GGP at Plaintiff's deposition which was within Plaintiff's knowledge, custody
2 and control. This includes, but is not limited to, the identity of the assailants
3 involved in the August 17, 2013, altercation; descriptions of the assailants; the
4 history between Plaintiff and the assailants; the facts involving the altercation;
5 and Plaintiff's role in the altercation. And that such failure violated the spirit and
6 intent of the discovery rules of this Court.
7

8 7. This Court further finds that Plaintiff failed to provide some of this
9 information as part of his mandatory obligations pursuant to NRCP 16.1.

10 8. This Court further finds that the failure to provide the information,
11 and denying knowledge of the information in response to the written discovery
12 requests as required under NRCP 33 and 35 and during his deposition, is belied
13 by evidence and testimony presented, including Plaintiff's voluntary statement
14 provided to the Las Vegas Metropolitan Police Department as part of its
15 investigation of the August 17, 2013, shooting, the testimony of Detective Majors
16 (which this Court finds to be credible) and by Plaintiff's Complaint filed with this
17 Court on April 27, 2015.
18

19 9. This Court further finds that Plaintiff's testimony and attempted
20 explanation of memory lapses was not supported by credible evidence.
21

22 10. No prior Order has been issued by this Court related to the
23 discovery requests, deposition testimony, NRCP 16.1 disclosures, or information
24 at issue. Given there is not a prior Order relating to the above referenced
25 violations, the Court finds that at this juncture the requested relief of terminating
26 sanctions is not appropriate.
27
28

1 11. Given the extent and gravity of the conduct, however, this Court
2 finds that, nonetheless, sanctions are warranted against Plaintiff based on both
3 Nevada law, including *Young v. Johnny Ribeiro*² and its progeny; the evidence
4 and testimony presented; and Plaintiff's conduct in litigating this case.

5 Accordingly, this honorable Court orders as follows:

6 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that Defendant,
7
8 Mydatt's Motion to Dismiss is hereby DENIED in part and GRANTED in part.

9 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that
10 Defendant Mydatt's request that Plaintiff's Complaint be dismissed based on the
11 discovery abuses involved is hereby DENIED without prejudice.

12 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that sanctions
13 are GRANTED against Plaintiff for the discovery and disclosure abuses involved
14 as follows:

15 A. Defendants, Mydatt and GGP, shall be awarded, and Plaintiff shall
16 pay, reasonable attorney's fees and costs in an amount to be
17 determined by this Court after proper submissions by all parties.

18 The amount shall be paid by Plaintiff within 14 days of the entering
19 of the Order setting forth the sanction amount;

20 B. If requested by Defendant(s), the Court shall provide a curative jury
21 instruction(s) that seeks to address the harm caused by Plaintiff's
22 discovery abuses by establishing *inter alia* that if Plaintiff had
23 complied with his obligations under NRCP 16.1, NRCP 30, NRCP
24
25

26
27 ² 106 Nev. 88 (1990).
28

1 33 and NRCP 36, evidence and testimony would have been
2 discovered which would have more accurately reflected the
3 circumstances involved in the altercation at issue between Plaintiff
4 and the assailants as indicated in the voluntary statement provided
5 to LVMPD. The applicable curative jury instruction(s) will be crafted
6 by the parties and this Court contemporaneous with the submission
7 of all jury instructions closer to the time of trial;
8

9 C. If good cause is shown, the Court shall grant an extension of the
10 discovery period, currently set for September 16, 2016, and trial,
11 currently set for November 14, 2016, upon a timely request by
12 Defendants Mydatt and GGP upon further consideration of the
13 preparation required.
14

15 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that no
16 settlement conference will be ordered at this time as the parties have broached
17 settlement discussions informally and will continue to pursue on their own terms.
18

19 DATED this 18th day of August, 2016.

20 
21 JOANNA S. KISHNER
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL PARTIES SERVED VIA E-SERVICE


TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

EXHIBIT B

Alvin L. Burden

CLERK OF THE COURT

ORDER

Edgar Carranza, Esq.
Nevada State Bar No. 5902
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(702) 872-5555
(702) 872-5545 facsimile
ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

Case No. A717577

Dept. XXXI

**ORDER DENYING IN PART AND GRANTING IN PART MOTION
FOR ATTORNEY'S FEES AND COSTS RELATED TO MOTION TO DISMISS**

Date of hearing: n/a
Time of hearing: n/a

Defendants', **MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and**
MARK WARNER (collectively referred to herein as "Mydatt") and Defendant, **GGP MEADOW**
MALL LLC (referred to herein as "GGP"), Motion for Attorney's Fees and Costs, filed on August
19, 2016, Plaintiff, **X'ZAVION HAWKINS'** (hereinafter referred to as "Plaintiff") Opposition to

10-11-16 A07:56 IN

WJ

1 the Motion to For Attorney's Fees and Costs and Counter Motion for Fees and Costs re: the
2 Motion to Disqualify , filed on September 7, 2016, Mydatt's reply to opposition and opposition to
3 counter motion, filed on September 13, 2016, Plaintiff's Supplemental brief in Opposition to the
4 Motion for Attorney's Fees and Costs and Mydatt's Reply to Plaintiff's Supplemental Brief, along
5 with arguments made by each party during the hearing before this Court on September 20, 2016
6 have been reviewed and considered. This honorable Court having reviewed the pleadings filed,
7 authority submitted and oral arguments from the parties hereby grants and denies the Motion to for
8 Attorney's Fees and Costs finding as follows:
9

10 1. This Court considered whether there was any authority that allowed or precluded
11 the sanction award against Plaintiff and found that, as it had already made a ruling after a full
12 consideration of the record including conducting an Evidentiary Hearing, that there exists an
13 appropriate basis to award sanctions in the form of fees and costs against Plaintiff for his conduct.
14 It further found that although Plaintiff contends that, *inter alia*, *Sheppard Mullin Richter &*
15 *Hampton, LLP v. J.M. Mfg. Co., Inc.*, 198 Cal Rptr. 3d 253 (Cal. App. 4th) (2016), precludes the
16 Court from awarding any fees related to the work performed by the Lewis Brisbois law firm, the
17 Court adopts the arguments set forth in Defendants' Supplemental Brief and rejects Plaintiff's
18 contention.
19

20 2. The Court further finds that there is a proper basis to award as a sanction, the fees
21 and costs reasonably incurred by all three law firms involved with the defense, relying on, *inter*
22 *alia*, NRCP 37, the Court's own inherent powers, Nevada case law, including *Shuette V. Beazer*
23 *Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005); *Brunzell v. Golden Gate National*
24 *Bank*, 85 Nev. 345, 350, 455 P.2d 31 (1969), as well as the other basis set forth in the record.
25

26 3. The Court further finds that, *inter alia*, the rates charged by each counsel, their
27 skills and expertise, as well as the result obtained, all merit granting their fee request consistent
28 with the Court's prior Order. However, the Court also finds that given the number of lawyers and

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1 law firms involved in the Motion and Hearing at issue, it is appropriate to reduce the fee amount
2 of each of the respective firms to be consistent with the nature and scope of the record and
3 applicable law. Accordingly, the Court finds that an award for attorney's fees totaling \$41,635.00
4 is appropriate comprised of the following amounts:

- 5 A. Lewis Brisbois fees in the amount of \$19,846.00;
6 B. Lee Hernandez fees in the amount of \$11,629.50; and
7 C. BACKUS, CARRANZA & BURDEN fees in the amount of \$10,159.50.

8
9 4. The Court further finds that the additional fees requested by Defendants in the
10 original motion and supplemental filings for \$3,000 related to work required as a result of
11 Plaintiff's supplemental filings is not appropriate in this context as this decision relates only to the
12 appropriate sanctions related to the motion to dismiss, and thus the request is denied without
13 prejudice.
14

15 5. The Court also finds that although one of the mileage cost entries, in the amount of
16 \$11.34, was not properly supported as being related to the underlying Motion, the rest of the costs
17 were properly supported and thereby award costs in the amount of \$196.66.

18 Accordingly, with respect to the pending motion for attorney's fees and costs, this
19 honorable Court orders as follows:

20 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that Defendants' Motion for
21 Attorney's Fees and Costs is hereby DENIED, in part, and GRANTED, in part.

22 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Defendants' are hereby
23 awarded attorney's fees totaling \$41,635.00 and costs totaling \$196.66, for a total award of
24 \$41,831.66.
25

26

27


1 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Plaintiff shall make the
2 above payment to Defendants within 30 days of the Notice of Entry of this Order by the Court.
3

4 DATED this 13 day of October, 2016.
5

6
7 
8 DISTRICT COURT JUDGE
9 *cks*

10 Submitted by:

11 BACKUS, CARRANZA & BURDEN

12 
13 Edgar Carranza, Esq.
14 Nevada Bar No. 5902
15 3050 South Durango Drive
16 Las Vegas, Nevada 89117
17 Attorneys for Defendants
18 MYDATT SERVICES, INC. d/b/a VALOR
19 SECURITY SERVICES and MARK WARNER
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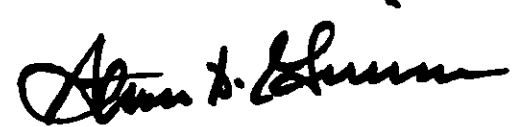
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EXHIBIT C


CLERK OF THE COURT

1 **NEO**
2 **Edgar Carranza, Esq.**
3 **Nevada State Bar No. 5902**
4 **BACKUS, CARRANZA & BURDEN**
5 **3050 S. Durango Drive**
6 **Las Vegas, NV 89117**
7 **(702) 872-5555**
8 **(702) 872-5545 facsimile**
9 **ecarranza@backuslaw.com**
10 **Attorneys for Defendants**
11 **MYDATT SERVICES, INC. d/b/a VALOR**
12 **SECURITY SERVICES and MARK WARNER**

DISTRICT COURT
CLARK COUNTY, NEVADA

11	X'ZAVION HAWKINS,)	
12)	Case No. A717577
13	Plaintiffs,)	
14)	Dept. XXXI
15	vs.)	
16)	
17	GGP MEADOW 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 I through 10;)	
22	DOE SECURITY GUARDS 11 through 20; and)	
23	ROE ENTITES 21 through 30, Inclusive,)	
24)	
25	Defendants.)	

NOTICE OF ENTRY OF ORDER

22 **PLEASE TAKE NOTICE THAT an Order Denying in Part and Granting in Part Motion**
23 **for Attorney's Fees and Costs Related to Motion to Dismiss was signed by District Court Judge,**
24 **Joanne Kishner, on October 13, 2016, and filed in the above-referenced matter on October 17,**

25
26
27
28

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BACKUS, CARRANZA & BURDEN

1 2016, a copy of which is attached hereto.

2
3 Dated this 17th day of October, 2016.

4 **BACKUS, CARRANZA & BURDEN**

5
6 By: 

7 Edgar Carranza, Esq.
8 Nevada Bar No. 5902
9 3050 South Durango Drive
10 Las Vegas, Nevada 89117
11 Attorneys for Defendants
12 MYDATT SERVICES, INC. d/b/a VALOR
13 SECURITY SERVICES and MARK
14 WARNER
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BACKUS, CARRANZA & BURDEN

3050 SOUTH DURANGO DRIVE

LAS VEGAS, NEVADA 89117

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CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On October 18th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

SERVICE LIST

<p>David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com</p>	<p>Attorney for Plaintiff</p>	<p><input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means</p>
<p>David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com</p>	<p>Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER</p>	<p><input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means</p>

Exhibit “1”

**MEMORANDUM RE: ATTORNEYS' FEES FOR MOTION TO DISQUALIFY THE LAW
FIRM OF LEWIS BRISBOIS BISGAARD & SMITH**

	Date	Timekeeper	Time	Rate	Activity
1.	05/03/16	JJM	.3	120.00	Telephone conference with Jason Barrus, Esq. re: argument by Josh Aicklen, Esq. relating to motion to dismiss
2.	05/03/16	JJM	.8	320.00	Verify facts re: dates and substance of communication with Josh Aicklen, Esq. of LBBS re: refusal to produce documents obtained directly from Det. Majors rather than custodian of records for LVMPD
3.	05/03/16	JJM	.4	160.00	Verify facts re: original deposition date for Det. Majors and continuance to after X'Zavion's deposition
4.	05/03/16	JJM	.4	160.00	Telephone conference with X'Zavion re: meeting with Paul Shpirt, Esq. at Eglet Law Group
5.	05/03/16	JJM	.2	80.00	Analyze NRPC 1.9 re: attorney-client conflicts
6.	05/03/16	JJM	.2	80.00	Analyze NRPC 1.10 re: attorney-client conflicts
7.	05/04/16	JJM	.8	320.00	Analyze Nevada Bar Ethical Opinion re: attorney-client conflicts
8.	05/04/16	JJM	.3	120.00	Telephone conference with Bar Counsel Phil Patee, Esq. re: facts of Paul Shpirt's representation of X'Zavion at Eglet Law Group and current employment with LBBS in light of NRPC 1.9 and 1.10
9.	05/04/16	JJM	.2	80.00	Telephone conference with Jason Barrus, Esq. re: Bar Counsel opinion re: LBBS conflict per NRPC 1.9 and 1.10 and obtaining copy of fee agreement executed by Paul Shpirt on behalf of Eglet Law Group
10.	05/04/16	JJM	.4	160.00	Office Conference with DJC re: Bar Counsel insight re: LBBS conflict per NRPC 1.9 and 1.10
11.	05/04/16	JJM	.4	160.00	Prepare draft affidavit for Jason Barrus, Esq. re: communication with Paul Shpirt, Esq. on behalf of Eglet Law Group
12.	05/05/16	JJM	2.1	840.00	Prepare factual overview and procedural posture re: motion to disqualify LBBS pursuant to NRPC 1.9 and 1.10
13.	05/06/16	JJM	.3	120.00	Analyze NRS 49.045, 49.055, 49.095 re: attorney-client privilege

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14.	05/06/16	JJM	2.1	840.00	Analyze case law: Haynes v. State, McKay v. Board of Commissioners of Douglas County, Brown v. District Ct., Cromin v. 8 th Judicial District Ct., Robbins v. Gillock, Coles v. Arizona Charlie's, Nevada Yellow Cab v. 8 th Judicial District Ct., Hackett v. Feeney, Young v. Ribereiro Bldg. re: attorney-client privilege, conflicts and sanctions to prepare legal argument for motion to disqualify
15.	05/06/16	JJM	6.2	2,480.00	Prepare legal argument and conclusion re: motion to disqualify LBBS pursuant to NRPC 1.9 and 1.10
16.	05/09/16	JJM	.2	80.00	Telephone conference with Jason Barrus re: revision to draft affidavit
17.	05/09/16	JJM	.4	160.00	Prepare exhibits to motion to disqualify LBBS pursuant to NRPC 1.9 and 1.10
18.	05/19/16	JJM	1.2	480.00	Analyze Defendants' 26 page opposition to motion to disqualify LBBS with 115 pages of exhibits
19.	05/20/16	JJM	.4	160.00	Telephone conference with Jason Barrus, Esq. re: Defendants' opposition to motion to disqualify LBBS
20.	05/20/16	JJM	.3	120.00	Prepare supplemental affidavit of Jason Barrus, Esq. re: communication with Paul Shpirt, Esq. re: X'Zavion
21.	05/20/16	JJM	.3	120.00	Prepare affidavit of Lloyd Baker, Esq. re: communication with Paul Shpirt, Esq. re: X'Zavion
22.	05/20/16	JJM	5.1	2,040.00	Prepare reply in support of motion to disqualify LBBS with analysis of State Bar of Nevada Standing Committee on Ethics and Professional Responsibility Formal Opinion No. 39
23.	06/03/16	JJM	.1	40.00	Analyze memorandum from District Court re: moving location for hearing
24.	06/06/16	DJC	.1	40.00	Dictate correspondence to District Court re: ongoing trial
25.	06/06/16	JJM	.8	320.00	Telephone conference with District Court and opposing counsel re: hearing set for June 8 th
26.	06/06/16	JJM	.1	40.00	Electronic communication with Robert Adams, Esq. re: Paul Shpirt, Esq.'s employment with Eglet Law Group
27.	06/07/16	JJM	.2	80.00	Telephone conference with Jason Barrus, Esq. re: revised affidavits for Messrs. Barrus and Baker

28.	06/08/16	JJM	1.9	760.00	Travel time with X'Zavion to attend motion to disqualify LBBS
29.	06/08/16	DJC	8.0	3,200.00	Prepare for and argue motion to disqualify LBBS
30.	06/20/16	JJM	2.4	960.00	Prepare findings of fact, conclusions of law and order re: disqualification of LBBS

TOTAL HOURS = 36.6 TOTAL ATTORNEYS' FEES = 36.6 x 400 = \$14,640.00

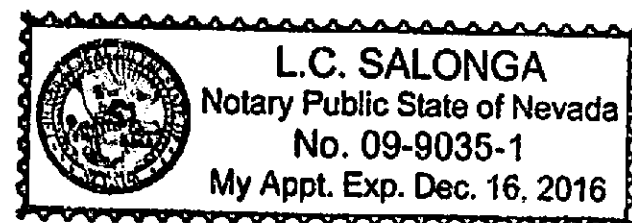
STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I declare under penalty of perjury that the foregoing attorneys' fees in this action are correct and the services were necessarily performed.


DAVID J. CHURCHILL (SBN: 7308)
Attorney for Plaintiff

SUBSCRIBED AND SWORN TO
before me this 6th day of September, 2016.


NOTARY PUBLIC in and for said
County and State



STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I declare under penalty of perjury that the foregoing attorneys' fees in this action are correct and the services were necessarily performed.


JOLENE J. MANKE (SBN: 7436)
Attorney for Plaintiff

SUBSCRIBED AND SWORN TO
before me this 6th day of September, 2016.


NOTARY PUBLIC in and for said
County and State

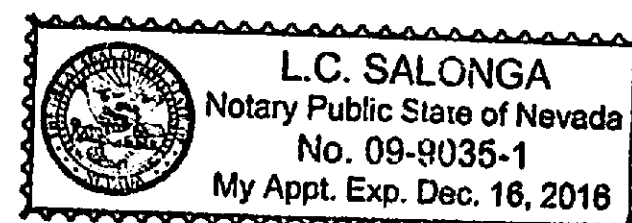
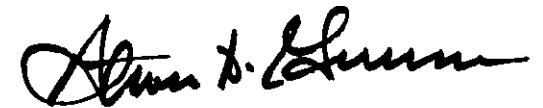


EXHIBIT 28



CLERK OF THE COURT

OPPS

Edgar Carranza, Esq.

Nevada State Bar No. 5902

BACKUS, CARRANZA & BURDEN

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Las Vegas, NV 89117

(702) 872-5555

(702) 872-5545 facsimile

ecarranza@backuslaw.com

Attorneys for Defendants

MYDATT SERVICES, INC. d/b/a VALOR

SECURITY SERVICES and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

Case No. A717577

Dept. XXXI

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S COUNTERMOTION
FOR ATTORNEY'S FEES AND COSTS RE: MOTION TO DISQUALIFY
LEWIS BRISBOIS BISGAARD & SMITH**

Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
(referred to herein as "Mydatt") and MARK WARNER (referred to herein as "Mr. Warner"), by
and though counsel, Edgar Carranza, Esq. of the law firm of BACKUS, CARRANZA & BURDEN and
Charlene Renwick, Esq. and David S. Lee, Esq. of the law firm of Lee, Hernandez, Landrum &
Garofalo, hereby file the instant opposition to Plaintiff's counter motion for attorney's fees and
costs related to his prior motion to disqualify the law firm of Lewis Brisbois Bisgaard & Smith.

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 This opposition is supported by the following memorandum of points and authorities, exhibits and
2 affidavits, if any, attached.

3 4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 On July 21, 2016, an evidentiary hearing was held to address Plaintiff's documented
7 discovery abuses as part of Defendants' motion to dismiss the complaint. At the conclusion of the
8 evidentiary hearing this Court denied the requested dismissal, but agreed that sanctions were
9 warranted, including an award of attorney's fees and costs incurred as a result of Plaintiff's
10 discovery abuses.
11

12 On August 19, 2016, Defendants filed their Motion for Attorney's Fees and Costs at the
13 direction of this Court. Under the applicable rules, any opposition to the motion was due no later
14 than September 6, 2016.

15 On September 7, 2016, Plaintiff filed his untimely opposition to the motion.¹ At the same
16 time, Plaintiff filed an inappropriate countermotion for attorney's fees and costs related to the
17 motion to disqualify the Lewis Brisbois Bisgaard & Smith law firm. It is to this unrelated
18 countermotion for attorney's fees and costs to which Defendants file the instant opposition.
19

20 **II. POINTS AND AUTHORITIES**

21 **A. COUNTERMOTION FOR FEES AND COSTS UNRELATED TO THE CURRENT MOTION IS** 22 **INAPPROPRIATE.**

23 Plaintiff has filed yet another countermotion to a motion filed by Defendants. This time,
24 Plaintiff's countermotion is appended his opposition to Defendants' Motion for Attorney's Fees
25 and Costs related to the motion to dismiss. This unrelated countermotion is contrary to EDCR
26 2.20(f) and should not be considered.
27
28

¹ The reply to Plaintiff's Opposition to the Motion for Attorney's Fees and Costs is filed separately.

1 The Eighth Judicial District Court Rules outline the appropriateness for a countermotion
2 filed in response to a pending motion. Rule 2.20(f) allows a countermotion only if it is related to
3 the same subject matter as the pending motion. Specifically, the rule provides that,

4 An opposition to a motion which contains a motion *related to the same subject*
5 *matter* will be *considered as a counter-motion*. A counter-motion will be heard
6 and decided at the same time set for the hearing of the original motion and no
7 separate notice of motion is required.²

8 In this case, Plaintiff filed an opposition to Defendants' Motion for Attorney's Fees and
9 Costs related to the motion to dismiss on September 7, 2016. In addition to being untimely,³ the
10 opposition contained a countermotion seeking an award of attorney's fees and costs related to an
11 earlier motion to disqualify the Lewis Brisbois Bisgaard & Smith law firm decided by this Court
12 several months ago. The countermotion is not related to the pending motion for fees and costs
13 involving the motion to dismiss. Because it is unrelated, it is inappropriately submitted as a
14 countermotion and should not be considered.

15 **B. THE INAPPROPRIATE COUNTERMOTION CONTINUES PLAINTIFF'S ABUSIVE LITIGATION**
16 **TACTICS.**

17 Plaintiff's inclusion of an unrelated countermotion is further evidence of Plaintiff's abusive
18 tactics which he has employed, and continues to employ, throughout this case.

19 Nevada courts have long expressed their distaste for the practice of repetitive and serial
20 motion practice.⁴ Disallowing the practice helps prevent repetitive, serial motion filing by a party
21 who seeks nothing more than to pick the right circumstances or the right judge which will allow
22 the filing party to achieve a different result, based on essentially the same facts.⁵

23 This Court is well aware of Plaintiff's abusive tactics during discovery which culminated
24 in the evidentiary hearing of July 21, 2016. But discovery is not the only area where Plaintiff has
25

26
27 ² Emphasis added.

28 ³ See, Defendants' Reply to Opposition to Motion for Attorney's Fees and Costs.

⁴ See, *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P3d 213, 228 (2009);

⁵ *Id.*

1 engaged in suspect tactics. As detailed below, these abuses have now bled over into Plaintiff's
2 motion practice.

3 Unfortunately, the instant unrelated countermotion is not the first countermotion filed by
4 Plaintiff. It is not even the second such countermotion. Rather, Plaintiff's practice has been to file
5 serial countermotions at every turn in an effort to try to fend off meritorious motions submitted
6 against him, whether they are related to the pending motion or not. For example, on March 23,
7 2016, Mydatt first filed its motion to dismiss Plaintiff's complaint based on the discovery abuses
8 uncovered. In response, Plaintiff filed not only an opposition to the motion to dismiss, but also
9 included an unrelated countermotion for sanctions against Defendants for its discovery of
10 documents confirming Plaintiff's abuses.⁶ It was clear from the nature of the countermotion that
11 Plaintiff was seeking to distract this Court's attention from his own abuses by raising phantom
12 discovery abuses against the Defendants. This Court saw through the attempt at deception and
13 correctly denied the same as having "no basis."⁷
14
15

16 Also on March 23, 2016, Defendants filed a motion for leave to file a third party complaint
17 against the assailants. Plaintiff filed an opposition to the motion and appended another
18 countermotion. This time, the countermotion sought to bifurcate the trial so that the assailants
19 who caused Plaintiff's injuries could be tried separate and apart from Plaintiff's case against the
20 Defendants for the same injuries.⁸ Plaintiff was well aware of the misguided nature of the
21 requested bifurcation given the facts involved but filed the countermotion nonetheless. This Court
22 again correctly granted Defendants' motion for leave to file a third party complaint and denied
23 Plaintiff's countermotion.⁹
24
25

26 ⁶ Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Sanctions,
10:1-11:2.

27 ⁷ Exhibit A, Minutes of Hearing on 05/03/2016 ("COURT ORDERED, Plaintiff's Countermotion for Sanctions is
DENIED, no basis.")

28 ⁸ Plaintiff's Opposition to Defendants' Motion for Leave to File Third Party Complaint and, Alternatively,
Countermotion to Bifurcate Trial, 7:11-8:14.

⁹ Exhibit A.

1 Plaintiff's current countermotion is nothing more than a continuance of this serial motion
2 practice (or countermotion practice). This time, Plaintiff seeks to distract this Court from
3 imposing the sanctions against Plaintiff which it ordered were appropriate by requesting fees and
4 costs involving an unrelated motion. Again, Plaintiff is well aware of the unmeritorious nature of
5 his latest countermotion, but he filed it anyway. Plaintiff's abusive motion practice should not be
6 rewarded. This Court should yet again ignore Plaintiff's countermotion and deny the same.

7
8 **C. THE COURT HAS ALREADY DENIED PLAINTIFF'S REQUEST FOR FEES AND COSTS RELATED**
9 **TO THE DISQUALIFICATION.**

10 That makes Plaintiff's latest countermotion even more offensive is that this Court has
11 already considered the appropriateness of an award of fees and costs as a result of the
12 disqualification and did not order the same. As a result, Plaintiff is precluded from re-arguing the
13 same issue as it has already been ruled on by this Court and is the law of the case.

14 It is well settled in Nevada, and across the country, that once an issue has been ruled on by
15 the trial court, it cannot be re-opened. As observed by the United States Supreme Court, the *law*
16 *of the case doctrine* "expresses the practice of courts generally to refuse to reopen what has been
17 decided."¹⁰ "Under law of the case doctrine, as now most commonly understood, it is not
18 improper for a court to depart from a prior holding if convinced that it is clearly erroneous and
19 would work a manifest injustice."¹¹ However, a trial court may revisit a prior ruling only when 1)
20 subsequent proceedings produce substantially new or different evidence, 2) there has been an
21 intervening change in controlling law, or 3) the prior decision was clearly erroneous and would
22 result in manifest injustice if enforced.¹² Here, no such circumstances exist which warrant a
23 revisiting of the issue.
24

25 On May 11, 2016, Plaintiff filed its Motion to Disqualify Lewis Brisbois Bisgaard & Smith
26

27
28 ¹⁰ See, *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728 (2007).

¹¹ *Id.*

¹² *Id.*

1 and for Sanctions on an Order Shortening Time. In it, Plaintiff specifically requested an award of
2 fees and costs related to the involvement of the Lewis Brisbois law firm.¹³ Despite the request,
3 this Court did not order any such award of fees and costs. That is the law of this case on this
4 issue.

5 Plaintiff's countermotion does not include any substantially new or different evidence that
6 was not previously available to him. It also does not propose that there has been an intervening
7 change in controlling law or that the prior decision was clearly erroneous or otherwise would
8 result in manifest injustice. Instead, Plaintiff simply re-files his request for fees and costs without
9 explanation. This is not enough to overcome this Court's prior denial of fees.

11 **D. THE COUNTERMOTION FOR FEES AND COSTS HAS NO MERIT AND SHOULD BE DENIED.**

12 In addition to the above reasons why Plaintiff's countermotion fails, it also has no
13 substantive merit. Unlike the issue currently before this Court regarding the monetary sanction
14 against Plaintiff based on his discovery abuses, this Court did not indicate that any such award
15 would be granted in favor of Plaintiff's as a result of the disqualification.

16 On June 8, 2016, this Court heard argument related to Plaintiff's Motion to Disqualify the
17 Lewis Brisbois law firm. At the conclusion of the hearing, it granted Plaintiff's request for
18 disqualification.¹⁴ Of import, it did not grant any attorney's fees or costs related to the motion to
19 disqualify and did not invite Plaintiff to submit any such motion for attorney's fees and costs.¹⁵
20 This is drastically different from this Court's clear order that Defendants would be awarded fees
21 and costs related to the motion to dismiss.
22

23 Perhaps most telling of all is that in the three months that followed, the disqualification,
24 Plaintiff never submitted any request for attorney's fees and costs related to the motion to
25 disqualify. Not until Defendants filed their motion for fees and costs related to the motion to
26

27
28 ¹³ Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith, 14:20-15:17.

¹⁴ Exhibit B, Minutes of Hearing on 06/08/2016.

¹⁵ *Id.*

1 dismiss did Plaintiff feel it necessary to request a competing award. The timing of the
2 countermotion evidences that Plaintiff's true motivation behind the inappropriate request for fees
3 and costs is not to remedy anything related to the motion to disqualify, but rather is aimed
4 squarely at offsetting the sanctions order against him by this Court. Sanctions which were
5 necessitated only by his own repeated and flagrant discovery abuses. Abuses which Plaintiff
6 hopes not to be held responsible for by evading or offsetting the monetary sanctions forthcoming.

7
8 **E. THE DISQUALIFICATION WAS THE RESULT OF THE LEWIS BRISBOIS LAW FIRM'S**
9 **CONDUCT NOT THE CONDUCT OF THE PARTIES.**

10 Plaintiff's countermotion seeks an award of fees and costs from the remaining Defendants
11 whom were innocent bystanders to any conduct on which the disqualification was based.
12 Therefore, an award against the remaining parties would be manifestly unfair.

13 As was detailed in the briefing and during oral argument related to the motion to
14 disqualify, *the Lewis Brisbois law firm* failed in this Court's eyes to take the steps required under
15 the Nevada Rules of Professional Conduct when it undertook representation of the Defendants.
16 No finding was made, and no argument presented, that the Defendants played any role in the
17 failure to adhere to the rules.

18
19 In fact, Plaintiff has yet again failed to reference any Nevada legal authority which
20 supports its request for an award of fees and costs against a party, under these circumstances,
21 rather than the offending attorney. Without any such authority, it would be manifestly unfair to
22 saddle the defending parties for the alleged sins of their former counsel. On that basis alone,
23 Plaintiff's countermotion requires that it be denied.

24 **III CONCLUSION**

25 Plaintiff's countermotion for fees and costs is yet another red herring serial countermotion
26 filed by a Plaintiff who has a penchant for filing meritless countermotions. It is procedurally
27 deficient in that it is wholly unrelated to the pending motion for attorney's fees and costs related to
28

1 the motion to dismiss, and thus cannot be considered a countermotion under Rule 2.20(f).
2 Additionally, it has already been ruled on by this Court at the time of the disqualification of the
3 Lewis Brisbois law firm and cannot be re-opened without any new evidence, change of controlling
4 law or other circumstances which warrant reconsideration.

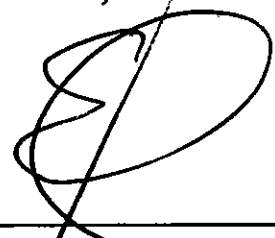
5 Substantively, this Court already considered the appropriateness of any such award and
6 declined to order the same. Any such award now, on the individual defending parties, would be
7 manifestly unjust as the parties were not part of the conduct on which the disqualification was
8 granted. Plaintiff has failed to show otherwise.

9 Therefore, Defendants respectfully request that this Court deny Plaintiff's countermotion
10 for fees and costs related to the prior disqualification of the Lewis Brisbois law firm.
11

12 Dated this 13th day of September, 2016.

BACKUS, CARRANZA & BURDEN

By:



Edgar Carranza, Esq.
Nevada Bar No. 5902
3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On September 13th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.


VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
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SERVICE LIST

ATTORNEYS OF RECORD	TELEPHONICS PROPORTIONATE SHARE	
David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com	Attorney for Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means
David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com	Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means

EXHIBIT A

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[Search](#) [Refine Search](#) [Close](#)

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
Retained
702-880-9750(W)

Defendant Mydatt Services Inc *Doing Business*
As Valor Security Services

David S Lee
Retained
702-880-9750(W)

Defendant Warner, Mark

Mitchell J. Resnick
Retained
702-997-3800(W)

Plaintiff Hawkins, X'Zavion

David J. Churchill
Retained
702-868-8888(W)

Third Party Defendant Berry, Zacchaeus *Also Known*
As Berry, Zacharias *Also Known*
As Berry, Zachary *Also Known*
As Berry, Zak

Third Party Defendant Christmas, Ashley

Third Party Plaintiff GGP Meadows Mall, LLC

David S Lee
Retained
702-880-9750(W)

Third Party Plaintiff Mydatt Services Inc *Doing Business*
As Valor Security Services

David S Lee
Retained
702-880-9750(W)

Third Party Plaintiff Warner, Mark

Mitchell J. Resnick
Retained
702-997-3800(W)

EVENTS & ORDERS OF THE COURT

05/03/2016 | All Pending Motions (9:30 AM) (Judicial Officer Kishner, Joanna S.)

Minutes

05/03/2016 9:30 AM

- DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT...PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND COUNTERMOTION FOR SANCTIONS...DEFENDANT GGP MEADOWS MALL LLC'S JOINDER TO DEFENDANTS' MYDATT SERVICES, INC. AND MARK WARNER'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT Matter argued and submitted. Court finds evidentiary hearing is needed. COURT ORDERED, matter CONTINUED for Evidentiary Hearing. Counsel estimate 4 hours needed for hearing, requests afternoon of 5/26/16 or morning of 6/9/16. Court will determine which date will work and will notify counsel by end of day or tomorrow morning. COURT ORDERED, Plaintiff's Countermotion for Sanctions is DENIED, no basis. CONTINUED TO: (DATE TO BE DETERMINED) DEFENDANTS, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC., DBA VALOR SECURITY SERVICES, AND MARK WARNER'S MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT...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 Arguments by counsel. Court stated its findings, and ORDERED, Motion and Joinder thereto are GRANTED. COURT FURTHER ORDERED, Countermotion to Bifurcate Trial is DENIED WITHOUT PREJUDICE. Defense counsel to prepare the Order, circulating to all counsel for approval as to form and content. 5/20/16 STATUS CHECK: ORDER (CHAMBERS)

Parties Present

Return to Register of Actions

EXHIBIT B

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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
Retained
702-880-9750(W)

Defendant Mydatt Services Inc *Doing Business*
As Valor Security Services

David S Lee
Retained
702-880-9750(W)

Defendant Warner, Mark

Mitchell J. Resnick
Retained
702-997-3800(W)

Plaintiff Hawkins, X'Zavion

David J. Churchill
Retained
702-868-8888(W)

Third Party Defendant Berry, Zacchaeus *Also Known*
As Berry, Zacharias *Also Known*
As Berry, Zachary *Also Known*
As Berry, Zak

Third Party Defendant Christmas, Ashley

Third Party Plaintiff GGP Meadows Mall, LLC

David S Lee
Retained
702-880-9750(W)

Third Party Plaintiff Mydatt Services Inc *Doing Business*
As Valor Security Services

David S Lee
Retained
702-880-9750(W)

Third Party Plaintiff Warner, Mark

Mitchell J. Resnick
Retained
702-997-3800(W)

EVENTS & ORDERS OF THE COURT

06/08/2016 | All Pending Motions (11:00 AM) (Judicial Officer Kishner, Joanna S.)

Minutes

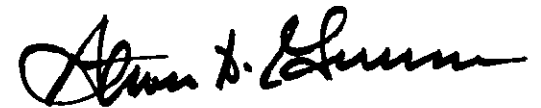
06/08/2016 11:00 AM

- Also present: John Lavery, Esq. and Harry Rosenthal, Esq.
EVIDENTIARY HEARING: DEFENDANT'S 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 Mr. Churchill advised he will be submitting new affidavits of Lloyd Baker, Esq. and Jason Barrus, Esq. in support of his Motion to Disqualify, which were MARKED and ADMITTED as Court's Exhibits. Mr. Lavery argued the affidavits should not be allowed as they are untimely. Upon Court's inquiry, Ms. Renwick advised GGP Meadows Mall LLC will withdraw their recently filed supplemental exhibit. COURT STATED FINDINGS and ORDERED, affidavit of Mr. Baker will be excluded. Following further arguments by counsel, Court advised it will not consider the affidavit of Jason Barrus, Esq. Colloquy regarding the previous telephonic hearing. Following extensive arguments by counsel, COURT STATED FINDINGS and FURTHER ORDERED, Motion to Disqualify Attorney GRANTED; Lewis, Brisbois, Bisgaard & Smith DISQUALIFIED. Mr. Rosenthal advised their witness had to be released due to a time constraint, and requested the Evidentiary Hearing be rescheduled. Colloquy regarding dates. There being no objection by counsel, COURT ADDITIONALLY ORDERED, Evidentiary Hearing CONTINUED. 6/15/16 1:30 PM EVIDENTIARY HEARING: DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT / DEFENDANT GGP MEADOWS MALL LL'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

Parties Present

Return to Register of Actions

EXHIBIT 29



CLERK OF THE COURT

RPLY

Edgar Carranza, Esq.

Nevada State Bar No. 5902

BACKUS, CARRANZA & BURDEN

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Attorneys for Defendants

MYDATT SERVICES, INC. d/b/a VALOR

SECURITY SERVICES and MARK WARNER

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiffs,

vs.

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

Defendants.

) **Case No. A717577**

) **Dept. XXXI**

) **Date of Hearing: September 20, 2016**

) **Time of Hearing: 9:00 a.m.**

**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO
MOTION FOR ATTORNEY'S FEES AND COSTS**

Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
(referred to herein as "Mydatt") and MARK WARNER (referred to herein as "Mr. Warner"), by
and though counsel, Edgar Carranza, Esq. of the law firm of BACKUS, CARRANZA & BURDEN and
Charlene Renwick, Esq. and David S. Lee, Esq. of the law firm of Lee, Hernandez, Landrum &
Garofalo, and GGP MEADOW MALL LLC (hereinafter referred to as "GGP"), by and through

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 counsel Charlene Renwick, Esq. and David S. Lee, Esq. of the law firm of Lee, Hernandez,
2 Landrum & Garofalo, hereby file the instant reply to Plaintiff's opposition to the motion for
3 attorney's fees and costs related to Mydatt's Motion to Dismiss Plaintiff, X'ZAVION HAWKINS
4 complaint. This reply is supported by the following memorandum of points and authorities,
5 exhibits and affidavits, if any, attached.
6

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I. INTRODUCTION

9
10 On August 19, 2016, Defendants filed their Motion for Attorney's Fees and Costs at the
11 direction of this Court. Under the applicable rules, any opposition to the motion was due no later
12 than September 6, 2016.

13 On September 7, 2016, Plaintiff filed his untimely opposition to the motion and
14 countermotion for attorney's fees and costs related to the motion to disqualify the Lewis Brisbois
15 Bissgarrad & Smith law firm.¹ It is to the opposition to the motion for attorney's fees and costs to
16 which Defendants hereby file the instant reply.
17

18 II. POINTS AND AUTHORITIES

19 A. UNTIMELY OPPOSITION SHOULD NOT BE CONSIDERED.

20 Plaintiff filed his opposition to the motion to for attorney's fees and costs after its deadline
21 with no explanation as to why it was not timely filed. This failure to adhere to the requirements of
22 EDCR 2.20 should be construed as an admission by Plaintiff that the motion is meritorious and
23 should be granted.

24 EDCR 2.20 dictates the requirements, for motions filed with this Court. With respect to a
25 briefing schedule, EDCR 2.20(e) requires that "[w]ithin 10 days after service of the motion, and 5
26 days after service of any joinder to the motion, *the opposing party must serve and file written notice*
27
28

¹ Opposition to the Countermotion is filed separately.

1 *of non-opposition or **opposition thereto***, together with a memorandum of points and authorities and
2 supporting affidavits, if any, stating facts showing why the motion and/or joinder should be
3 denied.”² Failure by the opposing party to file and serve a written opposition within the specified
4 time frame may be construed as an admission that the motion is meritorious and a consent to granting
5 the same.³

6
7 In this case, Defendants filed their motion for attorney’s fees and costs on August 19, 2016.
8 In accordance with EDCR 2.20, any opposition to the motion to dismiss should have been filed no
9 later than September 6, 2016.⁴ Plaintiff did not file his opposition until September 7, 2016, one day
10 too late.

11 Moreover, Plaintiff filed the untimely opposition without so much as a cursory attempt to
12 explain why it was being submitted beyond the deadline, or other good cause that would warrant
13 this Court setting aside the requirements of EDCR 2.20 in favor of considering the rogue document.
14 A request to enlarge the time period for filing the opposition must be made by motion and granted
15 only upon a finding of good cause and excusable neglect.⁵

16
17 Plaintiff’s failure to file an opposition within the allotted time frame warrants construing it
18 as an admission that the motion is meritorious and consent to granting the same. Accordingly, the
19 requested fees and costs should be awarded as requested.

20 **B. ATTORNEY’S FEES SHOULD BE AWARDED AS ORDERED BY THE COURT.**

21 Even if Plaintiffs’ untimely opposition is considered, the substance of the document does
22 not warrant denial of the requested fees and costs. The opposition contains nothing more than
23 desperate arguments, with no supportive Nevada legal authority, seeking to avoid the monetary
24 sanctions this Court determined were appropriate as a result of his own well-documented
25

26
27
28 ² Emphasis added.

³ EDCR 2.20(e).

⁴ 10 days plus an additional 3 days and holiday as required by NRCP 6(e).

⁵ NCRP 6(b).

discovery abuses.

1. ATTORNEY'S FEES FROM THE LEWIS BRISBOIS FIRM ARE APPROPRIATE AND NOT PRECLUDED BY ANY LEGAL AUTHORITY.

Plaintiff's first attempt to whittle away at the sanctions awarded is by trying to argue that the fees incurred by the Lewis Brisbois law firm should not be included because the firm was previously disqualified from this case. Yet in so doing, Plaintiff fails to cite any legal authority in Nevada which requires denial of an award of attorney's fees as a sanction for separate discovery abuses under similar circumstances.

It is well settled that "the purposes of sanctions are to deter, to punish, to compensate and to educate."⁶ In accordance with this purpose this Court fashioned the sanctions against Plaintiff after it determined that they were appropriate following an extensive evidentiary hearing where this it considered witness testimony and evidence introduced by Defendants and Plaintiff, stemming from Mydatt and Mr. Warner's motion to dismiss. The path to the evidentiary hearing was paved by the filing of the motion to dismiss by the Lewis Brisbois law firm. Plaintiff objects to inclusion of the fees incurred by the Lewis Brisbois law firm for filing the motion because it had been previously disqualified from the case by separate motion. Yet Plaintiff fails to provide any legal authority which supports its proposition that the sanctions against it should be relieved by the unrelated disqualification.

The reality is that without the filing of the motion by the Lewis Brisbois law firm, the issue of Plaintiff's discovery abuses never comes before this Court and this Court never makes the decision to sanction Plaintiff. Thus including the attorney's fees related to those efforts furthers this Court's order that sanctions against Plaintiff are both necessary and appropriate.

Plaintiff hopes to muddy the waters by arguing that an award of fees under these circumstances would not be "ethical," yet fails to provide any Nevada legal authority which

⁶ *Wash. Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash. 2d 299, 356, 858 P.2d 1054 (1993).

1 supports his position. At no time during the July 21, 2016 evidentiary hearing did this Court ever
2 indicate that the Defendants could not move forward with the hearing because the motion to
3 dismiss was initiated by the Lewis Brisbois law firm. Had it been inappropriate to move forward,
4 no doubt this Court would have vacated the evidentiary hearing and directed the parties to re-file
5 the motion to dismiss. No such order was made, and no such relief was ever requested by
6 Plaintiff.
7

8 Given the complete lack of authority, Plaintiff request to avoid part of the sanction against
9 him attributable to the fees incurred by the Lewis Brisbois law firm should be given no credence.

10 **2. ATTORNEY'S FEES FOR THE LEE HERNANDEZ LAW FIRM ARE APPROPRIATE.**

11 Plaintiff next tries to argue that the attorney's fees based on the work performed by the Lee
12 Hernandez law firm should not be awarded because they are duplicative and excessive. This
13 argument ignores the order of this Court which specifically anticipated fees for *all the lawyers*
14 involved.
15

16 First, Plaintiff's opposition incorrectly states that "[n]either Ms. Renwick nor Mr. Lee sat
17 at the defense table" during the hearing, and that their choice of seating somehow dictates whether
18 their fees should be included in the sanction. As with his other arguments, no legal authority is
19 presented by Plaintiff to support this seating argument.

20 The reality is that Ms. Renwick did sit at counsel table (despite representations by Plaintiff
21 to the contrary) alongside undersigned counsel and his paralegal. The limited number of seats at
22 defense counsel's table relegated Mr. Lee to find alternate seating, not his level of preparation.
23

24 Second, both Mr. Lee and Ms. Renwick entered their appearances on the record during the
25 evidentiary hearing⁷ and both actively prepared for the hearing.⁸

26 Third, both Mr. Lee and Ms. Renwick meaningfully prepared for and participated in the
27

28 ⁷ Exhibit I, Transcript of Proceedings, 3:14-4:4.

⁸ *Id.* ("Mr. Lee: Your Honor, David Lee on behalf of GPP and Mydatt. I am not intending to speak on the record today, *but just in case.*") (Emphasis added).

1 hearing. The billing records evidence the same. For example, Ms. Renwick was integral in
2 preparing witnesses for the hearing, both those who were called and those who were at the ready
3 should they be needed. Numerous teleconferences with various witnesses regarding both the
4 logistics of their appearance in court⁹ and to prepare for their substantive testimony¹⁰ were held by
5 Ms. Renwick. She also prepared witnesses who were ultimately not called in the interest of
6 moving the hearing along and avoiding duplication of testimony.¹¹

8 Ms. Renwick also helped clarify factual issues throughout the evidentiary hearing in
9 response to inquiries from the Court or attempts to distort the facts by Plaintiff.¹²

10 Moreover, Ms. Renwick was prepared to cross examine any expert witness Plaintiff may
11 have called if efforts were made by him to try to justify the discovery abuses by blaming them on
12 the effects the medication and/or the trauma had on his memory.¹³ She was also prepared to call a
13 rebuttal defense expert to help clarify why blaming the discovery abuses on outside factors was
14 not plausible in this case.¹⁴ As it turned out, Plaintiff simply made the argument with no expert
15 support and, as a result, Ms. Renwick was never required to cross examine or examine any expert
16 witnesses on this topic. Simply because Plaintiff chose the easy way out at the hearing does not
17 minimize the value of the efforts to prepare for the possibility of such expert testimony.
18

19 In addition to his efforts in preparing for the hearing, Mr. Lee was also intimately involved
20

21 ⁹ E.g., Exhibit C, 6/08/2016 entry for CNR: "T/c w/ Det. Majors (witness) re: revised hearing protocol, and
22 clarification of party that witness was subpoenaed by"; 6/09/2016 entry for CNR: "Draft and review mult. e-corres.
23 to/from J. Make (Plaintiff's counsel) re: unavailability of witnesses for reset evidentiary hearing, proposed protocol
24 for resetting hearing, conf. call with court required to address witness availability and continued setting for hearing."

25 ¹⁰ E.g., Exhibit C, 7/14/2016 entry for CNR: Attend conference w/ E. Carranza (co-counsel) and Det. Majors re:
26 preparation for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint."

27 ¹¹ E.g., Exhibit C, 7/20/2016 entry for CNR: "T/c w/ Det. Menzies (witness) re: recollection of investigation of
28 Plaintiff's shooting and interview, and protocol for evidentiary hearing."

¹² E.g., Exhibit I, 173:15; 174:21-175:4.

¹³ E.g., Exhibit C, 7/20/2016 entry for CNR: "Prepare for Evidentiary Hearing on Motion to Dismiss Plaintiff's
Complaint (includes review of Plaintiff's recorded audio statement to LVMPD, transcript of the same, Plaintiff's
deposition transcript and Errata to the same, review of expert report prepared by Plaintiff's expert D. Loong and
rebuttal report prepared by def. expert L. Etcoff and *draft outline of cross examination of D. Loong and direct
examination of L. Etcoff*)." (Emphasis added).

¹⁴ E.g., Exhibit C, 7/15/2016 entry for CNR: "T/c w/ Dr. Etcoff (rebuttal expert) re: potential for expert to be called as
witness at evidentiary hearing on Mt. to Dismiss Plaintiff's Complaint and underlying issues that may be addressed by
witness during hearing."

1 as the hearing unfolded. A clear example of his valuable involvement was at the time this Court
2 fashioned the sanction against Plaintiff. After the close of the hearing, this Court asked all
3 counsel, including Mr. Lee, to confer regarding potential sanctions short of the requested
4 dismissal. As Plaintiff will very well recall, Mr. Lee was actively involved in these discussions,
5 both proposing appropriate sanctions and refuting arguments by Plaintiff as to why the proposals
6 were not warranted.

7
8 Plaintiff's final argument with respect to the Lee Hernandez law firm is that he should not
9 be required to pay fees as a result of the duplicative nature of having several lawyers "prepare for
10 and sit through the evidentiary hearing."¹⁵ This Court, however, already made clear to Plaintiff
11 that he would be required to pay for the involvement of the multiple lawyers and law firms.
12 Specifically, Plaintiff was advised that with respect to the award of attorney's fees,

13 ...And unfortunately for you, you got two sets of defense counsel, but that's the
14 way it is. Nothing negative. I'm just saying you sue multiple people, you get
15 multiple defense counsel.¹⁶

16 Plaintiff's arguments against allowing for an award of the attorney's fees incurred by the
17 Lee Hernandez law firm should not be given any weight. This Court already advised him that
18 those fees would be included in the sanction.

19 **3. BACKUS, CARRANZA & BURDEN ATTORNEYS' FEES ARE APPROPRIATE AND NOT**
20 **EXCESSIVE.**

21 Plaintiff's final attempt to whittle away at the sanctions imposed by this Court is to argue
22 that the fees incurred by the BACKUS, CARRANZA & BURDEN law firm are excessive. Again, this is
23 nothing more than a transparent attempt to avoid the sanctions brought upon by his own discovery
24 abuses.

25 First, Plaintiff appears to be confused by the billing invoices and summary submitted by
26 the BACKUS, CARRANZA & BURDEN law firm. The common thread in all the complaints by
27

28
¹⁵ Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs, 4:4-5.

¹⁶ Exhibit I, 183:9-22.

1 Plaintiff are that the total time noted next to each date for each timekeeper does not add up to the
2 unredacted individual line item entries. The simple reason is that the total time entered for each
3 day reflects the total time billed on each date at the designated rate, while the unredacted line
4 items are the actual billing entries which relate to the motion to dismiss. Only the individual
5 unredacted line items were added together and submitted as part of the summary (Exhibit E)
6 totaling \$11,442.50 and ultimately included in the prayer for attorney's fees for the same
7 amount.¹⁷

8
9 For example, Plaintiff complains that the total time for July 7, 2016 reflects 3.5 of hours
10 billed by EC on the case, yet the unredacted work does not add up to 3.5 hours- it adds up to 2.2
11 hours.¹⁸ That is because only the unredacted line items, in this case, 2.2 hours, were requested in
12 the motion.

13
14 Had Defendants included all time billed on each date, the time attributed to Mr. Carranza
15 would total 57.7 hours and 20.6 hours for Ms. Halbert. That is not was has been included in the
16 motion and requested from this Court. Only the applicable line item time entries in July 2016
17 totaling 36.4 hours for Mr. Carranza and 14.5 hours for Ms. Halbert have been requested. A
18 simple mathematical addition of the line items reflect the same.

19 Secondly, the clarification eliminates the specific entries identified by Plaintiff for specific
20 tasks he characterizes as being excessive:

- 21 A. Drafting Order: incorrectly attributed 2.9 hours to begin drafting the order on the
22 motion to dismiss and another 4.3 hours to complete the same (total of 7.2 hours),
23 when actually only 0.5 hours attributed to begin drafting the order and 0.8 to
24 complete the order (total of 1.3 hours).

25
26

27
28

¹⁷ Motion for Attorney's Fees and Costs, 5:9-12.

¹⁸ Plaintiff's Opposition, 5:12-13.

1 B. Drafting letter to Court: incorrectly attributed 2.4 hours for drafting letter to Court
2 regarding audio recording, when actually only 0.2 hours was billed (and requested)
3 for the same.

4 C. Emails/letters: incorrectly attributed 2.6 hours for reading emails and drafting a
5 letter, when actually it totaled only 0.3 hours.
6

7 The total time and associated fees attributed to the BACKUS, CARRANZA & BURDEN law
8 firm are specifically limited to the unredacted line items detailed in the invoices submitted. And
9 each of these tasks were necessary and reasonable given their nature. Plaintiff has failed to show
10 otherwise.

11 III. CONCLUSION

12 At the end of the day, Plaintiff is trying to do nothing more than minimize the discomfort
13 he feels following the imposition of the monetary sanction. A sanction which this Court found
14 was warranted as an alternative to the requested dismissal. Significant fees were incurred by all
15 three law firms in order to address and attempt to ameliorate Plaintiff's abusive discovery tactics.
16 Sanctions, by their nature, are supposed to hurt otherwise they would not be sanctions. Had
17 Plaintiff not engaged in the abusive conduct, the efforts would not have been necessary and he
18 would not be facing an award of fees and costs.
19

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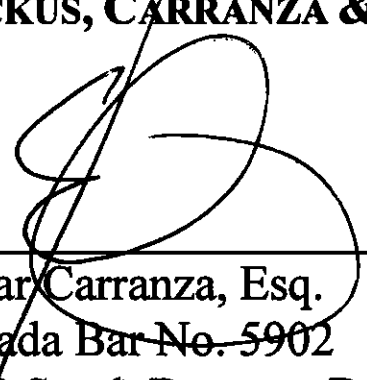
BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 Accordingly, Defendants respectfully request that the attorney's fees (\$54,325.00) and
2 costs (\$208.00) detailed in the opening motion be awarded and that Plaintiff be ordered to pay
3 these amounts within **14 days of this Court's order.**

4
5 Dated this 13th day of September, 2016.

BACKUS, CARRANZA & BURDEN

6
7
8 By:



Edgar Carranza, Esq.
Nevada Bar No. 5902
3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On September 13th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

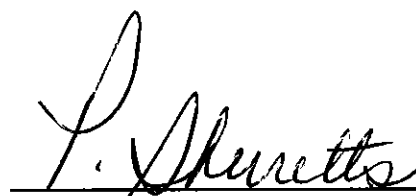
VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

SERVICE LIST

INJURY LAWYERS OF NEVADA		INJURY LAWYERS OF NEVADA
David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com	Attorney for Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means
David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com	Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means

EXHIBIT I

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

X'ZAVION HAWKINS,)	
)	CASE NO. A-15-717577
Plaintiff,)	DEPT NO. XXXI
vs.)	
)	
GGP MEADOWS MALL, LLC,)	
)	
Defendant.)	TRANSCRIPT OF
)	PROCEEDINGS

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

**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**

THURSDAY, JULY 21, 2016

APPEARANCES:

For the Plaintiff:	DAVID J. CHURCHILL, ESQ. JOLENE J. MANKE, ESQ.
For the Defendant:	DAVID S. LEE, ESQ. CHARLENE RENWICK, ESQ. EDGAR CARRANZA, ESQ.

RECORDED BY SANDRA PRUCHNIC, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 21, 2016, 9:59 A.M.

2 * * * * *

3 THE COURT: Counsel, let's hear appearances.

4 (Pause in proceeding.)

5 THE COURT: So we get appearances first. Let me
6 make sure. Like I said, we're calling Case 717577, X'Zavion
7 Hawkins vs. GGP Meadows Mall. Appearances, please.

8 MR. CHURCHILL: David Churchill for the plaintiff,
9 X'Zavion Hawkins.

10 MR. CARRANZA: Edgar Carranza for Defendants Mydatt
11 and Mark Warner. With me, I have Debora Halbert from my
12 office.

13 THE COURT: Thank you.

14 MS. RENWICK: Charlene Renwick on behalf of GGP
15 Meadows Mall, Mydatt and --

16 THE COURT: Observing or making appearances today?

17 UNKNOWN SPEAKER: I'm here for the 10:00 o'clock.

18 THE COURT: You're 10:00 o'clock. No, no. 10:00
19 o'clock got moved to 1:00 o'clock. You got specific notice on
20 that -- let me be clear. That's why I'm saying everybody else
21 here for -- because I was looking that way. For the HMLV
22 Capital vs. Clear Recon Group, we sent you a --

23 UNKNOWN SPEAKER: That's at 1:00 o'clock?

24 THE COURT: Yeah. We sent you a notification --

25 (Pause in proceeding.)

KARR REPORTING, INC.

1 THE COURT: Okay. Sorry for that interruption. So
2 we had plaintiff's counsel. Did you want to make an
3 appearance or not?

4 MS. MANKE: I'm Jolene Manke. I'm here for
5 plaintiff just helping to shuffle papers.

6 THE COURT: No worries. Counsel.

7 MR. LEE: Your Honor, David Lee on behalf of GGP and
8 Mydatt. I am not intending to speak on the record today, but
9 just in case.

10 THE COURT: Okay. No worries. Appreciate it.
11 Okay. Let's do a couple quick little housekeeping clean-ups.
12 I appreciate you probably used an old caption from pre-days
13 and prior hearings, but we need to make sure we have correct
14 counsel listed on meetings; meaning you're not on it
15 currently, a prior firm is still on the subpoena for today,
16 but obviously that's not a big issue, you all can get that
17 taken care of with any future pleadings.

18 MS. RENWICK: I apologize, Your Honor. I think that
19 subpoena was issued shortly after the last hearing and we just
20 missed that.

21 THE COURT: Okay. It was the one that was filed
22 7/19, what I'm looking at.

23 MS. RENWICK: Okay. I apologize, Your Honor. I
24 missed that entirely.

25 THE COURT: No worries. I just wanted to make --

1 THE COURT: It would be interesting to see what
2 your 16.1 disclosures look like to see if there's any names on
3 that, because the diligence required [inaudible] 16.1
4 disclosures. But anyway, that's not [inaudible].

5 Okay. Thank you. That was all my questions. Did I
6 give you an opportunity to finish?

7 MR. CHURCHILL: Yeah, Your Honor. That's -- but
8 that's pretty much it. There has been no violation whatsoever
9 of any court order and Mr. Hawkins in fact already rectified,
10 before any sanction could even be imposed upon him, he had
11 already rectified his deposition responses.

12 THE COURT: Okay. Thank you so much. You get last
13 word. It's your motion, or your joinder, whoever's speaking,
14 or if you both speaking, let me know.

15 MS. RENWICK: Your Honor, I would just like to make
16 a point of clarification before counsel gets up to respond.
17 There's been numerous implications that we received this
18 information and somehow were preventing plaintiff from
19 accessing it. I can tell you we met with Detective Majors. I
20 called, found out who the investigating officer was. As
21 counsel mentioned, both parties --

22 THE COURT: His depo is clear. There was no
23 insinuations you all engaged in any inappropriate conduct or
24 anything.

25 MS. RENWICK: Both we did subpoena records and there

1 is -- our understanding is that the files are separated. So
2 the investigating officer's records aren't part of the file
3 that was in records, which is why we kept getting the same
4 documents again and again and not getting Detective Majors'
5 file.

6 We were told that in order to speak to Detective
7 Majors we would have to subpoena him, which we did. We
8 scheduled a meeting. As we related to counsel, we met with
9 him. It was January 28. At that point he turned over the
10 voluntary statement, the transcriptions of the voluntary
11 statements and the audio recordings. At no point did he give
12 us his entire file.

13 He brought his file with him to his deposition, at
14 which point it was attached as an exhibit to the deposition
15 transcript. So I want to make that very clear. And if you'll
16 review in the deposition transcript that you were just looking
17 at for Detective Majors as to the timeline, it's on page 140,
18 when we were talking about those emails back and forth to
19 Jason Barrus.

20 THE COURT: Oh, thank you. Okay.

21 MS. RENWICK: Page 140. It was September of 2014.
22 I believe September 25. That was the exchange with Jason
23 Barrus as to obtaining the file.

24 THE COURT: Thank you.

25 MS. RENWICK: Just so you have the -- I know

1 timeline was an issue.

2 THE COURT: Well, no, I appreciate it, because
3 that's -- you know, I don't know what happened ever to the zip
4 drive, but...

5 DEFENDANTS' REBUTTAL ARGUMENT

6 MR. CARRANZA: Your Honor, and I know we've talked a
7 little bit about Rule 37 at length, about what it requires and
8 whether or not there was an order that preexisted. But if I
9 remember the motion to dismiss correctly, it was multi-tiered
10 as far as the basis that this Court has at its disposal to
11 dismiss this complaint.

12 In addition to Rule 37, there's also this concept
13 that the Court has the inherent control over its own docket
14 and calendar to manage its calendar in cases as it sees fit.
15 I think that's memorialized in Rule 1 of our Rules of Civil
16 Procedure.

17 And the argument in the motion was that in addition
18 to Rule 37, this Court could also look to the unclean hands
19 that Mr. Hawkins came to this Court with by engaging in the
20 type of activity that he engaged in, because all we've seen
21 here is nothing but convenient explanation by Mr. Hawkins that
22 somehow he was having a bad day when his deposition was taken
23 in February on every topic that could have painted a different
24 picture about his case. But on those topics that supported
25 his case, he was crystal clear on.

1 if this case goes to trial, that would address all of these
2 and the harm and the prejudice. I could also see if it was a
3 curative if you all needed extended time for discovery. I
4 know you've done one extension, but you didn't request that
5 the trial dates be continued in your one discovery request to
6 discovery commissioner. So I could see continuing the trial
7 to allow some additional discovery. I could see that as also
8 a potential partial curative.

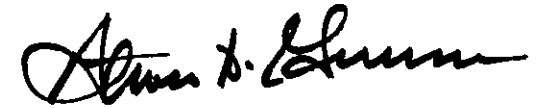
9 Monetary sanctions for the cost of today, the other
10 thing I'm looking at, because but for your client's conduct
11 and the manner in which it was done, today would not have been
12 necessary. And I think that financial aspect of allowing
13 defense counsel --

14 And unfortunately for you, you got two sets of
15 defense counsel, but that's the way it is. Nothing negative.
16 I'm just saying you sue multiple people, you get multiple
17 defense counsel.

18 -- is to allow them to submit fees and costs for
19 today's hearing, have you have an opportunity to review it and
20 have the Court evaluate it, whether or not, you know, fees and
21 costs sanctions would be appropriate for today's hearing with
22 regards to your client, because there is very strong concerns.

23 And I think those alternative remedies short of
24 dismissal would be appropriate. That's the Court's
25 inclination. You're the moving party, you're plaintiff, I can

EXHIBIT 30



CLERK OF THE COURT

BREF

DAVID J. CHURCHILL (SBN: 7308)

JOLENE J. MANKE (SBN: 7436)

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

vs.

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. NO.: XXXI

**PLAINTIFF'S SUPPLEMENTAL BRIEF
IN OPPOSITION TO DEFENDANTS'
MOTION FOR ATTORNEYS FEES AND
COSTS**

Date of Hearing: 09/20/2016

Time of Hearing: 9:00 a.m.

Plaintiff X'ZAVION HAWKINS by and through his attorneys INJURY LAWYERS OF NEVADA, hereby presents is supplemental briefing opposing Defendants' motion for attorneys' fees and costs relating to Defendants' motion to dismiss.

DATED this 26th day of September, 2016.

INJURY LAWYERS OF NEVADA



DAVID J. CHURCHILL (SBN: 7308)

JOLENE J. MANKE (SBN: 7436)

6900 Westcliff Drive, Suite 707

Las Vegas, Nevada 89145

Attorneys for Plaintiff

1 **POINTS AND AUTHORITIES - OPPOSITION TO DEFENDANTS' MOTION FOR**
2 **ATTORNEYS' FEES AND COSTS RE: MOTION TO DISMISS**

3 **I. LEGAL ISSUE**

4 The issue before this Honorable Court is whether the conflicted law firm of Lewis Brisbois
5 Bisgaard & Smith may seek to recover attorneys' fees and costs from Plaintiff.

6 **II. UNDISPUTED FACTS**

7 1. When Josh Cole Aicklen, Esq., a partner with Lewis Brisbois Bisgaard & Smith, was
8 retained to monitor the defense of Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY
9 SERVICES ("Mydatt") and MARK WARNER ("Warner") being provided by Lee, Hernandez,
10 Landrum & Garofalo in October of 2015, the law firm was employing Paul A. Shpirt, Esq., who had
11 formerly represented Plaintiff X'ZAVION HAWKINS ("X'Zavion") during his employment with Eglet
12 Law Group.
13

14 2. In October of 2015, Messrs. Aicklen and Shpirt realized Mr. Shpirt had represented
15 X'Zavion relating to the exact same matter while practicing with Eglet Law Group.
16

17 3. While LBBS claimed to take efforts to screen off Mr. Shpirt from X'Zavion's matter, the
18 firm never gave notice to X'Zavion that Mr. Shpirt was practicing with LBBS.

19 4. By never providing notice to X'Zavion, LBBS never gave X'Zavion the opportunity to
20 either consent or withhold consent to LBBS performing defense work for Mydatt and Warner.

21 5. At a hearing on June 8, 2016, LBBS was disqualified as counsel for Mydatt and Warner.

22 6. From approximately October of 2015, until the evidentiary hearing on June 8, 2016,
23 LBBS performed work defending Mydatt and Warner against X'Zavion.
24

25 7. Now, LBBS seeks to have X'Zavion pay for services performed to bring a motion to
26 dismiss against X'Zavion and in favor of Mydatt and Warner.

27 ///

28 ///

1 **III. LEGAL ARGUMENT**

2 **A. Conflicted Attorneys May Not Benefit From Ethical Lapses.**

3 This Court has already established that LBBS violated NRPC 1.9 and 1.10 relating to its defense
4 of Mydatt and Warner against X'Zavion. NRPC 1.9 provides as follows:

5 **Rule 1.9. Duties to Former Clients.**

6 (a) A lawyer who has formerly represented a client in a matter shall not thereafter
7 represent another person in the same or a substantially related matter in which that
8 person's interests are materially adverse to the interests of the former client unless the
9 former client gives informed consent, confirmed in writing.

10 (b) A lawyer shall not knowingly represent a person in the same or a substantially
11 related matter in which a firm with which the lawyer formerly was associated had
12 previously represented a client:

13 (1) Whose interests are materially adverse to that person; and

14 (2) About whom the lawyer had acquired information protected by Rules 1.6 and
15 1.9(c) that is material to the matter;

16 (3) Unless the former client gives informed consent, confirmed in writing.

17 (c) A lawyer who has formerly represented a client in a matter or whose present or
18 former firm has formerly represented a client in a matter shall not thereafter:

19 (1) Use information relating to the representation to the disadvantage of the
20 former client except as these Rules would permit or require with respect to a client, or
21 when the information has become generally known; or

22 (2) Reveal information relating to the representation except as these Rules would
23 permit or require with respect to a client.

24 Further, NRPC 1.10 provides as follows:

25 **Rule 1.10. Imputation of Conflicts of Interest.**

26 (a) While lawyers are associated in a firm, none of them shall knowingly represent a
27 client when any one of them practicing alone would be prohibited from doing so by Rules
28 1.7, 1.9, or 2.2, unless the prohibition is based on a personal interest of the prohibited
lawyer and does not present a significant risk of materially limiting the representation of
the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not
prohibited from thereafter representing a person with interests materially adverse to those
of a client represented by the formerly associated lawyer and not currently represented by
the firm unless:

(1) The matter is the same or substantially related to that in which the formerly
associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and
1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client
under the conditions stated in Rule 1.7.

1 (d) Reserved.

2 (e) When a lawyer becomes associated with a firm, no lawyer associated in the firm
3 shall knowingly represent a person in a matter in which that lawyer is disqualified under
4 Rule 1.9 unless:

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

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

9 (3) Written notice is promptly given to any affected former client to enable it to
10 ascertain compliance with the provisions of this Rule.

11 Every jurisdiction has rules prohibiting attorney-client conflicts.

12 California Rule of Professional Conduct 3-310 prohibiting attorney-client conflicts provides as
13 follows:

14 **Rule 2-210 Avoiding the Representation of Adverse Interests**

15 (A) For purposes of this rule:

16 (1) "Disclosure" means informing the client or former client of the relevant circumstances
17 and of the actual and reasonably foreseeable adverse consequences to the client or former
18 client;

19 (2) "Informed written consent" means the client's or former client's written agreement to
20 the representation following written disclosure;

21 (3) "Written" means any writing as defined in Evidence Code section 250.

22 (B) A member shall not accept or continue representation of a client without providing
23 written disclosure to the client where:

24 (1) The member has a legal, business, financial, professional, or personal relationship
25 with a party or witness in the same matter; or

26 (2) The member knows or reasonably should know that:

27 (a) the member previously had a legal, business, financial, professional, or personal
28 relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or personal
relationship with another person or entity the member knows or reasonably should know
would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the
subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the
clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the
interests of the clients actually conflict; or

1 (3) Represents a client in a matter and at the same time in a separate matter accept as a
2 client a person or entity whose interest in the first matter is adverse to the client in the
3 first matter.

4 When California courts have addressed the issue of whether conflicted law firms may benefit
5 from work performed relating to conflicted matters, they have long determined that forfeiture and
6 disgorgement of attorneys' fees is appropriate. In *Sheppard Mullin Richter & Hampton LLP v. J-M*
7 *Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253 (Cal. App. 4th 2016), a California appellate court relied on
8 California's long-standing precedent to require a conflicted law firm to disgorge and forfeit millions of
9 dollars in legal fees based on the firm's failure to disclose an actual conflict of interest. (A true and
10 correct copy of *Sheppard Mullin Richter & Hampton LLP v. J-M Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253
11 (Cal. App. 4th 2016) is attached hereto as Ex. "1.")

12 In *Sheppard*, the law firm had billed over \$3.8 million defending its client J-M Manufacturing
13 Co., Inc., the world's largest manufacturer of polyvinyl chloride (PVC) pipe in a large Qui Tam lawsuit
14 involving numerous parties. *Id.* at 257. Prior to its engagement, the firm ran a standard conflicts check
15 that indicated the firm had represented one of the adverse intervening parties in the Qui Tam action,
16 South Tahoe Public Utility District, on certain unrelated employment matters. *Id.* Several weeks later
17 the firm also undertook a new and minor unrelated matter for South Tahoe, but failed to disclose the
18 existing conflict with J-M or obtain an informed waiver of the conflict from either of its clients. *Id.* at
19 258. Neither the court nor J-M disputed the limited scope of the work performed by the firm on behalf
20 of South Tahoe. The most important fact was the firm's failure to give notice of its ongoing, adverse
21 representation. *Id.* at 260.

22 South Tahoe brought a successful motion to disqualify the Sheppard Mullin firm in the Qui Tam
23 action. *Id.* After Sheppard Mullin was disqualified, J-M refused to pay approximately \$1.3 million in
24 outstanding legal fees. *Id.* Sheppard Mullin sued J-M to recover those outstanding fees and compel
25 arbitration where the arbitration panel awarded the firm a majority of its attorneys' fees. *Id.* at 261. The
26 arbitration panel found that "Sheppard Mullin's conduct was not so serious or egregious as to make
27 disgorgement of fees appropriate" where the representation of the adverse client "was unrelated to the
28 subject of the J-M representation, and therefore the conflict did not pervade the whole relationship with

1 J-M ...” *Id.* A California trial court affirmed the arbitration award, but J-M appealed, arguing that the
2 violation of CRPC 3-310 on conflicts of interest rendered the engagement contract illegal or void as a
3 matter of public policy. *Id.* at 261.

4 First, the California appeals court determined that, under the applicable arbitration agreement
5 and California law, the court should make a de novo determination as to whether the engagement
6 contract was enforceable. *Id.* at 262-265. Second, the court determined that, despite standard waivers of
7 both current and future conflicts contained in their client’s engagement agreements, Sheppard Mullin
8 had failed to obtain informed written consent as required by Rule 3-310(C)(3). *Id.* at 266-267. Third,
9 the court found that the “attorney’s duty of undivided loyalty that forms the basis of Rule 3-310
10 constitutes the very foundation of an attorney-client relationship” and, thus, the engagement agreement
11 was invalid and unenforceable because it “violated an expression of public policy.” *Id.* at 272-273.

12 Turning to the merits, the court held that Sheppard Mullin “[was] not entitled to its fees for the
13 work it did for J-M while there was an actual conflict with [its other client].” *Id.* at 274. In reaching this
14 conclusion, the court relied primarily on two California appeals court cases from the 1970’s. *See, Id.* at
15 272 (analyzing *Goldstein v. Lees*, 120 Cal.Rptr. 253 (Cal. App. 1975) and *Jeffry v. Pounds*, 136
16 Cal.Rptr.373 (Cal. App. 1977)). The *Goldstein* court found an engagement contract “void for reasons of
17 public policy” where counsel represented a minority shareholder and director in a proxy fight to gain
18 control of a company for which the attorney had served as in-house counsel several years prior to the
19 proxy fight. 120 Cal.Rptr. at 254-255. Central to the decision was the fact that the attorney possessed
20 “corporate secrets that [were] material to the proxy fight.” *Id.* at 255. In *Jeffry*, a small law firm’s lead
21 partner represented both a husband in a personal injury action and his wife in her divorce proceeding
22 against the husband. 67 Cal.App 3d at 374-375. There, the court denied any fees for work performed
23 after the conflict arose even though the representations involved “unrelated matters” and the law firm
24 did not have a “dishonest purpose” or engage in “deliberately unethical conduct.” *Id.* at 377.

25 Besides arguing for all its fees, Sheppard Mullin also argued that despite its violation of CRPC
26 3-310, quantum meruit should be allowed for its representation of J-M in the Qui Tam action. *Id.* at
27 274. However, the court pointed out that the California Supreme Court had found that quantum meruit
28 recovery must be denied in cases of ethical violations. *Id.* (citing *Huskinson & Brown v. Wolf*, 32 Cal.4th

1 453, 9 Cal. Rptr.3d 693, 84 P.3d 379 (2004).) The *Sheppard Mullin* court further found that “when a
2 conflict of interest is asserted as a “[d]efense in the attorney’s action to recover fees or the reasonable
3 value of services[, a] violation of the fiduciary obligation will defeat recovery.” *Id.* at 272. (citing 1
4 Witkin, Cal. Proc. 5th (2008) Attys, 104, p. 142.) The *Sheppard Mullin* court found that “Sheppard
5 Mullin’s violation of Rule 3-310 preclude[d] if from receiving compensation [whatsoever] for services
6 provided to J-M in the Qui Tam Action.” *Id.* Likewise, LBBS’ violation of its fiduciary duty to
7 X’Zavion created by its failure to provide notice of its employment of Mr. Shpirt must preclude it from
8 looking to X’Zavion for any compensation for services provided defending Mydatt and Warner against
9 X’Zavion.

10 The *Sheppard Mullin* court was swayed by the *Fair* decision, in which the court found
11 disgorgement of attorney fees appropriate regardless of any proof of damages when a conflict of interest
12 is involved, *See, Fair*, 125 Cal.Rptr.3d at 779. Besides precluding a conflicted firm from seeking
13 recovery from the aggrieved client, the *Sheppard Mullin* decision arguably sets precedent for the
14 automatic disgorgement of all attorneys’ fees incurred while a conflict of interest violation exists.

15 If anything, the facts relating to X’Zavion and LBBS are more egregious than those relating to
16 *Sheppard Mullin*. While the work Sheppard Mullin performed for South Tahoe was completely
17 unrelated and quite minor, the work performed by LBBS defending Mydatt and Warner was directly
18 related to X’Zavion and so adverse that LBBS filed a motion to dismiss X’Zavion’s complaint.

19 Lastly, the *Sheppard Mullin* court found that

20 Sheppard Mullin’s breach of the duty of loyalty set forth in Rule 3-310 was a violation of
21 public policy. A finding that Sheppard Mullin was nonetheless entitled to its attorney
22 fees as if no breach had occurred would undermine the same public policy. We therefore
23 follow the reasoning of *Goldstein* and *Jeffry* and hold that Sheppard Mullin is not entitled
24 to its fees for the work it did for J-M while there was an actual conflict with South Tahoe.
Id. at 274.

25 From the inception of LBBS’ representation of Mydatt and Warner, it had a direct conflict of
26 interest with X’Zavion pursuant to NRPC 1.9 and 1.10. No exception under the State Bar of Nevada’s
27 Formal Opinion from the Standing Committee on Ethics, No. 39 applied to LBBS’ employment of Mr.
28 Shpirt because LBBS never provided notice to X’Zavion that Mr. Shpirt was employed with LBBS.

1 X'Zavion never had the opportunity to consent or withhold his consent for LBBS to represent
2 Defendants Mydatt and Warner in this matter.

3 At the time LBBS filed the motion to dismiss against X'Zavion on behalf of Mydatt and Warner,
4 the firm was actively violating its duty of loyalty to X'Zavion. Such action is against public policy.
5 LBBS seeking to recover attorneys' fees from X'Zavion for the very work it performed while it was
6 acting contrary to his interests is also against public policy. Again, LBBS never should have had any
7 adversarial involvement in this matter as the conflict of interest is imputed to the entire firm. As such,
8 X'Zavion respectfully requests that this Honorable Court not consider any work performed by LBBS or
9 any costs incurred by LBBS as set forth in Ex. "A" to Defendants' motion for attorneys' fees and costs.
10 Accordingly, Defendants' requested attorneys' fees should be reduced by Twenty-Nine Thousand, Two
11 Hundred One Dollars (\$29,201.00).

12 **IV. CONCLUSION**

13 Based upon the foregoing, X'Zavion respectfully requests that LBBS' request for attorneys' fees
14 from X'Zavion be denied in its entirety.

15 DATED this 26th day of September, 2016

16 INJURY LAWYERS OF NEVADA

17 

18
19 DAVID J. CHURHCHILL (SBN: 7308)
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21 6900 Westcliff Drive, Suite 707
22 Las Vegas, Nevada 89145
23 *Attorneys for Plaintiff*
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25
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27
28

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 26th day of
3 September, 2016, I served the foregoing **PLAINTIFF'S SUPPLEMENTAL BRIEF IN**
4 **OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS FEES AND COSTS** on the
5 following parties via Electronic Service as follows:
6

7 DAVID S. LEE (SBN: 6033)
8 CHARLENE N. RENWICK (SBN: 10165)
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10 GAROFALO
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14 crenwick@lee-lawfirm.com
15 Attorneys for Defendants
16 GGP MEADOWS MALL LLC;
17 MYDATT SERVICES, INC.
18 d/b/a VALOR SECURITY SERVICES; and
19 and MARK WARNER
20
21
22
23
24
25
26
27
28

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MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER


an employee of Injury Lawyers of Nevada

Exhibit “1”

244 Cal.App.4th 590
Court of Appeal,
Second District, Division 4, California.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Plaintiff and Respondent,
v.
J-M MANUFACTURING CO., INC., Defendant and Appellant.

B256314

Filed January 29, 2016

As Modified on Denial of Rehearing February 26, 2016

Synopsis

Background: Attorneys filed action against former client for specific performance, breach of contract, account stated, services rendered, and quantum meruit, seeking recovery of attorney fees under engagement agreement relating to prior litigation from which attorneys were disqualified for simultaneous representation of adverse clients. Client cross-complained for breach of contract, an accounting, breach of fiduciary duty, and fraudulent inducement, and sought disgorgement of fees previously paid. The Superior Court, Los Angeles County, No. YC067332, Stuart Rice, J., granted attorneys' motion to compel arbitration, and following arbitration, confirmed award in favor of attorneys. Client appealed.

Holdings: The Court of Appeal, Collins, J., held that:

- [1] question of enforceability of parties' agreement was for the court, rather than arbitrator, to decide;
- [2] attorneys violated rules of professional conduct by representing client while also representing adverse party in prior litigation in unrelated matters;
- [3] attorneys' violation of rules of professional conduct rendered parties' agreement unenforceable; and
- [4] attorneys' violation of rules of professional conduct precluded attorneys from collecting attorney fees from client for work done while actual conflict existed.

Reversed and remanded with instructions.

West Headnotes (24)

[1]	Alternative Dispute Resolution Scope and Standards of Review
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	<p>On appeal from an order confirming an arbitration award, Court of Appeal reviews the trial court's order, not the arbitration award, under a de novo standard.</p> <p>Cases that cite this headnote</p>
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[2]	<p>Alternative Dispute Resolution Scope and standards of review</p>
	<p>De novo standard of review governs trial court's review of arbitrator's decision where one of the parties claims that entire contract or transaction underlying the award is illegal.</p> <p>Cases that cite this headnote</p>

[3]	<p>Alternative Dispute Resolution Existence and validity of agreement</p>
	<p>Question of enforceability of engagement agreement entered into by attorneys and their former client, which contained arbitration provision, was for the court to decide, rather than arbitrators, in attorneys' action against client to recover attorney fees incurred in prior litigation under agreement; although client did assert garden-variety fraudulent inducement, client challenged legality of agreement as a whole based on alleged conflict of interest stemming from attorneys' simultaneous representation of adverse clients, in violation of rules of professional conduct. Cal. Civ. Code §§ 1441, 1667; Cal. R. Prof. Conduct 3-310.</p> <p>Cases that cite this headnote</p>

[4]	<p>Alternative Dispute Resolution What law governs</p>
	<p>Where parties agree that state law governs contract containing arbitration provision, Federal Arbitration Act (FAA) does not apply. 9 U.S.C.A. § 1.</p> <p>Cases that cite this headnote</p>

[18]	Contracts Public Policy in General
	<p>There is no requirement that a contract violate express mandate of a statute before it may be declared void as contrary to public policy. Cal. Civ. Code §§ 1441, 1667.</p> <p>Cases that cite this headnote</p>

[19]	Contracts Public Policy in General
	<p>When determining whether a contract is unenforceable because it violates public policy, public policy in question may sometimes be based on statute, but does not necessarily have to be; it can be based on other policies perceived to be contrary to the public welfare. Cal. Civ. Code §§ 1441, 1667.</p> <p>Cases that cite this headnote</p>

[20]	Attorney and Client Deductions and forfeitures
	<p>Attorneys' violation of rule of professional conduct prohibiting simultaneous representation of adverse clients by representing former client, who was the defendant in prior litigation, while also representing the adverse party in that litigation in unrelated matters precluded attorneys from collecting attorney fees from client under parties' engagement agreement pertaining to prior litigation for work attorneys did for client while there was an actual conflict; conflict pervaded entire relationship between attorney and client, attorneys' ethical breach went to the very heart of its relationship with client, and finding that attorneys were entitled to fees would have undermined public policy underlying rule. Cal. R. Prof. Conduct 3-310(C); Restatement (Third) of the Law Governing Lawyers § 37.</p> <p>Cases that cite this headnote</p>

[21]	Attorney and Client Deductions and forfeitures
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[5]	Alternative Dispute Resolution Scope of inquiry in general
	<p>If a party challenges enforceability of entire contract containing arbitration provision after arbitration in motion to vacate arbitration award, any preliminary determination of legality of contract by arbitrator, whether in the nature of a determination of a pure question of law or a mixed question of fact and law, should not be held to be binding upon trial court.</p> <p>Cases that cite this headnote</p>

[6]	Alternative Dispute Resolution Matters of public interest Alternative Dispute Resolution Illegal contracts and transactions
	<p>Laws in support of a general public policy and in enforcement of public morality cannot be set aside by arbitration, and neither will persons with a claim forbidden by the laws be permitted to enforce it through the transforming process of arbitration.</p> <p>Cases that cite this headnote</p>

[7]	Alternative Dispute Resolution Existence and validity of agreement
	<p>Challenge to enforceability of a contract containing arbitration provision as a whole, rather than a portion of an otherwise enforceable contract, must be decided by the court rather than the arbitrator.</p> <p>Cases that cite this headnote</p>

[8]	Attorney and Client Representing Adverse Interests
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	<p>Attorneys violated rule of professional conduct prohibiting an attorney from simultaneously representing adverse clients by representing former client, who was the defendant in prior litigation, while also representing an adverse party in that litigation in unrelated matters; although parties' engagement agreement pertaining to prior litigation contained conflict waiver, attorneys did not disclose any information to client about conflict with adverse party in prior litigation, and attorneys did not obtain client's informed, written consent to continued representation despite the actual conflict that occurred. Cal. R. Prof. Conduct 3-310(A)(2), (C)(3).</p> <p>Cases that cite this headnote</p>
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[9]	<p>Contracts Questions for jury</p>
	<p>Whether a contract is illegal or contrary to public policy is a question of law to be determined from the circumstances of each particular case. Cal. Civ. Code §§ 1441, 1667.</p> <p>Cases that cite this headnote</p>

[10]	<p>Attorney and Client Representing Adverse Interests</p>
	<p>Where fully informed consent is not obtained, duty of loyalty to different clients renders it impossible for attorney, consistent with ethics and the fidelity owed to clients, to advise one client as to a disputed claim against the other. Cal. R. Prof. Conduct 3-310(C)(3).</p> <p>Cases that cite this headnote</p>

[11]	<p>Attorney and Client Disclosure, waiver, or consent</p>
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	<p>Because waiver of attorney-client conflict must be informed, second waiver may be required if original waiver insufficiently disclosed the nature of a subsequent conflict. Cal. R. Prof. Conduct 3-310(C)(3).</p> <p>Cases that cite this headnote</p>
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[12]	<p>Attorney and Client Disclosure, waiver, or consent</p>
	<p>Written consent to all potential and actual conflicts in the absence of any knowledge about the existence of such conflicts cannot comply with the requirement of "informed written consent" necessary for attorney to represent clients with adverse interests. Cal. R. Prof. Conduct 3-310(C)(3).</p> <p>Cases that cite this headnote</p>

[13]	<p>Attorney and Client Making, requisites, and validity</p>
	<p>Attorneys' violation of rule of professional conduct prohibiting simultaneous representation of adverse clients by representing former client, who was the defendant in prior litigation, while also representing the adverse party in that litigation in unrelated matters rendered engagement agreement between attorneys and client in prior litigation unenforceable; rule was an expression of public policy central to attorney-client relationship sufficient to render agreement unenforceable. Cal. Civ. Code §§ 1441, 1667; Cal. R. Prof. Conduct 3-310(C)(3).</p> <p>Cases that cite this headnote</p>

[14]	<p>Contracts Enforcement of contract in general</p>
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	<p>Contract made contrary to public policy or against the express mandate of a statute may not serve as the foundation of any action, either in law or in equity, and parties will be left, therefore, where they are found when they come to a court for relief. Cal. Civ. Code §§ 1441, 1550(3), 1596, 1598, 1607, 1667.</p> <p>Cases that cite this headnote</p>
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[15]	<p>Attorney and Client Nature of attorney's duty</p>
	<p>Effective functioning of fiduciary relationship between attorney and client depends on client's trust and confidence in counsel, and courts will protect clients' legitimate expectations of loyalty to preserve this essential basis for trust and security in attorney-client relationship.</p> <p>Cases that cite this headnote</p>

[16]	<p>Attorney and Client Representing Adverse Interests</p>
	<p>Primary value at stake in cases of simultaneous or dual representation is the attorney's duty, and client's legitimate expectation, of loyalty, rather than confidentiality. Cal. R. Prof. Conduct 3-310(C).</p> <p>Cases that cite this headnote</p>

[17]	<p>Attorney and Client Representing Adverse Interests</p>
	<p>Paramount concern in cases of simultaneous or dual representation by attorney is to preserve public trust in the scrupulous administration of justice and the integrity of the bar. Cal. R. Prof. Conduct 3-310(C).</p> <p>Cases that cite this headnote</p>

	<p>It is the general rule in conflict of interest cases that, where an attorney violates his ethical duties to the client, attorney is not entitled to a fee for his services. Cal. R. Prof. Conduct 3-310(C); Restatement (Third) of the Law Governing Lawyers § 37.</p> <p>Cases that cite this headnote</p>
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[22]	<p>Attorney and Client Deductions and forfeitures</p>
	<p>Disgorgement of attorney fees, when sought as a tort remedy in cases not involving a serious ethical breach, may require evidence of actual damages to avoid providing the client with a windfall.</p> <p>Cases that cite this headnote</p>

[23]	<p>Attorney and Client Deductions and forfeitures</p>
	<p>When a serious ethical breach is at issue, an attorney may not recover fees for services rendered, regardless of whether the fees have already been collected from the client or if the fees have yet to be paid.</p> <p>Cases that cite this headnote</p>

[24]	<p>Attorney and Client Right to compensation in general Attorney and Client Deductions and forfeitures</p>
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Violation of a rule that constitutes a serious breach of fiduciary duty, such as a conflict of interest that goes to the heart of the attorney-client relationship, warrants denial of recovery of attorney fees under quantum meruit theory. Cal. R. Prof. Conduct 3-310(C); Restatement (Third) of the Law Governing Lawyers § 37.

See 1 Witkin, Cal. Procedure (5th ed. 2008) Attorneys, § 440.

Cases that cite this headnote

****255 APPEAL** from a judgment of the Superior Court of Los Angeles County, Stuart Rice, Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. YC067332)

Attorneys and Law Firms

****256** Greines, Martin, Stein & Richland, Kent L. Richardson, Barbara W. Ravitz, and Jeffrey E. Raskin, Los Angeles, for Defendant and Appellant.

Gibson, Dunn & Crutcher, Kevin S. Rosen, Theane Evangelis, and Heather L. Richardson, Los Angeles, for Plaintiff and Respondent.

COLLINS, J.

***596 INTRODUCTION**

Appellant J-M Manufacturing Company, Inc. (J-M) appeals from a judgment in favor of its former attorneys, Sheppard, Mullin, Richter & Hampton, LLP (Sheppard Mullin). Sheppard Mullin sought recovery of attorney fees relating to litigation in which Sheppard Mullin represented J-M. Sheppard *597 Mullin was disqualified from that litigation because, without obtaining informed consent from either client, Sheppard Mullin represented J-M, the defendant in the litigation, while simultaneously representing an adverse party in that case, South Tahoe Public Utility District (South Tahoe), in unrelated matters. J-M argued that its engagement agreement with Sheppard Mullin was unenforceable because it was illegal and it violated the public policy embodied in the California Rules of Professional Conduct Rule 3-310 (Rule 3-310),¹ which bars simultaneous representation of adverse clients. J-M argued that as a result of Sheppard Mullin's violation, J-M did not owe Sheppard Mullin outstanding attorney fees and Sheppard Mullin should return to J-M all attorney fees paid pursuant to the agreement.

The trial court ordered the case to arbitration based on the parties' written engagement agreement. A panel of three arbitrators found that the agreement was not illegal, denied J-M's request for disgorgement of fees paid, and ordered J-M to pay Sheppard Mullin's outstanding fees. The trial court confirmed the award and J-M appealed, arguing that the trial court enforced an illegal contract in violation of public policy.

Under California law, because J-M challenged the legality of the entire agreement, the issue of illegality was for the trial court, rather than the arbitrators, to decide. The undisputed facts establish that Sheppard Mullin violated the requirements of Rule 3-310 by simultaneously representing J-M and South Tahoe. Sheppard Mullin failed to disclose the conflict to either J-M or South Tahoe, and it failed to obtain the informed written consent of either client to the conflict. The representation of both parties without informed written consent is contrary to California law and contravenes the public policy embodied in Rule 3-310. Because Sheppard Mullin's representation of J-M violated Rule 3-310 and public policy, the trial court erred by enforcing the contract between the parties and entering judgment on the arbitration award based on that contract. We therefore reverse the judgment.

J-M also seeks disgorgement of all fees paid to Sheppard Mullin. Sheppard Mullin, on the other hand, argues that under principles of quantum meruit, it is entitled to attorney fees despite its violation of the Rules of Professional Conduct. We follow established California law and find that Sheppard Mullin is not entitled to fees for the work it did while violating Rule 3-310, which exemplifies the inviolate duty of loyalty an attorney owes a client. Because the point at which the actual conflict arose **257 is unclear from the record, however, we remand for a factual finding on that issue.

***598 FACTUAL AND PROCEDURAL BACKGROUND**

We take portions of our factual history from the declarations submitted to the arbitration panel, which are in the record on appeal.

A. The underlying litigation: the Qui Tam Action

In 2006, a qui tam action was initiated against J-M and Formosa Plastics Corporation U.S.A. on behalf of approximately 200 real parties in interest, including the United States, seven states, and other state and local government entities. (*United States ex rel. Hendrix v. J-M Manufacturing Company, Inc.*, United States District Court for the Central District of California, case No. 5:06-cv-00055-GW-PJW (Qui Tam Action).) J-M manufactures polyvinyl chloride (PVC) pipe. The Qui Tam Action alleged that J-M falsely represented to its customers that the PVC pipe products it sold conformed to applicable industry standards for water works parts. It also alleged that, contrary to this representation, J-M was aware of numerous tests proving that its PVC pipe regularly failed to meet the minimum longitudinal tensile-strength requirements. The complaint demanded over \$1 billion in damages.

Another law firm represented J-M in the initial phases of the Qui Tam Action. By February 2010, the complaint was unsealed, and numerous governmental entities were filing notices of intervention. Camilla Eng, J-M's general counsel, invited Sheppard Mullin attorneys Bryan Daly and Charles Kreindler to meet with her and J-M chief executive officer Walter Wang to discuss replacing J-M's current counsel. They discussed the experience of the Sheppard Mullin attorneys in qui tam actions and their proposed defense strategy. J-M retained Sheppard Mullin shortly thereafter.

Sheppard Mullin represented J-M in the Qui Tam Action for sixteen months, litigating motions, conducting discovery, reviewing documents, and conducting an extensive internal investigation at J-M. It billed J-M nearly \$3.8 million for approximately 10,000 hours of work.

B. Conflict waiver provision

In March 2010, before J-M retained Sheppard Mullin, Daly and Kreindler ran a conflicts check to determine whether Sheppard Mullin had represented any of the real parties in interest identified in the Qui Tam Action. They discovered that Jeffrey Dinkin, a Sheppard Mullin labor-and-employment partner, had done work for South Tahoe, one of the municipal intervenors in the Qui Tam Action. Dinkin stated in a declaration that he began working with South Tahoe early in his career when he worked at a different firm. When he moved to Sheppard Mullin in 2002, he brought South Tahoe with him as a client. South Tahoe signed an engagement agreement with Sheppard *599 Mullin in 2002, and it renewed that agreement in 2006. The agreement had a broad advance conflict waiver provision similar to the one in the J-M agreement, discussed below. Dinkin did occasional, as-needed labor and employment work for South Tahoe between 2006 and November 2009.

When Sheppard Mullin's conflict check for J-M revealed that South Tahoe was a client, Daly and Kreindler consulted with an assistant general counsel to Sheppard Mullin. That unidentified attorney informed them that South Tahoe had "agreed to an advance conflict waiver and that Sheppard Mullin had done no work for [South Tahoe] for the previous five **258 months (since November 2009)." In addition, Daly and Kreindler discussed the issue with Ronald Ryland, Sheppard Mullin's general counsel, "who analyzed [South Tahoe's] conflict waiver and informed us that it allowed us to represent J-M in the Qui Tam Action."

Daly met with Eng for two hours on March 4, 2010, to discuss a draft engagement agreement. The draft contained the advance conflict waiver provision that ultimately was included in the final engagement agreement. It stated, "*Conflicts with Other Clients.* Sheppard, Mullin, Richter & Hampton LLP has many attorneys and multiple offices. We may *currently or in the future represent one or more other clients (including current, former, and future clients) in matters involving [J-M]*. We undertake this engagement on the condition that we may represent another client in a matter in which *we do not represent [J-M]*, even if the interests of the other client are adverse to [J-M] (including appearance on behalf of another client adverse

to [J-M] in litigation or arbitration) and can also, if necessary, examine or cross-examine [J-M] personnel on behalf of that other client in such proceedings or in other proceedings to which [J-M] is not a party *provided* the other matter is not substantially related to our representation of [J-M] and in the course of representing [J-M] we have not obtained confidential information of [J-M] material to representation of the other client. *By consenting to this arrangement, [J-M] is waiving our obligation of loyalty to it so long as we maintain confidentiality and adhere to the foregoing limitations.* We seek this consent to allow our Firm to meet the needs of existing and future clients, to remain available to those other clients and to render legal services with vigor and competence. Also, if an attorney does not continue an engagement or must withdraw therefrom, the client may incur delay, prejudice or additional cost such as acquainting new counsel with the matter.” (Italics added except for word “provided.”) We refer to this as the “conflict waiver provision.”

According to Daly, Eng carefully reviewed the entire draft agreement with him, and she “did not ask me any questions or express any concern about the advance conflict waiver.” Eng declared that Sheppard Mullin attorneys never discussed the conflict waiver provision with her, nor did they explain it. Eng *600 also said the Sheppard Mullin attorneys assured her there were no conflicts in representing J-M in the Qui Tam Action. J-M’s practice was to ensure that its outside attorneys had neither potential nor actual conflicts of interest. Although Eng made a number of handwritten edits related to the fee provisions, and also edited the paragraph preceding the conflict waiver provision, she did not edit the conflict waiver provision. She ultimately executed the engagement agreement (the Agreement) on March 8, 2010, and sent it to Daly by email.

C. South Tahoe raises the conflict of interest in the Qui Tam Action

Dinkin began actively working for South Tahoe again on March 29, 2010. Between March 2010 and May 2011, Sheppard Mullin billed South Tahoe for 12 hours of work, including telephone conversations and work on employment matters.

In March 2011, Day Pitney, counsel for South Tahoe in the Qui Tam Action, wrote a letter to Sheppard Mullin asserting that Sheppard Mullin had a conflict as a result of its simultaneous representation of J-M and South Tahoe. In response to the Day Pitney letter, Sheppard Mullin took the position that South Tahoe had agreed to an advance conflict waiver in its engagement **259 agreement with Sheppard Mullin and therefore no conflict existed. Day Pitney’s position was that there was an actual conflict. In April 2011, Day Pitney informed Sheppard Mullin that South Tahoe planned to bring a motion to disqualify Sheppard Mullin from the Qui Tam Action.

According to Eng’s declaration submitted in the arbitration proceedings, she first heard about the conflict with South Tahoe on April 20, 2011, which she asserts was about 50 days after Day Pitney first contacted Sheppard Mullin about the conflict. Eng stated that Sheppard Mullin did not inform J-M that counsel for South Tahoe had contacted Sheppard Mullin about a potential disqualification motion because of the conflict until after the disqualification motion was filed.

Eng also stated that she first learned about the results of the March 2010 conflicts check on June 22, 2011, when she read in Sheppard Mullin attorneys’ declarations that the conflicts check had revealed South Tahoe as a client. She declared that Sheppard Mullin never requested a conflict waiver from J-M in light of the South Tahoe conflict, and had Sheppard Mullin requested it, J-M would have declined.

D. Sheppard Mullin is disqualified as counsel in the Qui Tam Action

South Tahoe’s disqualification motion in the Qui Tam Action was heard on June 6, 2011. The district court tentatively ruled that the advance waiver in *601 South Tahoe’s engagement agreement with Sheppard Mullin was invalid. In its tentative ruling, the court cited Rule 3-310(C)(3), which bars an attorney from representing clients in adverse positions without the informed written consent of each client.² The court referred to the engagement agreement letters between Sheppard Mullin and South Tahoe, and said that “the prospective waivers contained within the 2002 and 2006 letters were ineffective to indicate South Tahoe’s informed consent to the conflict at issue here.” The court added, “The Court cannot conclude that South Tahoe was in any way close to ‘fully informed’” about the conflict with J-M.

The court rejected Sheppard Mullin’s suggestion that it could drop South Tahoe as a client and remain counsel for J-M in the Qui Tam Action, citing *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1037, 117 Cal.Rptr.2d 685 (*American Airlines v. Sheppard Mullin*): “A lawyer may not avoid the automatic disqualification rule applicable to concurrent representation of conflicting interests by unilaterally converting a present client into a former client.” The parties suggested bifurcating South Tahoe from the Qui Tam Action, with separate counsel for J-M working on that portion of the case. The hearing was continued to give the parties an opportunity to determine if that was a viable solution.

On June 9, 2011, Sheppard Mullin sent a letter to South Tahoe that began, “We write to address the long-standing

relationship between the [South Tahoe Public Utility] District and our Firm. We have been pleased to provide labor advice to you for the last 9 years.” Sheppard Mullin offered to “promptly pay to the District the sum of \$100,000” and to “provide up to 40 hours of free labor and employment legal advice and services.” In return, Sheppard Mullin asked that South Tahoe **260 “consent to the Firm’s continued representation of J–M in the pending federal district court action and any other state or federal action that the District and J–M may be involved in.” South Tahoe declined on June 16, 2011. On July 1, Sheppard Mullin increased its offer to \$250,000 and 40 hours of employment work in exchange for a conflict waiver. South Tahoe’s response is not in the record, but it appears that the offer was rejected. Meanwhile, J–M rejected the proposal to bifurcate South Tahoe from the Qui Tam Action with separate counsel defending that portion of the case.

On July 14, 2011, the district court granted South Tahoe’s motion to disqualify Sheppard Mullin.

***602 E. The present action**

After Sheppard Mullin was disqualified, J–M took the position that J–M was not required to pay Sheppard Mullin any fees that were outstanding at the time of the disqualification. J–M also demanded that Sheppard Mullin return all fees relating to the Qui Tam Action that J–M had already paid.

In June 2012, Sheppard Mullin filed an action against J–M for specific performance, breach of contract, account stated, services rendered, and quantum meruit. It sought approximately \$1.3 million as payment for services rendered to J–M in the Qui Tam Action and related matters. It also sought specific performance of the arbitration provision in the Agreement. J–M cross-complained for breach of contract, an accounting, breach of fiduciary duty, and fraudulent inducement. It also sought disgorgement of fees previously paid to Sheppard Mullin.

Sheppard Mullin petitioned for an order compelling arbitration. J–M opposed arbitration, partly on the basis that the entire Agreement containing the arbitration provision was illegal and void as against public policy because Sheppard Mullin’s conflict of interest between J–M and South Tahoe violated Rule 3–310(C)(3). J–M argued that the court was required to determine whether the contract was enforceable before sending the case to arbitration, because “the Court has an *independent duty* to ensure that it does not use its power to enforce an illegal contract.”

The trial court granted Sheppard Mullin’s motion to compel arbitration. The court noted that the parties “contract[ed] out of the procedural requirements of the Federal Arbitration Act (FAA) ... by providing that California law applies to disputes arising out of the subject retainer agreement.” The court rejected J–M’s argument that the contract was unenforceable based on illegality, instead interpreting J–M’s arguments as arising under the doctrine of fraudulent inducement: “[J–M] argues that *circumstances unbeknown to it* at the time of signing the agreement, i.e. [Sheppard Mullin’s] alleged conflict of interest, caused the *entire* retainer agreement to be unenforceable. Thus, [J–M] *knew what it was signing*, but [Sheppard Mullin] allegedly induced such consent by fraudulent means....” The court found that J–M had alleged fraud in the inducement, and the issue should be presented to the arbitrator. J–M’s petition for writ of mandate challenging this ruling was denied.

F. Arbitration

Pursuant to the terms of the arbitration provision, the arbitration was conducted before a panel of three arbitrators. The parties stipulated that J–M waived any challenge to the value or quality of Sheppard Mullin’s work in *603 the Qui Tam Action and any claim for costs (fees included) associated with replacing Sheppard Mullin in the Qui Tam Action.

**261 The arbitrators’ final award considered the claimed ethical violation and “fraudulent concealment of the conflict.” The arbitrators found “that the better practice would have been [for Sheppard Mullin] to disclose the full South Tahoe situation to J–M, and seek J–M’s waiver of it.” But the arbitrators concluded that they need not decide whether Sheppard Mullin’s failure to seek such a waiver constituted an ethical violation, and for purposes of their analysis assumed that the ethical violation occurred. The arbitrators rejected J–M’s claim for fraudulent concealment, based on their finding that Sheppard Mullin honestly and in good faith believed that no conflict existed when it undertook J–M’s representation in the Qui Tam Action.

The arbitrators found the assumed ethical violation did not require automatic fee disgorgement or forfeiture. Instead, they engaged in an equitable weighing of whether the ethical violation was serious or egregious. The arbitrators concluded that Sheppard Mullin’s conduct was not so serious or egregious as to make disgorgement or forfeiture of fees appropriate. They also found that Sheppard Mullin’s representation of South Tahoe involved a matter that was unrelated to the subject of the J–M representation, and therefore the conflict did not pervade the whole relationship with J–M or go to the heart of Sheppard Mullin’s representation of J–M.

The arbitrators awarded Sheppard Mullin \$1,118,147 in unpaid fees, pre-award interest of \$251,471, and interest of \$302

per day from January 8, 2014 until the date of the award against J–M. They awarded no recovery to J–M from Sheppard Mullin.

G. Petitions to confirm or vacate the award

Sheppard Mullin petitioned the trial court to confirm the arbitration award; J–M petitioned the court to vacate the award, again arguing that Sheppard Mullin violated Rule 3–310(C)(3), and sought an order requiring Sheppard Mullin to disgorge the fees it received from J–M. The trial court confirmed the award. It found the arbitrators did not exceed their powers in that the Agreement was not illegal or void and the arbitration award did not violate public policy or a statutory right. The court concluded that a violation of Rule 3–310 did not render the entire retainer agreement illegal, void, or unenforceable. It reasoned that whether an attorney should be entitled to attorney fees despite the existence of an ethical violation was at the heart of the determination made by the arbitrators, and that the court could not disrupt the legal and factual findings of the arbitrators.

The court entered judgment confirming the arbitration award on March 18, 2014. This timely appeal by J–M followed.

***604 DISCUSSION**

A. Standard of review

[1] [2]“On appeal from an order confirming an arbitration award, we review the trial court’s order (not the arbitration award) under a de novo standard.” (*Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 892 fn. 7, 64 Cal.Rptr.2d 484 (*Lindenstadt*).) This is “the standard of review that governs a trial court’s review of an arbitrator’s decision where one of the parties claims that the entire contract or transaction underlying the award is illegal.” (*Ibid.*) This is such a case.

B. Where a party challenges an entire contract as illegal or in violation of public policy, the question of enforceability is for the court

[3] A central issue in this case is the court’s role where a party has alleged that **262 an entire contract, rather than a portion of a contract, is unenforceable because it violates public policy. Here, J–M has challenged the entire Agreement—rather than just a portion—as unenforceable.³ J–M argues that the trial court should not have confirmed the arbitration award, because by doing so the court enforced a contract that violates California’s public policy as articulated in the Rules of Professional Conduct for attorneys.

Sheppard Mullin, on the other hand, argues that the arbitration award was properly confirmed because a court’s role in reviewing arbitration awards is extremely limited. Following arbitration, review is typically limited to the grounds set forth in Code of Civil Procedure section 1286.2 (section 1286.2), which provides that an arbitration award may be vacated only if the trial court makes particular findings, such as determining that the award was procured by fraud or corruption, the rights of the parties were substantially prejudiced by the actions of the arbitrators, or “the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon which the controversy submitted.” (§ 1286.2.)

Determining whether federal or state law governs the Agreement is crucial to whether the court or the arbitrators should have decided if the Agreement was enforceable, and therefore how we review that decision. The trial court *605 held that this question was properly presented to the arbitrators, noting that *Phillips v. Sprint PCS* (2012) 209 Cal.App.4th 758, 147 Cal.Rptr.3d 274 (*Phillips*) holds that a “challenge ... that contests the validity of the agreement as a whole, is decided by the arbitrator.” (*Id.* at p. 774, 147 Cal.Rptr.3d 274.) *Phillips*, however, and the U.S. Supreme Court case upon which it relied, *Buckeye Check Cashing, Inc. v. Cardegna* (2006) 546 U.S. 440, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (*Buckeye*), were governed by the Federal Arbitration Act (FAA; 9 U.S.C. § 1, et seq.), not California law. (See *Phillips*, *supra*, 209 Cal.App.4th at p. 764, 147 Cal.Rptr.3d 274 [noting that under the terms of the contract at issue, “the Federal Arbitration Act (FAA), not California law, ‘govern[s] all questions of whether a claim is subject to arbitration.’ ”]; *Buckeye*, *supra*, 546 U.S. at pp. 445–446, 126 S.Ct. 1204 [as a matter of “substantive federal arbitration law,” “the issue of the contract’s validity is considered by the arbitrator in the first instance”].)

[4] However, the Agreement states that J–M “agrees that this agreement will be governed by the laws of California without regard to its conflict rules.” Where the parties agree that California law governs the contract, the FAA does not apply. (*Mastick v. TD Ameritrade, Inc.* (2012) 209 Cal.App.4th 1258, 1264, 147 Cal.Rptr.3d 717 (*Mastick*); see also *Volt*

Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University (1989) 489 U.S. 468, 470, 109 S.Ct. 1248, 103 L.Ed.2d 488 [California arbitration law is not preempted by the FAA where the parties have agreed that their arbitration agreement will be governed by California **263 law].) Cases applying the FAA, therefore, are not controlling here.

[5] Under California law, a challenge to the legality of an entire contract that contains an arbitration provision must be determined by the trial court, not the arbitrator. “The power of the arbitrator to determine rights under a contract is *dependent upon the existence of a valid contract* under which this right might arise, and the question of the validity of the basic contract is essentially a *judicial question*, which cannot be finally determined by an arbitrator.” (1 Witkin, Summary 10th (2005) Contracts, § 450, p. 490, citing *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 610, 204 P.2d 23 (*Loving*).) And if a party challenges the enforceability of a contract after arbitration in a motion to vacate the arbitration award, the court should “review[] the evidence de novo to determine whether the arbitration award was based on illegal agreements or transactions.” (*Lindenstadt, supra*, 55 Cal.App.4th at pp. 888–889, 64 Cal.Rptr.2d 484.) “[A]ny preliminary determination of legality by the arbitrator, whether in the nature of a determination of a pure question of law or a mixed question of fact and law, should not be held to be binding upon the trial court.” (*Loving, supra*, 33 Cal.2d at p. 609, 204 P.2d 23.)

Sheppard Mullin, arguing that limited judicial review applies, relies on *606 *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10 Cal.Rptr.2d 183, 832 P.2d 899 (*Moncharsh*) and *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 33, 152 Cal.Rptr.3d 199 (*Ahdout*). These cases are not controlling, however, because they address judicial review when a party has alleged that only a portion of an otherwise enforceable contract—rather than the contract as a whole—is illegal or unenforceable.

The Supreme Court explored this distinction in *Loving, supra*, 33 Cal.2d 603, 204 P.2d 23. In that case, the Court held it was error to confirm an arbitration award in favor of unlicensed contractors. The Court stated that “ordinarily with respect to arbitration proceedings ‘the merits of the controversy between the parties are not subject to judicial review,’ [citations]. But ... the rules which give finality to the arbitrator’s determination of ordinary questions of fact or of law are inapplicable where the issue of illegality of the entire transaction is raised in a proceeding for the enforcement of the arbitrator’s award.” (*Id.* at p. 609, 204 P.2d 23.) The Court went on to say that deference to the findings of the arbitrators was not warranted in such circumstances: “When so raised, the issue [of illegality] is one for judicial determination upon the evidence presented to the trial court, and any preliminary determination of legality by the arbitrator, whether in the nature of a determination of a pure question of law or a mixed question of fact and law, should not be held to be binding upon the trial court.” (*Ibid.*; see also *All Points Traders, Inc. v. Barrington Associates* (1989) 211 Cal.App.3d 723, 737, 259 Cal.Rptr. 780.)

The Supreme Court again emphasized this distinction in *Moncharsh*, which involved a challenge to only the fee-splitting clause of the relevant agreement, rather than the entire agreement. (*Moncharsh, supra*, 3 Cal.4th at p. 32, 10 Cal.Rptr.2d 183, 832 P.2d 899 [“*Moncharsh* challenges but a single provision of the overall employment contract”].) Since only a claim of *partial* illegality was raised, the Court ruled that the issue of illegality was for the arbitrator to resolve. (*Id.* at p. 30, 10 Cal.Rptr.2d 183, 832 P.2d 899.) Indeed, the *Moncharsh* Court said that if the parties had established that the entire contract was illegal, the arbitration clause would not be enforceable: “[I]f an otherwise **264 enforceable arbitration agreement is contained in an illegal contract, a party may avoid arbitration altogether.” (*Id.* at 29, 10 Cal.Rptr.2d 183, 832 P.2d 899; see also *Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 917, 182 Cal.Rptr.3d 644, 341 P.3d 438 [“*Moncharsh* noted that judicial review may be warranted when a party claims that an arbitrator has enforced an entire contract or transaction that is illegal.”].)

Lindenstadt, supra, 55 Cal.App.4th 882, 64 Cal.Rptr.2d 484 also held that the trial court, not the arbitrator, must determine the legality of an entire contract. There, the court recognized the general rule that courts should not interfere with arbitration awards, but noted that in *Loving* “the Supreme Court recognized a narrow exception to the general rule” when a party challenged the legality of the entire contract. (*Lindenstadt, supra*, 55 Cal.App.4th at p. 889, 64 Cal.Rptr.2d 484.) In that *607 case, plaintiff Lindenstadt assisted defendant Staff Builders in locating home health care businesses to acquire. Lindenstadt brought an action against Staff Builders seeking finder’s fees for locating several businesses; Staff Builders asserted that Lindenstadt was statutorily barred from seeking fees because he acted as an unlicensed real estate broker. (*Id.* at pp. 885–886, 64 Cal.Rptr.2d 484.) The case went to arbitration based on the parties’ contract, and the arbitrator concluded Lindenstadt was entitled to fees. (*Id.* p. 887, 64 Cal.Rptr.2d 484.) In its opposition to Lindenstadt’s motion to confirm the arbitration award, Staff Builders argued that the trial court was obligated to undertake a de novo review of the evidence to determine whether the arbitration award was based on illegal contracts or transactions. (*Id.* p. 888, 64 Cal.Rptr.2d 484.) The Court of Appeal agreed, saying that Lindenstadt “ ‘cannot be permitted to rely upon the arbitrator’s conclusion of legality’ ([*Loving, supra*, 33 Cal.2d] at p. 614, 204 P.2d 23) since ‘... it would violate public policy to allow a party to do through arbitration what it cannot do through litigation’ (*Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 316, fn. 2, 197 Cal.Rptr. 581, 673 P.2d 251, [*Ericksen*]).” (*Lindenstadt, supra*, 55 Cal.App.4th at pp. 892–893, 64 Cal.Rptr.2d 484.) The Court of Appeal remanded the case to allow the trial court to determine whether Lindenstadt acted as an unlicensed real estate broker in each transaction at issue.

[6] *Ahdout, supra*, 213 Cal.App.4th 21, 152 Cal.Rptr.3d 199, also discussed the different standards of review of an arbitration award depending on whether a party challenges an entire contract, or only a portion of a contract, as illegal or unenforceable. *Ahdout* contrasted *Loving*, where the entire agreement was challenged, with *Moncharsh*, where only a portion of the contract was challenged: “Whereas the building contract in *Loving* was rendered void in its entirety by the contractor’s lack of a license, the illegality alleged in *Moncharsh* affected only one provision of an employment contract....” (*Ahdout, supra*, at p. 36, 152 Cal.Rptr.3d 199.) *Ahdout* recognized that the enforceability of the entire contract was also challenged in *Lindenstadt*, and added, “Indeed, the court in *Lindenstadt* noted the language in *Moncharsh* limiting the scope of *Loving* to cases where the entire contract or transaction was illegal.” (*Ibid.*) By comparison, *Ahdout* noted that “the alleged illegality in the instant case does not infect the entire contract.” (*Ibid.*) As a result, *Ahdout* found, review of the arbitrator’s decision on the narrow grounds articulated in section 1286.2 was appropriate in that case, and “the exception enunciated in *Loving* and *Lindenstadt*, as considered **265 by *Moncharsh*, is not applicable.” (*Ibid.*) Here, judicial determination is required because, as in *Loving* and *Lindenstadt*, J–M has challenged the legality of the contract as a whole.⁴

[7] *608 J–M argued that the entire Agreement was unenforceable because Sheppard Mullin had a conflict of interest when it simultaneously represented J–M in the Qui Tam Action and adverse party South Tahoe in other matters. As stated in *Loving*, *Moncharsh*, *Lindenstadt*, and *Ahdout*, a challenge to the enforceability of a contract as a whole, rather than a portion of an otherwise enforceable contract, must be decided by the court rather than the arbitrator.⁵ The trial court therefore erred by deferring to the arbitrators in determining the enforceability of the Agreement.

C. Sheppard Mullin violated Rule 3–310

[8] Turning to the substance of the case, we determine whether Sheppard Mullin’s simultaneous representation of J–M and South Tahoe violated Rule 3–310 of the California Rules of Professional Conduct. As noted above, we consider this question de novo.

Rule 3–310(C)(3) provides that an attorney “shall not, *without the informed written consent of each client* ... [r]epresent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.” (Italics added.) “‘Informed written consent’ means the client’s ... written agreement to the representation **266 following written disclosure.” (Rule 3–310(A)(2).)

[9] *609 J–M argues that the Agreement violated “the fundamental public policy embodied in rule 3–310(C) of the Rules of Professional Conduct, which required J–M’s informed written consent to any conflicting representation by Sheppard.” Sheppard Mullin, on the other hand, argues that the “Engagement Agreement’s conflict waiver was plainly legal.” “Whether a contract is illegal or contrary to public policy is a question of law to be determined from the circumstances of each particular case.” (*Jackson v. Rogers & Wells* (1989) 210 Cal.App.3d 336, 349–350, 258 Cal.Rptr. 454; see also *Brisbane Lodging, L.P. v. Webcor Builders, Inc.* (2013) 216 Cal.App.4th 1249, 1256–1257, 157 Cal.Rptr.3d 467; *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 838, 247 Cal.Rptr. 340.)

Sheppard Mullin argues that J–M’s “illegality argument rests entirely on disputed factual issues that are not reviewable.” Sheppard Mullin cites *Loving* to argue that illegality must be proved by “uncontradicted evidence.” (See *Loving, supra*, 33 Cal.2d at p. 610, 204 P.2d 23 [if “it appears to the court from the uncontradicted evidence that the contract is illegal,” the court should deny a petition to compel arbitration or enforce an arbitration award].) Courts have rejected this interpretation of *Loving*. “[A] reading of *Loving & Evans* to require uncontradicted evidence of illegality is too formalistic. The court did not explicitly condition its holding on the existence of uncontroverted evidence. Rather, the case merely stands for the proposition that the legality of the underlying agreement should first be judicially determined.” (*Green v. Mt. Diablo Hospital Dist.* (1989) 207 Cal.App.3d 63, 74, 254 Cal.Rptr. 689.)

Nonetheless, the essential facts are not in dispute. Sheppard Mullin partner Jeffery Dinkin did work for South Tahoe before the parties entered into the Agreement. Sheppard Mullin’s conflicts check revealed Dinkin’s work for South Tahoe before Sheppard Mullin gave the Agreement to J–M, but Sheppard Mullin concluded that there was no reason to disclose this relationship to J–M. J–M signed the Agreement without knowing that Sheppard Mullin represented South Tahoe in unrelated matters. The parties disagree about whether South Tahoe was a “former” client or a “current” client at the time the Agreement was signed. However, it is undisputed that three weeks after J–M signed the Agreement, Dinkin began working for South Tahoe again, so there is no question that there was an actual conflict at that point. Sheppard Mullin was disqualified from the Qui Tam Action as a result.

Sheppard Mullin argues that it proceeded as required by Rule 3–310(C)(3): “The conflict waiver in the Engagement Agreement waives both current *and* future conflicts. Waivers of current and future conflicts are commonplace and enforced by California and other courts.” The conflict waiver provision in the Agreement stated that Sheppard Mullin “may currently

or in the future represent one or more other clients (including current, former, and future *610 clients) in matters involving [J–M].” The Agreement allowed Sheppard Mullin to engage in conflicting representations “*provided* the other matter is not substantially related to our representation of [J–M] and in the course of representing [J–M] we have not obtained confidential information of [J–M] material to representation of the other client.” It continued, “By consenting to this arrangement, [J–M] is waiving our obligation of loyalty to it so long as we maintain confidentiality and adhere to the foregoing limitations.”

[10] **267 What Sheppard Mullin ignores, however, is that Rule 3–310(C)(3) requires *informed* written consent. “Where ... a fully informed consent is not obtained, the duty of loyalty to different clients renders it impossible for an attorney, consistent with ethics and the fidelity owed to clients, to advise one client as to a disputed claim against the other.” (*Klemm v. Superior Court* (1977) 75 Cal.App.3d 893, 898, 142 Cal.Rptr. 509.)

Here, the undisputed facts demonstrate that Sheppard Mullin did not disclose *any* information to J–M about a conflict with South Tahoe. The Agreement includes a boilerplate waiver that included no information about any specific potential or actual conflicts. Dinkin was working for South Tahoe while Sheppard Mullin was defending J–M against South Tahoe in the Qui Tam Action. It strains credulity to suggest that the Agreement constituted “*informed* written consent” of actual conflicts to J–M, when in fact Sheppard Mullin was silent about any conflict.

[11] Even assuming Sheppard Mullin was not representing South Tahoe at the time it entered into the agreement with J–M, Sheppard Mullin nonetheless began performing additional work for South Tahoe three weeks later. It did not inform either client of this actual conflict. Because “waiver must be informed, a second waiver may be required if the original waiver insufficiently disclosed the nature of a subsequent conflict.” (*Concat LP v. Unilever, PLC* (N.D. Cal. 2004) 350 F.Supp.2d 796, 820 (*Concat*), citing *Visa U.S.A. Inc. v. First Data Corp.* (N.D. Cal. 2003) 241 F.Supp.2d 1100, 1106 (*Visa*); see also Rule 3–310(C)(3) [an attorney may not “accept” new representation creating an actual conflict with an existing client without obtaining informed, written consent]; *Western Sugar Coop. v. Archer–Daniels–Midland Co.* (C.D. Cal. 2015) 98 F.Supp.3d 1074, 1082 (*Western Sugar*).)

In asserting its position that the waiver in the Agreement was sufficient, Sheppard Mullin relies on *Zador Corp. v. Kwan* (1995) 31 Cal.App.4th 1285, 37 Cal.Rptr.2d 754 (*Zador*) and *Visa, supra*, 241 F.Supp.2d 1100 to argue that its broadly worded future waiver was sufficient. These cases, however, demonstrate the appropriate steps an attorney should take to obtain a client’s informed written consent to a conflict pursuant to Rule 3–310—and thus highlight Sheppard Mullin’s failure to do so.

*611 *Zador, supra*, 31 Cal.App.4th 1285, 37 Cal.Rptr.2d 754 addressed informed waivers of potential future conflicts. In that case, Zador Corporation purchased a parcel of property through its agent, C.K. Kwan. A subsequent conveyance of the property gave rise to a claim by another party that he was entitled to an interest in the property, and he sued Zador, Kwan, and another entity. Zador asked the law firm Heller, Ehrman, White & McAuliffe (Heller), which had represented Zador’s ownership for ten years, to handle the lawsuit.

Kwan asked Heller to represent him as well. Heller made clear to Kwan that it was also representing Zador, and presented Kwan with an agreement waiving and consenting to potential conflicts of interest. The agreement explained that while there was no present, actual conflict between Zador and Kwan, actual conflicts could arise if the interests of Zador became inconsistent with Kwan’s interests. The agreement explained possible risks if an actual conflict arose, including “shared attorney-client loyalties” and possible erosion of attorney-client privilege, and stated that Heller would continue to represent Zador if its interests became adverse to Kwan. The agreement encouraged Kwan **268 to seek independent counsel regarding the “import of this consent” and asked him to agree not to seek disqualification of Heller if an actual conflict arose. (*Zador, supra*, 31 Cal.App.4th at pp. 1289–1290, 37 Cal.Rptr.2d 754.) Kwan took twenty minutes to study the agreement and then signed it. (*Id.* at p. 1290, 37 Cal.Rptr.2d 754.)

Two months later, Heller learned of a possible conflict between Kwan and Zador. Heller informed Kwan of the possible conflict and recommended he retain independent counsel. Kwan reaffirmed his consent to Heller’s continued representation of Zador. In a confirming letter to Kwan, Heller memorialized this consent. Eventually, however, Zador (through Heller) named Kwan as a cross-defendant. (*Zador, supra*, 31 Cal.App.4th at pp. 1291–1292, 37 Cal.Rptr.2d 754.) Kwan then moved to disqualify Heller and the trial court granted the motion. (*Id.* at p. 1292, 37 Cal.Rptr.2d 754.)

The Court of Appeal held that disqualification of Heller was not required because Kwan had provided informed consent to Heller’s continued representation of Zador in the event of a conflict. (*Zador, supra*, 31 Cal.App.4th at p. 1295, 37 Cal.Rptr.2d 754.) The court noted with approval that “The waiver and consent form was detailed.” (*Id.* at p. 1299, 37 Cal.Rptr.2d 754, repeated at p. 1301, 37 Cal.Rptr.2d 754.) The court pointed out that when adversity arose between Kwan and Zador, Kwan obtained separate legal counsel but initially “reaffirmed his agreement to the consent form and to Heller’s continued representation of Zador.” (*Id.* at p. 1301, 37 Cal.Rptr.2d 754.) The order disqualifying Heller was therefore reversed. (*Id.* at p.

The second case Sheppard Mullin cites, *Visa, supra*, 241 F.Supp.2d 1100, also involved a motion to disqualify Heller in a case involving a potential *612 future conflict. First Data, which was developing a system to process credit card transactions, asked Heller to represent it in a patent infringement action pending in Delaware. The parties recognized a possible future conflict with Visa, with whom Heller had a longstanding relationship. Heller informed First Data that although it saw no current conflict in representing First Data in the Delaware action, it would only agree to represent First Data if First Data agreed to permit Heller to represent Visa in any future disputes, including litigation, that might arise between First Data and Visa. First Data agreed, and signed an engagement letter that clearly stated these terms. (*Visa*, at p. 1102.)

About a year later, Visa sued First Data in California for trademark infringement and other claims. First Data moved to disqualify Heller as counsel for Visa in the California case, arguing that Heller's violation of Rule 3-310(C) required automatic disqualification. (*Visa, supra*, 241 F.Supp.2d at p. 1104.)

The district court observed that an advance waiver of potential future conflicts, such as the one executed by First Data and Heller, is permitted under California law, even if the waiver does not specifically state the exact nature of the future conflict. (*Visa, supra*, 241 F.Supp.2d at p. 1105.) Citing *Zador*, the *Visa* court emphasized that the "only inquiry that need be made is whether the waiver was fully informed," and noted that "[a] second waiver by First Data in a non-related litigation would only be required if the waiver letter insufficiently disclosed the nature of the conflict that subsequently arose between Visa and First Data." (*Id.* at p. 1106.)

Citing *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145, 86 Cal.Rptr.2d 816, 980 P.2d 371 (*Speedee Oil*), **269 *Zador, supra*, 31 Cal.App.4th 1285, 37 Cal.Rptr.2d 754, and other authority, the *Visa* court identified factors to be taken into account in evaluating whether full disclosure was made and the client made an informed waiver, such as the breadth of the waiver, the temporal scope of the waiver, the quality of the conflicts discussion between the attorney and the client, and the nature of the actual conflict. (*Visa, supra*, 241 F.Supp.2d at p. 1106.) Applying these factors, the *Visa* court found that the waiver was sufficient because Heller had identified the adverse client and disclosed as fully as possible the nature of any potential conflict. Heller had also explained that in the event of an actual conflict, it would represent Visa in any matters against First Data, including litigation. (*Id.* at p. 1107.) The court found that First Data signed the waiver with fully informed consent to any conflict with Visa. (*Id.* at pp. 1108-1109.)

Zador and *Visa* stand in sharp contrast to the facts here. Unlike Heller in *Zador* and *Visa*, Sheppard Mullin did not disclose the circumstances regarding a potential or actual conflict with South Tahoe to either J-M or South *613 Tahoe. The Sheppard Mullin attorneys on the Qui Tam Action were aware the firm had a relationship with South Tahoe, and even sought advice from firm counsel as to whether it had to be disclosed before J-M signed the Agreement. The conflict waiver provision in the Agreement did not mention South Tahoe. Instead, it broadly waived all current and future conflicts with any client: "*Conflicts with Other Clients.* Sheppard, Mullin Richter & Hampton LLP has many attorneys and multiple offices. We may currently or in the future represent one or more other clients (including current, former, and future clients) in matters involving [J-M].... By consenting to this arrangement, [J-M] is waiving our obligation of loyalty to it so long as we maintain confidentiality and adhere to the foregoing limitations."

[12] The facts here therefore are not analogous to *Zador* and *Visa*, because Sheppard Mullin (1) failed to inform J-M about any potential or actual conflict with South Tahoe, and (2) did not obtain J-M's informed, written consent to continued representation despite the actual conflict that occurred while Sheppard Mullin was working for J-M and South Tahoe at the same time. Written consent to all potential and actual conflicts in the absence of any knowledge about the existence of such conflicts cannot comply with the requirement of "informed written consent" in Rule 3-310(C). Because Sheppard Mullin failed to secure informed written consent to the conflict before or during its representation of J-M, the Agreement violated Rule 3-310.⁶

D. Rule 3-310 is an expression of public policy central to the attorney-client relationship, the violation of which warrants finding the Agreement unenforceable

[13] Having found that Sheppard Mullin violated Rule 3-310, the next question **270 is whether the violation renders the parties' Agreement unenforceable. We find that it does.

[14] A contract must have a lawful object or the contract is void. (Civ. Code, §§ 1550, subd. (3), 1596, 1598.) An unlawful contract is not valid. (Civ. Code, §§ 1607, 1667.) A contract is unlawful if it is "1. Contrary to an express provision of law; 2. Contrary to the policy of express law, though *614 not expressly prohibited; or, 3. Otherwise contrary to good morals." (Civ.

Code, § 1667; see also Civ. Code, §§ 1441 [“A condition in a contract, the fulfillment of which is ... unlawful ... is void”], 1608 [“If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void”].) Therefore, courts have long held that “[a] contract made contrary to public policy or against the express mandate of a statute may not serve as the foundation of any action, either in law or in equity [citation], and the parties will be left, therefore, where they are found when they come to a court for relief.” (*Tiedje v. Aluminum Taper Milling Co.* (1956) 46 Cal.2d 450, 453–454, 296 P.2d 554; see also *Kashani v. Tsann Kuen China Enterprise Co., Ltd.* (2004) 118 Cal.App.4th 531, 541, 13 Cal.Rptr.3d 174.)

[15] At issue in this case are the public policies embodied in the California Rules of Professional Conduct, which “are not only ethical standards to guide the conduct of members of the bar; but they also serve as an expression of public policy to protect the public.” (*Altschul v. Sayble* (1978) 83 Cal.App.3d 153, 163, 147 Cal.Rptr. 716 (*Altschul*)). “The effective functioning of the fiduciary relationship between attorney and client depends on the client’s trust and confidence in counsel. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275,) 282, 285, 36 Cal.Rptr.2d 537, 885 P.2d 950 [*Flatt*].) The courts will protect clients’ legitimate expectations of loyalty to preserve this essential basis for trust and security in the attorney-client relationship. (*Ibid.*)” (*Speedee Oil, supra*, 20 Cal.4th at pp. 1146–1147, 86 Cal.Rptr.2d 816, 980 P.2d 371.) Sheppard Mullin breached this essential basis for trust and security as to both J–M and South Tahoe.

A contract in violation of Rule 3–310(C) is against the public interest. “Rule 3–310 and conflict of interest rules are designed to ‘assure the attorney’s absolute and *undivided loyalty* and commitment to the client and the *protection of client confidences*.’ (1 Vapnek et al., Cal. Practice Guide: Professional Responsibility) (The Rutter Group 2007 ¶ 4:4, p. 4–3.)” (*Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 427, 78 Cal.Rptr.3d 37.) “It is well established that an attorney’s duties to his client are governed by the Rules of Professional Conduct, and that those rules, together with statutes and general principles relating to other fiduciary relationships, ‘help define the duty component of the fiduciary duty which an attorney owes his client.’ [Citation.]” (*American Airlines v. Sheppard Mullin, supra*, 96 Cal.App.4th at p. 1032, 117 Cal.Rptr.2d 685.)

[16] [17] “The primary value at stake in cases of simultaneous or dual representation is the attorney’s duty—and the client’s legitimate expectation—of loyalty, rather than confidentiality.” (*Flatt, supra*, 9 Cal.4th at p. 284, 36 Cal.Rptr.2d 537, 885 P.2d 950.) The Supreme Court explained the *615 underlying public policy: “A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship.” **271 (*Id.* at p. 285, 36 Cal.Rptr.2d 537, 885 P.2d 950.) Thus, “[t]he courts will protect clients’ legitimate expectations of loyalty to preserve this essential basis for trust and security in the attorney-client relationship. (*Ibid.*)” (*Speedee Oil, supra*, 20 Cal.4th at pp. 1146–1147, 86 Cal.Rptr.2d 816, 980 P.2d 371.) “ ‘The paramount concern ... [is] to preserve public trust in the scrupulous administration of justice and the integrity of the bar.’ ” (*Fiduciary Trust International of California v. Superior Court* (2013) 218 Cal.App.4th 465, 485–486, 160 Cal.Rptr.3d 216 (*Fiduciary Trust*), quoting *Speedee Oil, supra*, 20 Cal.4th at p. 1145, 86 Cal.Rptr.2d 816, 980 P.2d 371.)

At oral argument, Sheppard Mullin cited *Ahdout* to argue that courts may consider only public policy as expressly declared by the Legislature. As a result, Sheppard Mullin argued, the Rules of Professional Conduct—adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California (Rule 1–100)—do not represent a statement of California public policy sufficient to render a contract unenforceable. (See *Ahdout, supra*, 213 Cal.App.4th at pp. 38–39, 152 Cal.Rptr.3d 199 [“The fact that [Bus. & Prof. Code] section 7031 reflects an explicit expression by the Legislature of its public policy objectives sets this case apart from *Moncharsh*, which concerned alleged violations of the Rules of Professional Conduct that are approved by the Supreme Court, not the Legislature.”].) This is an incorrect reading of *Ahdout*, which distinguished cases such as *Moncharsh* that discuss the Rules of Professional Conduct but did not hold that such rules cannot serve as a valid expression of public policy.

[18] [19] Instead, “[t]here is no requirement that a contract violate an express mandate of a statute before it may be declared void as contrary to public policy.” (*Altschul, supra*, 83 Cal.App.3d at p. 162, 147 Cal.Rptr. 716; see also *Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 901, 102 Cal.Rptr.2d 502 [“Both legislative enactments and administrative regulations can be utilized to further this state’s public policy of protecting consumers in the marketplace of goods and services.”].) When determining whether a contract is unenforceable because it violates public policy, courts may look to a variety of sources. “The public policy in question may sometimes be based on statute (see, e.g., *Wildman v. Government Employees’ Ins. Co.* (1957) 48 Cal.2d 31, 307 P.2d 359[]) but does not necessarily have to be—it can be based on other policies perceived to be contrary to the public welfare. (See *Altschul* [, *supra*,] 83 Cal.App.3d 153, 162, 147 Cal.Rptr. 716 [court refuses to enforce fee-for-referral agreements among attorneys as contrary to public policy].)” (*Rosen v. State Farm General Ins. Co.* (2003) 30 Cal.4th 1070, 1081, 135 Cal.Rptr.2d 361, 70 P.3d 351, Moreno, J., concurring; see also *616 *Cariveau v. Halferty* (2000) 83 Cal.App.4th 126, 132, 99 Cal.Rptr.2d 417 [“Public policy, in the context of a court’s refusal to enforce a contract term, may be based on the policy expressed in a statute or the rules of a voluntary regulatory entity, or may be

for South Tahoe for five months before that. J–M argues that an actual conflict nonetheless existed because Sheppard Mullin had an ongoing relationship with South Tahoe for many years. Indeed, Dinkin stated in his declaration that he brought South Tahoe with him as a client when he joined Sheppard Mullin in 2002. Also, in a June 9, 2011 letter to South Tahoe after the conflict came to light, Sheppard Mullin stated, “We have been pleased to provide labor advice to you for the last 9 years.”

Sheppard Mullin and South Tahoe executed engagement agreements in 2002 and 2006. The 2006 engagement agreement states, “Termination of Representation. You [South Tahoe] have the right to terminate our representation of you at any time. Subject to our ethical obligation to give you reasonable notice to arrange for alternative representation, we may terminate our representation of you at any time. Unless we agree to render other legal services to the District, our representation will terminate upon completion of the Matter.” “Matter” is defined elsewhere in the contract as “general employment matters.” The record reveals no engagement agreements with South Tahoe post-dating this 2006 agreement. Dinkin stated in his declaration that he “occasionally handled discrete individual matters and provided advice to South Tahoe” through November 2009 based on the 2002 and 2006 agreements. Therefore, it is unclear whether Sheppard Mullin’s representation of South Tahoe was ongoing or if it terminated before the Agreement with J–M was signed.¹¹

This is a fact question we will not determine in the first instance. We therefore remand for further proceedings in the trial court to determine this question, and for the court to determine the amount of fees that Sheppard Mullin must reimburse to J–M.

***621 DISPOSITION**

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. J–M is awarded its costs on appeal.

We concur:

WILLHITE, Acting P.J.

ZELON, J.*

All Citations

244 Cal.App.4th 590, 198 Cal.Rptr.3d 253, 16 Cal. Daily Op. Serv. 1205, 2016 Daily Journal D.A.R. 1051

Footnotes	
1	All further references to a “Rule” refer to the California Rules of Professional Conduct unless otherwise indicated.
2	Rule 3–310(C)(3) states, “A member shall not, without the informed written consent of each client.... Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”
3	In its opposition to Sheppard Mullin’s petition to compel arbitration, J–M argued the Agreement was illegal and void as a violation of public policy because of Sheppard Mullin’s conflict of interest while it represented J–M. In its petition to vacate the arbitration award, J–M again argued the Agreement was “void and unenforceable” because of Sheppard Mullin’s violation of Rule 3–310. On appeal, J–M argues that “the trial court erred in confirming the arbitration award, thereby enforcing an illegal contract that contravenes ... public polic[y].”

implied from the language of such statute or rule.”.) Thus, in the context of determining whether a contract as a whole is illegal or against public policy and therefore unenforceable, a determination of relevant public policy is not limited to an explicit expression of public policy by the Legislature.

Moreover, Sheppard Mullin’s argument ignores the long line of cases relying on the Rules of Professional Conduct to find contracts unenforceable. (See, e.g., *Chambers v. Kay* (2002) 29 Cal.4th 142, 161, 126 Cal.Rptr.2d 536, 56 P.3d 645) [“[B]ecause **272 this court approved rule 2–200 under legislative authorization (see Bus. & Prof. Code, § 6076), and because the rule binds all members of the State Bar (rule 1–100(A), 1st par.), it would be absurd for this or any other court to aid Chambers in accomplishing a fee division that would violate the rule’s explicit requirement of written client consent and would subject Chambers to professional discipline.”]; *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.* (2010) 187 Cal.App.4th 1405, 1417, 114 Cal.Rptr.3d 781 [“Fee agreements that violate the Rules of Professional Conduct may be deemed unenforceable on public policy grounds.”]; *Bird, Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App. 4th 419, 431, 130 Cal.Rptr.2d 782 [A fee agreement that violates Rule 4–200 is not valid and enforceable]; *McIntosh v. Mills* (2004) 121 Cal.App.4th 333, 346, 17 Cal.Rptr.3d 66 [“In light of these public interest concerns, and because there is no dispute here that the agreement at issue between McIntosh and Mills clearly violates CPRC, rule 1–320(A), we conclude that the doctrine of illegality applies facially to their fee-sharing agreement.”]

As discussed in *Flatt, Speedee Oil, American Airlines v. Sheppard Mullin*, and *Fiduciary Trust*, the attorney’s duty of undivided loyalty that forms the basis of Rule 3–310 constitutes the very foundation of an attorney-client relationship. The Agreement, which violated Rule 3–310(C), therefore violated an expression of public policy. The trial court erred in holding that the Agreement was valid and enforceable.

E. As a result of Sheppard Mullin’s violation of 3–310, it is not entitled to attorney fees

[20] Sheppard Mullin argues that despite its violation of Rule 3–310, it is nonetheless entitled to its attorney fees for its representation of J–M in the Qui Tam Action. However, when a conflict of interest is asserted as a “[d]efense in the attorney’s action to recover fees or the reasonable value of services[, a] violation of the fiduciary obligation will defeat recovery.” (*617 I Witkin, Cal. Proc. 5th (2008) Attys, § 104, p. 142.) Sheppard Mullin’s violation of Rule 3–310 precludes it from receiving compensation for services provided to J–M in the Qui Tam Action.

“A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer’s compensation for the matter. Considerations relevant to the question of forfeiture include the gravity and timing of the violation, its willfulness, its effect on the value of the lawyer’s work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies.” (Rest.3d of the Law Governing Lawyers, § 37.)

California cases have drawn a line between cases involving serious ethical violations such as conflicts of interest, in which compensation is prohibited, and technical violations or potential conflicts, in which compensation may be allowed. Two seminal cases set out the governing principles. The first is *Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 120 Cal.Rptr. 253 (*Goldstein*), a case in which a law firm sought to recover fees for legal services rendered. In the underlying case, a former corporate counsel represented a minority shareholder and director in a proxy fight against the same corporation. Focusing on the fact that the attorney knew confidential information about the corporation, the Court of Appeal held that former Rule 5 barred recovery of attorney fees for the underlying **273 action.⁷ (*Id.* at pp. 620, 623–624, 120 Cal.Rptr. 253.) The court reasoned, “It is settled in California that an attorney may not recover for services rendered if those services are rendered in contradiction to the requirements of professional responsibility.” (*Id.* at p. 618, 120 Cal.Rptr. 253, citing *Clark v. Millsap* (1926) 197 Cal. 765, 785, 242 P. 918 [“acts of impropriety inconsistent with the character of the profession, and incompatible with the faithful discharge of its duties” will prevent an attorney from recovering for services rendered.].)

The second seminal case is *Jeffry v. Pounds* (1977) 67 Cal.App.3d 6, 136 Cal.Rptr. 373 (*Jeffry*). In that case, a law firm represented a husband in a personal injury action, but also agreed to represent his wife in a dissolution of marriage action she brought against him. The Court of Appeal found that the law firm had breached former Rule 5–102(B),⁸ which precluded an attorney from representing conflicting interests unless all parties concerned provided informed written consent. The attorney did not obtain written consent of both *618 parties. (*Id.* at p. 11, 136 Cal.Rptr. 373.) The *Jeffry* court denied any fees to the firm for work performed after the conflict arose. (*Id.* at p. 12, 136 Cal.Rptr. 373.) The court emphasized that this conclusion was not based on an improper intent on the part of the firm: “We do not charge [the firm] with dishonest purpose or deliberately unethical conduct.” (*Id.* at p. 11, 136 Cal.Rptr. 373.)

A number of cases have followed *Goldstein* and *Jeffry*. (See, e.g., *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 16, 60 Cal.Rptr.2d 207 [attorney not entitled to fees after he offered to dismiss a class action in return for a personal payment to him of millions of dollars]; *A.I. Credit Corp., Inc. v. Aguilar & Sebastinelli* (2003) 113 Cal.App.4th 1072, 6 Cal.Rptr.3d 813 [law firm not entitled to fees after it helped a new client enforce a judgment against a former client

by assisting the new client in locating and pursuing the former client's assets].) Another case, *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 125 Cal.Rptr.3d 765 (*Fair*), noted that attorneys are not entitled to fees where the ethical violation is "one that pervades the whole relationship." (*Id.* at p. 1150, 125 Cal.Rptr.3d 765.) *Fair* affirmed the trial court's denial of quantum meruit recovery where an attorney's conduct "constituted not merely a technical rule violation, but the breach of *Fair*'s fiduciary duty to" his clients. (*Id.* at p. 1151, 125 Cal.Rptr.3d 765.)

As in *Fair*, the conflict here pervaded the entire relationship between Sheppard Mullin and J-M. Even if, as Sheppard Mullin argues, it was not working for South Tahoe at the time the Agreement was signed, it nonetheless began working for South Tahoe three weeks later, thereby representing adverse clients without telling either client about the actual conflict. The violation caused Sheppard Mullin to be disqualified from representing J-M in the Qui Tam Action—the very purpose for which J-M had hired it. It is clear, therefore, that Sheppard Mullin's ethical breach went to the very heart of its relationship with J-M.

Sheppard Mullin cites *Mardirossian & Associates v. Ersoff* (2007) 153 Cal.App.4th 257, 62 Cal.Rptr.3d 665, *Slovensky v. Friedman* (2006) 142 Cal.App.4th 1518, 49 Cal.Rptr.3d 60, and **274 *Sullivan v. Dorsa* (2005) 128 Cal.App.4th 947, 27 Cal.Rptr.3d 547 to argue that "courts routinely award attorneys their fees despite conflicts of interest that could lead to disqualification." These cases are distinguishable in that none of them involved an actual conflict.⁹

[21] [22] [23] Sheppard Mullin also argues that fees should be allowed because J-M suffered no damage as the result of its ethical violations and because the arbitrators found it acted in good faith. Given Sheppard Mullin's ethical misconduct here, it is irrelevant whether J-M suffered damage. "It is the general rule in conflict of interest cases that where an attorney violates *619 his ... ethical duties to the client, the attorney is not entitled to a fee for his ... services. [Citations.]" (*Cal Pak, supra*, 52 Cal.App.4th at p.14, 60 Cal.Rptr.2d 207.) We note that the *Fair* court rejected a similar argument regarding lack of damage: "No authority cited by *Fair* holds that proof the client was damaged by the attorney's breach of fiduciary duty or conflict of interest is required to void the agreement between the two ... where the breach is sufficiently serious." (*Fair, supra*, 195 Cal.App.4th at pp. 1153–1154, 125 Cal.Rptr.3d 765.) Moreover, forfeiture of attorney fees is intended to be a deterrent, which is invoked because the "damage that misconduct causes is often difficult to assess." (Restatement (Third) of the Law Governing Lawyers § 37 (2000).) J-M's actual damages as result of Sheppard Mullin's breach are irrelevant.¹⁰

[24] The analysis does not change because Sheppard Mullin has alleged that it is entitled to fees under a quantum meruit theory. In *Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 9 Cal.Rptr.3d 693, 84 P.3d 379 (*Huskinson*), the Supreme Court acknowledged that quantum meruit recovery had been denied in cases of ethical violations such as Sheppard Mullin's here. It observed that such cases "involved violations of a rule that proscribed the very conduct for which compensation was sought, i.e., the rule prohibiting attorneys from engaging in conflicting representation or accepting professional employment adverse to the interests of a client or former client without the written consent of both parties." (*Huskinson*, 32 Cal.4th at p. 463, 9 Cal.Rptr.3d 693, 84 P.3d 379, italics added, citing *Jeffry, supra*, 67 Cal.App.3d 6, 12, 136 Cal.Rptr. 373 and *Goldstein, supra*, 46 Cal.App.3d 614, 120 Cal.Rptr. 253.) The same result was reached in *Fair*, in which the Court of Appeal concluded that *Fair*'s breach of fiduciary duty precluded recovery of fees in quantum meruit: "[V]iolation of a rule that constitutes a serious breach of fiduciary duty, such as a conflict of interest that goes to the heart of the attorney-client relationship, warrants denial of quantum meruit recovery. [Citations.]" (*Fair, supra*, 195 Cal.App.4th at pp. 1161–1162, 125 Cal.Rptr.3d 765.)

We have found that Sheppard Mullin's breach of the duty of loyalty set forth in Rule 3–310 was a violation of public policy. A finding that Sheppard Mullin was nonetheless entitled to its attorney fees as if no breach had occurred would undermine this same public policy. We therefore follow the reasoning of *Goldstein* and *Jeffry* and hold that Sheppard Mullin is not entitled to its fees for the work it did for J-M while there was an actual conflict with South Tahoe.

F. Disputed fact issue about when the actual conflict began

There is no question that starting from March 29, 2010, the date Dinkin resumed **275 work on behalf of South Tahoe while other Sheppard Mullin attorneys were representing J-M in the Qui Tam Action, there was an actual *620 conflict in violation of Rule 3–310(C). At that point Sheppard Mullin "in a separate matter accept[ed] as a client a person or entity [South Tahoe] whose interest in the first matter [the Qui Tam Action] is adverse to the client in the first matter [J-M]." (Rule 3–310(C)(3).) Sheppard Mullin admits that in late March 2010 South Tahoe "reemerged" as a client, and Dinkin stated in his declaration that he worked for South Tahoe in March, April, June, October, and December 2010, and in January, February, and March of 2011.

There is a fact question, however, as to whether there was an actual conflict between the time J-M signed the Agreement (March 8, 2010) and when Dinkin resumed actively working for South Tahoe (March 29, 2010). Sheppard Mullin argues that South Tahoe was not a current client when the Agreement with J-M was signed because Dinkin had not done any work

4	Sheppard Mullin also argues that the public policy supporting arbitration compels us to affirm the arbitration award. We recognize the “strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.” (<i>Ericksen, supra</i> , 35 Cal.3d at p. 322, 197 Cal.Rptr. 581, 673 P.2d 251.) But the public policy supporting arbitration does not take precedence over the mandate that contracts comply with California’s other public policies. “The laws in support of a general public policy and in enforcement of public morality cannot be set aside by arbitration, and neither will persons with a claim forbidden by the laws be permitted to enforce it through the transforming process of arbitration.” (<i>Loving, supra</i> , 33 Cal.2d at p. 611, 204 P.2d 23, quoting <i>Tandy v. Elmore-Cooper Live Stock Commission Co.</i> (1905) 113 Mo.App. 409, 87 S.W. 614, 618; see also <i>Moncharsh, supra</i> , 3 Cal.4th at p. 32, 10 Cal.Rptr.2d 183, 832 P.2d 899 [allowing judicial scrutiny of an arbitral award when a court is presented with “a clear expression of illegality or public policy undermining this strong presumption in favor of private arbitration”].) The public policy supporting arbitration therefore does not limit the scope of judicial review of an allegedly unenforceable contract.
5	The trial court erred by characterizing J–M’s illegality argument as an assertion based only on fraudulent inducement to be determined by the arbitrators: “Defendant has attempted to characterize this case as one based upon illegality, rather than fraudulent inducement. The Court is not convinced of this distinction....” Indeed, there is a distinction. The Supreme Court has held that under California law, “claims of fraud in the inducement of the contract (as distinguished from claims of fraud directed to the arbitration clause itself) will be deemed subject to arbitration.” (<i>Ericksen, supra</i> , 35 Cal.3d at p. 323, 197 Cal.Rptr. 581, 673 P.2d 251.) But in so holding, the court was careful to distinguish cases in which a defendant alleges the contract was illegal or in violation of public policy. “Questions of public policy which are implicated by an illegal agreement, and which might be ill-suited for arbitral determination, are not presented when garden-variety ‘fraud in the inducement,’ related to performance failure, is claimed.” (<i>Id.</i> at p. 316, fn. 2, 197 Cal.Rptr. 581, 673 P.2d 251.) Here, although J–M did assert garden-variety fraudulent inducement, it also placed the illegality question squarely before the court. The trial court therefore erred in holding that J–M’s illegality argument implicated <i>only</i> fraud in the inducement to be determined by the arbitrators.
6	Sheppard Mullin argues that finding the conflict waiver provision inadequate would “upend countless agreements between lawyers and their clients and wreak havoc on the practice of law in this State.” We disagree. We would not be the first court to reject an uninformed, blanket advance waiver such as the one at issue in this case. (See, e.g., <i>Concat, supra</i> , 350 F.Supp.2d at pp. 801, 821; <i>Lennar Mare Island, LLC v. Steadfast Ins. Co.</i> (E.D. Cal. 2015) 105 F.Supp.3d 1100, 1115; <i>Western Sugar, supra</i> , 98 F.Supp.3d at p. 1083.) Moreover, our holding is consistent with the purpose of the Rules of Professional Conduct—to “protect the public and to promote respect and confidence in the legal profession.” (Rule 1–100(A).)
7	At the time, Rule 5 stated, “ ‘A member of the State Bar shall not accept employment adverse to a client or former client, ... relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client.’ ” (<i>Goldstein, supra</i> , 46 Cal.App.3d at pp. 618–619, 120 Cal.Rptr. 253.)
8	Former Rule 5–102(B) (duty of loyalty) is a predecessor to current Rule 3–310, as is former Rule 4–101 (requiring counsel to preserve the confidentiality of client matters). “The former rules governing attorneys’ duties of confidentiality and loyalty were thus consolidated into a single rule.” (<i>Flatt, supra</i> , 9 Cal.4th at p. 288, fn. 5, 36 Cal.Rptr.2d 537, 885 P.2d 950.)
9	In <i>Slovensky</i> , the court accepted as true the plaintiff’s allegations that her former attorneys breached their fiduciary duty by failing to disclose that they were settling a number of plaintiffs’ cases together in a global settlement. No actual conflict was demonstrated. (142 Cal.App.4th at p. 1534.)
10	We recognize that disgorgement, when sought as a tort remedy in cases not involving a serious ethical breach, may require evidence of actual damages to avoid providing the client with a windfall. (See, e.g., <i>Frye v. Tenderloin Housing Clinic, Inc.</i> (2006) 38 Cal.4th 23, 48; <i>Slovensky, supra</i> , 142 Cal.App.4th at pp. 1535–1536.) When a serious ethical breach is at issue, however, an attorney may not recover fees for services rendered. It makes no difference whether the fees have already been collected from the client or if the fees have yet to be paid.
11	Even if South Tahoe was a former client at the time the Agreement was signed, Sheppard Mullin’s failure to disclose the relationship to J–M may have violated Rule 3–310(B)(1). As the parties have not briefed this issue, we will not address it here.

*	Associate Justice of the Court of Appeal, Second District, Division Seven, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
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Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
05/26/2016	51	CNR	L250 A103	2050	175.00	0.10	17.50		Draft brief corres. to Court re: continuance of evidentiary hearing on Mtn. to Dismiss Plaintiff's Complaint
06/03/2016	1	DSL	L250 A104	2075	185.00	0.30	55.50		Review preparations for evidentiary hearing and renewed witness subpoenas on same
06/03/2016	51	CNR	L240 A103	2077	175.00	4.10	717.50		Draft supporting demonstrative exhibit for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint (line item summary of: (1) Plaintiff's deposition testimony, (2) statement to LVMPD following shooting, (3) interrogatory responses and (4) errata to deposition testimony outlining all instances of Plaintiff's perjury, to allow for immediate reference during direct/cross examination of Plaintiff)
									Review corres. from T. Cordoba (asst. to Judge) re: revised protocol for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
06/03/2016	51	CNR	L240 A104	2108	175.00	0.10	17.50		Review revised Subpoenas for Appearance at Evidentiary Hrg. to Det. Majors and Menzle
06/03/2016	51	CNR	L250 A104	2109	175.00	0.10	17.50		
06/06/2016	1	DSL	L250 A104	2078	185.00	0.30	55.50		Draft/review e-corr from counsel and court re: emergency hearing on protocol for evidentiary hearing
06/06/2016	51	CNR	L240 A104	2081	175.00	0.10	17.50		Review corres. from D. Churchill (Plaintiff's counsel) re: request for further continuance of evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
06/06/2016	51	CNR	L240 A107	2082	175.00	0.60	105.00		Draft and review mult. e-cores. to/from co-counsel re: necessity of rebuttal expert witness if Plaintiff calls its expert Dr. Loong (neuropsychologist), request that hearing not be continued, protocol for defense witnesses at evidentiary hearing.
06/06/2016	51	CNR	L240 A107	2083	175.00	0.90	157.50		Lengthy t/c w/ all counsel and Judge Kishner (trial judge) re: Plaintiff's request to further continue evidentiary hearing, objection by defense to the same, proposed protocol for hearing on Motion to Disqualify Lewis Brisbois and Motion to Dismiss Plaintiff's Complaint and Plaintiff's agreement to go forward with hearing as currently set
06/06/2016	1	DSL	L130 A104	2085	185.00	0.20	37.00		Draft/review e-corr from co-counsel re: retention of add'l experts in preparation for evidentiary hearing
06/06/2016	1	DSL	L110 A104	2096	185.00	0.40	74.00		Review course of action to prepare for evidentiary hearing and use of experts.

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
06/06/2016	80 NF	L110	A101	2280	85.00	0.80	68.00		Review litigation file and identify documents necessary for attorneys use in hearing Evidentiary Hearing re: Motion To Dismiss Plaintiffs' Complaint and Hearing re: Motion to Disqualify co-counsel for Mydatt Services and Mark Warner LBB&S
06/06/2016	51 CNR	L240	A107	2289	175.00	0.10	17.50		Brief t/c w J. Alcklen (co-counsel) re: evidentiary hearing and hearing on Mtn. to Disqualify
06/07/2016	1 DSL	L250	A103	2086	185.00	0.90	166.50		Outline presentation of evidence for evidentiary hearing on motion to dismiss and motion to DQ co-counsel
06/07/2016	1 DSL	L230	A104	2087	185.00	0.10	18.50		Review minute order changing protocol for evidentiary hearing
06/07/2016	51 CNR	L240	A103	2088	175.00	0.90	157.50		Revise, supplement and finalize supporting exhibit for evidentiary hearing on Motion to Dismiss Plaintiffs' Complaint (line item summary of: (1) Plaintiff's deposition testimony, (2) statement to LVMPD following shooting, (3) interrogatory responses and (4) errata to deposition testimony outlining all instances of Plaintiff's perjury, to allow for immediate reference during direct/cross examination of Plaintiff)
06/07/2016	51 CNR	L240	A103	2089	175.00	0.10	17.50		Draft GGP's Supplemental Exhibit to Joinder to Motion to Dismiss Plaintiffs' Complaint
06/07/2016	51 CNR	L240	A101	2090	175.00	6.30	1,102.50		Prepare for evidentiary hearing on Defendants' Motion to Dismiss Plaintiffs' Complaint (includes outlining strategy for direct/cross examination of witnesses, identification of necessary exhibits and outline foundation for the same, identify issues of hearsay and review and analysis of case law and statutory authority to support arguments for exceptions to the same, and outline questions for direct/cross examination of witnesses)
06/07/2016	1 DSL	L350	A103	2091	185.00	0.30	55.50		Outline means to avoid hearsay objections
06/07/2016	51 CNR	L240	A104	2110	175.00	0.10	17.50		Review corres. from T. Cordoba (asst. to Judge) re: evidentiary hearing protocol further revised
06/08/2016	1 DSL	L350	A101	2092	185.00	1.40	259.00		Prepare for evidentiary hearing on motion to DQ co-counsel and Motion to Dismiss
06/08/2016	1 DSL	L350	A109	2093	185.00	5.60	1,036.00		Attend evidentiary hearing on motion to DQ co-counsel and Motion to Dismiss
06/08/2016	51 CNR	L250	A108	2095	175.00	0.20	35.00		T/c w/ Det. Majors (witness) re: revised hearing protocol, and clarification of party that witness was subpoenaed by
06/09/2016	1 DSL	L120	A103	2098	185.00	0.40	74.00		Outline course of action for continued evidentiary hearing and e-corr to/from opp counsel and court re: same
	51 CNR	L340	A108	2099	175.00	0.20	35.00		
	51 CNR	L250	A108	2100	175.00	0.20	35.00		
06/09/2016	1 DSL	L250	A109	2101	185.00	0.50	92.50		Prepare for and attend emergency hearing on evidentiary hearing
06/09/2016	51 CNR	L250	A107	2102	175.00	0.20	35.00		T/c w/ J. Manke (counsel for Plaintiff) re: necessity of evidentiary hearing, Det. Majors not available for reset hearing, and further conference with court required to address the same
06/09/2016	51 CNR	L250	A108	2103	175.00	0.20	35.00		T/c w/ T. Cordoba (asst. to Judge) re: witness unavailable for reset evidentiary hearing, conference required with Judge to address the same or potential for submitting motion on the pleadings
06/09/2016	51 CNR	L250	A107	2104	175.00	0.40	70.00		Draft and review mult. e-corres. to/from J. Manke (Plaintiffs counsel) re: unavailability of witness for reset evidentiary hearing, proposed protocol for resetting hearing, conf. call with court required to address witness availability and continued setting for hearing
06/09/2016	51 CNR	L250	A103	2105	175.00	0.10	17.50		Draft brief corres. to Court re: witness unavailable for reset evidentiary hearing and request for conference call to address the same
06/09/2016	1 DSL	L250	A103	2187	185.00	0.30	55.50		Further outline course of action in light of unavailability of witnesses for evidentiary hearing
06/09/2016	51 CNR	L240	A108	2254	175.00	0.40	70.00		Lengthy t/c w/ Court and Plaintiff's counsel re: defense witness unavailable for reset evidentiary hearing, Defendants' willingness to submit Motion on pleadings, Court's position that evidentiary hearing must be held and alternative protocol for said hearing

Client: 1156.002Q First Mercury Insurance (Continued)

Tuesday 08/09/2016 9:23 am

Client: 1156.002Q First Mercury Insurance (Continued)

RRE™

0782

Client: 1156.002Q First Mercury Insurance (Continued)

RRE

0783

Primary Timekeeper: 1 David S. Lee

Client 1158.002Q First Mercury Insurance (Continued)

[illegible]

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

[illegible]

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
07/18/2016	1	DSL	L230 A104	1689	185.00	0.10	18.50		Review corr rec'd from court re; hearing protocol
07/19/2016	51	CNR	L240 A104	1656	175.00	0.60	105.00		Review and draft mult. e-corres. from/to E. Carranza (co-counsel) re: procedure for evidentiary hearing regarding introduction of deposition testimony of witnesses and Det. Menzies unavailable to testify at evid. hrg. due to conflict, Plaintiff's prior record of false statement to police
07/19/2016	1	DSL	L350 A104	1690	185.00	0.30	55.50		Review preparation for evidentiary hearing and subpoenas for witnesses at same
07/20/2016	51	CNR	L240 A108	1660	175.00	0.20	35.00		T/c w/ Det. Menzie (witness) re: recollection of investigation of Plaintiff's shooting and interview, and protocol for evidentiary hearing
07/20/2016	51	CNR	L240 A107	1661	175.00	0.80	140.00		Draft and review mult. e-corres. to/from E. Carranza (co-counsel) re: Det. Menzie's confirmation of appearance at hearing, limited information from the same and whether witness is needed at hearing, clarification of setting for hearing, Det. Majors confirmed for appearance and hearing preparation
07/20/2016	51	CNR	L240 A108	1662	175.00	0.40	70.00		Draft and review mult. e-corres. and text messages to/from Det. Menzies (witness) re: Plaintiff's Voluntary Stmt. to LVMPD to be reviewed by witness in preparation for evid. hrg., audio recording of the same cannot be forwarded due to file error and notice that witness is no longer required to appear given that he cannot independently recall interview with Plaintiff or specifics of the same
07/20/2016	51	CNR	L240 A101	1663	175.00	6.50	1,137.50		Prepare for Evidentiary Hearing on Motion to Dismiss Plaintiff's Complaint (Includes: review of Plaintiff's recorded audio statement to LVMPD, transcript of the same, Plaintiff's deposition transcript and Errata to the same, review of expert report prepared by Plaintiff's expert D. Loong and rebuttal report prepared by def. expert L. Etcoff and draft outline of cross examination of D. Loong and direct examination of L. Etcoff)
07/20/2016	1	DSL	L350 A104	1665	185.00	0.20	37.00		Analyze benefit of Det Menzees at Evidentiary Hearing
07/20/2016	1	DSL	L120 A103	1708	185.00	0.30	55.50		Outline course of action for evidentiary hearing
07/20/2016	80	NF	L110 A101	1713	65.00	0.60	51.00		Review litigation file and identify documents necessary for attorneys use in Evidentiary Hearing re: Defendants Motion to Dismiss Plaintiff's Complaint
07/21/2016	51	CNR	L240 A109	1666	175.00	7.50	1,312.50		Attend Evidentiary Hearing on Motion to Dismiss Plaintiff's Complaint
07/21/2016	1	DSL	L250 A109	1687	185.00	8.40	1,554.00		Prepare for and attend evidentiary hearing on motion to dismiss

Primary Timekeeper: 1 David S. Lee
Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
07/26/2016	51	CNR	L250 A104	1737	175.00	0.20	35.00		Review and analyze proposed Order Granting in Part and Denying In Part Motion to Dismiss Plaintiff's Complaint prepared by co counsel
07/26/2016	51	CNR	L250 A107	1739	175.00	0.10	17.50		Draft brief e-corres. to E. Carranza (co counsel) re: approval of proposed Order on Motion to Dismiss Plaintiff's Complaint
07/27/2016	51	CNR	L250 A104	1745	175.00	0.10	17.50		Review corres from E. Carranza (co counsel) re: proposed Order on Motion to Dismiss Plaintiff's Complaint and protocol for parties' revisions to the same
07/29/2016	1	DSL	L210 A103	1709	185.00	0.20	37.00		Further outline revisions to order on Motion to Dismiss and draft/review e-corr from counsel re: same
07/29/2016	51	CNR	L120 A103	1749	175.00	0.40	70.00		Analysis of potential curative jury instruction to address sanction for Plaintiff's discovery violations and draft proposed structure of the same to be included in Order Granting in Part and Denying in Part Defendants'

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
07/29/2016	51 CNR	L120	A107	1751	175.00	0.20	35.00		Motion to Dismiss Plaintiff's Complaint Draft e-cores. to E. Carranza (co counsel) re: proposed revisions to Joint Def. Agmt. and proposal that specific language be included in Order on Motion to Dismiss to ensure that court commits to scope of curative jury instruction to avoid dispute as to the same at time of trial
07/31/2016	51 CNR	L250	A104	1764	175.00	0.20	35.00		Review and draft brief e-cores. from/to E. Carranza (co-counsel) re: proposed revision to Order Granting/Denying Motion to Dismiss Plaintiff's Complaint and Plaintiff's failure to respond to the same
Total Billable Fees									
Total Fee Write-Up								0.00	
Total Fee Write-Down								0.00	
Billable Total:		1 DSL						0.00	
Write-Down Total:									
Billable Total:		51 CNR						0.00	
Write-Up Total:								0.00	
Write-Down Total:									
Billable Total:		80 NF						0.00	
Write-Up Total:								0.00	
Write-Down Total:									
Fee Credits									
Expenses									
Total Billable Expenses									
Advances									
04/30/2016	1 DSL	L140	E112	75			3.50		Court fees - E-Filing 04/01/16 GGP Meadows Mall's Joinder to Mydatt Services and Mark Warner's Motion to Dismiss Plaintiff's Complaint

Date: 08/09/2016

Tab3 Detail Work-In-Process Report
Lee, Hernandez, Landrum, & Garofalo

Page: 21

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
06/30/2016	1 DSL	L140	E112	93			3.50		[REDACTED]
07/31/2016	1 DSL	L140	E112	70			3.50		Court fees - E-Filing 06/07/16 GGP Meadows Mall's Supplemental Exhibit To Joinder to Mydatt Services and Mark Warner's Motion to Dismiss Plaintiffs Complaint
07/31/2016	1 DSL	L140	E112	71			3.50		Court fees - E-Filing 07/18/16 Civil Evidentiary Hearing Subpoena To Detective Menzie
									Court fees - E-Filing 07/19/16 Civil Evidentiary Hearing Subpoena To Detective Majors

Total Billable Advances



EXHIBIT E



BACKUS, CARRANZA & BURDEN

Attorneys and Counselors at Law

Shareholders

LELAND EUGENE BACKUS
EDGAR CARRANZA
JACK P. BURDEN
SHEA A. BACKUS

Associates

TESS JOHNSON
JEREMY ROBINS

MEMORANDUM

TO: File
FROM: EC
DATE: 08-18-16
RE: Mydatt adv. Hawkins- Attorney's fees re: motion to dismiss

June 2016

EC (Edgar Carranza, Esq.)	2.7 Hours	Rate: \$250.00	\$675.00
<u>DJH (Debra Halbert)</u>	<u>0 Hours</u>	<u>Rate: \$115.00</u>	<u>\$0</u>
Total \$675.00			

July 2016

EC (Edgar Carranza, Esq.)	36.4 Hours	Rate: \$250.00	\$9,100.00
<u>DJH (Debra Halbert)</u>	<u>14.5 Hours</u>	<u>Rate: \$115.00</u>	<u>\$1,667.50</u>
Total \$10,767.50			

Total Fees **\$11,442.50**

EXHIBIT F

BACKUS, CARRANZA & BURDEN

3050 South Durango Drive
Las Vegas, NV 89117
(702) 872-5555 FAX (702) 872-5545
Employer I.D. #86-0883400

Invoice Date 06/30/2016
Activity Billed Through 06/30/2016
Invoice # 002175 - 00001 - 26085

YORK RISK SERVICES GROUP
PETER RASMUSSEN
PETER.RASMUSSEN@YORKRSG.COM

STARR ADJUSTMENT SERVICES
TRACY LYONS
TRACY.LYONS@STARRCOMPANIES.COM

Regarding:
VALOR SECURITY ADV. HAWKINS

For Professional Services Rendered:

06/28/2016	EC	Review deposition transcript of X'avion Hawkins.	2.40 hrs	600.00
06/29/2016	EC	Teleconference with Lyons re: [REDACTED] [REDACTED] and prepare for evidentiary hearing (0.3); [REDACTED]	0.50 hrs	125.00
06/29/2016	JRR	[REDACTED]	[REDACTED]	[REDACTED]
06/30/2016	EC	[REDACTED]	[REDACTED]	[REDACTED]
06/30/2016	JRR	[REDACTED]	[REDACTED]	[REDACTED]
06/30/2016	JRR	[REDACTED]	[REDACTED]	[REDACTED]

VALOR SECURITY ADV. HAWKINS
Invoice # 002175 - 00001 - 26085

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Total Fees For This Matter: \$2,189.50

DISBURSEMENTS:

Total Disbursements For This Matter: 0.00

BILLING SUMMARY:

CARRANZA, EDGAR	4.00 hrs	\$250.00 /hr	\$1,000.00
ROBINS, JEREMY R.	6.10 hrs	\$195.00 /hr	\$1,189.50

CURRENT INVOICE:

Total Professional Services:	\$2,189.50	
Total Expenses Advanced:	\$0.00	
Total Charges For This Invoice:	\$2,189.50	
Less Prepaid Amount Applied:	\$0.00	
Current Amount Due:		\$2,189.50

STATEMENT OF ACCOUNT:

Prior Balance:	\$0.00	
Less Payments Received:	\$0.00	
Past Amount Due:		\$0.00
TOTAL AMOUNT NOW DUE:		<u>\$2,189.50</u>

0795

BACKUS, CARRANZA & BURDEN

3050 South Durango Drive
Las Vegas, NV 89117
(702) 872-5555 FAX (702) 872-5545
Employer I.D. #86-0883400

Invoice Date 07/31/2016
Activity Billed Through 07/31/2016
Invoice # 002175 - 00001 - 26163

YORK RISK SERVICES GROUP
PETER RASMUSSEN
PETER.RASMUSSEN@YORKRSG.COM

STARR ADJUSTMENT SERVICES
TRACY LYONS
TRACY.LYONS@STARRCOMPANIES.COM

Regarding:

VALOR SECURITY ADV. HAWKINS

For Professional Services Rendered:

07/02/2016 EC

[REDACTED]

[REDACTED]

[REDACTED]

07/05/2016 EC

[REDACTED]

[REDACTED]

[REDACTED]

07/06/2016 EC

[REDACTED]

[REDACTED]

[REDACTED]

07/07/2016 EC

[REDACTED]

3.50 hrs

875.00

[REDACTED] draft
letter to plaintiff's re: representation,
evidentiary hearing, and other issues (0.4);

[REDACTED] analyze

power point of plaintiff's testimony (0.6);
teleconference with Churchill re:
representation, expert inspection, agreement
to date, evidentiary hearing, discovery
issues, potential mediation and other issues
(0.7); teleconference with Lyons re:

[REDACTED] (0.5).
evidentiary hearing and [REDACTED]

07/08/2016 EC

[REDACTED]

3.30 hrs

825.00

VALOR SECURITY ADV. HAWKINS
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	[REDACTED]		
	[REDACTED] begin drafting examination of plaintiff (1.4); [REDACTED]		
07/09/2016 EC	Analyze opposition to motion to dismiss (0.6); continue drafting examination of plaintiff for evidentiary hearing (0.8).	1.40 hrs	350.00
07/11/2016 EC	[REDACTED] [REDACTED] emails from/to Lyons re: preparation for evidentiary hearing, [REDACTED]	2.30 hrs	575.00
07/11/2016 DJH	[REDACTED]	[REDACTED]	[REDACTED]
07/12/2016 EC	Finish drafting direct examination of plaintiff (1.9); [REDACTED]	2.30 hrs	575.00
07/12/2016 DJH	[REDACTED]	[REDACTED]	[REDACTED]
07/13/2016 EC	[REDACTED] [REDACTED] prepare for meeting with Detective Majors and Renwick (1.3).	2.10 hrs	525.00

0797

VALOR SECURITY ADV. HAWKINS
 Invoice # 002175 - 00001 - 26163

07/13/2016 DJH [REDACTED]

07/14/2016 EC Draft direct examination of Detective Majors (1.4); memo from Court re: ADA accessible courtroom (0.1); travel to/from interview with Det. Majors (1.0); meet with Det. Majors re: hearing, interview and other issues (1.4); [REDACTED] 4.40 hrs 1,100.00

07/14/2016 DJH Upload materials to hearing laptop in preparation for using same as potential exhibits at evidentiary hearing (0.7); [REDACTED] 6.80 hrs 782.00

07/15/2016 EC Conference with DJH re: evidentiary hearing, exhibits to be used, power point and other issues (0.4); teleconference with Lyons re: evidentiary hearing (0.5). 0.90 hrs 225.00

07/15/2016 DJH [REDACTED]

07/15/2016 DJH Identify and assemble potential exhibits, depositions and plaintiff's discovery responses in preparation for evidentiary hearing. 2.60 hrs 299.00

07/15/2016 DJH [REDACTED]

07/18/2016 EC Analyze deposition transcript for Detective Majors (1.8); analyze audio statement of Hawkins (0.6); edit direct examination of Detective Majors (1.6); [REDACTED] re: examination, outline [REDACTED] 4.50 hrs 1,125.00

07/18/2016 DJH [REDACTED]

07/19/2016 EC Review subpoena for Detective Menzes (0.1); edit cross examination for plaintiff (1.9); analyze video clips of plaintiff's deposition (1.0); [REDACTED] 4.80 hrs 1,200.00

VALOR SECURITY ADV. HAWKINS
 Invoice # 002175 - 00001 - 26163

		(0.3); meet and confer with DJH (2) re: exhibits, video clip presentation, hearing and other issues (0.8); prepare for teleconference with Majors (0.5); teleconference with Majors (0.2).		
07/19/2016	DJH			
07/20/2016	EC	Teleconference with majors re: hearing (1.0); (0.4); edit deposition video clips (0.6); conference with DJH (2) re: hearing, exhibits needed, deposition clips, IT needs and other issues (1.0); finalize preparation for hearing (1.8);	5.30 hrs	1,325.00
07/20/2016	DJH	Create additional deposition clips from plaintiff's deposition to be used at evidentiary hearing.	2.20 hrs	253.00
07/20/2016	DJH	Update notes in evidentiary hearing outline in preparation for running electronic presentation.	0.70 hrs	80.50
07/20/2016	DJH			
07/21/2016	EC	Travel to/from hearing (1.0); conduct evidentiary hearing re: motion to dismiss complaint for Hawkins' discovery abuses (6.3); conference with counsel re: potential sanctions (other than dismissal), remaining discovery, monetary sanction and other issues (0.5); email to Lyons re: hearing and outcome (0.1).	7.90 hrs	1,975.00
07/21/2016	DJH	Finalize PowerPoint for evidentiary hearing (0.3); attend evidentiary hearing, take notes and run PowerPoint presentation (7.0); travel to/from evidentiary hearing (1.0).	8.30 hrs	954.50
07/22/2016	EC	emails from/to Aiklen re: fees and costs associated with motion (0.1); emails from/to Renwick re: order, fees/costs and (0.2);	1.90 hrs	475.00

VALOR SECURITY ADV. HAWKINS

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07/22/2016	DJH		
07/23/2016	EC	2.90 hrs	725.00
begin drafting order on motion to dismiss (0.5).			
07/24/2016	DJH		
07/25/2016	EC	4.30 hrs	1,075.00
finish drafting proposed order re: motion to dismiss (0.8); teleconference with Lyons re: evidentiary hearing, decision, order, (0.7); emails to/from Renwick re: proposed order, (0.2);			
07/25/2016	DJH		
07/26/2016	EC	2.40 hrs	600.00
Draft letter to court re: audio recording (0.2);			
07/26/2016	DJH		
07/27/2016	EC	2.60 hrs	650.00

0800

VALOR SECURITY ADV. HAWKINS
Invoice # 002175 - 00001 - 26163

emails to/from Lyons re: proposed order (0.1);

(0.3); draft letter to all counsel re:
proposed Order (0.2);

07/27/2016 DJH

07/28/2016 EC

07/28/2016 DJH

07/30/2016 EC

Read and analyze fees and costs from Lewis
Brisbois for purposes of memorandum of costs
and expenses (0.5); review email from Renwick
and suggested modifications to proposed Order
and

0.90 hrs

225.00

Total Fees For This Matter:

23,635.50

DISBURSEMENTS:

07/31/2016

07/31/2016

07/31/2016

07/31/2016

07/31/2016

07/31/2016

07/31/2016

07/31/2016

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07/31/2016

07/31/2016

07/31/2016

Total Disbursements For This Matter:

0801

VALOR SECURITY ADV. HAWKINS
Invoice # 002175 - 00001 - 26163

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BILLING SUMMARY:

HALBERT, DEBORA J.	77.70 hrs	\$115.00 /hr	\$8,935.50
CARRANZA, EDGAR	58.80 hrs	\$250.00 /hr	\$14,700.00

CURRENT INVOICE:

Total Professional Services:	\$23,635.50	
Total Expenses Advanced:	\$37,554.73	
Total Charges For This Invoice:	\$61,190.23	
Less Prepaid Amount Applied:	\$0.00	
Current Amount Due:		\$61,190.23

STATEMENT OF ACCOUNT:

Prior Balance:	\$1,662.80	
Less Payments Received:	\$2,189.50	
(+/-) Adjustments:	\$526.70	
Past Amount Due:		\$0.00
TOTAL AMOUNT NOW DUE:		<u>\$61,190.23</u>

EXHIBIT G

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 **AFFT**
2 Edgar Carranza, Esq.
3 Nevada State Bar No. 5902
4 **BACKUS, CARRANZA & BURDEN**
5 3050 S. Durango Drive
6 Las Vegas, NV 89117
7 (702) 872-5555
8 (702) 872-5545 facsimile
9 ecarranza@backuslaw.com
10 Attorneys for Defendants
11 MYDATT SERVICES, INC. d/b/a VALOR
12 SECURITY SERVICES and MARK WARNER

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 X'ZAVION HAWKINS,)
12) **Case No. A717577**
13 Plaintiffs,)
14) **Dept. XXXI**
15 vs.)
16)
17 GGP MEADOW 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 I through 10;)
22 DOE SECURITY GUARDS 11 through 20; and)
23 ROE ENTITES 21 through 30, Inclusive,)
24 Defendants.)
25)
26)
27)
28)

21 **AFFIDAVIT OF EDGAR CARRANZA, ESQ.**

22
23 STATE OF NEVADA)
24) ss:
25 COUNTY OF CLARK)

26 The above-named affiant, **EDGAR CARRANZA, ESQ.**, after being duly sworn, hereby
27 deposes and states:

28 1. All information stated herein is based on my personal knowledge, except as

1 to that information stated upon information and belief, and as to that information, I am informed and
2 believe the information to be true.

3 2. I am co-counsel for Defendants, MYDATT SERVICES, INC. d/b/a VALOR
4 SECURITY SERVICES and MARK WARNER, and am duly licensed and admitted to practice law
5 in the State of Nevada, the United States District Court for the District of Nevada, the United States
6 Court of Appeals for the Ninth Circuit and the United States Supreme Court.

7
8 3. I am the lead attorney on this matter for the BACKUS, CARRANZA & BURDEN law firm
9 and am most familiar with the fees and costs incurred in defense of this case.

10 4. All fees incurred were determined by multiplying the total hours worked by
11 attorneys and paralegals assigned to handle the file. The defense was provided under favorable
12 rates granted to this client as follows: Edgar Carranza, Esq. (partner) at \$250 per hour for a total
13 of 39.7 hours worked and Debra Halbert (paralegal) at \$120 per hour total 14.5 hours worked.

14
15 5. In computing these billings, daily time batches were entered into the accounting
16 program employed by the firm reflecting the work performed on the case on a day by day basis.
17 Each attorney and paralegal who devoted time to the case, at or about the time the services were
18 rendered, noted the time spent, and prepared a description of the work completed. These entries
19 were then used by my firm's accounting department to prepare monthly billing invoices. It is
20 through this accounting process that the total fee amount expended on this matter was reached.

21 6. The total fee amount incurred in this matter by the BACKUS, CARRANZA & BURDEN
22 is \$11,442.50. These fees were necessary and reasonable in defense of my clients.

23 7. I am informed and believe that the same approach was taken by both the Lewis,
24 Brisbois, Bisgaard & Smith law firm and the Lee, Hernandez, Landrum & Garofalo law firm in
25 computing the respective fees detailed in Exhibits A and C, respectively.

26 8. I am familiar with the total costs expended in this matter which total \$208.00. These
27 costs were necessary and reasonable in defense of my clients.
28

BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

1 9. I received my Juris Doctorate degree from Arizona State University in 1994 and
2 have practiced in Nevada for approximately twenty (20) years. BACKUS, CARRANZA & BURDEN is
3 an AV rated litigation law firm, I am an AV rated lawyer (5.0 out of 5.0) and my practice includes
4 commercial litigation defending Nevada employers from claims which often include negligent
5 security and premises liability matters. I am an active member of the American Bar Association
6 (ABA), the Defense Research Institute (DRI) and the International Association of Defense
7 Counsel (IADC).
8

9 10. To the best of my knowledge and belief, these fees and costs are correct, reasonable
10 and necessarily incurred in defending this matter.
11

12 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
13 true and correct.
14

15 DATED this 19th day of August, 2016.

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EDGAR CARRANZA, ESQ.

20 SWORN AND ATTESTED TO before me
21 this 19th day of August, 2016.

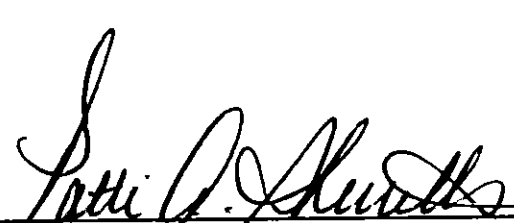
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NOTARY PUBLIC



EXHIBIT H



American Legal Investigation Services Nevada Inc.
P.O. Box 59701 Los Angeles, CA 90074-9701

TAX ID# 26-1476985

INVOICE

37006024	37117
7/15/16	135.00

LEE HERNANDEZ LANDRUM & GAROFALO
ATTN: YVETTE ROBERTS
7575 VEGAS DR, SUITE 150
LAS VEGAS, NV 89128

BILLING/PAYMENT QUESTIONS
DOM FRITSCH 702-6714002

DATE		INVOICE NO.		INVOICE DATE		TOTAL DUE		TOTAL PAID	
		37117		37006024		7/15/16		135.00	
7/08/16	8515926	3DP	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meester A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hearing Subpoena to Detective Menzie Please serve at Las Signed: CLOSE/8516306	Detective Menzie, P#6830 750 Sierra Vista Drive LAS VEGAS NV 89169	Base Chg :	45.00	45.00		
PROCESS-3 DAYS									
7/08/16	8515927	3DP	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meester A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hearing Subpoena to Detective Majors Please serve Las Signed: CLOSE/8516410	Detective William Lee Majors 750 Sierra Vista Drive LAS VEGAS NV 89169	Base Chg :	45.00	45.00		
PROCESS-3 DAYS									
7/12/16	8516306	3DP	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meester A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hearing Subpoena to Detective Menzie Please serve at Las Signed: N. PARTIDA/LEST SPVSR	Detective Menzie, P#6830 6975 W WINDMILL LANE LAS VEGAS NV 89113	Base Chg :	45.00	45.00		
PROCESS-3 DAYS									
7/12/16	8516367	SDP	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meester A-15-717577-C Hawkins v. GGP Meadows, etc. Letter and DCRR Please deliver Signed: SUBMITTED DISCOVERY	EIGHTH JUDICIAL DISTRICT COURT 200 LEWIS AVENUE LAS VEGAS NV 89155 Comment: * NO BASE CHARGE *					
FILING SAME DAY-DAILY RUN									
							Total	135.00	

INVOICE PAYMENT DUE UPON RECEIPT



American Legal Investigation Services Nevada Inc.
P.O. Box 59701 Los Angeles, CA 90074-9701

TAX ID# 26-1476985

INVOICE

37006209	37117
7/23/16	62.50

LEE HERNANDEZ LANDRUM & GAROFALO
ATTN: YVETTE ROBERTS
7575 VEGAS DR, SUITE 150
LAS VEGAS, NV 89128

BILLING/PAYMENT QUESTIONS
DON FRITSCH 702-6714002

			37117	37006209	7/23/16	62.50	1		
7/12/16	8516410	SDP	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meeter A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hearing Subpoena to Detective Majors DIANE NEEDS AFFIDAVI Signed: PERSONALLY SERVED		Detective William Lee Majors P#7089 Base Chg : 1851 Stella Lake Street LAS VEGAS NV 89106 Ref: HAWKINS		62.50	62.50	
PROCESS-SAME DAY									
7/19/16	55000437	SDF	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meeter A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hrg Subpoena to Detective Menzie Please deliver Signed: DELIVERED DEPT 31		EIGHTH JUDICIAL DISTRICT COURT 200 LEWIS AVENUE LAS VEGAS NV 89155 Comment: * NO BASE CHARGE * Ref: HAWKINS				
FILING SAME DAY-DAILY RUN									
7/20/16	55000661	SDF	LEE HERNANDEZ LANDRUM & GAROFALO 7575 Vegas Drive LAS VEGAS NV 89128 Caller: Diane Meeter A-15-717577-C Hawkins v. GGP Meadows, etc. Civil Evidentiary Hrg Subpoena to Detective Majors Please deliver Signed: DELIVERED DEPT 31		EIGHTH JUDICIAL DISTRICT COURT 200 LEWIS AVENUE LAS VEGAS NV 89155 Comment: * NO BASE CHARGE * Ref: HAWKINS				
FILING SAME DAY-DAILY RUN									
								Total	62.50

INVOICE PAYMENT DUE UPON RECEIPT

Details of filing: 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 in Case Number: A-15-717577-C

E-File ID: 8256820

Lead File Size: 2261070 bytes

Date Filed: 2016-06-07 15:44:58.0

Case Title: A-15-717577-C

Case Name: X'Zavlon Hawkins, Plaintiff(s) vs. GGP Meadows Mall, LLC, Defendant(s)

Filing Title: 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

Filing Type: EFS

Filer's Name: Colleen Soto

Filer's Email: dlee@lee-lawfirm.com

Account Name: CITI - CMS

Filing Code: SUPP

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: 07-JUN-2016 08:58:08 PM: Approved \$3.50 on MasterCard account "CITI - CMS" [****-8357]

Comments:

Courtesy Copies: dmeeter@lee-lawfirm.com

Firm Name: Lee Hernandez Landrum & Garofalo

Your File Number:

Status: Accepted - (A)

Date Accepted: 2016-06-07 17:58:10.0

Review Comments:

Reviewer: Michelle McCarthy

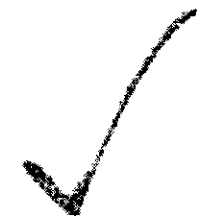
File Stamped Copy: A-15-717577-C-8256820 SUPP Defendant GGP Meadows Mall LLC s Supplemental Exhibit To Joinder to Defendants Myd.pdf

Documents: Cover Document:
Lead Document: GGP Supp Exhibit to Joinder of Mydatt Warner's Mtn to Dismiss.pdf 2261070 bytes

Data Reference ID:

Credit Card Response: System Response: AU1CE6E21EC5
Reference:

Details of filing: *Civil Evidentiary Hearing Subpoena To Detective Menzie*
Filed in Case Number: A-15-717577-C



E-File ID: 8389854

Lead File Size: 307428 bytes

Date Filed: 2016-07-18 14:45:05.0

Case Title: A-15-717577-C

Case Name: X'Zavion Hawkins, Plaintiff(s) vs. GGP Meadows Mall, LLC, Defendant(s)

Filing Title: Civil Evidentiary Hearing Subpoena To Detective Menzie

Filing Type: EFS

Filer's Name: Colleen Soto

Filer's Email: dlee@lee-lawfirm.com

Account Name: CITI - CMS

Filing Code: SUBI

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: 19-JUL-2016 11:23:41 AM: Approved \$3.50 on MasterCard account "CITI - CMS" [****-8357]

Comments:

Courtesy Copies: dmeeter@lee-lawfirm.com

Firm Name: Lee Hernandez Landrum & Garofalo

Your File Number:

Status: Accepted - (A)

Date Accepted: 2016-07-19 08:23:44.0

Review Comments:

Reviewer: Judit Angyalne Kiss

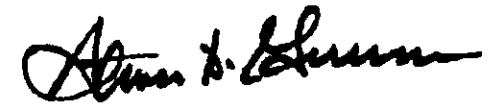
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Documents: Cover Document:

Lead Document: Civil Evid Hrg Subpoena to Detective Menzie - Affd of Srv.pdf 307428 bytes

Data Reference ID:

Credit Card Response: System Response: AQ1CD7F66523
Reference:



CLERK OF THE COURT

SUBP

1 DAVID S. LEE, ESQ.
Nevada Bar No.: 6033
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8 SERVICES, INC. dba VALOR
SECURITY SERVICES and
9 MARK WARNER

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17 MYDATT SERVICES, INC. dba VALOR
SECURITY SERVICES and
18 MARK WARNER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

20 X'ZAVION HAWKINS,
21 Plaintiff,

22 vs.

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

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

**CIVIL EVIDENTIARY HEARING
SUBPOENA TO DETECTIVE MENZIE**



Details of filing: *Civil Evidentiary Hearing Subpoena to Detective Majors*
Filed in Case Number: A-15-717577-C

E-File ID: 8396328

Lead File Size: 303876 bytes

Date Filed: 2016-07-19 16:59:39.0

Case Title: A-15-717577-C

Case Name: X'Zavion Hawkins, Plaintiff(s) vs. GGP Meadows Mall, LLC, Defendant(s)

Filing Title: Civil Evidentiary Hearing Subpoena to Detective Majors

Filing Type: EFS

Filer's Name: Colleen Soto

Filer's Email: dlee@lee-lawfirm.com

Account Name: CITI - CMS

Filing Code: SUBI

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: 20-JUL-2016 02:01:16 PM: Approved \$3.50 on MasterCard account "CITI - CMS" [****-8357]

Comments:

Courtesy Copies: dmeeter@lee-lawfirm.com

Firm Name: Lee Hernandez Landrum & Garofalo

Your File Number:

Status: Accepted - (A)

Date Accepted: 2016-07-20 11:01:18.0

Review Comments:

Reviewer: Janel Washington

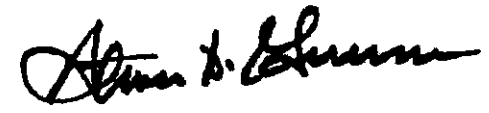
File Stamped Copy: A-15-717577-C-8396328 SUBI Civil Evidentiary Hearing Subpoena to Detective Majors.pdf

Documents: Cover Document:

Lead Document: Civil Evid Hrg Subpoena to Detective Major.pdf 303876 bytes

Data Reference ID:

Credit Card Response: System Response: AP1CD66564A4
Reference:



CLERK OF THE COURT

SUBP

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SECURITY SERVICES and
9 MARK WARNER

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16 Attorneys for Defendants,
17 MYDATT SERVICES, INC. dba VALOR
SECURITY SERVICES and
18 MARK WARNER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

20 X'ZAVION HAWKINS,
21 Plaintiff,
22 vs.

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

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

CIVIL EVIDENTIARY HEARING
SUBPOENA TO DETECTIVE MAJORS

EXHIBIT 24

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 X'ZAVION HAWKINS,

5 Plaintiffs,

6 vs.

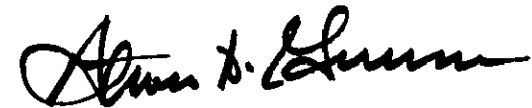
7
8 GGP MEADOW MALL LLC, a Delaware
9 Limited Liability Company; MYDATT
10 SERVICES, INC. d/b/a VALOR SECURITY
11 SERVICES, an Ohio Corporation; MARK
12 WARNER, individually; DOES I through 10;
13 DOE SECURITY GUARDS 11 through 20;
and ROE ENTITES 21 through 30, Inclusive,

Defendants.

) **Case No. A717577**

) Electronically Filed

) **Dept. XXXI** 08/24/2016 11:56:29 AM

) 

) **CLERK OF THE COURT**

14
15 **ORDER DENYING IN PART AND GRANITING**
16 **IN PART MOTION TO DISMISS**

17 Date of hearing: 07-21-16

18 Time of hearing: 9:30 a.m.

19 Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY

20 SERVICES and MARK WARNER's (collectively referred to herein as "Mydatt")

21 Motion to Dismiss, filed on March 23, 2016; Defendant, GGP MEADOW MALL

22 LLC's (referred to herein as "GGP") Joinder, filed on April 1, 2016; Plaintiff,

23 X'ZAVION HAWKINS' (hereinafter referred to as "Plaintiff") Opposition to the

24 Motion to Dismiss and Countermotion for Sanctions, filed on March 8, 2016; and

25 Mydatt's reply to Opposition and Countermotion, filed on April 26, 2016; came on

26 for hearing before this Court on May 3, 2016, and an Evidentiary Hearing July 21,

1 2016. This honorable Court having reviewed the pleadings filed, the evidence
2 admitted, witness testimony presented and oral arguments from the parties
3 hereby grants and denies the Motion to Dismiss finding as follows:

4 1. Nevada Rule of Civil Procedure ("NRC") 37(a)(2)(B) allows the
5 Court to grant sanctions, upon motion by a party, for discovery abuses as
6 follows:
7

8 (B) If a deponent fails to answer a question propounded or
9 submitted under Rules 30 or 31, or a corporation or other entity
10 fails to make a designation under Rule 30(b)(6) or 31(a), or a
11 party fails to answer an interrogatory submitted under Rule 33, or
12 if a party, in response to a request for inspection submitted under
13 Rule 34, fails to respond that inspection will be permitted as
14 requested or fails to permit inspection as requested, the
15 discovering party may move for an order compelling an answer, or
16 a designation, or an order compelling inspection in accordance
17 with the request. The motion must include a certification that the
18 movant has in good faith conferred or attempted to confer with the
19 person or party failing to make the discovery in an effort to secure
20 the information or material without court action. When taking a
21 deposition on oral examination, the proponent of the question may
22 complete or adjourn the examination before applying for an Order.
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1 2. NRCP 37(a)(4) allows an award of fees and costs in response to a
2 motion under Rule 37:

3 (A) If the motion is granted or if the disclosure or requested
4 discovery is provided after the motion was filed, the court shall,
5 after affording an opportunity to be heard, require the party or
6 deponent whose conduct necessitated the motion or the party or
7 attorney advising such conduct or both of them to pay to the
8 moving party the reasonable expenses incurred in making the
9 motion, including attorney's fees, unless the court finds that the
10 motion was filed without the movant's first making a good faith
11 effort to obtain the disclosure or discovery without court action, or
12 that the opposing party's nondisclosure, response or objection
13 was substantially justified, or that other circumstances make an
14 award of expenses unjust.

15
16 (C) If the motion is granted in part and denied in part, the court
17 may enter any protective order authorized under Rule 26(c) and
18 may, after affording an opportunity to be heard, apportion the
19 reasonable expenses incurred in relation to the motion among the
20 parties and persons in a just manner.

21 3. NRCP 37(b) allows for additional sanctions against a party as
22 follows:

23 (2) Sanctions—Party. If a party or an officer, director, or
24 managing agent of a party or a person designated under Rule
25 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
26 order to provide or permit discovery, including an order made
27 under subdivision (a) of this rule or Rule 35, or if a party fails to
28 obey an order entered under Rules 16, 16.1, and 16.2, the court in
which the action is pending may make such orders in regard to
the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was
made or any other designated facts shall be taken to be
established for the purposes of the action in accordance with
the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support
or oppose designated claims or defenses, or prohibiting that
party from introducing designated matters in evidence;

1 (C) An order striking out pleadings or parts thereof, or staying
2 further proceedings until the order is obeyed, or dismissing
3 the action or proceeding or any part thereof, or rendering a
4 judgment by default against the disobedient party;

5 (D) In lieu of any of the foregoing orders or in addition
6 thereto, an order treating as a contempt of court the failure to
7 obey any orders except an order to submit to a physical or
8 mental examination;

9 (E) Where a party has failed to comply with an order under
10 Rule 35(a) requiring that party to produce another for
11 examination, such orders as are listed in subparagraphs (A),
12 (B), and (C) of this subdivision, unless the party failing to
13 comply shows that that party is unable to produce such
14 person for examination.

15 In lieu of any of the foregoing orders or in addition thereto, the
16 court shall require the party failing to obey the order or the
17 attorney advising that party or both to pay the reasonable
18 expenses, including attorney's fees, caused by the failure,
19 unless the court finds that the failure was substantially justified
20 or that other circumstances make an award of expenses
21 unjust.

22 4. Courts are empowered, pursuant to the unclean hands doctrine, to
23 close the doors to the courthouse to a litigant who is "tainted with inequity
24 or bad faith relative to the matter in which he seeks relief."¹

25 5. NRCP 1 provides courts the inherent discretion to construe and
26 administer the rules of civil procedure "to secure the just, speedy, and
27 inexpensive determination of every action."

28 6. This Court finds that after a full evidentiary hearing where both
parties were able to provide witness testimony and evidence, Plaintiff failed to
provide information requested by Mydatt in the written discovery and by Mydatt

¹ See, *Precision Instrument Manufacturing Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 804, 814-15 (1945).

1 and GGP at Plaintiff's deposition which was within Plaintiff's knowledge, custody
2 and control. This includes, but is not limited to, the identity of the assailants
3 involved in the August 17, 2013, altercation; descriptions of the assailants; the
4 history between Plaintiff and the assailants; the facts involving the altercation;
5 and Plaintiff's role in the altercation. And that such failure violated the spirit and
6 intent of the discovery rules of this Court.
7

8 7. This Court further finds that Plaintiff failed to provide some of this
9 information as part of his mandatory obligations pursuant to NRCP 16.1.

10 8. This Court further finds that the failure to provide the information,
11 and denying knowledge of the information in response to the written discovery
12 requests as required under NRCP 33 and 35 and during his deposition, is belied
13 by evidence and testimony presented, including Plaintiff's voluntary statement
14 provided to the Las Vegas Metropolitan Police Department as part of its
15 investigation of the August 17, 2013, shooting, the testimony of Detective Majors
16 (which this Court finds to be credible) and by Plaintiff's Complaint filed with this
17 Court on April 27, 2015.
18

19 9. This Court further finds that Plaintiff's testimony and attempted
20 explanation of memory lapses was not supported by credible evidence.
21

22 10. No prior Order has been issued by this Court related to the
23 discovery requests, deposition testimony, NRCP 16.1 disclosures, or information
24 at issue. Given there is not a prior Order relating to the above referenced
25 violations, the Court finds that at this juncture the requested relief of terminating
26 sanctions is not appropriate.
27
28

1 11. Given the extent and gravity of the conduct, however, this Court
2 finds that, nonetheless, sanctions are warranted against Plaintiff based on both
3 Nevada law, including *Young v. Johnny Ribeiro*² and its progeny; the evidence
4 and testimony presented; and Plaintiff's conduct in litigating this case.

5 Accordingly, this honorable Court orders as follows:

6 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that Defendant,
7 Mydatt's Motion to Dismiss is hereby DENIED in part and GRANTED in part.

8 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that
9 Defendant Mydatt's request that Plaintiff's Complaint be dismissed based on the
10 discovery abuses involved is hereby DENIED without prejudice.

11 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that sanctions
12 are GRANTED against Plaintiff for the discovery and disclosure abuses involved
13 as follows:

14 A. Defendants, Mydatt and GGP, shall be awarded, and Plaintiff shall
15 pay, reasonable attorney's fees and costs in an amount to be
16 determined by this Court after proper submissions by all parties.

17 The amount shall be paid by Plaintiff within 14 days of the entering
18 of the Order setting forth the sanction amount;

19 B. If requested by Defendant(s), the Court shall provide a curative jury
20 instruction(s) that seeks to address the harm caused by Plaintiff's
21 discovery abuses by establishing *inter alia* that if Plaintiff had
22 complied with his obligations under NRCP 16.1, NRCP 30, NRCP
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² 106 Nev. 88 (1990).

1 33 and NRCP 36, evidence and testimony would have been
2 discovered which would have more accurately reflected the
3 circumstances involved in the altercation at issue between Plaintiff
4 and the assailants as indicated in the voluntary statement provided
5 to LVMPD. The applicable curative jury instruction(s) will be crafted
6 by the parties and this Court contemporaneous with the submission
7 of all jury instructions closer to the time of trial;
8

9 C. If good cause is shown, the Court shall grant an extension of the
10 discovery period, currently set for September 16, 2016, and trial,
11 currently set for November 14, 2016, upon a timely request by
12 Defendants Mydatt and GGP upon further consideration of the
13 preparation required.
14

15 IT IS FURTHER ORDERED, DECREED, AND ADJUDGED that no
16 settlement conference will be ordered at this time as the parties have broached
17 settlement discussions informally and will continue to pursue on their own terms.
18

19 DATED this 18th day of August, 2016.

20 
21 JOANNA S. KISHNER
22 DISTRICT COURT JUDGE
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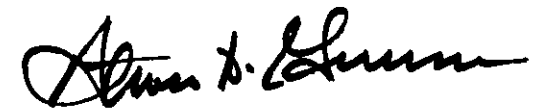
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL PARTIES SERVED VIA E-SERVICE


TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

EXHIBIT 25



CLERK OF THE COURT

FFCO
DAVID J. CHURCHILL (SBN: 7308)
JOLENE J. MANKE (SBN: 7436)
INJURY LAWYERS OF NEVADA
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F: 702-868-8889
david@injurylawyersnv.com
jolene@injurylawyersnv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

vs.

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. NO.: XXXI

**FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER RE:
PLAINTIFF'S MOTION TO
DISQUALIFY LEWIS BRISBOIS
BISGAARD & SMITH AND FOR
SANCTIONS ON ORDER
SHORTENING TIME**

Date of Hearing: 06/08/2016
Time of Hearing: 11:00 a.m.

This matter came on for hearing on June 8, 2016, on Plaintiff X'ZAVION HAWKINS' ("Plaintiff") motion to disqualify Lewis Brisbois Bisgaard & Smith and for sanctions on order shortening time. Present at the hearing were Plaintiff; his counsel, David J. Churchill, Esq. and Jolene J. Manke, Esq. of Injury Lawyers of Nevada; John P. Lavery, Esq., David B. Avakian, Esq. and Harold J. Rosenthal, Esq. of Lewis Brisbois Bisgaard & Smith, LLP ("LBBS"), co-counsel for Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER; and, David S. Lee, Esq. and Charlene N. Renwick, Esq. of Lee, Hernandez, Landrum & Garofalo, counsel for Defendants GGP MEADOWS MALL LLC ("Meadows Mall"), MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES ("Mydatt") and MARK WARNER ("Warner"). After entertaining oral argument and having fully reviewed all the papers, documents on file, and all applicable statutes, case law and advisory opinion, the Court finds as follows:

1 **I. PROCEDURAL BACKGROUND AND SUMMARY OF ARGUMENTS RAISED**

2 On August 17, 2013, X'Zavion was shot multiple times while attending the Nike Air Jordan
3 Green Glow shoe launch at Meadows Mall. As a result of the shooting, X'Zavion is permanently
4 paralyzed from the waist down.

5 Before litigation commenced, X'Zavion was represented by Jason W. Barrus, Esq. and Lloyd W.
6 Baker of Baker Law Firm. On December 18, 2014, X'Zavion, his mother and Messrs. Barrus and Baker
7 met with Paul A. Shpirt, Esq. and Tracy A. Eglet, Esq. of Eglet Law Group n/k/a Eglet Prince to discuss
8 referring X'Zavion's matter to Eglet Law Group for litigation. Eglet Law Group decided to accept the
9 referral. Accordingly, during the meeting on December 18, 2014, Mr. Shpirt signed the retainer
10 agreement with X'Zavion. He also signed the attorney fee sharing agreement between Eglet Law
11 Group, Baker Law Firm and X'Zavion. Mr. Barrus provided a thumb drive containing materials relating
12 to X'Zavion's matter to Eglet Law Group.

13 On March 16, 2015, Mr. Shpirt telephoned Mr. Barrus to advise him that Eglet Law Group
14 would not be able to continue representing X'Zavion. That same day, Mr. Shpirt sent an e-mail to
15 Messrs. Baker and Barrus memorializing his conversation with Mr. Barrus that Eglet Law Group would
16 not be able to continue representing X'Zavion because of "some of the problems we see with liability in
17 this case" and because "the police report creates a lot of issues for us."

18 Baker Law Firm then referred X'Zavion's matter to Injury Lawyers of Nevada. On April 27,
19 2015, Injury Lawyers of Nevada filed X'Zavion's complaint alleging claims for negligence, respondeat
20 superior and gross negligence against Meadows Mall, Mydatt and Warner.

21 Sometime in July of 2015, Mr. Shpirt left Eglet Law Group and returned to LBBS where he had
22 practiced previously. In October of 2015, Josh Cole Aicklen, Esq., a partner with LBBS, was retained to
23 monitor the defense of Mydatt and Warner being provided by Lee, Hernandez, Landrum & Garofalo.
24 Also in October of 2015, Messrs. Aicklen and Shpirt realized Mr. Shpirt had represented X'Zavion
25 while practicing with Eglet Law Group. LBBS took efforts to screen off Mr. Shpirt from X'Zavion's
26 matter. However, LBBS did not send notice to X'Zavion that Mr. Shpirt was practicing with LBBS. On
27 November 16, 2015, LBBS filed a notice of association of counsel for Mydatt and Warner.

28 ///

1 Thereafter, LBBS filed a motion to dismiss X'Zavion's complaint based on an allegation of
2 unclean hands relating to information obtained from Det. William Majors, the Metro detective who
3 oversaw the investigation of X'Zavion being shot at Meadows Mall. At the hearing on the motion to
4 dismiss on May 3, 2016, the Court determined an evidentiary hearing was required.

5 On May 11, 2016, X'Zavion brought a motion to disqualify LBBS on order shortening time
6 based upon Mr. Shpirt's prior representation of X'Zavion at Eglet Law Group, the imputed conflict to
7 LBBS and LBBS' failure to provide notice to X'Zavion that Mr. Shpirt was practicing at LBBS after
8 LBBS began representing Mydatt and Warner. X'Zavion's motion included a request for the sanction of
9 recovering attorney's fees and costs incurred from the time that LBBS defended Mydatt and Warner
10 and/or striking the first volume of X'Zavion's deposition.

11 Based upon the filing of X'Zavion's motion to disqualify LBBS, the Court decided to defer
12 conducting the evidentiary hearing on Mydatt and Warner's motion to dismiss X'Zavion's complaint
13 and Meadows Mall's joinder thereto until after the Court issued a decision on the motion to disqualify.

14 **II. DISCUSSION**

15 **A. The Conflict**

16 NRPC 1.9 provides:

17 (a) A lawyer who has formerly represented a client in a matter shall not thereafter
18 represent another person in the same or a substantially related matter in which that
19 person's interests are materially adverse to the interests of the former client unless the
20 former client gives informed consent, confirmed in writing.

21 (b) A lawyers shall not knowingly represent a person in the same or a
22 substantially related matter in which a firm with which the lawyer formerly was
23 associated had previously represented a client:

- 24 (1) Whose interests are materially adverse to that person; and
- 25 (2) About whom the lawyer had acquired information protected by Rules
- 26 1.6 and 1.9(c) that is material to the matter;
- 27 (3) Unless the former client gives informed consent, confirmed in writing.

28 (c) A lawyer who has formerly represented a client in a matter or whose present
 or former firm has formerly represented a client in a matter shall not thereafter:

 (1) Use information relating to the representation to the disadvantage of
 the former client except as these Rules would permit or require with respect to a client, or
 when the information has become generally known; or

 (2) Reveal information relating to the representation except as these Rules
 would permit or require with respect to a client.

AS a former attorney at Eglet Law Group, it is viewed to have represented Mr. Hawkins.

1 There is a conflict of interest pursuant to NRPC 1.9. First, Mr. Shpirt, ~~did formally~~ represent Mr. Hawkins when he was practicing with Eglet Law Group. Second, Mr. Hawkins' matter that was with Eglet Law Group is the above-captioned matter currently pending before this Court. Third, Mr. Shpirt is currently practicing with LBBS, which firm is now representing Defendants Mydatt and Warner, whose interests are directly adverse Mr. Hawkins in the above-captioned matter.

6 **B. Imputation of the Conflict**

7 NRPC 1.10 (e) provides:

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

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

12 (2) The personally disqualified lawyer is timely screened from any participation
13 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 ascertain
15 compliance with the provisions of this Rule.

16 Compliance with each aspect of NRPC 1.10(e) is required to avoid imputation of Mr. Shpirt's
17 conflict to LBBS. LBBS contends Mr. Shpirt did not have a substantial role or primary responsibility
18 for Mr. Hawkins' matter at Eglet Law Group. LBBS also contends it has timely screened Mr. Shpirt
19 from participating in this matter and he will not receive any fee relating to this matter. Mr. Hawkins and
20 his counsel contend that Mr. Shpirt's involvement with Mr. Hawkins' matter while at Eglet Law Group
21 was substantial. Conflicting evidence was provided by both sides. However, importantly, no evidence
22 was presented demonstrating compliance with the requirement that written notice be promptly given to
23 the former client.

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1 **B. Failure to Provide Proper Notice**

2 LBBS did not provide proper notice to Mr. Hawkins to allow him to either give or withhold his
3 consent as required pursuant to NRPC 1.9 and 1.10. LBBS states in its opposition that extensive
4 measures to ensure Mr. Shpirt is screened off from the matter have already been implemented. LBBS
5 asserts that Mr. Shpirt can be and has been effectively screened off of the matter to avoid imputation of
6 the conflict onto the whole firm. LBBS contends Mr. Shpirt did not have a substantial role in
7 representing Mr. Hawkins at Eglet Law Group, and that the firm as a whole has implemented effective
8 and substantial screening measures to comply with the rules and avoid any conflict.

9 Mr. Hawkins disagrees. He asserts that not only has he not expressly consented to waive any
10 potential conflict, but he and his counsel dispute the involvement of Mr. Shpirt in the instant case. He
11 also contends he was not notified of the potential conflict as set forth in the rules.

12 In evaluating the conflicting contentions of the parties, the Court evaluates whether or not the
13 procedures required by NRPC 1.9(b) and 1.10(e) were satisfied to make screening of Mr. Shpirt by
14 LBBS valid in accordance with the Rules of Professional Conduct. NRPC 1.9(b)(3) requires an attorney
15 to get a former client's informed consent before representing an opposing party in the same or
16 substantially related matter. Additionally, NRPC 1.10(e)(3) requires that written notice be promptly
17 given to the affected former client when a lawyer that is disqualified under NRPC 1.9 is employed by a
18 new firm which is retained on the same or substantially related matter. In the instant case, it is
19 undisputed that the representation at issue is the same litigation matter. Thus, the appropriate inquiry for
20 the Court is whether appropriate notice was provided or whether there are any exceptions that would
21 apply.

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1 No evidence was presented demonstrating that Mr. Hawkins was ever informed that Mr. Shpirt
2 was moving to LBBS prior to the motion at issue. No evidence was presented demonstrating that Mr.
3 Hawkins ever consented to Defendants Mydatt and Warner being represented by LBBS. No evidence
4 was presented demonstrating that Mr. Hawkins ever waived any imputed disqualification. During the
5 hearing LBBS acknowledged it did not send Mr. Hawkins written notice of Mr. Shpirt's employment
6 with LBBS. It is, therefore, undisputed that Mr. Hawkins was not given written notice of the potential
7 conflict of interest as required by NRPC 1.10(e)(3) and his written consent was not obtained as required
8 by NRPC 1.9(b). Based on the failures to meet all of the procedural requirements of NRPC 1.9(b) and
9 1.10(e), the applicable rules on their face would require disqualification of LBBS.

10 LBBS, however, set forth that it should not be disqualified because of the State Bar of Nevada
11 Standing Committee on Ethics and Responsibility, Formal Opinion No. 39, dated April 24, 2008,
12 finding, "his/her new law firm could continue to represent Client B in a case without Client A consent if
13 the personally disqualified lawyer is ethically screened from the case. (*See*, Opp. At 18:11-12.) LBBS
14 also argued to avoid disqualification on the basis of "substantial compliance." (*Id.* at 19:10-12.)
15 Looking at the undisputed evidence of Mr. Shpirt's involvement based upon the e-mail correspondence
16 and the failure to provide written notice to Mr. Hawkins to attempt to obtain his consent, the Court
17 cannot find that this matter would fall into the potential exception provided for in Formal Opinion No.
18 39, even given the extensive screening efforts that were implemented. While the Court does not find
19 any misconduct on the part of Mr. Shpirt or LBBS, and recognizes the efforts of LBBS to screen Mr.
20 Shpirt, the applicable rules mandate that LBBS must be disqualified from representing Defendants
21 Mydatt and Warner in the instant action.

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1 **III. CONCLUSION**

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff X'ZAVION
3 HAWKINS' motion to disqualify Lewis Brisbois Bisgaard & Smith, LLP is GRANTED. Plaintiff
4 X'ZAVION HAWKINS' motion for sanctions is DENIED.

5 DATED this 26 day of Aug, 2016.

6
7  JOANNA S. KISHNER

8 DISTRICT COURT JUDGE

9 Respectfully submitted:

10 INJURY LAWYERS OF NEVADA

Approved as to form and content:

LEE, HERNANDEZ, LANDRUM &
GAROFALO

11
12 
13 DAVID J. CHURCHILL (SBN: 7308)
14 JOLENE J. MANKE (SBN: 7436)
15 6900 Westcliff Drive, Suite 707
16 Las Vegas, Nevada 89145
Attorneys for Plaintiff

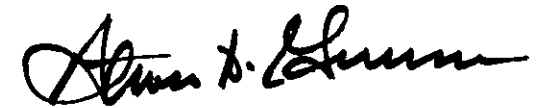
17 *didn't sign*
18 DAVID S. LEE (SBN: 6033)
19 CHARLENE N. RENWICK (SBN: 10165)
20 7575 Vegas Drive, Suite 150
21 Las Vegas, Nevada 89128
22 E-Mail: dlee@leelawfirm.com
23 crenwick@lee-lawfirm.com
24 Attorneys for Defendants
25 GGP MEADOWS MALL LLC;
26 MYDATT SERVICES, INC.
27 d/b/a VALOR SECURITY SERVICES; and
28 and MARK WARNER

Approved as to form and content:

LEWIS BRISBOIS BISGAARD & SMITH LLP

23 *didn't sign*
24 JOSH COLE AICKLEN (SBN: 7254)
25 DAVID B. AVAKIAN (SBN: 9502)
26 HAROLD J. ROSENTHAL (SBN: 10208)
27 6385 S. Rainbow Boulevard, Suite 600
28 Las Vegas, Nevada 89118
E-Mail: josh.aicklen@lewisbroisbois.com
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Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

EXHIBIT 26



CLERK OF THE COURT

1 **NEOJ**
2 DAVID J. CHURCHILL (SBN: 7308)
3 JOLENE J. MANKE (SBN: 7436)
4 **INJURY LAWYERS OF NEVADA**
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7 T: 702-868-8888
8 F: 702-868-8889
9 david@injurylawyersnv.com
10 jolene@injurylawyersnv.com
11 *Attorneys for Plaintiff*

DISTRICT COURT

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

NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that a Findings of Fact, Conclusion of Law and Order Re: Plaintiff's
18 Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time has
19 been entered in the above captioned case, a copy of which is attached hereto.

20 DATED this 7th day of September, 2016.

21 INJURY LAWYERS OF NEVADA



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

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CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 7th day of

September, 2016, I served the foregoing **NOTICE OF ENTRY OF ORDER** on the following parties
via Electronic Service as follows:

DAVID S. LEE (SBN: 6033)
CHARLENE N. RENWICK (SBN: 10165)
LEE, HERNANDEZ, LANDRUM &
GAROFALO

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Attorneys for Defendants
GGP MEADOWS MALL LLC;
MYDATT SERVICES, INC.
d/b/a VALOR SECURITY SERVICES; and
and MARK WARNER

EDGAR CARRANZA (SBN: 5902)
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E-Mail: ecarranza@backuslaw.com

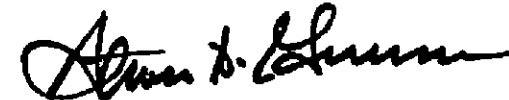
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

JOSH COLE AICKLEN (SBN: 7254)
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david.avakian@lewisbrisbois.com
harold.rosenthal@lewisbrisbois.com

Attorneys for Defendants


an employee of Injury Lawyers of Nevada



CLERK OF THE COURT

FFCO
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

vs.

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. NO.: XXXI

**FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER RE:
PLAINTIFF'S MOTION TO
DISQUALIFY LEWIS BRISBOIS
BISGAARD & SMITH AND FOR
SANCTIONS ON ORDER
SHORTENING TIME**

Date of Hearing: 06/08/2016
Time of Hearing: 11:00 a.m.

This matter came on for hearing on June 8, 2016, on Plaintiff X'ZAVION HAWKINS' ("Plaintiff") motion to disqualify Lewis Brisbois Bisgaard & Smith and for sanctions on order shortening time. Present at the hearing were Plaintiff; his counsel, David J. Churchill, Esq. and Jolene J. Manke, Esq. of Injury Lawyers of Nevada; John P. Lavery, Esq., David B. Avakian, Esq. and Harold J. Rosenthal, Esq. of Lewis Brisbois Bisgaard & Smith, LLP ("LBBS"), co-counsel for Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER; and, David S. Lee, Esq. and Charlene N. Renwick, Esq. of Lee, Hernandez, Landrum & Garofalo, counsel for Defendants GGP MEADOWS MALL LLC ("Meadows Mall"), MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES ("Mydatt") and MARK WARNER ("Warner"). After entertaining oral argument and having fully reviewed all the papers, documents on file, and all applicable statutes, case law and advisory opinion, the Court finds as follows:

Findings of Fact, Conclusion of Law and Order re: Disqualification of LBBS and for Sanctions on OST - 1

0832

1 **I. PROCEDURAL BACKGROUND AND SUMMARY OF ARGUMENTS RAISED**

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3 Green Glow shoe launch at Meadows Mall. As a result of the shooting, X'Zavion is permanently
4 paralyzed from the waist down.

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9 referral. Accordingly, during the meeting on December 18, 2014, Mr. Shpirt signed the retainer
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28 (c) A lawyer who has formerly represented a client in a matter or whose present
or former firm has formerly represented a client in a matter shall not thereafter:

- 29 (1) Use information relating to the representation to the disadvantage of
- 30 the former client except as these Rules would permit or require with respect to a client, or
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AS a former Eglet Law Group
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Represented
later

1 There is a conflict of interest pursuant to NRPC 1.9. First, Mr. Shpirt ~~did formally~~ represent Mr. Hawkins when he was practicing with Eglet Law Group. Second, Mr. Hawkins' matter that was with Eglet Law Group is the above-captioned matter currently pending before this Court. Third, Mr. Shpirt is currently practicing with LBBS, which firm is now representing Defendants Mydatt and Warner, whose interests are directly adverse Mr. Hawkins in the above-captioned matter.

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

15 Compliance with each aspect of NRPC 1.10(e) is required to avoid imputation of Mr. Shpirt's conflict to LBBS. LBBS contends Mr. Shpirt did not have a substantial role or primary responsibility for Mr. Hawkins' matter at Eglet Law Group. LBBS also contends it has timely screened Mr. Shpirt from participating in this matter and he will not receive any fee relating to this matter. Mr. Hawkins and his counsel contend that Mr. Shpirt's involvement with Mr. Hawkins' matter while at Eglet Law Group was substantial. Conflicting evidence was provided by both sides. However, importantly, no evidence was presented demonstrating compliance with the requirement that written notice be promptly given to the former client.

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1 **B. Failure to Provide Proper Notice**

2 LBBS did not provide proper notice to Mr. Hawkins to allow him to either give or withhold his
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9 1.10(e), the applicable rules on their face would require disqualification of LBBS.

10 LBBS, however, set forth that it should not be disqualified because of the State Bar of Nevada
11 Standing Committee on Ethics and Responsibility, Formal Opinion No. 39, dated April 24, 2008,
12 finding, "his/her new law firm could continue to represent Client B in a case without Client A consent if
13 the personally disqualified lawyer is ethically screened from the case. (*See*, Opp. At 18:11-12.) LBBS
14 also argued to avoid disqualification on the basis of "substantial compliance." (*Id.* at 19:10-12.)
15 Looking at the undisputed evidence of Mr. Shpirt's involvement based upon the e-mail correspondence
16 and the failure to provide written notice to Mr. Hawkins to attempt to obtain his consent, the Court
17 cannot find that this matter would fall into the potential exception provided for in Formal Opinion No.
18 39, even given the extensive screening efforts that were implemented. While the Court does not find
19 any misconduct on the part of Mr. Shpirt or LBBS, and recognizes the efforts of LBBS to screen Mr.
20 Shpirt, the applicable rules mandate that LBBS must be disqualified from representing Defendants
21 Mydatt and Warner in the instant action.

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1 **III. CONCLUSION**

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff X'ZAVION
3 HAWKINS' motion to disqualify Lewis Brisbois Bisgaard & Smith, LLP is GRANTED. Plaintiff
4 X'ZAVION HAWKINS' motion for sanctions is DENIED.

5 DATED this 26 day of Aug, 2016.

6
7  JOANNA S. KISHNER


8 DISTRICT COURT JUDGE

9 Respectfully submitted:

10 INJURY LAWYERS OF NEVADA

Approved as to form and content:

LEE, HERNANDEZ, LANDRUM &
GAROFALO

11
12 
13 DAVID J. CHURCHILL (SBN: 7308)
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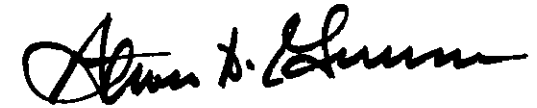
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and MARK WARNER

20 Approved as to form and content:

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

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EXHIBIT 27



CLERK OF THE COURT

OPPS

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DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

vs.

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. NO.: XXXI

**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**


Date of Hearing: 09/20/2016

Time of Hearing: 9:00 a.m.

Plaintiff X'ZAVION HAWKINS by and through his attorneys INJURY LAWYERS OF NEVADA, hereby opposes Defendants' motion for attorneys' fees and costs relating to Defendants' motion to dismiss and brings his countermotion for attorneys' fees and costs relating to being required to move to disqualify the law firm of Lewis Brisbois Bisgaard & Smith from representing Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER in the current litigation pursuant to Nevada Rules of Professional Conduct 1.9 and 1.10.

DATED this 6th day of September, 2016.

INJURY LAWYERS OF NEVADA



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Las Vegas, Nevada 89145
Attorneys for Plaintiff

1 **POINTS AND AUTHORITIES - OPPOSITION TO DEFENDANTS' MOTION FOR**
2 **ATTORNEYS' FEES AND COSTS RE: MOTION TO DISMISS**

3 **I. FACTUAL SUMMARY**

4 1. On March 31, 2016, Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY
5 SERVICES (hereinafter "Mydatt") and MARK WARNER (hereinafter "Warner") through their counsel
6 Lewis Brisbois Bisgaard & Smith (hereinafter "LBBS") filed a motion to dismiss Plaintiff X'ZAVION
7 HAWKINS' (hereinafter "X'Zavion") complaint based upon unclean hands.

8
9 2. On April 1, 2016, Defendant GGP MEADOWS MALL, LLC (hereinafter "GGP") filed a
10 joinder to defendants' motion to dismiss through its counsel Charlene N. Renwick, Esq. of Lee
11 Hernandez Landrum & Garofalo (hereinafter "the Lee law firm").

12 3. On April 26, 2016, Defendants Mydatt and Warner's reply to X'Zavion's opposition was
13 filed by LBBS.

14 4. At an evidentiary hearing on June 8, 2016, LBBS was disqualified as counsel for
15 Defendants Mydatt and Warner.

16 5. At the evidentiary hearing on Defendant's Mydatt and Warner's motion to dismiss on
17 July 21, 2016, Edgar Carranza, Esq. of Backus Carranza & Burden sat at the defense table and he alone
18 presented argument and participated in direct and cross examination of witnesses.

19 6. During the evidentiary hearing on Defendants Mydatt and Warner's motion to dismiss
20 Ms. Renwick of the Lee law firm did not sit at the defense table or make any argument. She joined Mr.
21 Carranza's arguments. She did not conduct any direct or cross examination of any witnesses.

22 7. During the evidentiary hearing on Defendants Mydatt and Warner's motion to dismiss
23 David S. Lee, Esq. of the Lee law firm made an appearance. However, he did not sit at the defense
24 table, and at no time did he make any argument or conduct any direct or cross examination of any
25 witnesses.

1 **II. LEGAL ARGUMENT**

2 **A. No Time Should Be Considered for the Conflicted Law Firm Lewis Brisbois**
3 **Bisgaard & Smith**

4 First, Lewis Brisbois Bisgaard & Smith never should have represented Defendants Mydatt and
5 Warner in this action without providing notice to X'Zavion of its employment of his former counsel,
6 Paul Shpirt, Esq. Second, it stretches ethical boundaries that LBBS now wants X'Zavion to pay for
7 work performed by this conflicted law firm.

8 From the inception of LBBS' representation of Defendants Mydatt and Warner, it had a direct
9 conflict of interest with X'Zavion pursuant to NRPC 1.9 and 1.10. No exception under the State Bar of
10 Nevada's Formal Opinion from the Standing Committee on Ethics, No. 39 applied to LBBS'
11 employment of Mr. Shpirt because LBBS never provided notice to X'Zavion that Mr. Shpirt was
12 employed with LBBS. X'Zavion never had the opportunity to consent or withhold his consent for
13 LBBS to represent Defendants Mydatt and Warner in this matter.

14 At the time LBBS filed the motion to dismiss against X'Zavion on behalf of Defendants Mydatt
15 and Warner, the firm was actively violating X'Zavion's absolute right to enforce his attorney-client
16 privilege with Mr. Shpirt. Now, LBBS is seeking attorneys' fees from X'Zavion for work performed
17 while it was acting contrary to his interests in violation of well-established rules regarding avoiding
18 attorney-client conflicts. How is this ethical? Based upon X'Zavion's belief that LBBS never should
19 have had any adversarial involvement in this matter, he respectfully requests that this Honorable Court
20 not consider any work performed by LBBS or any costs incurred by LBBS as set forth in Ex. A to
21 Defendants' motion for attorneys' fees and costs. Accordingly, Defendants' requested attorneys' fees
22 should be reduced by Twenty-Nine Thousand, Two Hundred One Dollars (\$29,201.00).

23 **B. Lee Hernandez Landrum & Garofalo is Double Billing and Excessively Billing**

24 The Lee law firm currently represents all defendants in this matter. X'Zavion believes Mr. Lee
25 is the principal and Ms. Renwick is an associate attorney with the firm. As indicated, LBBS, drafted the
26 motion and the reply. As also indicated, Mr. Carranza made all of the arguments on behalf of the
27 defense and conducted all direct and cross examination of witnesses at the evidentiary hearing on July
28 21, 2016. Neither Ms. Renwick nor Mr. Lee sat at the defense table. While Ms. Renwick indicated she

1 joined Mr. Carranza's arguments, she did not make any argument or assist with any direct or cross
2 examination of any witnesses. Other than making an appearance for the record, Mr. Lee did not
3 participate in the evidentiary hearing in any way.

4 Now, both Ms. Renwick and Mr. Lee are requesting that X'Zavion pay attorneys' fees for both
5 of them to prepare for and sit through the evidentiary hearing. Given that Mr. Carranza was, apparently,
6 primarily tasked with the responsibility of making arguments and conducting direct and cross
7 examination of witnesses, there was no need for both Ms. Renwick and Mr. Lee to spend time preparing
8 for an evidentiary hearing where neither of them would be doing anything other than joining Mr.
9 Carranza's arguments.

10 As an example of improper double billing, on July 21, 2016, Ms. Renwick billed 7.5 hours for
11 attending the evidentiary hearing, and Mr. Lee billed 8.4 hours for also attending the evidentiary
12 hearing. It is illogical that both Ms. Renwick and Mr. Lee needed to be present at the evidentiary
13 hearing to simply have Ms. Renwick say she was joining Mr. Carranza's arguments.

14 Ms. Renwick's time entries are also redundant, for example, on June 7, 2016, the day before the
15 evidentiary hearing on June 8, 2016, she billed 6.3 hours to prepare for the evidentiary hearing. Then, on
16 July 20, 2016, the day before the evidentiary hearing on July 21, 2016, she billed 6.5 hours to again
17 prepare for the evidentiary hearing. What was she doing on July 20, 2016, that was so significantly
18 different from what she had previously done on June 7, 2016? She could not have been preparing to
19 participate in the evidentiary hearing on X'Zavion's motion to disqualify LBBS because the motion was
20 irrelevant to the Lee law firm. She could not have been preparing a novel argument for the evidentiary
21 hearing on behalf of Defendant GGP when Mr. Carranza clearly took the laboring oar for Defendants
22 Mydatt and Warner and Ms. Renwick simply joined the arguments on behalf of GGP.

23 The Lee law firm did not provide a total for the number of hours billed by Ms. Renwick versus
24 Mr. Lee. X'Zavion respectfully requests that the Lee law firm not be allowed to double bill for tasks
25 performed by both Ms. Renwick and Mr. Lee. X'Zavion also respectfully requests that redundant time
26 entries for Ms. Renwick not be included.

27 ///

28 ///

1 **C. Time Expended by Carranza & Burden is Excessive**

2 X'Zavion appreciates that Mr. Carranza had to familiarize himself with the facts of this matter in
3 preparation for the evidentiary hearing where he made all oral argument and conducted all direct and
4 cross examination of witnesses. However, a number of Mr. Carranza's time entries indicate a significant
5 amount of time was spent performing tasks that seem excessive given that Mr. Carranza is a seasoned
6 attorney AV rated who has been practicing in Nevada for 20 years. Mr. Carranza indicates the total time
7 he spent on this matter in June of 2016 was 2.7, which X'Zavion does not dispute. In July of 2016, Mr.
8 Carranza indicates the total time he spent on this matter was 36.4 hours, and the total time Ms. Debra
9 Halbert spent was 14.5 hours. However, the time that Mr. Carranza and Ms. Halbert actually spent
10 working on the matter in July is not as straightforward as it would appear. An example of some of the
11 confusion is as follows:

12 On July 7, 2016, Mr. Carranza billed 3.5 hours, but the time entries that are not redacted do not
13 add up to 3.5 hours.

14 On July 8, 2016, Mr. Carranza billed 3.3 hours, but the time entries that are not redacted do not
15 add up to 3.5 hours.

16 On July 11, 2016, Mr. Carranza billed 2.3 hours, but the only time entry that is not redacted
17 relates to reading e-mails.

18 On July 12, 2016, Mr. Carranza billed 2.3 hours, but only 1.9 hours of time is indicated.

19 On July 13, 2016, Mr. Carranza billed 2.1 hours, but only 1.3 hours of time is indicated.

20 On July 14, 2016, Ms. Halbert billed 6.8 hours, but only .7 hours of time is indicated.

21 On July 18, 2016, Mr. Carranza billed 4.5 hours, but only 3.0 hours is indicated.

22 On July 20, 2016, Mr. Carranza billed 5.3 hours, but only 4.8 hours is indicated.

23 On July 22, 2016, Mr. Carranza billed 1.9 hours, but only .3 hours is indicated.

24 On July 23, 2016, Mr. Carranza billed 2.9 hours to begin drafting the order on the motion to
25 dismiss, and on July 25, 2016, he spent another 4.3 hours drafting the order.

26 On July 26, 2016, Mr. Carranza billed 2.4 hours for drafting a letter to the court regarding audio
27 recording when the correspondence was not complicated.

28 On July 27, Mr. Carranza billed 2.6 hours for reading e-mails and drafting a letter.

1 **III. CONCLUSION**

2 Based upon the foregoing, X'Zavion respectfully requests that this Honorable court not consider
3 any attorneys' fees proposed by the conflicted law firm of Lewis Brisbois Bisgaard & Smith, that double
4 billing and redundant attorneys' fees proposed by Lee Hernandez Landrum & Garofalo not be
5 considered and that excessive or unexplained time proposed by Backus Carranza & Burden be modified.

6 **POINTS AND AUTHORITIES – PLAINTIFF'S COUNTERMOTION FOR ATTORNEYS'**
7 **FEES AND COSTS RE: MOTION TO DISQUALIFY LEWIS BRISBOIS BISGAARD & SMITH**

8 As this Honorable Court is well aware, after the commencement of litigation X'Zavion became
9 aware of his former counsel, Paul Shpirt, Esq., being employed with LBBS, which was defending
10 Defendants Mydatt and Warner in this action. Plaintiff prevailed on his motion to disqualify LBBS.
11 Accordingly, at this time, Plaintiff is moving for attorneys' fees relating to the time expended to
12 disqualify LBBS necessitated by the firm's failure to provide notice to him of Mr. Shpirt's employment.

13 **I. FACTUAL OVERVIEW**

14 During the evidentiary hearing relating to Plaintiff's motion to disqualify LBBS, the following
15 facts were established as outlined in the findings of fact, conclusions of law and order entered in this
16 matter:

17 1. Before litigation commenced, X'Zavion was represented by Jason W. Barrus, Esq. and
18 Lloyd W. Baker of Baker Law Firm. On December 18, 2014, X'Zavion, his mother and Messrs. Barrus
19 and Baker met with Paul A. Shpirt, Esq. and Tracy A. Eglet, Esq. of Eglet Law Group n/k/a Eglet Prince
20 to discuss referring X'Zavion's matter to Eglet Law Group for litigation. Eglet Law Group decided to
21 accept the referral. Accordingly, during the meeting on December 18, 2014, Mr. Shpirt signed the
22 retainer agreement with X'Zavion. He also signed the attorney fee sharing agreement between Eglet
23 Law Group, Baker Law Firm and X'Zavion. Mr. Barrus provided a thumb drive containing materials
24 relating to X'Zavion's matter to Eglet Law Group. (See, Findings of Fact Conclusions of Law and
25 Order at 2:5-12.)

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1 2. On March 16, 2015, Mr. Shpirt telephoned Mr. Barrus to advise him that Eglet Law
2 Group would not be able to continue representing X'Zavion. That same day, Mr. Shpirt sent an e-mail
3 to Messrs. Baker and Barrus memorializing his conversation with Mr. Barrus that Eglet Law Group
4 would not be able to continue representing X'Zavion because of "some of the problems we see with
5 liability in this case" and because "the police report creates a lot of issues for us." (*Id.* at 2:13-17.)

6 3. Baker Law Firm then referred X'Zavion's matter to Injury Lawyers of Nevada. On April
7 27, 2015, Injury Lawyers of Nevada filed X'Zavion's complaint alleging claims for negligence,
8 respondeat superior and gross negligence against Meadows Mall, Mydatt and Warner. (*Id.* at 2:18-20.)

9 4. Sometime in July of 2015, Mr. Shpirt left Eglet Law Group and returned to LBBS where
10 he had practiced previously. In October of 2015, Josh Cole Aicklen, Esq., a partner with LBBS, was
11 retained to monitor the defense of Mydatt and Warner being provided by Lee, Hernandez, Landrum &
12 Garofalo. Also in October of 2015, Messrs. Aicklen and Shpirt realized Mr. Shpirt had represented
13 X'Zavion while practicing with Eglet Law Group. LBBS took efforts to screen off Mr. Shpirt from
14 X'Zavion's matter. However, LBBS did not send notice to X'Zavion that Mr. Shpirt was practicing
15 with LBBS. On November 16, 2015, LBBS filed a notice of association of counsel for Mydatt and
16 Warner. (*Id.* at 2:21-27.)

17 5. Thereafter, LBBS filed a motion to dismiss X'Zavion's complaint based on an allegation
18 of unclean hands relating to information obtained from Det. William Majors, the Metro detective who
19 oversaw the investigation of X'Zavion being shot at Meadows Mall. At the hearing on the motion to
20 dismiss on May 3, 2016, the Court determined an evidentiary hearing was required. (*Id.* at 3:1-4.)

21 6. On May 11, 2016, X'Zavion brought a motion to disqualify LBBS on order shortening
22 time based upon Mr. Shpirt's prior representation of X'Zavion at Eglet Law Group, the imputed conflict
23 to LBBS and LBBS' failure to provide notice to X'Zavion that Mr. Shpirt was practicing at LBBS after
24 LBBS began representing Mydatt and Warner. X'Zavion's motion included a request for the sanction of
25 recovering attorney's fees and costs incurred from the time that LBBS defended Mydatt and Warner
26 and/or striking the first volume of X'Zavion's deposition. (*Id.* at 3:5-10.)

27 7. On June 8, 2016, this Honorable Court conducted an evidentiary hearing and granted
28 X'Zavion's motion to disqualify LBBS as counsel for Defendants Mydatt and Warner.

1 **II. LEGAL ARGUMENT**

2 NRCP 54 states, in pertinent part:

3 (A) Claim to be by motion. A claim for attorney's fees must be made by motion. The district
4 court may decide the motion despite the existence of a pending appeal from the underlying
5 final judgment.

6 LBBS' failure to provide notice to X'Zavion of its employment of his former counsel, so he
7 could either consent or withhold his consent for LBBS to defend Mydatt and Warner in this matter,
8 X'Zavion's counsel was required to expend time to move to disqualify LBBS. X'Zavion's motion to
9 disqualify was granted.

10 The court has discretion in determining a reasonable amount of attorneys' fees. The court must
11 evaluate the following factors: (1) whether Plaintiff's claim was brought in good faith; and (2) whether
12 the attorney fees sought by the Plaintiff are reasonable and justified in amount. After weighing the
13 foregoing factors, the court may award up to the full amount of fees requested. *Beattie v. Thomas*, 99
14 Nev. 579, 668 P.2d 268 (1983).

15 Pursuant to guidance from the Nevada Supreme Court, District Courts must consider the
16 following facts in evaluating the reasonableness of attorney fees:

17 (1) The qualities of the advocate; his ability, training, education, experience, professional
18 standing and skill;

19 (2) The character of the work to be done; its difficulty, intricacy, importance, the time and skill
20 required, the responsibility imposed and the prominence and character of the parties when they affect the
21 importance of the litigation;

22 (3) The work actually performed by the lawyer; the skill, time and attention given to the work;
23 and

24 (4) The result; whether the attorney was successful and what benefits were derived; and where
25 the trial court evaluates the necessary facts unless its exercise of discretion is arbitrary or capricious the
26 Supreme Court will not disturb its ruling on appeal. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d
27 786 (1985)(citing *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).
28


1 The evidence of X'Zavion's good faith in bringing the motion to disqualify LBBS is
2 demonstrated by the Court granting his motion. In this matter, X'Zavion requests an award of attorneys'
3 fees of Fourteen Thousand, Six Hundred Forty Dollars (\$14,640.00) which represents 36.6 attorney
4 hours at the rate of \$400.00 per hour. (A true and correct verified accounting for the time expended by
5 X'Zavion's counsel is attached hereto as Ex. "1.") David J. Churchill, Esq. has been practicing law in
6 Nevada for almost 16 years. Jolene J. Manke, Esq. has been practicing law for almost 18 years, with
7 almost 16 of those years in Nevada. The quality and expertise of X'Zavion's counsel's work must be
8 considered favorably. X'Zavion's counsel has been granted awards of attorneys' fees of \$400 per hour
9 by other Clark County District Court judges for work performed in other matters, including most
10 recently by the Hon. Ronald Israel in the matter of *Reimann v. Firefly Partners, LLC d/b/a Tapas*
11 *Kitchen & Bar*, Case No. A-13-677133. They have been practicing law continuously since their
12 admission to the bar and over the years they have been involved in a number of trials where multi-
13 million dollar jury verdicts have been obtained. Accordingly, X'Zavion believes he is making a
14 reasonable request for an award of attorneys' fees for having to bring the motion to disqualify LBBS for
15 failure to provide notice pursuant to NRPC 1.9 and 1.10.

16 **III. CONCLUSION**

17 Based upon the foregoing, X'Zavion respectfully requests that he be awarded attorneys' fees in
18 the amount of Fourteen Thousand, Six Hundred Forty Dollars (\$14,640.00) for being required to bring
19 the successful motion to disqualify Lewis Brisbois Bisgaard & Smith for violating his attorney-client
20 privilege pursuant to NRPC 1.9 and 1.10.

21 DATED this 6TH day of September, 2016

22 INJURY LAWYERS OF NEVADA


23
24 
25 DAVID J. CHURCHILL (SBN: 7308)
26 JOLENE J. MANKE (SBN: 7436)
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CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I certify that on the 7th day of September, 2016, I served the foregoing **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** on the following parties via Electronic Service as follows:

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SECURITY SERVICES and MARK WARNER


an employee of Injury Lawyers of Nevada

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 IV

DAVID J. CHURCHILL, Nev. Bar No. 7301

JOLENE J. MANKE, Nev. Bar No. 7436

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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

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I certify that I am an employee of Injury Lawyers of Nevada and that on the 21st day of November, 2016, service of the foregoing Petitioners' Appendix Volume I of II was made by electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

Page v of v

EXHIBIT 23


CLERK OF THE COURT

MOT
Edgar Carranza, Esq.
Nevada State Bar No. 5902
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3050 S. Durango Drive
Las Vegas, NV 89117
(702) 872-5555
(702) 872-5545 facsimile
ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

DISTRICT COURT
CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,)	
)	Case No. A717577
Plaintiffs,)	
)	Dept. XXXI
vs.)	
)	
GGP MEADOW MALL LLC, a Delaware)	
Limited Liability Company; MYDATT)	
SERVICES, INC. d/b/a VALOR SECURITY)	
SERVICES, an Ohio Corporation; MARK)	
WARNER, individually; DOES I through 10;)	
DOE SECURITY GUARDS 11 through 20; and)	
ROE ENTITIES 21 through 30, Inclusive,)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR ATTORNEYS FEES AND COSTS

Defendants, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and
(referred to herein as "Mydatt") and MARK WARNER (referred to herein as "Mr. Warner"), by
and through counsel, Edgar Carranza, Esq. of the law firm of BACKUS, CARRANZA & BURDEN, and
GGP MEADOW MALL LLC (hereinafter referred to as "GGP"), by and through counsel
Charlene Renwick, Esq. and David S. Lee, Esq. of the law firm of Lee, Hernandez, Landrum &
Garofalo, hereby file the instant motion for attorney's fees and costs pursuant to this Court's order

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1 following the evidentiary hearing held on July 21, 2016 related to Mydatt's Motion to Dismiss
2 Plaintiff, X'ZAVION HAWKINS complaint. While this Court denied the requested dismissal, it
3 nonetheless ordered that Defendants, Mydatt, Mr. Warner and GGP, were entitled to an award of
4 attorney's fees and costs related to the motion to dismiss and evidentiary hearing. Defendants
5 submit the instant motion at the direction of the Court and further request that this Court order
6 Plaintiff to pay the same within 14 days. This motion is supported by the following memorandum
7 of points and authorities, exhibits and affidavits, if any, attached herewith.

8 NOTICE OF MOTION

10 PLEASE TAKE NOTICE that this Motion for Attorney's Fees and Costs will be brought
11 before the Court on the 20 day of SEPTEMBER, 2016, at 9:00A
12 heard.

13 Dated this 17th day of August, 2016.

14 **BACKUS, CARRANZA & BURDEN**

15 By: 

16 Edgar Carranza, Esq.
17 Nevada Bar No. 5902
18 3050 South Durango Drive
19 Las Vegas, Nevada 89117
20 Attorneys for Defendants
21 MYDATT SERVICES, INC. d/b/a VALOR
22 SECURITY SERVICES and MARK
23 WARNER

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 On March 23, 2016, Mydatt and Mr. Warner filed the motion to dismiss Plaintiff's
27 complaint after it became clear that Plaintiff had been intentionally refusing to provide information
28 and fabricating responses which he knew to be untrue. After the briefing schedule was completed,

1 this Court scheduled an evidentiary hearing.

2 On July 21, 2016, the evidentiary hearing was held during which time evidenced was
3 admitted and testimony provided confirming that Plaintiff's responses during discovery were
4 untruthful. While this Court denied Mydatt's request for dismissal, it nonetheless found that
5 Plaintiff's conduct warranted sanctions, which included an award of fees and costs related to the
6 Motion to Dismiss.¹ The Court asked the Defendants to submit the attorney's fees and costs incurred
7 in relation to the Motion so that it could review and make an award. Defendants hereby submit the
8 instant Motion for Attorney's Fees and Costs as directed by the Court.
9

10 II. POINTS AND AUTHORITIES

11 A. ATTORNEY'S FEES SHOULD BE AWARDED AS ORDERED BY THE COURT.

12 NRCP 37 permits trial courts to award attorney's fees Nevada Rule of Civil Procedure
13 ("NRCP") 37(a)(2)(B) allows the Court to grant sanctions, upon motion by a party, for discovery
14 abuses as follows:
15

16 (B) If a deponent fails to answer a question propounded or submitted under Rules
17 30 or 31, or a corporation or other entity fails to make a designation under Rule
18 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule
19 33, or if a party, in response to a request for inspection submitted under Rule 34,
20 fails to respond that inspection will be permitted as requested or fails to permit
21 inspection as requested, the discovering party may move for an order compelling an
22 answer, or a designation, or an order compelling inspection in accordance with the
23 request. The motion must include a certification that the movant has in good faith
24 conferred or attempted to confer with the person or party failing to make the
25 discovery in an effort to secure the information or material without court action.
26 When taking a deposition on oral examination, the proponent of the question may
27 complete or adjourn the examination before applying for an order.

28 NRCP 37(a)(4) further allows an award of fees and costs in response to a motion under
Rule 37:

(A) If the motion is granted or if the disclosure or requested discovery is provided
after the motion was filed, the court shall, after affording an opportunity to be
heard, require the party or deponent whose conduct necessitated the motion or the
party or attorney advising such conduct or both of them to pay to the moving party

¹ The proposed Order was submitted to the Court for execution on August 2, 2016, after having been offered to all parties for approval, but has not yet been entered.

1 the reasonable expenses incurred in making the motion, including attorney's fees,
2 unless the court finds that the motion was filed without the movant's first making a
3 good faith effort to obtain the disclosure or discovery without court action, or that
the opposing party's nondisclosure, response or objection was substantially
justified, or that other circumstances make an award of expenses unjust.

4

(C) If the motion is granted in part and denied in part, the court may enter any
5 protective order authorized under Rule 26(c) and may, after affording an
6 opportunity to be heard, apportion the reasonable expenses incurred in relation to
the motion among the parties and persons in a just manner.

7
8 NRCP 37(b) also allows for additional sanctions against a party found to have engaged in
9 discovery abuses as follows:

10 (2) Sanctions—Party. If a party or an officer, director, or managing agent of a
11 party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a
12 party fails to obey an order to provide or permit discovery, including an order made
under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered
13 under Rules 16, 16.1, and 16.2, the court in which the action is pending may make
such orders in regard to the failure as are just, and among others the following:

14 (A) An order that the matters regarding which the order was made or any
15 other designated facts shall be taken to be established for the purposes of the
action in accordance with the claim of the party obtaining the order;

16 (B) An order refusing to allow the disobedient party to support or oppose
17 designated claims or defenses, or prohibiting that party from introducing
designated matters in evidence;

18 (C) An order striking out pleadings or parts thereof, or staying further
19 proceedings until the order is obeyed, or dismissing the action or proceeding
20 or any part thereof, or rendering a judgment by default against the disobedient
party;

21 (D) In lieu of any of the foregoing orders or in addition thereto, an order
22 treating as a contempt of court the failure to obey any orders except an order
to submit to a physical or mental examination;

23 (E) Where a party has failed to comply with an order under Rule 35(a)
24 requiring that party to produce another for examination, such orders as are
25 listed in subparagraphs (A), (B), and (C) of this subdivision, unless the party
26 failing to comply shows that that party is unable to produce such person for
examination.

27 In lieu of any of the foregoing orders or in addition thereto, the court shall require
28 the party failing to obey the order or the attorney advising that party or both to pay
the reasonable expenses, including attorney's fees, caused by the failure, unless the

1 court finds that the failure was substantially justified or that other circumstances
2 make an award of expenses unjust.

3 This is exactly the situation this Court was asked to consider by way of the Motion to
4 Dismiss and as a result of the July 21, 2016, evidentiary hearing, this Court ordered sanctions
5 against Plaintiff which included, *inter alia*, an award of attorney's fees and costs to each
6 Defendant. In accordance with this Court's direction Defendants, Mydatt, Mark Warner and GGP,
7 submit their respective attorney's fees as follows:
8

9	A.	\$29,201.00	Lewis, Brisbois, Bisgaard & Smith ²
10	B.	\$13,681.50	Lee, Hernandez, Landrum & Garofalo ³
11	C.	<u>\$11,442.50</u>	BACKUS CARRANZA & BURDEN ⁴
12		\$54,325.00	Total fees

13
14 The actual work performed by each law firm involved in the defense is reasonable and
15 directly related to the Motion to Dismiss and evidentiary hearing conducted. The properly redacted
16 invoices for the Lewis, Brisbois, Bisgaard & Smith law firm,⁵ the Lee, Hernandez, Landrum &
17 Garofalo law firm⁶ and the BACKUS, CARRANZA & BURDEN⁷ law firm detail the work performed by
18 each, and are enclosed herewith for the Court's review.
19

20 These fees were determined by multiplying the total hours worked by attorneys and
21 paralegals from the different law firms handling the file.⁸ In computing these billings, daily time
22 batches were entered into the accounting program employed by the firm reflecting the work
23 performed on the case on a day by day basis.⁹ Each attorney/paralegal that devoted time to the case,
24

25 ² Exhibit A, Lewis, Brisbois, Bisgaard & Smith- Summary of fees and costs.

26 ³ Exhibit C, Lee, Hernandez, Landrum & Garofalo- Summary of fees.

27 ⁴ Exhibit E, BACKUS, CARRANZA & BURDEN- Summary of Fees and costs.

28 ⁵ Exhibit B, Invoices for March 2016, April 2016, and May 2016.

⁶ Exhibit D, Invoices for March 2016, April 2016, May 2016, June 2016 and July 2016.

⁷ Exhibit F, Invoices for June 2016 and July 2016.

⁸ Exhibit G, Affidavit of Edgar Carranza, Esq.

⁹ Exhibit G.

1 at or about the time the services were rendered, noted the time spent, and prepared a description of
2 the work completed.¹⁰ These entries were then used by the accounting departments for each law
3 firm to prepare monthly billing invoices.¹¹ It is through this accounting process that the \$54,325.00
4 total fee amount expended on this matter was reached.¹²

5 The Nevada Supreme Court has directed the district courts to consider the following factors
6 in determining whether fees expended are reasonable:
7

8 (1) the qualities of the advocate; his ability, training, education, experience,
9 professional standing and skill; (2) the character of the work to be done: its difficulty,
10 intricacy, importance, the time and skill required, the responsibility imposed and the
11 prominence and character of the parties when they affect the importance of the
12 litigation; (3) the work actually performed by the lawyer; the skill, time and attention
13 given to the work; and (4) the result: whether the attorney was successful and what
14 benefits were derived.¹³

15 While not necessary in this case given the Court's ruling, consideration of the above *Brunzell*
16 factors also weighs in favor of an award of fees s requested.

17 Each of the law firms are AV rated law firms and have garnered wide accolades for their
18 respective practices.¹⁴ Lead counsel for each firm, each have 20+ years of experience in negligent
19 security/premises liability.¹⁵ They are individually graduates of top tier law school, honors
20 graduates or graduates with distinction from their respective law schools. Each is a member of
21 various bar and professional associations and groups, including the American Bar Association
22 ("ABA"), the Defense Research Institute ("DRI") and the International Association of Defense
23 Counsel ("IADC"),¹⁶ which has further honed their professional skill and quality of practice.

24 Moreover, the character, intricacy and demands of this case were intense from the initial

25 ¹⁰ Exhibit G.

26 ¹¹ Exhibit G.

27 ¹² Exhibit G.

28 ¹³ *Schouweiler v. Yancey Company*, 101 Nev. 827, 834, 712 P.2d 786, 790 (1985) (citing *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 455 P.2d 31 (1969)).

¹⁴ See, <http://www.lee-lawfirm.com/>; <http://lewisbrisbois.com/>; <http://www.backuslaw.com/>.

¹⁵ See, <http://www.lee-lawfirm.com/partners?parentnavigationid=14797>; <http://lewisbrisbois.com/attorneys/aicklen-josh-cole>; <http://www.backuslaw.com/company-profiles/nevada-corporate-attorneys/edgar-carranza/>.

¹⁶ *Id.*

1 filing. As this Court is well aware, this case involves a gang related shooting involving Plaintiff
2 resulting in his paralysis. Given the seriousness of the allegations being made and the severity of
3 the injury to Plaintiff, the Defendants have always endeavored to actively move this matter
4 forward and spent considerable time and effort attempting to develop the facts, evidence and
5 witnesses to allow the parties to ultimately try this case. Great efforts were made to discern the
6 facts of how the shooting occurred, and to identify witnesses and the assailants so that all relevant
7 and necessary parties could be present at the trial. This required extensive investigative efforts
8 and review of thousands of medical records, witnesses statements, video footage and other
9 evidence disclosed by each party and discovered through other efforts.
10

11 Finally, the ultimate result of the services provided by defense counsel was a favorable ruling
12 relative to Plaintiff's discovery abuses. The success provided to Defendants will benefit them
13 greatly in that they can ameliorate some, but not all, of the needless expense which was caused by
14 Plaintiff's conduct.
15

16 Given these factors, Defendants should be awarded the **\$54,325.00** in attorney's fees
17 incurred in defending this matter.

18 **B. COSTS SHOULD BE AWARDED AS ORDERED BY THE COURT.**

19 In addition to the attorney's fees, Defendants have also incurred costs in the amount of
20 \$208.00, which represents costs for subpoenaing witnesses for the evidentiary hearing, as well as
21 filing fees related to the Motion to Dismiss. Copies of the invoices for said costs are attached herein
22 as "Exhibit H."
23

24 **III. CONCLUSION**

25 Defendants were forced to address Plaintiff's discovery abuses after it was clear that Plaintiff
26 had no intention of abiding by the rules of this Court. To that end, Mydatt filed its Motion to Dismiss
27 Plaintiff's Complaint, GGP joined the same, and all parties fully briefed the matter. Following a
28 hearing on the Motion, an evidentiary hearing was conducted on July 21, 2016, in an effort to

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1 determine if dismissal was the appropriate sanction for Plaintiff's discovery abuses. At the
2 conclusion of the hearing, this Court denied the requested dismissal but agreed that Plaintiff's abuses
3 could not be credibly justified and thereby ordered sanctions against him, including an award of fees
4 and costs related to the Motion to Dismiss. In accordance with this Court's direction, Defendants,
5 Mydatt, Mr. Warner and GGP, hereby submit their reasonable attorney's fees totaling **\$54,325.00**
6 and costs of **\$208.00** which were reasonably and necessarily incurred. Defendants respectfully
7 request that an order be issued requiring Plaintiff to pay these sums, and that payment be made to
8 Defendants within 14 days of this Court's order.
9

10 Dated this 19th day of August, 2016.

BACKUS, CARRANZA & BURDEN

By: 

Edgar Carranza, Esq.
Nevada Bar No. 5902
3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK
WARNER

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CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas, Nevada, 89117. On August 19th, 2016, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.


VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

BY ELECTRONIC MEANS: by electronically filing and serving with the court's vendor.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

BACKUS, CARRANZA & BURDEN
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LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545


SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
David Churchill, Esq. Jolene J. Manke, Esq. INJURY LAWYERS OF NEVADA 6900 Westcliff Dr. Suite 707 Las Vegas, Nevada 89145 702-868-8888 702-868-8889 david@injurylawyersnv.com Joelen@injurylawyersnv.com	Attorney for Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means
David S. Lee, Esq. Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Suite 150 Las Vegas, Nevada 89128 702-880-9750 702-314-1210 dlee@lee-lawfirm.com crenwick@lee-lawfirm.com	Attorney for Defendants, GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service <input checked="" type="checkbox"/> Electronic means

EXHIBIT A

LEWIS BRISBOIS BISGAARD & SMITH LLP

MEMORANDUM

TO: File 

FROM: Brandon D. Wright

DATE: July 28, 2016

RE: *Hawkins, X'Zavion v. Mydatt Services, Inc., et al.*
District Court Clark County, Nevada Case No. A717577
Summary of Fees/Costs Associated with Motion to Dismiss

FILE NO.: 33219.205

MARCH

A. **Fees:**

1.JCA	40.9 Hours	Rate: \$250.00	\$10,225.00
2.DBA	3.9 Hours	Rate: \$225.00	\$ 877.50
3.BDW	27.7 Hours	Rate: \$190.00	\$ 5,763.00
4.AN	0.60 Hours	Rate: \$100.00	\$ 60.00
TOTAL	73.10 hours	Fees:	\$ 16,925.50

II. APRIL

A. **Fees:**

1.JCA	5.2 Hours	Rate: \$250.00	\$ 1,300.00
2.DBA	2.7 Hours	Rate: \$225.00	\$ 607.50
3.BDW	12.0 Hours	Rate: \$190.00	\$ 2,280.00
4.HJR	2.2 Hours	Rate: \$190.00	\$ 418.00
5.AN	9.20 Hours	Rate: \$100.00	\$ 920.00
TOTAL	31.30 hours	Fees:	\$ 5,525.50

III. MAY

A. **Fees:**

1.JCA	16.6 Hours	Rate: \$250.00	\$ 4,150.00
2.DBA	5.4 Hours	Rate: \$225.00	\$ 1,215.00
3.BDW	0.0 Hours	Rate: \$190.00	\$ 0.00
4.HJR	1.5 Hours	Rate: \$190.00	\$ 285.00
5.AN	11.00 Hours	Rate: \$100.00	\$ 1,100.00
TOTAL	73.10 hours	Fees:	\$ 6,750.00

TOTAL FEES \$ 29,201.00

EXHIBIT B

LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS
SUITE 4000
633 W. FIFTH STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number JCA 33219-205 York Risk Services Group, Inc.
Hawkins, X'Zavion v Mydatt Services

4/18/16
1647934
Page 1

Date	Atty	Description of Services Rendered	Hours
3/01/16	BDW	Analysis/Strategy: Research: Conducted legal research of FRCP and NRCP 37 sanction for perjury under Alexander v. Jackson. P.A., 156 S.W.3d 11, 15, Chambers v. NASCO, 501 U.S. 32, 44 (1991) and progeny to prepare written legal eval of the same.	1.4
3/02/16	BDW	Analysis/Strategy: Research: Continued detailed legal research regarding dismissal per NRCP 37 under Stewart v. FBI, CV-97-1595-S, Anheuser-Busch, Inc. v. Nat. Beverage Distribs., 69 F.3d 337, (9th Cir. 1995), Ermine Jewels, 786 F.2d 1447, 1451 (9th Cir. 1986) and progeny (state and federal) for purposes of preparing written legal evaluation of the same.	1.1
3/02/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of P's deposition transcript for purposes of evaluating the materiality and scope of P's perjury in relation to an NRCP 37 motion to dismiss P's complaint to prepare written legal evaluation of the same.	.8
3/02/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of P's transcript to law enforcement and police report regarding the subject incident for puproses of evaluating the materiality and scope of P's perjury in relation to an NRCP 37 motion to dismiss P's complaint to prepare written legal evaluation of the same.	.6
3/03/16	DBA	Fact Investigation/Development: Plan & Prepare For: Detailed legal analysis of NRCP 37 and case law re perjury and striking pleadings round table conference call	.5

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
WILL APPEAR ON A LATER STATEMENT

0723

LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS
SUITE 4000
633 W. FIFTH STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 05-3720522

File Number JCA 33219-205 York Risk Services Group, Inc.
Hawkins, X'Zavlon v Mydatt Services

4/18/16
1647934
Page 2

Date	Atty	Description of Services Rendered	Hours
------	------	----------------------------------	-------

3/06/16	BDW	Analysis/Strategy: Draft/Revise: Continued preparing written legal evaluation and analysis of appropriateness of NRCP 37 motion to strike P's complaint for perjury and unclean hands for purposes of and preparing motion to strike (5 single spaced pages)	1.7
---------	-----	--	-----

3/07/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of P's deposition transcript v. P's statements to law enforcement transcript and police report following the subject incident for purposes of preparing mtn to dismiss P's complaint pursuant to NRCP 37 and unclean hands.	1.2
3/07/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of P's Complaint, written discovery responses, and voluntary statements following the shooting for purposes of preparing mtn to dismiss pursuant to NRCP 37 and unclean hands	1.4
3/07/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of the deposition transcript of Mr. Thompson, Ms. Love and Ms. Pena in re the subject Incident for purposes of preparing mtn to dismiss P's complaint for perjury pursuant to NRCP 37 and unclean hands (130+p).	1.3
3/07/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of LVMDP photographs and Mr. Warner photographs of the subject incident for purposes of preparing mtn to dismiss P's complaint pursuant to NRCP 37 and unclean hands doctrine.	.3

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0724

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FEDERAL I.D. NO 95-3720522

File Number 33219-205
JCA

York Risk Services Group, Inc.
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Date	Atty	Description of Services Rendered	Hours
3/08/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of Dpt. Major's "Folder notes" regarding develops of the subject incident for purposes of preparing factual background section in NRCP 37 mtn to dismiss P's Complaint.	.3
3/08/16	BDW	Dispositive Motions: Draft/Revise: Prepared factual background of subject incident (including sections of P's interview with Metro) in D's NRCP 37 motion to dismiss P's complaint for purposes of the same (4 pages).	1.3
3/08/16	BDW	Dispositive Motions: Review/Analyze: Continued detauled legal analysis of P's COmplaint, Valors Answer, Mr. Warner's Answer, Scheduling Orders and notice of depositions of P's for puporses of preparefng procedural history (noting unclean hands affirm defense) in mtn 37 to dismiss.	.6
3/08/16	BDW	Dispositive Motions: Draft/Revise: Prepared procedural history section in mtn to dismiss P's complaint pursuant to NRCP 37 discussing (comprehneively) P's Complaint's alligation, P's RFA response, ROGS and P's Depo testimony for purpose sof trhe same (4 pages).	1.4
3/08/16	BDW	Dispositive Motions: Draft/Revise: Contineud preparing procedural history section in mtn to dismiss P's complaint pursuant to NRCP 37 discussing (comprehneively) P's Complaint's alligation, P's RFA response, ROGS and P's Depo testimony for purpose sof trhe same (2 additional pages).	.7
3/08/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of P's medica records from UMC, Summerlin Hospital and Desert Surgery center for purposes of evaluating P's statements to medical providers for imeachment/perjury to prepare mtn to strike per r. 37. (200+p)	1.6
3/09/16	BDW	Dispositive Motions: Draft/Revise: Prepared affidavit in support for D's mtn for NRCP 37 sanctions to dismiss P's complaint for purposes of specifying background facts and authenticating exhibits (4 pages).	1.2
3/09/16	BDW	Dispositive Motions: Draft/Revise: Prepared executive overview section in NRCP 27 mtn to dismiss P's complaint pursuant to rule and Court's inherent authority given extensive nature of P's perjury and length of motion (2 pages).	.7
3/09/16	BDW	Dispositive Motions: Research: Continued detailed legal research regarding NRCP 37 and doctrine of unclean hands (undecided an noval Issue in NV) under Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc., 124 Nev. 272, 276, 182 P.3d 764, 767 (2008) Pierce v. Heritage Properties, Inc., 688 So. 2d 1385 (Miss. 1997) Vargas v. Peltz, 901 F.Supp 152 (S.D. Fla. 1995) and federal and state progeny regarding unclean hands for purposes of pearing mtn to dismiss P's complaint perusant to doctrine of unclean hands.	1.7

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File Number JCA 33219-205 York Risk Services Group, Inc.
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3/09/16	BDW	Dispositive Motions: Draft/Revise: Prepared legal argument section of D's mtn to dmiss P's complaint pursuant to NRCP 37 and Young factors (factors 1-5 of 8) in motion to dismiss for purposes of the same (5 pages).	1.7
3/09/16	BDW	Dispositive Motions: Draft/Revise: Continued preparing motion to dismiss P's Complaint persuant to NRCP 37 and young factors (factors 6-8 of 8) (2 addltional pages).	.7
3/09/16	BDW	Dispositive Motions: Draft/Revise: Prepared wrtten legal argument section regarding federal trend to dismiss Complaints for Plaintiff's perjury under the unclean hands doctrine for purposes of dismissing P's complaint (5 pages) in motion to dismiss P's complaint.	1.5
3/09/16	BDW	Dispositive Motions: Draft/Revise: Continued preparing legal argument section regarding NV's position on unclean hands and a compehensive analysis of Pierce v. Heritage Properties, Inc., 688 So. 2d 1385 (Miss. 1997) Vargas v. Peltz, 901 F.Supp 152 (S.D. Fla. 1995) and Alexander, 156 S.W.3d at 13 and conclusion of motion to dismiss P's complaint under the unclean hands doctrinee (no state case law in NV) for purposes of dismissing P's complaint (2 pages).	.7
3/09/16	BDW	Dispositive Motions: Review/Analyze: Conducted detailed legal analysis of Detective Majors deposition transcript (received today) for purposes of supplementing NRCP 37 motion and Detective Major's testimony to impeach Plaintiff in NRCP 37 mtn to dismiss P's complaint (141 pages).	.7
3/09/16	DBA	Depositions: Review/Analyze: Detailed legal analysis of the recently received deposition transcript of Detective Majors in order to analyze additional basis for dispositive motion practice	1.5
3/10/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of Will Lee Major's deposition transcript and exhibits for purposes of preparing wrtten legal evaluation of the same to supp lit/discovery plan regarding P's impeachment and futher necessary discovery. (143 pages).	1.4
3/10/16	DBA	Fact Investigation/Development: Communicate (Other External): Telephone call to of dispositive motion practice and	.3
3/10/16	JCA	Dispositive Motions: Draft/Revise: Prepare affidavit of JCA and work on statement of facts and supplement analysis re false statements in the deposition.	4.4
3/11/16	DBA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the video of	

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Date	Atty	Description of Services Rendered	Hours
3/14/16	BDW	Analysis/Strategy: Draft/Revise: Prepared written legal evaluation of the deposition transcript of detective lee Majors (p. 1-34) regarding P's impeachment and P/C likely motion to strike for purposes of the same.	1.1
3/14/16	DBA	Dispositive Motions: Draft/Revise: Prepare supplement to motion to strike Plaintiff's Complaint with regard to additional statutory authority, deposition testimony and case law	1.1
3/14/16	JCA	Dispositive Motions: Draft/Revise: Continue drafting motion to dismiss and write sections on analysis of Johnny Riblero factors.	7.6
3/15/16	JCA	Dispositive Motions: Draft/Revise: Continue preparation of motion to dismiss, including analysis of unclean hands doctrine and supplement info re false written discovery responses.	6.2
3/16/16	JCA	Dispositive Motions: Draft/Revise: Work on false testimony analysis of plaintiff's deposition.	3.8
3/17/16	JCA	Analysis/Strategy: Communicate _____ conference call re discovery and if motion to dismiss.	.5
3/17/16	JCA	Dispositive Motions: Draft/Revise: Prepare analysis re NRCP 37 and begin analysis of Johnny Riblero factors.	6.6
3/18/16	BDW	Analysis/Strategy: Review/Analyze: Continued detailed legal analysis of Plaintiff's deposition transcript Vol 1 (-60 pages) for purposes of preparing a comprehensive written legal evaluation of Plaintiff's account and perjury regarding the facts' circumstances and people in re: subject shooting.	.6

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3/18/16	JCA	Dispositive Motions: Draft/Revise: Continue legal analysis section of the brief analyzing the factors from Johnny Riblero case, and begin analysis of the doctrine of unclean hands.	7.2
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3/21/16	JCA	Dispositive Motions: Draft/Revise: Complete analysis of the unclean hands doctrine, three cases cited in the brief and write the conclusion of the Motion.	4.6

3/22/16	DBA	Fact Investigation/Development: Review/Analyze: Prepare and receive correspondence to and from re status of filing motion to dismiss	.2
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3/23/16	DBA	Fact Investigation/Development: Communicate (Other External): Telephone call to and from re status of authority to file motion to strike	.3
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3/24/16	AN	Pleadings: Draft/Revise: Draft Defendants' Supplemental Exhibits of Audio and Video Discs in Support of Motion to Dismiss and prepare exhibits therein.	.6
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File Number JCA	33219-205	York Risk Services Group, Inc. Hawkins, X'Zavion v Mydatt Services	4/18/16 1647934 9
Date	Atty	Description of Services Rendered	Hours

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Date	Atty	Description of Services Rendered	Hours
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Date	Description of Disbursement	Units	Rate	Amount
3/31/16	Duplication	433.00	.10	43.30
3/31/16	CD Copies	8.00	10.00	80.00
3/31/16	Dvd Copies	8.00	25.00	200.00
3/14/16	Federal Express Mail Federal Express Inv#:5-333-30594 02/18/16 Recipent: Tatalovich & Associates Sender: Harold J. Rosenthal 775679900860			17.06
3/14/16	Federal Express Mail Federal Express Inv#:5-333-30594 02/18/16 Recipient: Tatalovich & Associates Sender: Harold J. Rosenthal 775679948967			44.36
3/14/16	Federal Express Mail Federal Express Inv#:5-333-30594 02/18/16 Recipent: Tatalovich & Associates Sender: Harold J. Rosenthal 775679971196			43.23
3/14/16	Federal Express Mail Federal Express Inv#:5-333-30594 02/18/16 Recipient: Tatalovich & Associates Sender: Harold J. Rosenthal 775679999730			40.94
3/02/16	E115-Transcript Esquire Solutions, LLC Inv#:INV0705172 Deposition transcript of X'Zavion Hawkins on 2/12/16.			385.25
3/15/16	Filing Services American Legal Investigation Services Nevada, Inc. Inv#:37004128 03/02/16 Lewis Brisbois 8794032			63.72
3/15/16	Filing Services American Legal Investigation Services Nevada, Inc. Inv#:37004128 03/11/16 Eighth Judicial District Court 8795275			31.86
3/02/16	E118-Videotaped Depo Esquire Solutions, LLC Inv#:INV0705178 Videotaped deposition of X'Zavion Hawkins on 2/12/16.			107.95

Recap of Services	Hours	Effective Rate	Fees
Autumn Nouwels	9.7	100.00	970.00
Brandon D. Wright	36.1	190.00	6,859.00
David Avakian	20.2	225.00	4,545.00
Harold J. Rosenthal	35.3	190.00	6,707.00
Josh C. Aicklen	45.1	250.00	11,275.00

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File Number JCA	33219-205	York Risk Services Group, Inc. Hawkins, X'Zavion v Mydatt Services	5/19/16 1666686 Page 1
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4/02/16	DBA	Fact Investigation/Development: Review/Analyze: Initial receipt, review and response to numerous correspondence to and from Plaintiff's deposition changes	.3
4/02/16	DBA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's deposition changes to first deposition transcript	.2
4/02/16	DBA	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of GGP's joinder to motion to dismiss	.1

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Date	Atty	Description of Services Rendered	Hours
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4/12/16	DBA	Dispositive Motions: Review/Analyze: Detailed legal analysis of Plaintiff's Opposition to Motion to Dismiss and counter-motion for sanctions in order to analyze points and authorities for a reply brief and opposition to the motion for sanctions	1.4
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4/14/16 BDW Dispositive Motions: Research: Conducted legal research on NRCP/FRCP 26(e), PIC Inc. v. Prescon Corp., 485 F. Supp. 1299, 1301 (D. Del. 1980), Havenfield Corp. v. H & R Block, Inc., 509 F.2d 1263 (8th Cir.), P. A. B. Prodiuts Et Appareils de Beaute v. Satinine Societa in Nome

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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Date	Atty	Description of Services Rendered	Hours
		Collettivo di S. A. e. M. Usellini, 570 F.2d 328 (C.C.P.A.1978) and state and federal progeny for purposes of preparing rule statement regarding timeliness of disclosure for purposes of preparing reply to P's opp to d's motion.	1.3
4/14/16	BDW	Dispositive Motions: Draft/Revise: Prepared legal standard/rule statement section regarding NRCP/FRCP 26(e) citing analysis in A. P. Ross Enters. v. Hynds Plumbing & Heating Co., 98 Nev. 7, 8 (1982), , Havenfield Corp. v. H & R Block, Inc., 509 F.2d 1263 (8th Cir.), Societa In Nome Collettivo di S. A. e. M. Usellini, 570 F.2d 328 (C.C.P.A.1978), PIC Inc. v. Prescon Corp., 485 F. Supp. 1299, 1301 (D. Del. 1980) and Coleman v. Keebler Co., 997 F.Supp. 1102, 1107 (N.D. Ind. 1998) for purposes of preparing legal argument regarding purposes of concealment and "seasonable disclosure."	1.2
4/14/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of P's Opposition and counter motion, P's deposition transcript (82 pages) Detective Major deposition transcript (142), Plaintiff's errata to depo transcript, Plaintiff's recorded statement (25 pages), P's Complaint, P's ROGS responses and RFPD responses for purposes of preparing Reply and Opposition to P's counter motion (-300+ pages).	2.2

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Date	Atty	Description of Services Rendered	Hours

4/19/16	BDW	Dispositive Motions: Draft/Revise: Prepared written legal argument sections in D's reply and Opposition to P's Opposition and counter motion (to D's motion to dismiss) in re failure to respond to D's motion per EDCR 2.20 and P's improper characterization as a motion for summary judgement (citing the Young factors) (4 pages).	1.1
4/19/16	BDW	Dispositive Motions: Review/Analyze: Continued detailed legal analysis of P's deposition transcript and deposition transcript errata page for purposes of citing the language P used to explain his purgery and the impact the same has on his deposition testimony for purposes of preparing D's reply and Opposition to P's Oppo and countermotion to D's motion to dismiss P's Complaint.	.4
4/19/16	BDW	Dispositive Motions: Draft/Revise: Supplemented detailed rule statement in re NRCP/FRCP 26(e) (1)(2) in re 3M Innovative Props., Co. v. Barton Nelson, Inc., No. 02-3591(PAM/RLE), 2004 U.S. Dist. LEXIS 15435, at *8 (D. Minn. Aug. 8, 2004) and Havenfield Corp. v. H & R Block, Inc., 509 F.2d 1263, 1272 (8th Cir. 1975) for purposes of preparing argument argument section about D's 21 day delay to supplement discovery as proper in section in D's reply to P's opposition and counter motion to D's motion for sanctions (3 pages).	.8
4/19/16	BDW	Dispositive Motions: Draft/Revise: Prepared detailed introduction, factual background and procedural history including detective major's testimony and Plaintiff's correspondence regarding not being provided documents in introduction (factual and procedural history) section of reply and opposition to D's motion to dismiss P's complaint and oppose P's counter-motion for sanctions. (4 pages).	1.2
4/19/16	BDW	Dispositive Motions: Draft/Revise: Prepared argument section regarding D's timely supplementation of written discovery and information given Detective major's statement holding in Havenfield Corp., 509 F.2d at 1272 and 3M Innovative Props., Co. v. Barton Nelson, Inc., No. 02-3591(PAM/RLE), 2004 U.S. Dist. LEXIS 15435, at *8 (D. Minn. Aug. 8, 2004) for purposes of replying to P's counter motion.	1.1

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Date	Atty	Description of Services Rendered	Hours

4/20/16	BDW	Dispositive Motions: Draft/Revise: Review revise and supplement (procedural background and legal argument sections) in Defendants Reply and Opposition to P's Opposition and counter motion to Defendants' motion to dismiss Plaintiff's complaint to include additional specific statements in re Plaintiff ability to give "best testimony" in Plaintiff's depositions and Detective Major's admission that he produced documents to both parties in re "seasonable discovery" for purposes of circulation and signature (13 pages).	1.2
4/20/16	BDW	Dispositive Motions: Draft/Revise: Continued preparing reply and opposition, opposition to counter motion, conclusion and supporting affidavit (sections) in Defendants Reply and Opposition to P's Opposition and counter motion to Defendants' motion to dismiss Plaintiff's complaint (4 pages).	1.5

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Date	Atty	Description of Services Rendered	Hours
4/21/16	JCA	Dispositive Motions: Draft/Revise: Prepare reply to Plaintiff's opposition and supplement opposition to Plaintiff's counter motion for sanctions.	2.7
4/25/16	DBA	Other Written Motions & Submiss: Review/Analyze: Detailed legal analysis of changes to reply brief in support of motion to dismiss from In order to analyze supplemental legal analysis sections	.7
4/25/16	HJR	Analysis/Strategy: Review/Analyze: Analyze Plaintiff's deposition transcript (.6), recorded statement transcript (.4), discovery responses (.2) in preparation of drafting revisions to Reply Brief in Support of Motion to Dismiss requested by and;	1.2
4/25/16	HJR	Analysis/Strategy: Communicate (Other Outside Counsel): Telephone conference with regarding proposed changes to Reply Brief in support of Motion to Dismiss	.4
4/25/16	HJR	Analysis/Strategy: Draft/Revise: Draft email to regarding revised reply brief	.1
4/25/16	JCA	Dispositive Motions: Draft/Revise: Prepare final of reply and add information re Det. majors providing documents to	1.1
4/25/16	JCA	Dispositive Motions: Draft/Revise: Final rewrite and errata analysis	1.4
4/26/16	HJR	Analysis/Strategy: Review/Analyze: Analyze email co-counsel regarding proposed changes Reply to Motion to Dismiss	.1
4/26/16	HJR	Analysis/Strategy: Draft/Revise: Draft revisions to Reply Brief in Support of Motion to Dismiss to include proposed revisions	.3
4/26/16	HJR	Analysis/Strategy: Review/Analyze: Analyze email from regarding Reply to Opposition to Motion to Dismiss	.1
4/27/16	AN	Pleadings: Review/Analyze: Review Defendant's motions to dismiss to determine relevant testimony to clip in preparation for impending hearing.	.8
4/27/16	AN	Fact Investigation/Development: Review/Analyze: Review deposition transcript of Plaintiff and audio recorded statement to identify testimony clips referenced in motion to dismiss in preparation for hearing.	1.6

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4/29/16	AN	Pleadings: Draft/Revise; Create Power Point presentation of contradictory testimony is Plaintiff for use during hearing on motion to dismiss.	6.8
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Date	Description of Disbursement	Units	Rate	Amount
3/31/16	Court filing fee American Legal Investigation Services Nevada, Inc. Inv#:37004364 03/17/16 Lewis Brisbois 8796027			30.00
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/03/2016 Nvcourt 7921295, Application for Issuance of Commission to take out of State Deposition of the Custodian of Records for Facebook, Inc.			3.50
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/03/2016 Nvcourt 7924022, Subpoena Duces Tecum (Custodian of Records for Facebook, Inc.)			3.50
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/03/2016 Nvcourt 7924017, First Amended Notice of taking deposition of the Custodian of Records for Facebook, Inc.			3.50
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/14/2016 Nvcourt 7963018, Commission and take Out of State Deposition of the Custodian of Records for Facebook, Inc.			3.50
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/24/2016 Nvcourt 7998858, Defendants' Motion to Dismiss Plaintiff's Complaint			3.50
4/08/16	Court filing fee Wells Fargo Commercial Card Services Inv#:033116STMT-SBOWERS Trans Date: 03/25/2016 Nvcourt 8003630, Defendants' Supplemental Exhibits of Audio and Video Discs in Support of			

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
WILL APPEAR ON A LATER STATEMENT

0740

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FEDERAL I.D. NO 95-3720522

File Number JCA	33219-205	York Risk Services Group, Inc. Hawkins, X'Zavlon v Mydatt Services	6/16/16 1681475 1
Date	Atty	Description of Services Rendered	Hours

5/02/16	JCA	Dispositive Motions: Plan & Prepare For: Oral argument on motion to dismiss, including a run through of video evidence for argument tomorrow.	1.8
5/03/16	AN	Pleadings: Draft/Revise: Continue preparation of power point presentation of Plaintiff's contradictory testimony for use during hearing on motion to dismiss.	2.4
5/03/16	AN	Trial & Hearing Attendance: Appear For/Attend: Travel to and participate in hearing on Defendants' motion to dismiss.	3.6
5/03/16	DBA	Dispositive Motions: Appear For/Attend: Attend hearing on motion to dismiss and motion to amend	2.2
5/03/16	JCA	Dispositive Motions: Plan & Prepare For: Final preparations for motion to dismiss and motion for leave to amend	.8
5/03/16	JCA	Dispositive Motions: Travel to dispositive motion hearing.	.5
5/03/16	JCA	Dispositive Motions: Appear For/Attend: Appear and argue motion to dismiss and motion for leave to amend , last on a long calendar.	2.2
5/03/16	JCA	Dispositive Motions: Travel Return travel from court.	.5
5/03/16	JCA	Dispositive Motions: Communicate (With Client): Prepare status report to clients re motion hearing.	.3

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0741

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FEDERAL I.D. NO 05-3720522

File Number JCA 33219-205 York Risk Services Group, Inc.
Hawkins, X'Zavion v Mydatt Services

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Date	Atty	Description of Services Rendered	Hours
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5/09/16	AN	Pleadings: Draft/Revise: Draft Evidentiary Hearing Subpoena to Detective Majors.	.2
5/09/16	AN	Pleadings: Draft/Revise: Draft Evidentiary Hearing Subpoena to Detective Menzie.	.2

5/12/16	AN	Fact Investigation/Development: Communicate (Other External): Telephone conference with Las Vegas Metropolitan Police Department to determine current area command centers for Detectives Majors and Menzie in preparation for issuance of evidentiary hearing subpoenas.	.2
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5/12/16	DBA	Fact Investigation/Development: Communicate (Other External): Telephone conference with re further defense strategy leading up to evidentiary hearing on Defendant's motion to dismiss	.2
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DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
WILL APPEAR ON A LATER STATEMENT

0742

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FEDERAL I.D. NO 95-3720522

File Number
JCA

33219-205

York Risk Services Group, Inc.
Hawkins, X'Zavion v Mydatt Services

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Date	Atty	Description of Services Rendered	Hours
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DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0743

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File Number JCA	33219-205	York Risk Services Group, Inc. Hawkins, X'Zavlon v Mydatt Services	6/16/16 1681475 4
Date	Atty	Description of Services Rendered	Hours
5/17/16	DBA	Fact Investigation/Development: Draft/Revise: Prepare notice of entry of order re evidentiary hearing order	.2

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
WILL APPEAR ON A LATER STATEMENT

0744

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FEDERAL I.D. NO 96-3720522

File Number JCA	33219-205	York Risk Services Group, Inc. Hawkins, X'Zavlon v Mydatt Services	6/16/16 1681475 5
Date	Atty	Description of Services Rendered	Hours

5/21/16	DBA	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of entry re order on motion for evidentiary hearing and to dismiss	.1
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DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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FEDERAL I.D. NO 95-3720522

File Number
JCA 33219-205

York Risk Services Group, Inc.
Hawkins, X'Zavlon v Mydatt Services

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Date	Atty	Description of Services Rendered	Hours
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5/25/16	AN	Fact Investigation/Development: Draft/Revise: Begin drafting evidentiary hearing outline and relevant video and audio clips.	3.1
5/25/16	AN	Fact Investigation/Development: Communicate (Other External): Telephone conference with detectives Majors and Menzie regarding impending testimony during evidentiary hearing.	.2
5/25/16	AN	Fact Investigation/Development: Appear For/Attend: Attend strategy meeting with, _____ regarding evidentiary hearing on motion to dismiss.	1.1

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0746

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FEDERAL I.D. NO 95-3720522

File Number
JCA

33219-205

York Risk Services Group, Inc.
Hawkins, X'Zavion v Mydatt Services

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Date	Atty	Description of Services Rendered	Hours
5/25/16	DBA	Dispositive Motions: Plan & Prepare For: Attend meeting with for evidentiary hearing on motion to dismiss	1.4
5/25/16	HJR	Analysis/Strategy: Appear For/Attend: Attend prep meeting with Evidentiary Hearing (no travel associated with meeting, It was at our office)	1.5
5/25/16	JCA	Other Written Motions & Submiss: Plan & Prepare For: Prepare for oral argument on motion to dismiss, including audio clips from recorded statement and video clips from deposition	2.2
5/26/16	DBA	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of correspondence from to Court clerk e status of continued evidentiary hearing on motion to dismiss	.1

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0747

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33219-205

York Risk Services Group, Inc.
Hawkins, X'Zavlon v Mydatt Services

Date	Atty	Description of Services Rendered	Page	Hours
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6/03/16	DBA	Fact Investigation/Development: Review/Analyze: Finalize two amended evidentiary hearing subpoenas and notices to Officers Mezie and Detective Majors		.5
6/03/16	DBA	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the court memorandum re moving the evidentiary hearing		.2
6/03/16	DBA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the hearing transcript from the Defendants' Motion to Dismiss		.1
				.5

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
WILL APPEAR ON A LATER STATEMENT

0748

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File Number
JCA 33219-205

York Risk Services Group, Inc.
Hawkins, X'Zavion v Mydatt Services

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Date	Atty	Description of Services Rendered	Hours
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6/08/16 DBA Fact Investigation/Development: Review/Analyze: Detailed legal analysis of GGP's supplement to exhibit for evidentiary hearing on motion to dismiss (44 pages)

.4

Date	Description of Disbursement	Units	Rate	Amount
5/26/16	Mileage Harold J Rosenthal #12 Inv#:8430-96344 04/20/2016 Travel to Esquire, 2300 W. Sahara Ave, Las Vegas, NV for Deposition of PMK GGP Meadows Mall (Miles 20.80)			11.23
5/26/16	Mileage Harold J Rosenthal #12 Inv#:8430-96344 04/27/2016 Travel to Meadows Mall, Las Vegas, NV for Site Inspection (Miles 21. 00)			11.34
5/09/16	Court filing fee Wells Fargo Commercial Card Services Inv#:043016STMT-SBOWERS Trans Date: 04/12/2016 Nvcourt 8063234, Filing fee of defendants notice of vacating inspection pursuant to rule 34			3.50
5/09/16	Court filing fee Wells Fargo Commercial Card Services Inv#:043016STMT-SBOWERS Trans Date: 04/27/2016 Nvcourt 8113205, Filing fee of reply to opposition to motion to dismiss			3.50
5/09/16	Court filing fee Wells Fargo Commercial Card Services Inv#:043016STMT-SBOWERS Trans Date: 04/28/2016 Nvcourt 8119684, Filing fee of motion to extend security expert disclosure deadlines			3.50
5/15/16	E114-Witness Fee American Legal Investigation Services Nevada, Inc. Inv#:37005134 05/12/16 Lewis Brisbois 8508597			29.00
5/31/16	E114-Witness Fee American Legal Investigation Services Nevada, Inc. Inv#:37005327 05/12/16 Lewis Brisbois 8508602			29.00
5/12/16	Conference Call Soundpath Conferencing c/o American Teleconferencing Services Inv#:2132501800-051216 Conference call of Josh Cole Aicklen on 04/14/2016			1.65
5/12/16	Conference Call Soundpath Conferencing c/o American Teleconferencing Services Inv#:2132501800-051216 Conference call of Josh Cole Aicklen on 05/05/2016			1.26
5/12/16	Conference Call Soundpath Conferencing c/o American Teleconferencing Services Inv#:2132501800-051216 Conference call of Josh Cole Aicklen on 05/12/2016			1.02

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,
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0749

EXHIBIT C

Hawkins v. GGP Meadows Mall, et al.					
Date	Timekeeper	Rate	Hour	Amount	Description
3/10/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ co-counsel re: finalization of dispositive Motion on Plaintiff's Complaint, strategy for encouraging Plaintiff to consider resolution, and timing of filing Third Party Complaint
3/17/2016	CNR	\$ 175.00	0.4	\$ 70.00	Lengthy t/c w/ co-counsel and T. Lyons (Starr) re: pending Motion to Dismiss Plaintiff's Complaint and arguments to be raised in the same
3/21/2016	DSL	\$ 185.00	0.3	\$ 55.50	Send and receive e-corr and enclosures from co-counsel and carriers re; proposed motion to dismiss
3/22/2016	CNR	\$ 175.00	0.4	\$ 70.00	Review and analysis of proposed Motion to Dismiss Plaintiff's Complaint prepared by co-counsel (includes review of Det. Majors' deposition and investigative file to confirm facts and argument and to outline proposed revisions)
3/22/2016	CNR	\$ 175.00	0.3	\$ 52.50	Draft and review mult. brief e-corres. to/from J. Aicklen (co-counsel) re: proposed revisions to Motion to Dismiss Plaintiff's Complaint and application of case law to facts of instant case demonstrate that Plaintiff's perjury is egregious in this matter
3/23/2016	DSL	\$ 185.00	0.2	\$ 37.00	Send and receive e-corr and enclosures from co-counsel re; finalizing Motion to Dismiss and Motion for Leave to Amend
3/24/2016	DSL	\$ 185.00	0.3	\$ 55.50	Review final version of Defendant's Motion to Dismiss Plaintiffs' Complaint in preparation for arguing same
3/24/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review Defendants' Supplemental Exhibits to Motion to Dismiss Plaintiff's Complaint (filed by co-counsel)
4/12/2016	DSL	\$ 185.00	0.3	\$ 55.50	Review plaintiffs' opposition to Motion to Dismiss and Motion for Sanctions and outline Reply and argument based upon same
4/12/2016	CNR	\$ 175.00	0.4	\$ 70.00	Review and analysis of Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint and supporting affidavit of counsel
4/14/2016	CNR	\$ 175.00	0.3	\$ 52.50	Lengthy t/c w/ co-counsel and T. Lyons (Starr Indem.) re: analysis of Plaintiff's Opposition to Motion to Dismiss and Motion for Leave to File TPC, [REDACTED]
4/25/2016	CNR	\$ 175.00	0.2	\$ 35.00	Review and draft brief e-corres. from/to J. Aicklen (co-counsel) re: draft Reply in Support of Motion to Dismiss Complaint and conference call to discuss the same before filing
4/26/2016	CNR	\$ 175.00	0.3	\$ 52.50	Review and analysis of Reply brief in support of Mydatt's Motion to Dismiss Plaintiff's Complaint (prepared by co-counsel)
5/3/2016	CNR	\$ 175.00	1.1	\$ 192.50	Prepare for hearing on Mydatt/M. Warner's Motion to Dismiss Plaintiff's Complaint and Motion for Leave to File Third Party Complaint and Plaintiff's Countermotions (includes review of all briefs and outline of oral argument)
5/3/2016	CNR	\$ 175.00	0.2	\$ 35.00	Draft and review brief e-corres. to/from J. Aicklen (co-counsel) re: strategy for oral argument on Motion to Dismiss Plaintiff's Complaint and Motion for Leave to File Third Party Complaint
5/3/2016	CNR	\$ 175.00	2.8	\$ 490.00	Attend hearing on Mydatt/M. Warner's Motion to Dismiss Plaintiff's Complaint and Motion for Leave to File Third Party Complaint and Plaintiff's Countermotions
5/4/2016	DSL	\$ 185.00	0.2	\$ 37.00	Outline add'l course of action in prep for evidentiary hearing

5/4/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review proposed Order on Motion to Dismiss Plaintiff's Complaint, Motion for Leave to File TPC, and Plaintiff's Countermotions
5/4/2016	CNR	\$ 175.00	0.3	\$ 52.50	Review mult. e-corres. from/to D. Churchill (counsel for Plaintiff) and J. Aicklen (co-counsel) re: proposed Order on motions, approval of the same, minor revisions required and finalization of Order for submission
5/5/2016	CNR	\$ 175.00	0.3	\$ 52.50	Lengthy t/c w/ co-counsel re: evidentiary hearing on Motion to Dismiss Plaintiff's Complaint, Plaintiff's position on extending deadline for expert disclosures, [REDACTED]
5/10/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review Civil Evid. Hrg. Subpoena to Det. Menzie (served by co-counsel)
5/10/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review Civil Evid. Hrg. Subpoena to Det. Majors (served by co-counsel)
5/12/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ D. Avakian (co-counsel) re: witnesses to be called and made available for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint [REDACTED]
5/16/2016	DSL	\$ 185.00	0.1	\$ 18.50	Review proposed order on motion to dismiss
5/19/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ Det. Majors re: confirmation of receipt of subpoena for evidentiary hearing on Mtn. to Dismiss Complaint, confirmation of appearance and request for confirmation that Detective's partner will also appear at hearing
5/19/2016	DSL	\$ 185.00	0.3	\$ 55.50	Draft/review e-corr from co-counsel re: hearing prep [REDACTED]
5/19/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief e-corres. to co-counsel re: confirmation that Det. Majors will appear to testify at evidentiary hearing on Mtn. to Dismiss
5/19/2016	CNR	\$ 175.00	0.4	\$ 70.00	Review and draft mult. brief e-corres. from/to H. Rosenthal (co-counsel) re: confirmation of conference to prepare strategy for evidentiary hearing on Mtn. to Dismiss [REDACTED]
5/25/2016	DSL	\$ 185.00	0.5	\$ 92.50	Outline issues in preparation for pre-evidentiary meeting w/ counsel and evidentiary hearing on motion to dismiss
5/25/2016	DSL	\$ 185.00	0.3	\$ 55.50	Multiple communications w/ counsel and court re: evidentiary hearing on motion to dismiss and motion to DQ
5/25/2016	DSL	\$ 185.00	0.2	\$ 37.00	Review corr to/from court re: ADA accommodations for evidentiary hearing
5/25/2016	CNR	\$ 175.00	0.5	\$ 87.50	Prepare for conference w/ co-counsel on strategy for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint (includes outline of direct and cross-examination of witnesses identified for hearing)
5/25/2016	CNR	\$ 175.00	1.8	\$ 315.00	Attend conference w/ co-counsel on strategy for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
5/25/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from R. Massi (asst. to Judge) re: evidentiary hearing on Mtn. to Dismiss Plaintiff's Complaint to be continued
5/26/2016	DSL	\$ 185.00	0.2	\$ 37.00	Review evidentiary hearing Affidavits of Service
5/26/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief corres. to Court re: continuance of evidentiary hearing on Mtn. to Dismiss Plaintiff's Complaint
6/3/2016	DSL	\$ 185.00	0.3	\$ 55.50	Review preparations for evidentiary hearing and renewed witness subpoenas on same

6/3/2016	CNR	\$ 175.00	4.1	\$ 717.50	Draft supporting demonstrative exhibit for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint (line item summary of: (1) Plaintiff's deposition testimony, (2) statement to LVMPD following shooting, (3) interrogatory responses and (4) errata to deposition testimony outlining all instances of Plaintiff's perjury, to allow for immediate reference during direct/cross examination of Plaintiff)
6/3/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from T. Cordoba (asst. to Judge) re: revised protocol for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
6/3/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review revised Subpoenas for Appearance at Evidentiary Hrg. to Det. Majors and Menzie
6/6/2016	DSL	\$ 185.00	0.3	\$ 55.50	Draft/review e-corr from counsel and court re: emergency hearing on protocol for evidentiary hearing
6/6/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from D. Churchill (Plaintiff's counsel) re: request for further continuance of evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
6/6/2016	CNR	\$ 175.00	0.6	\$ 105.00	Draft and review mult. e-cores. to/from co-counsel re: necessity of rebuttal expert witness if Plaintiff calls its expert Dr. Loong (neuropsychologist), request that hearing not be continued, protocol for defense witnesses at evidentiary hearing, [REDACTED]
6/6/2016	CNR	\$ 175.00	0.9	\$ 157.50	Lengthy t/c w/ all counsel and Judge Kishner (trial judge) re: Plaintiff's request to further continue evidentiary hearing, objection by defense to the same, proposed protocol for hearing on Motion to Disqualify Lewis Brisbois and Motion to Dismiss Plaintiff's Complaint and Plaintiff's agreement to go forward with hearing as currently set
6/6/2016	DSL	\$ 185.00	0.2	\$ 37.00	Draft/review e-corr from co-counsel re: retention of add'l experts in preparation for evidentiary hearing
6/6/2016	DSL	\$ 185.00	0.4	\$ 74.00	Review course of action to prepare for evidentiary hearing and use of experts, [REDACTED]
6/6/2016	NF	\$ 85.00	0.8	\$ 68.00	Review litigation file and identify documents necessary for attorneys use in hearing Evidentiary Hearing re: Motion To Dismiss Plaintiffs' Complaint and Hearing re: Motion to Disqualify co-counsel for Mydatt Services and Mark Warner LBB&S
6/6/2016	CNR	\$ 175.00	0.1	\$ 17.50	Brief t/c w J. Aicklen (co-counsel) re: evidentiary hearing and hearing on Mtn. to Disqualify
6/7/2016	DSL	\$ 185.00	0.9	\$ 166.50	Outline presentation of evidence for evidentiary hearing on motion to dismiss and motion to DQ co-counsel
6/7/2016	DSL	\$ 185.00	0.1	\$ 18.50	Review minute order changing protocol for evidentiary hearing
6/7/2016	CNR	\$ 175.00	0.9	\$ 157.50	Revise, supplement and finalize supporting exhibit for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint (line item summary of: (1) Plaintiff's deposition testimony, (2) statement to LVMPD following shooting, (3) interrogatory responses and (4) errata to deposition testimony outlining all instances of Plaintiff's perjury, to allow for immediate reference during direct/cross examination of Plaintiff)
6/7/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft GGP's Supplemental Exhibit to Joinder to Motion to Dismiss Plaintiff's Complaint

6/7/2016	CNR	\$ 175.00	6.3	\$ 1,102.50	Prepare for evidentiary hearing on Defendants' Motion to Dismiss Plaintiff's Complaint (includes outlining strategy for direct/cross examination of witnesses, identification of necessary exhibits and outline foundation for the same, identify issues of hearsay and review and analysis of case law and statutory authority to support arguments for exceptions to the same, and outline questions for direct/cross examination of witnesses)
6/7/2016	DSL	\$ 185.00	0.3	\$ 55.50	Outline means to avoid hearsay objections
6/7/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from T. Cordoba (asst. to Judge) re: evidentiary hearing protocol further revised
6/8/2016	DSL	\$ 185.00	1.4	\$ 259.00	Prepare for evidentiary hearing on motion to DQ co-counsel and Motion to Dismiss
6/8/2016	DSL	\$ 185.00	5.6	\$ 1,036.00	Attend evidentiary hearing on motion to DQ co-counsel and Motion to Dismiss
6/8/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ Det. Majors (witness) re: revised hearing protocol, and clarification of party that witness was subpoenaed by
6/9/2016	DSL	\$ 185.00	0.4	\$ 74.00	Outline course of action for continued evidentiary hearing and e-corr to/from opp counsel and court re: same
6/9/2016	DSL	\$ 185.00	0.5	\$ 92.50	Prepare for and attend emergency hearing on evidentiary hearing
6/9/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ J. Manke (counsel for Plaintiff) re: necessity of evidentiary hearing, Det. Majors not available for reset hearing, and further conference with court required to address the same
6/9/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ T. Cordoba (asst. to Judge) re: witness unavailable for reset evidentiary hearing, conference required with Judge to address the same or potential for submitting motion on the pleadings
6/9/2016	CNR	\$ 175.00	0.4	\$ 70.00	Draft and review mult. e-corres. to/from J. Manke (Plaintiff's counsel) re: unavailability of witness for reset evidentiary hearing, proposed protocol for resetting hearing, conf. call with court required to address witness availability and continued setting for hearing
6/9/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief corres. to Court re: witness unavailable for reset evidentiary hearing and request for conference call to address the same
6/9/2016	DSL	\$ 185.00	0.3	\$ 55.50	Further outline course of action in light of unavailability of witnesses for evidentiary hearing
6/9/2016	CNR	\$ 175.00	0.4	\$ 70.00	Lengthy t/c w/ Court and Plaintiff's counsel re: defense witness unavailable for reset evidentiary hearing, Defendants' willingness to submit Motion on pleadings, Court's position that evidentiary hearing must be held and alternative protocol for said hearing
6/10/2016	DSL	\$ 185.00	0.3	\$ 55.50	Draft/review e-corr from former co-counsel re: postponing evidentiary hearing and Starr's selection of new counsel
6/10/2016	CNR	\$ 175.00	0.2	\$ 35.00	Review and draft brief e-corres. from/to D. Avakian (former co-counsel) re: request to court to continue evidentiary hearing to allow excess insurer to retain new counsel on behalf of Mydatt and M. Warner
6/15/2016	NF	\$ 85.00	0.3	\$ 25.50	Draft Trial Subpoenas to LVMPD Detective Majors and Detective Menzie re: Testimony at the upcoming Evidentiary Hearing
6/27/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from Judge re: request for clarification as to parties' position on whether evidentiary hearing is necessary on Motion to Dismiss Plaintiff's Complaint
6/27/2016	DSL	\$ 185.00	0.2	\$ 37.00	Review Minute Order from court on Evidentiary Hearing and formulate response on same
6/27/2016	DSL	\$ 185.00	0.4	\$ 74.00	Draft/review e-corr from all counsel and former counsel re: further settlement discussions and evidentiary hearing

6/27/2016	DSL	\$ 185.00	0.4	\$ 74.00	T/c w/ J. Manke (counsel for plaintiffs) re: settlement demand, evidentiary hearing and mediation and outline course of action on same
6/27/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ D. Avakian (former co-counsel) re: Court's request for clarification as to party requiring evidentiary hearing and intent to proceed with hearing as set
6/28/2016	DSL	\$ 185.00	0.5	\$ 92.50	T/cs w/ D. Churchill (plaintiffs' counsel) re: further settlement discussions and evidentiary hearing
6/28/2016	DSL	\$ 185.00	0.4	\$ 74.00	Further analysis of need for evidentiary hearing and outline response to court re: same
4/30/2016	DSL	\$ 3.50	1	\$ 3.50	Court fees - E-Filing 04/01/16 GGP Meadows Mall's Joinder to Mydatt Services and Mark Warner's Motion to Dismiss Plaintiff's Complaint
6/30/2016	DSL	\$ 3.50	1	\$ 3.50	Court fees - E-Filing 06/07/16 GGP Meadows Mall's Supplemental Exhibit To Joinder to Mydatt Services and Mark Warner's Motion to Dismiss Plaintiff's Complaint
7/8/2016	CNR	\$ 175.00	0.7	\$ 122.50	Lengthy t/c w/ E. Carranza (co counsel) re: evaluation of pending evidentiary hearing on Motion to Dismiss, strategy for using evidence presented at the same [REDACTED]
7/8/2016	DSL	\$ 185.00	0.9	\$ 166.50	Prepare for and attend conference call w/ E. Carranza (co-counsel) re: evidentiary hearing and strategy for future handling
7/8/2016	DSL	\$ 185.00	0.3	\$ 55.50	Outline course of action following conf call w/ co-counsel
7/9/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ Det. Majors re: disqualification of prior co-counsel, and conference w/ new co-counsel to prepare for evidentiary hearing
7/11/2016	CNR	\$ 175.00	0.4	\$ 70.00	Draft and review mult. e-corres. to/from E. Carranza (co counsel) re: conference w/ Det. Majors to prepare for evidentiary hearing, conflict for counsel and protocol for conference
7/13/2016	DSL	\$ 185.00	0.4	\$ 74.00	Analyze readiness for evidentiary hearing and potential sanctions
7/13/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from Court re: request for parties to confirm whether ADA compliant courtroom is needed for evidentiary hearing
7/13/2016	DSL	\$ 185.00	0.1	\$ 18.50	Review notice from court of ADA compliance for hearing
7/14/2016	CNR	\$ 175.00	2	\$ 350.00	Attend conference w/ E. Carranza (co-counsel) and Det. Majors re: preparation for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint
7/14/2016	NF	\$ 85.00	0.1	\$ 8.50	Review litigation file and identify documents necessary for attorneys use in pre-trial hearing with Detective W. Major
7/14/2016	CNR	\$ 175.00	0.2	\$ 35.00	Draft e-corres. to Det. Majors (witness) re: review of relevant transcripts and documents in preparation for evidentiary hearing and request for conference w/ Det. Menzies to discuss witness' recollection of Plaintiff and preparation for evidentiary hearing
7/15/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft corres. to Court re: defense defers to Plaintiff on request for ADA compliant courtroom for evidentiary hearing
7/15/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief corres. to Plaintiff's counsel re: confirmation of witnesses to be called at evidentiary hearing
7/15/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ Dr. Etcoff (rebuttal expert) re: potential for expert to be called as witness at evidentiary hearing on Mtn. to Dismiss Plaintiff's Complaint and underlying issues that may be addressed by witness during hearing

7/15/2016	CNR	\$ 175.00	0.2	\$ 35.00	Draft e-corres. to E. Carranza (co counsel) re: proposed exhibit outlining multiple instances of Plaintiff's perjury and confirmation that Dr. Etcoff can be available to testify at evidentiary hearing if needed
7/15/2016	DSL	\$ 185.00	0.2	\$ 37.00	Communications w/ co-counsel re: evidentiary hearing
7/15/2016	DSL	\$ 185.00	0.2	\$ 37.00	Review corr to/from court and opp counsel re: evidentiary hearing
7/15/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from D. Halbert (asst. to co counsel) re: notice to Court to arrange for ADA compliant courtroom for evidentiary hearing to accommodate Plaintiff
7/17/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief e-corres. to E. Carranza (co-counsel) re: outline for evidentiary hearing on Motion to Dismiss
7/18/2016	CNR	\$ 175.00	0.2	\$ 35.00	Review and draft brief e-corres. from/to E. Carranza (co-counsel) re: preparation for evidentiary hearing
7/18/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from Court re: protocol for evidentiary hearing to ensure ADA compliance
7/18/2016	DSL	\$ 185.00	0.1	\$ 18.50	Review corr rec'd from court re: hearing protocol
7/19/2016	CNR	\$ 175.00	0.6	\$ 105.00	Review and draft mult. e-corres. from/to E. Carranza (co-counsel) re: procedure for evidentiary hearing regarding introduction of deposition testimony of witnesses and Det. Menzies unavailable to testify at evid. hrg. due to conflict, Plaintiff's prior record of false statement to police
7/19/2016	DSL	\$ 185.00	0.3	\$ 55.50	Review preparation for evidentiary hearing and subpoenas for witnesses at same
7/20/2016	CNR	\$ 175.00	0.2	\$ 35.00	T/c w/ Det. Menzie (witness) re: recollection of investigation of Plaintiff's shooting and interview, and protocol for evidentiary hearing
7/20/2016	CNR	\$ 175.00	0.8	\$ 140.00	Draft and review mult. e-corres. to/from E. Carranza (co-counsel) re: Det. Menzie's confirmation of appearance at hearing, limited information from the same and whether witness is needed at hearing, clarification of setting for hearing, Det. Majors confirmed for appearance and hearing preparation
7/20/2016	CNR	\$ 175.00	0.4	\$ 70.00	Draft and review mult. e-corres. and text messages to/from Det. Menzies (witness) re: Plaintiff's Voluntary Stmt. to LVMPD to be reviewed by witness in preparation for evid. hrg., audio recording of the same cannot be forwarded due to file error and notice that witness is no longer required to appear given that he cannot independently recall interview with Plaintiff or specifics of the same
7/20/2016	CNR	\$ 175.00	6.5	\$ 1,137.50	Prepare for Evidentiary Hearing on Motion to Dismiss Plaintiff's Complaint (includes: review of Plaintiff's recorded audio statement to LVMPD, transcript of the same, Plaintiff's deposition transcript and Errata to the same, review of expert report prepared by Plaintiff's expert D. Loong and rebuttal report prepared by def. expert L. Etcoff and draft outline of cross examination of D. Loong and direct examination of L. Etcoff)
7/20/2016	DSL	\$ 185.00	0.2	\$ 37.00	Analyze benefit of Det Menzees at Evidentiary Hearing
7/20/2016	DSL	\$ 185.00	0.3	\$ 55.50	Outline course of action for evidentiary hearing
7/20/2016	NF	\$ 85.00	0.6	\$ 51.00	Review litigation file and identify documents necessary for attorneys use in Evidentiary Hearing re: Defendants Motion to Dismiss Plaintiffs Complaint
7/21/2016	CNR	\$ 175.00	7.5	\$ 1,312.50	Attend Evidentiary Hearing on Motion to Dismiss Plaintiff's Complaint
7/21/2016	DSL	\$ 185.00	8.4	\$ 1,554.00	Prepare for and attend evidentiary hearing on motion to dismiss

7/26/2016	CNR	\$ 175.00	0.2	\$ 35.00	Review and analyze proposed Order Granting in Part and Denying in Part Motion to Dismiss Plaintiff's Complaint prepared by co counsel
7/26/2016	CNR	\$ 175.00	0.1	\$ 17.50	Draft brief e-corres. to E. Carranza (co counsel) re: approval of proposed Order on Motion to Dismiss Plaintiff's Complaint
7/27/2016	CNR	\$ 175.00	0.1	\$ 17.50	Review corres. from E. Carranza (co counsel) re: proposed Order on Motion to Dismiss Plaintiff's Complaint and protocol for parties' revisions to the same
7/29/2016	DSL	\$ 185.00	0.2	\$ 37.00	Further outline revisions to order on Motion to Dismiss and draft/review e-corr from counsel re: same
7/29/2016	CNR	\$ 175.00	0.4	\$ 70.00	Analysis of potential curative jury instruction to address sanction for Plaintiff's discovery violations and draft proposed structure of the same to be included in Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Plaintiff's Complaint
7/29/2016	CNR	\$ 175.00	0.2	\$ 35.00	Draft e-cores. to E. Carranza (co counsel) re: proposed revisions to Joint Def. Agmt. and proposal that specific language be included in Order on Motion to Dismiss to ensure that court commits to scope of curative jury instruction to avoid dispute as to the same at time of trial
7/31/2016	CNR	\$ 175.00	0.2	\$ 35.00	Review and draft brief e-cores. from/to E. Carranza (co-counsel) re: proposed revision to Order Granting/Denying Motion to Dismiss Plaintiff's Complaint and Plaintiff's failure to respond to the same
TOTAL				\$ 13,681.50	

EXHIBIT D

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

TELEPHONE: (702) 880-9750
FACSIMILE: (702) 314-1210

Statement Date: March 31, 2016
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Account No. 1156.002
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Fees

Rate	Hours
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0759

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1156-002Q
94177

[illegible]

0760

[illegible]

				Rate	Hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
			[REDACTED]		
03/10/2016	CNR L120 A107	T/c w/ co-counsel re: finalization of dispositive Motion on Plaintiff's Complaint, strategy for encouraging Plaintiff to consider resolution, and timing of filing Third Party Complaint		175.00	0.20 35.00
		[REDACTED]			
		[REDACTED]			
		[REDACTED]			
		[REDACTED]			
		[REDACTED]			
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First Mercury Insurance

Hawkins v GGP Meadows
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Statement No: 94177

Rate Hours

[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
03/17/2016	CNR	L120	A107	Lengthy t/c w/ co-counsel and T. Lyons (Starr) re: pending Motion to Dismiss Plaintiff's Complaint and arguments to be raised in the same	175.00	0.40 70.00
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
03/21/2016	DSL	L350	A104	Send and receive e-corr and enclosures from co-counsel and carriers re; proposed motion to dismiss	185.00	0.30 55.50
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		
[REDACTED]				[REDACTED]		

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				Rate	Hours	
03/22/2016	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	CNR	L250	A104	Review and analysis of proposed Motion to Dismiss Plaintiff's Complaint prepared by co-counsel (includes review of Det. Majors' deposition and investigative file to confirm facts and argument and to outline proposed revisions)		
				175.00	0.40	70.00
	CNR	L250	A107	Draft and review mult. brief e-corres. to/from J. Aicklen (co-counsel) re: proposed revisions to Motion to Dismiss Plaintiff's Complaint and application of case law to facts of instant case demonstrate that Plaintiff's perjury is egregious in this matter		
				175.00	0.30	52.50
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
03/23/2016	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]

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DSL L210 A104

Send and receive e-corr and enclosures from co-counsel re; finalizing Motion to Dismiss and Motion for Leave to Amend

185.00	0.20	37.00
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DSL L310 A104

Review final version of Defendant's Motion to Dismiss Plaintiffs' Complaint in preparation for arguing same

185.00	0.30	55.50
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			Rate	Hours
[REDACTED]			[REDACTED]	
CNR	L250	A104	Review Defendants' Supplemental Exhibits to Motion to Dismiss Plaintiff's Complaint (filed by co-counsel)	
			175.00	0.10 17.50
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
	[REDACTED]		[REDACTED]	
	[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]		[REDACTED]	
	[REDACTED]		[REDACTED]	
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	[REDACTED]		[REDACTED]	
	[REDACTED]		[REDACTED]	
	[REDACTED]		[REDACTED]	

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03/31/2016

Account No: 1156-002Q
Statement No: 94177

[REDACTED]

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[REDACTED]

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	Rate	Hours
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

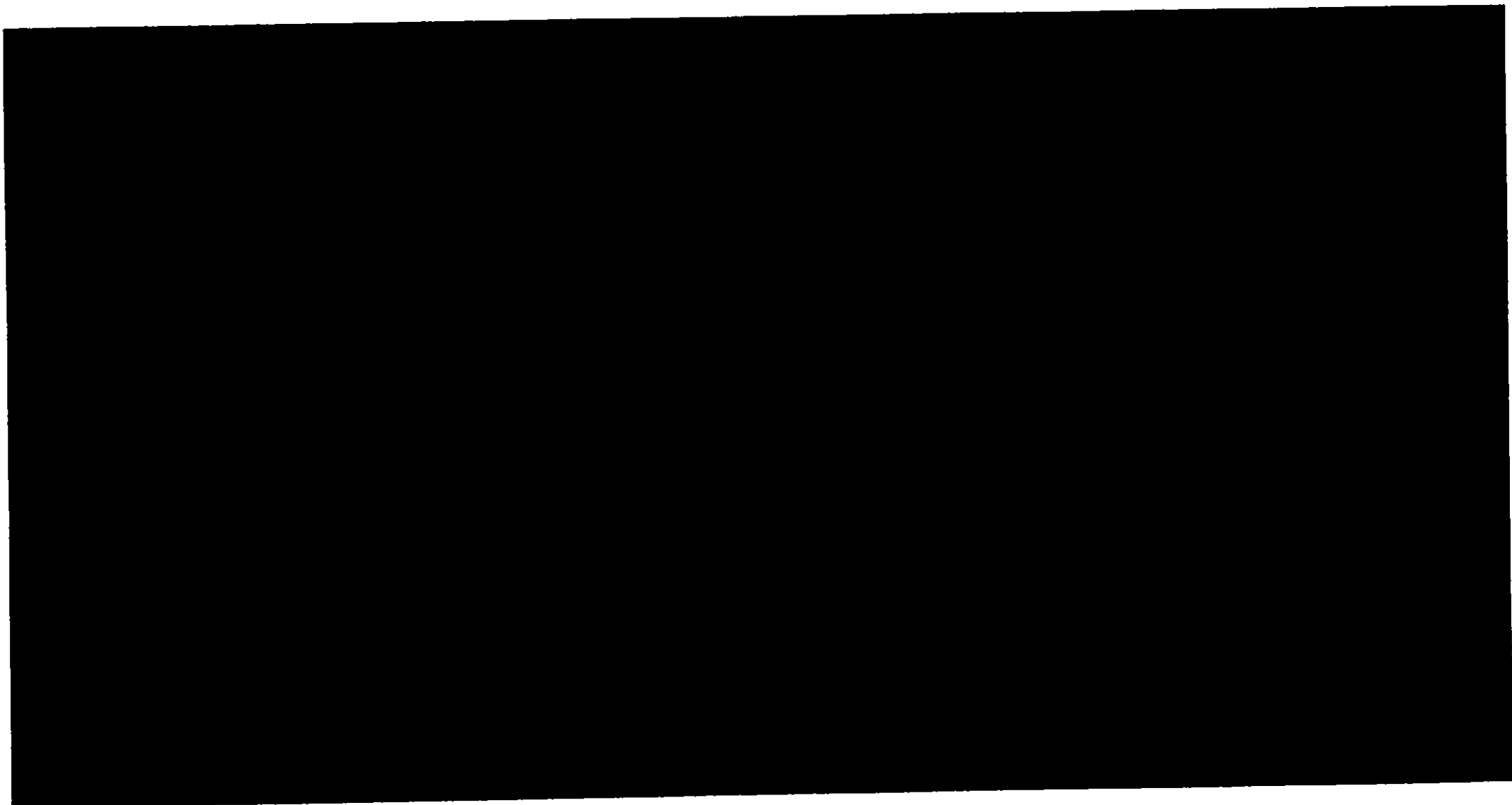
	Recapitulation	Hours	Rate	Total
Timekeeper	Title	[REDACTED]		
David S. Lee	Partner			
Elizabeth C. Spaur	Associate			
Charlene N. Renwick	Associate			
Nicole Fuentes	Paralegal			

Advances
[REDACTED]

First Mercury Insurance

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DATE	TIME	LOCATION	TYPE	STATUS	REMARKS	REMARKS	REMARKS
04/14/2016	51	CNR	L120	A107	1827	175.00	0.30
04/14/2016	52	CNR	L120	A107	1827	175.00	0.30
04/14/2016	53	CNR	L120	A107	1827	175.00	0.30
04/14/2016	54	CNR	L120	A107	1827	175.00	0.30
04/14/2016	55	CNR	L120	A107	1827	175.00	0.30
04/14/2016	56	CNR	L120	A107	1827	175.00	0.30
04/14/2016	57	CNR	L120	A107	1827	175.00	0.30
04/14/2016	58	CNR	L120	A107	1827	175.00	0.30
04/14/2016	59	CNR	L120	A107	1827	175.00	0.30
04/14/2016	60	CNR	L120	A107	1827	175.00	0.30
04/14/2016	61	CNR	L120	A107	1827	175.00	0.30
04/14/2016	62	CNR	L120	A107	1827	175.00	0.30
04/14/2016	63	CNR	L120	A107	1827	175.00	0.30
04/14/2016	64	CNR	L120	A107	1827	175.00	0.30
04/14/2016	65	CNR	L120	A107	1827	175.00	0.30
04/14/2016	66	CNR	L120	A107	1827	175.00	0.30
04/14/2016	67	CNR	L120	A107	1827	175.00	0.30
04/14/2016	68	CNR	L120	A107	1827	175.00	0.30
04/14/2016	69	CNR	L120	A107	1827	175.00	0.30
04/14/2016	70	CNR	L120	A107	1827	175.00	0.30
04/14/2016	71	CNR	L120	A107	1827	175.00	0.30
04/14/2016	72	CNR	L120	A107	1827	175.00	0.30
04/14/2016	73	CNR	L120	A107	1827	175.00	0.30
04/14/2016	74	CNR	L120	A107	1827	175.00	0.30
04/14/2016	75	CNR	L120	A107	1827	175.00	0.30
04/14/2016	76	CNR	L120	A107	1827	175.00	0.30
04/14/2016	77	CNR	L120	A107	1827	175.00	0.30
04/14/2016	78	CNR	L120	A107	1827	175.00	0.30
04/14/2016	79	CNR	L120	A107	1827	175.00	0.30
04/14/2016	80	CNR	L120	A107	1827	175.00	0.30
04/14/2016	81	CNR	L120	A107	1827	175.00	0.30
04/14/2016	82	CNR	L120	A107	1827	175.00	0.30
04/14/2016	83	CNR	L120	A107	1827	175.00	0.30
04/14/2016	84	CNR	L120	A107	1827	175.00	0.30
04/14/2016	85	CNR	L120	A107	1827	175.00	0.30
04/14/2016	86	CNR	L120	A107	1827	175.00	0.30
04/14/2016	87	CNR	L120	A107	1827	175.00	0.30
04/14/2016	88	CNR	L120	A107	1827	175.00	0.30
04/14/2016	89	CNR	L120	A107	1827	175.00	0.30
04/14/2016	90	CNR	L120	A107	1827	175.00	0.30
04/14/2016	91	CNR	L120	A107	1827	175.00	0.30
04/14/2016	92	CNR	L120	A107	1827	175.00	0.30
04/14/2016	93	CNR	L120	A107	1827	175.00	0.30
04/14/2016	94	CNR	L120	A107	1827	175.00	0.30
04/14/2016	95	CNR	L120	A107	1827	175.00	0.30
04/14/2016	96	CNR	L120	A107	1827	175.00	0.30
04/14/2016	97	CNR	L120	A107	1827	175.00	0.30
04/14/2016	98	CNR	L120	A107	1827	175.00	0.30
04/14/2016	99	CNR	L120	A107	1827	175.00	0.30
04/14/2016	100	CNR	L120	A107	1827	175.00	0.30

Lengthy t/c w/ co-counsel and T. Lyons (Starr Indem.) re: analysis of Plaintiff's Opposition to Motion to Dismiss and Motion for Leave to File TPC.

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

[illegible]

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

[illegible]

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

Date	Tmkr	R C	Task Code	Ref #	Rate	Hours to Bill	Amount	Write-Up/ Down Amt	Description
05/04/2016	1 DSL		L110 A104	1951	185.00	0.20	37.00		Outline add'l course of action in prep for evidentiary hearing
05/04/2016	51 CNR		L250 A104	2061	175.00	0.10	17.50		Review proposed Order on Motion to Dismiss Plaintiff's Complaint, Motion for Leave to File TPC, and Plaintiff's Countermotions
05/04/2016	51 CNR		L250 A104	2062	175.00	0.30	52.50		Review mult. e-corres. from/to D. Churchill (counsel for Plaintiff) and J. Aicklen (co-counsel) re: proposed Order on motions, approval of the same, minor revisions required and finalization of Order for submission
05/05/2016	51 CNR		L120 A107	1942	175.00	0.30	52.50		Lengthy t/c w/ co-counsel re: evidentiary hearing on Motion to Dismiss Plaintiff's Complaint, Plaintiff's position on extending deadline for expert disclosures,
05/10/2016	51 CNR		L410 A104	2016	175.00	0.10	17.50		Review Civil Evid. Hrg. Subpoena to Det. Menzie (served by co-counsel)
05/10/2016	51 CNR		L410 A104	2017	175.00	0.10	17.50		Review Civil Evid. Hrg. Subpoena to Det. Majors (served by co-counsel)
05/12/2016	51 CNR		L250 A108	1961	175.00	0.20	35.00		T/c w/ D. Avakian (co-counsel) re: witnesses to be called and made available for evidentiary hearing on Motion to Dismiss Plaintiff's Complaint

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

[illegible]

Primary Timekeeper: 1 David S. Lee

Client: 1156.002Q First Mercury Insurance (Continued)

[illegible]