

Exhibit 7

Exhibit 7

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**EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA**

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6	X'ZAVION HAWKINS,)	CASE NO. A-15-717577
)	
7	Plaintiff,)	DEPT. NO. XXXI
)	
8	vs.)	
)	
9	GGP MEADOWS MALL, LLC, et al,)	
)	
10	Defendants.)	
)	

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BEFORE THE HONORABLE JOANNA KISHNER, DISTRICT COURT JUDGE

12

TUESDAY, JANUARY 17, 2017

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TRANSCRIPT RE:
DEFENDANTS GGP MEADOWS MALL LLC, MYDATT SERVICES, INC.
dba VALOR SECURITY SERVICES, AND MARK WARNER'S
MOTION TO STAY LITIGATION AND CONTINUE TRIAL
ON ORDER SHORTENING TIME

16

17 **APPEARANCES:**

18	For the Plaintiff:	DAVID J. CHURCHILL, ESQ.
19	For Defendants GGP Meadows Mall, LLC,	
	Mydatt Services, Inc., and Mark Warner:	CHARLENE RENWICK, ESQ.
20		
	For Defendants Mydatt Services, Inc.	
21	and Mark Warner:	EDGAR CARRANZA, ESQ.

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24 **RECORDED BY:** Rachelle Hamilton, Court Recorder

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 17, 2017, 10:45 A.M.

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3 THE COURT: Page 4 & 5, 717577, Hawkins versus GGP Meadows Mall.
4 Counsel, appearances.

5 MR. CHURCHILL: Good morning, Your Honor. David Churchill for the
6 plaintiff, X'Zavion Hawkins.

7 MS. RENWICK: Charlene Renwick on behalf of all defendants, GGP
8 Meadows Mall, Mydatt and Mark Warner, Your Honor.

9 MR. CARRANZA: Good morning, Your Honor. Edgar Carranza for Mydatt
10 and Mark Warner.

11 THE COURT: Okay. We've got a couple of different things. First off, we
12 have the motion to stay the litigation and continue the trial on OST. I have plaintiff's
13 partial joinder. And then I have a document disclosure statement that was also filed.
14 So that was just the disclosure statement --

15 MS. RENWICK: Right.

16 THE COURT: -- as you know, pursuant to the rules. I just was looking --
17 I saw that was late filed and I wanted to make sure it wasn't anything substantive
18 with regards to today.

19 MS. RENWICK: There is one other substantive document that was filed;
20 however, the timing of filing, Your Honor, I didn't see it come through on Wiznet.
21 We had filed it --

22 THE COURT: I have no courtesy copy of anything else.

23 MS. RENWICK: I apologize, but just for the record prior to the partial
24 joinder, that afternoon we had also filed -- because we hadn't received any

1 opposition from plaintiff's counsel, I had also called and emailed over to counsel to
2 see whether or not an opposition was going to be filed because per your scheduling
3 order that was due on Wednesday, the 11th.

4 THE COURT: Right.

5 MS. RENWICK: And our reply was due on Friday. I received no response,
6 so we went ahead and filed a notice of non-opposition and a proposed order, which
7 obviously hasn't come through. And I do apologize, I courtesy copy was not sent
8 down.

9 THE COURT: Okay.

10 MS. RENWICK: So when you see it come through, that's what it is.

11 THE COURT: Okay. So it can be taken care of today and moot for further
12 purposes, is that right?

13 MS. RENWICK: It will.

14 THE COURT: Okay. And then I do realize I have a stip regarding motion
15 in limine deadlines, which I can't get to until I deal with the first portion of this.

16 MS. RENWICK: Correct.

17 THE COURT: Okay. So, writ filed; not impacting either of the counsel
18 standing before me today because it's only as to the counsel that's no longer in the
19 case, and a response is required. Is that correct or incorrect? The fee -- the issue,
20 I thought the sole issue was with regards to the disqualified counsel.

21 MR. CHURCHILL: I'm sorry, Your Honor?

22 THE COURT: The writ.

23 MR. CHURCHILL: Oh, on the writ.

24 THE COURT: The writ that you filed is just the disqualified counsel; correct?

1 MR. CHURCHILL: No. I would disagree with that, Your Honor.

2 THE COURT: Okay, then please enlighten me. Thank you so much.

3 MR. CHURCHILL: No, I think the breadth of the writ deals with more than
4 the fees to the disqualified counsel. It deals with the order itself. Your Honor, what
5 you had -- the last time we were in front of you what Your Honor had determined --

6 THE COURT: I asked the same question then. Yeah.

7 MR. CHURCHILL: Yes. And what Your Honor determined was you wanted
8 to see all of the briefing, their -- you know, their responsive brief and then our reply
9 going forward. But, Your Honor, it's still our position that the writ is challenging the
10 order itself.

11 THE COURT: And nobody gave me any courtesy copies of that, did they?
12 I didn't see any -- your response.

13 MS. RENWICK: The writ, Your Honor?

14 THE COURT: Did you file your response --

15 MR. CARRANZA: The answer to the writ will be filed this Friday.

16 THE COURT: This Friday? Okay, that's --

17 MR. CARRANZA: Yes, this Friday.

18 MS. RENWICK: There was an extension that was filed, Your Honor.

19 MR. CARRANZA: We got -- yeah, we got a seven day extension, which --

20 THE COURT: Okay.

21 MR. CARRANZA: -- that will not impact the February 17th deadline that
22 you had outlined for us at the last hearing.

23 If I can just really quickly address Mr. Churchill's statement. We spent
24 a considerable amount of time at the last hearing going over that very issue about

1 whether or not the substance of the writ was limited solely to the disqualified firm or
2 the order in its entirety, including the fees awarded to both Ms. Renwick's law firm
3 and my law firm, Your Honor. And I think you'll remember that during the discussion
4 Mr. Churchill even offered to pay the attorney's fees both for Ms. Renwick's firm
5 and my firm. I said something like, no, that ship has sailed. You put it a little more
6 eloquently and said, well, no, if I allow you to do that then that moots the motion to
7 dismiss, which we were there for.

8 We think that alone identifies the fact that Mr. Churchill's petition on
9 that order had nothing to do with the other components of your sanctioning order.
10 Just solely it was limited to the disqualified law firm's fees that were awarded as
11 part of that order. And we're going to address that as part of our response. We
12 will identify specifically the objections by Mr. Hawkins as part of his petition and
13 how those are limited only to the proposed jury instruction and the fees for the
14 disqualified law firm.

15 THE COURT: For today's purposes, though, it seems to be, despite each
16 of your pleadings saying that the other side kind of wants their cake and eat it, too --
17 you said it differently. You know, one side wants me to stay a certain part and not
18 stay other parts and the other side wants me to --

19 MR. CHURCHILL: Stay everything.

20 THE COURT: -- stay everything so they don't have to do everything, and
21 I've still got a pending motion to dismiss. So it seems appropriate that either I stay
22 everything or I don't stay everything, is really what it comes down to it because if
23 I'm going to stay only a portion then -- I mean, I have to look at an equal playing
24 field and I have to look at there's a writ. And since I don't -- since you're asking me

1 to rule on this motion today before -- the reason I was asking the same question,
2 it's not like I didn't remember it from the last time, but since you all wanted this on
3 an OST before my other deadlines, it seemed to me that something must have
4 happened in the intervening time, and it appears I'm incorrect.

5 MS. RENWICK: Your Honor, the concern obviously was we have a March
6 13th trial date. To wait until February to file the motion to stay to address whether
7 or not --

8 THE COURT: Yes, it make sense.

9 MS. RENWICK: It just -- we didn't want to get hit with why did you wait until
10 a month before trial. Obviously we've got the issue of the writ specifically deals with
11 the sanction you provided the defense, which was the jury instruction. How we can
12 go forward on trial without that jury instruction issue decided --

13 THE COURT: Presents a challenge.

14 MS. RENWICK: -- presents a challenge. Your Honor, I would argue,
15 however, the motion for summary judgment is entirely unrelated to the writ. It was
16 timely brought in October. It was heard and argued and originally we were hoping
17 to have that decision in December, but Your Honor had to defer. And so --

18 THE COURT: For a very good reason, because I still didn't have anything
19 that tells me the scope of the writ and I can't rule on --

20 MR. CARRANZA: But --

21 THE COURT: I can't rule on something that I don't yet know what the --

22 MS. RENWICK: But the motion for summary judgment, Your Honor, is
23 entirely unrelated to the writ. And I apologize, at the risk of sounding obtuse, I'm
24 trying to get some clarification on --

1 THE COURT: Okay.

2 MS. RENWICK: -- why the summary judgment is tied to the writ.

3 MR. CARRANZA: And I think that was very well reasoned by this Court the
4 last time we were here. You provided the court some cushion to allow you -- what
5 I understood was that you were going to look at the filings, the writ, the answer and
6 then the reply, if anything, once those were filed so that this Court could make a
7 determination what the scope of that writ and those writ proceedings was ultimately
8 going to be. I think we can still move forward with the schedule that you laid out,
9 that February 17th date by which you were going to consider both the motion for
10 summary judgment and the motion to dismiss that are currently pending before this
11 Court, without affecting the other proceedings. In fact, we are already -- we, the
12 parties are already moving forward with other facets, not trial related, including the
13 deposition of our security expert out in Arizona in a couple of weeks.

14 And so to the extent that the parties are already moving forward on
15 parts of the case that are not impacted by the trial, which is really the limited scope
16 of the motion to stay and continue the proceedings, is just those deadlines and
17 proceedings related to the trial. The rest of the case and the rest of the proceedings
18 may move forward, including that expert deposition, including determination by this
19 Court on the motion for summary judgment, including a review by this Court of the
20 writ proceedings and ultimately a review and a determination by this Court on the
21 motion to dismiss. We think that's why that's proper to do while at the same time
22 staying the trial proceedings.

23 THE COURT: Okay. First off, with the extension that was granted, is
24 that going to impact the prior scheduling agreed upon by the parties with the two

1 pending motions?

2 MR. CARRANZA: The motions in limine, the stipulation for motions in
3 limine?

4 THE COURT: The motion for summary judgment and the motion to dismiss
5 was based on what I then knew as being the response and reply dates that were
6 going to be triggered.

7 MR. CARRANZA: Correct. The extension for the answer will not affect
8 that.

9 THE COURT: Do you have a pending extension for your response?

10 MR. CHURCHILL: Yes. And I don't recall off the top of my head --

11 MR. CARRANZA: That is February 10th. That's set for February 10th.
12 That's the extension we provided. The deadline you had given is February 17th,
13 so that's a week prior to the deadline.

14 THE COURT: So it just shortens the time that the Court has the opportunity
15 to review the underlying documents. And of course you'll give me courtesy copies;
16 right?

17 MR. CARRANZA: Absolutely.

18 MS. RENWICK: Yes, Your Honor.

19 THE COURT: The same day it's filed, please, particularly if you've done
20 extensions because now I've got a lot.

21 MR. CARRANZA: Sure.

22 THE COURT: I've got less time to get things read --

23 MR. CARRANZA: Absolutely, Your Honor.

24 THE COURT: -- in comparison to the rest of the cases. Thank you so very

1 much. Okay. But when I was looking -- I'm looking at the conclusion sections
2 on the two different motions. (Reading) "Based on the foregoing, defendants
3 respectfully request the litigation be stayed and trial continued and no further
4 allowance of discovery other than the outstanding deposition of Mr. Tatalovich,
5 and the remaining trial deadlines be continued accordingly."

6 Okay. Plaintiff: "Based on the foregoing, plaintiff requests that the
7 Court either stay the entirety of the October 17th order or stay the entirety of this
8 matter pending writ before the Nevada Supreme Court."

9 So, Tatalovich is the security expert in Arizona. You just want that
10 one depo to take place. What -- you don't want that depo to take place?

11 MR. CHURCHILL: Your Honor, we're fine with that. We're fine with going
12 forward, taking that deposition. You know, I don't want to ask too much of the
13 Court. I do agree with Ms. Renwick, however, that it would be nice to get some
14 closure on, for example, the motion for summary judgment. But that being said,
15 I'm more than happy to go forward with Mr. Tatalovich's deposition on the 27th.

16 Your Honor --

17 THE COURT: So what do you want stayed?

18 MR. CHURCHILL: What we would like --

19 THE COURT: Just the payment of the sanctions, or --

20 MR. CHURCHILL: The order itself. So, Your Honor, what I would present
21 is this. There's -- I don't want to burden the Court too much, but here's the issue
22 that ultimately Mr. -- that Mr. Hawkins has. He has been trying diligently to get a
23 loan to pay these sanctions, okay. That's the -- but the lending companies will not
24 do anything.

1 THE COURT: Remember, I can't hear anything with regards to any
2 attorney-client communications.

3 MR. CHURCHILL: Yeah. The issue is this, Your Honor. These people
4 won't give a loan as long as there's a pending motion for summary judgment. What
5 we're asking, Your Honor, is this. At this point both parties agree that this case
6 should be stayed pending resolution on the writ from the Nevada Supreme Court.
7 There is no --

8 THE COURT: Is that correct, a stay pending? That's not -- that's not the
9 way I read your --

10 MR. CARRANZA: No, it's not, Your Honor.

11 THE COURT: Okay. Well, let me just hear him finish, but okay.

12 MR. CHURCHILL: Well, they're saying that -- well, look at their title.
13 Defendants' motion to stay litigation and continue trial on an order shortening time.
14 They're asking that this Court stay the litigation and continue the trial. At this point,
15 Your Honor, there's no prejudice whatsoever and both parties agree this matter
16 should be stayed pending resolution on the writ. There would be no prejudice to
17 either party to stay your Court's order. Your Honor can certainly give your decision
18 on the motion for summary judgment. I think that's certainly appropriate and
19 something that we've all been anxiously waiting for. But the parties --

20 THE COURT: I can't do it -- I mean, if you get extensions and the writ,
21 the very things that I need the basis to make my ruling, then of course by definition
22 I can't give you a ruling if you've extended your time to respond, right?

23 MR. CHURCHILL: I don't -- and I agree with Ms. Renwick on this. The
24 motion for summary judgment -- the motion for summary judgment I think is

1 completely independent of the order from before. I mean, this is --

2 THE COURT: The motion to dismiss is, you're going to say?

3 MR. CHURCHILL: Not the motion to dismiss, the motion for summary
4 judgment. The motion for summary judgment. What we are saying, Your Honor,
5 and what we're proposing, Your Honor, is that the entire order be stayed. They're
6 asking that a portion of it be stayed. We're asking, like Your Honor correctly pointed
7 out, that the entire order be stayed pending resolution from the Nevada Supreme
8 Court. You can't pick and choose what parts of the order to stay.

9 THE COURT: Well, but they're not asking me to stay the order. Okay,
10 just so we're clear, the order I understand you're talking about is my order awarding
11 sanctions to three separate law firms based on your client's conduct, okay. You
12 have a writ on whether or not the disqualified firm can receive it. I parsed out the
13 fees between the three different firms and the costs between the three different
14 firms and did appropriate -- well, we'll see. I think I did appropriate judgments.
15 Stay tuned. I'm more than glad -- whatever they tell me to do, I'm more than glad
16 to do.

17 That -- the reason I was asking the scope of the writ is because if
18 you were asserting that this Court can't move forward in any manner on this case
19 because there is a pending writ is really the question. I thought you had answered
20 in the affirmative, and you had answered in the negatory with regards to your
21 pending motion for summary judgment, because if things were going to be pursuant
22 to the summary judgment request, that if I had to hold up on everything because
23 of the pending writ because it had broader implications, okay, then that's -- then
24 the motion to dismiss obviously is the payment of the various things. It depends on

1 which one it was. So no one is disputing that one is tied in. So the Court -- it made
2 sense to hear what you all are briefing because the way you argued it to this Court
3 previously, it appeared like two very different interpretations of the scope of what
4 was being handled on an appellate level. And this Court does not have the
5 jurisdiction if something is being handled in an appellate level, subject to ancillary
6 matters such as fees, costs, blah, blah, blah; fees, costs appropriate, the cost
7 portion appropriate.

8 So if what you're saying is your writ has nothing to do with the MSJ
9 and you want me to rule on it with what I currently have and what was currently
10 submitted, I'm listening. If that's not what you're --

11 MR. CHURCHILL: Yeah.

12 THE COURT: If you're asking me to stay the entire case, then that's
13 inconsistent with asking me to rule on an MSJ and to rule on a motion to dismiss.
14 That's the reason why I keep doing this chicken and egg with you all --

15 MR. CHURCHILL: Yeah.

16 THE COURT: -- is when you use the words stay the case, that means as
17 of today nothing happens further in the district court. The only exclusion I saw in
18 your conclusion section was one deposition.

19 MS. RENWICK: In addition to --

20 THE COURT: Now, the body of your motion is different, but remember,
21 I was reading from the conclusion section, okay. So, it's hard for the Court. Yes,
22 you can read the title, yes, you can read the body, yes, you can read the conclusion.
23 Obviously I read the entire thing, but the conclusion seemed more narrow than the
24 body did. So when somebody concludes, you look at the conclusion because that's

1 where the relief actually being requested is in that section; right? You're asking for
2 a full stay of everything, which wouldn't allow me to rule on any pending motions,
3 which is why I'm really just asking this clarification question.

4 MR. CHURCHILL: Yeah. So --

5 THE COURT: So, if you both want me to rule on the motion for summary
6 judgment on what I currently have -- and you say it has no impact whatsoever on
7 the stay?

8 MR. CHURCHILL: I do.

9 MS. RENWICK: Yes, Your Honor.

10 MR. CARRANZA: We agreed.

11 THE COURT: Okay. Then I'm going to look at that and we'll decide on a
12 decision date. Motion to dismiss, do you want me to rule on that or do you want me
13 to look at the underlying motions?

14 MR. CARRANZA: We think you have what you need to rule on that now,
15 Your Honor.

16 MR. CHURCHILL: And, Your Honor, we think that you do need to look at
17 the underlying -- all of the briefing on that. But, Your Honor, we would still submit
18 that the parties are in agreement on staying the litigation, continuing the trial based
19 on --

20 THE COURT: Staying what portion? Can you be more precise?

21 MR. CHURCHILL: With the exception of the --

22 THE COURT: Okay. What's your exceptions in your stay?

23 MR. CHURCHILL: The exception would be the summary judgment.

24 THE COURT: Plaintiff has stay with exception of MSJ?

1 MR. CHURCHILL: Correct.

2 MS. RENWICK: Correct, Your Honor.

3 MR. CHURCHILL: Correct. And then stay the order pending -- stay your --

4 THE COURT: Which order? You've got to be clear. You've got three
5 potential ones out there and you've got a writ, so four.

6 MR. CHURCHILL: Yeah. The order granting sanctions against Mr.
7 Hawkins pending resolution from the Nevada Supreme Court.

8 THE COURT: So you don't wish to pay the other two firms. Your client
9 doesn't wish to pay the other two firms until the writ comes down. And you don't
10 wish the Court to look at the scope of the writ and make a determination before
11 making that ruling?

12 MR. CHURCHILL: We do wish for the Court to look at the scope of the
13 briefing before making that ruling. However, that may be moot, Your Honor, if
14 the order itself is stayed pending resolution from the Nevada Supreme Court.

15 THE COURT: That's what -- you're mooting their motion to dismiss.

16 MR. CHURCHILL: It would be moot.

17 THE COURT: Is that what you all want me to do?

18 MR. CARRANZA: No.

19 MS. RENWICK: No, Your Honor.

20 MR. CARRANZA: No. I mean, I think if I hear Mr. Churchill's argument
21 correctly, he's willing to agree to move forward on the Court making an order on
22 the pending motion for summary judgment. We agree with him on that.

23 With respect to what I'll call the sanctioning order, he's requesting
24 that you stay a determination on that until the supreme court resolves the issue.

1 We disagree with that. We think that you've got what you need to make a ruling on
2 that now. But if you feel more comfortable sticking with the February 17th deadline
3 to give the Court an opportunity to review the filings by both sides, then we think
4 that is a very wise course of action as well. We don't think you need to stay the
5 enforcement of that order. You can simply look at the scope of the arguments made
6 by both sides as part of the supreme court briefs and may issue a ruling, as you had
7 indicated, on February 17th. All the defense is asking is for a stay of all proceedings
8 related to trial. So motions in limine, pretrial conferences, ultimately going to trial.
9 Because I think, based on our discussion earlier, plaintiff's counsel also agrees to
10 move forward with the expert deposition that's still out there. And so that's yet
11 another exception to what he's asking for.

12 MS. RENWICK: So those pretrial dates are really all that's remaining, Your
13 Honor, because as we stated in the motion discovery is closed, essentially, with the
14 exception of Mr. Tatalovich's deposition, due to his health issues, which had to be
15 continued.

16 THE COURT: Motions in limine, Tatalovich are the only things outstanding
17 in this case?

18 MS. RENWICK: In addition to --

19 THE COURT: Other than the motion for summary judgment, motion to
20 dismiss and pending writ?

21 MR. CARRANZA: Correct.

22 MS. RENWICK: Correct, Your Honor.

23 THE COURT: So you're fine with -- if the Court doesn't rule today -- see,
24 if I grant your scope of stay, I've mooted their motion to dismiss, which I can't do.

1 It's a pending motion before the Court; that they had a right to have it heard before
2 even they filed their motion to dismiss. But because of the difference of opinion
3 on the scope of the writ, this Court needed to review the pleadings themselves that
4 you're filing in the writ, which you both specifically said the Court could do. And I'm
5 not doing it for substantive purposes, it was only for scope to see if I had jurisdiction,
6 because you each argued differently whether I have jurisdiction. Now you're saying
7 you want me to rule on the MSJ, which is a change. Motion to dismiss you still want
8 on the 17th, even though you've asked for an extension, so I'm going to have a lot
9 less time to read that extensive briefing. And you want the trial continued and
10 motions in limine continued, but the only thing -- and you agree on the motions in
11 limine, you agree on the trial and you agree on the carve-out for the expert; right?

12 MR. CARRANZA: Correct.

13 MS. RENWICK: Correct, Your Honor.

14 MR. CHURCHILL: Correct.

15 THE COURT: Doesn't that moot your writ? Doesn't it moot your writ?
16 What's the emergency of the writ if I'm not going to trial? That's not my issue, that's
17 the appellate court's, but whatever. That's not a statement, that was just more of
18 a question. I'm just procedurally trying to get a handle on this moving target.

19 So, how long do you want the trial to be continued? I'm not going to
20 do something for when the supreme court comes down with the writ because that
21 can be a couple of years from now and that's not a feasible date. If you're saying
22 that the writ is in no way tied to the trial because it's just sanction money, and then
23 it's of course the -- it's the jury instruction --

24 MS. RENWICK: The jury instruction, Your Honor.

1 THE COURT: -- which is the challenge.

2 MS. RENWICK: It's the defense's position that that's central to the trial.

3 THE COURT: I'm going to give you -- here's what I'm inclined to do. I'm
4 inclined to give you a six month continuance of the trial. Continue it for six months,
5 okay. I'm inclined to trigger the motion in limine date only to the new trial six month
6 date because that's consistent with what all of you all want, so that would be eight
7 weeks before the continued trial date. You both agree that the Tatalovich is
8 outstanding. Why do you need a stay?

9 MR. CARRANZA: I think we're all in agreement that that deposition can
10 go ahead and move forward as scheduled.

11 THE COURT: But why do you need a stay if I grant you your trial
12 continuance, I extend the motion in limine continuance with the new trial. You've
13 already stipulated and agreed that the Tatalovich or however you pronounce the
14 expert in Arizona's deposition goes forward. And you still want me to rule on the
15 pending motions. That's inconsistent with a stay.

16 MR. CARRANZA: And maybe titling the motion as a motion to stay maybe
17 was a little less artful than it could have been. It really is a motion to continue the
18 trial.

19 THE COURT: From your end. That's just what I'm trying to ask. If you're
20 asking me for a stay as well, I need to know what part you're asking to be stayed,
21 because the very things you're asking me to rule on are the things that would be
22 subject to a stay. That's why I keep asking this question.

23 MS. RENWICK: I apologize for the lack of being clear in the motion, Your
24 Honor. The concern was that without a decision on the jury instruction, our concern

1 was how could trial go forward. So without knowing when the supreme court
2 was going to issue a decision on that issue, again, the adverse jury instruction is
3 something that the defense feels is crucial to moving forward with trial. We figured
4 there was -- at that point then there was no choice but to stay the litigation because
5 we wouldn't have a trial date. Your Honor has just stated that you aren't going to
6 wait for that decision, given the time it could take.

7 THE COURT: I'm not saying I'm not -- I think a six month period to continue
8 the trial gives everyone the certainty -- it gives each of your clients and each of your
9 parties some date to work with. Historically, since you're asking a response, writs
10 usually are within about six months anyway, so that seems like a doable date. And
11 that allows -- because if I grant a stay, you're asking me to grant a stay but not stay
12 anything that you're asking me to rule on, including dispositive motions, which
13 I'm still not sure what portion you're asking to really stay. If you have a Rule 41 --
14 I mean, if you have a five year issue -- you've got a 2015 case, so I didn't see it
15 from that standpoint.

16 MS. RENWICK: I think if we're continuing the trial for six months, Your
17 Honor, I think at this point then the stay really isn't necessary.

18 THE COURT: It doesn't address all of your issues, I appreciate --

19 MR. CHURCHILL: Correct.

20 THE COURT: -- because you still want me to --

21 MR. CHURCHILL: To stay the order.

22 THE COURT: -- stay the enforcement. But I can't stay the enforcement
23 because I've got a pending motion to dismiss that I'm going to be addressing that
24 very issue on February 17th. Do you see what I'm saying? I can't moot their motion

1 to dismiss by giving you the relief you want right now when they have a pending
2 motion to dismiss that's already been briefed.

3 MR. CHURCHILL: And that comes back to our previous hearing, Your
4 Honor, as to whether or not you even have jurisdiction over that at this point because
5 that exact order is up right now before the Nevada Supreme Court. So what I would
6 argue again, Your Honor, is that at this point in time what they were asking for was
7 that this matter be stayed in part related to that order. I mean, that's their motion.
8 We agree with that and we're saying you can't just pick and choose what parts of the
9 order you're going to rely on in asking for a stay or asking for a motion to continue.
10 It's appropriate to stay the case right now and stay the execution of that order
11 pending resolution from the Nevada Supreme Court.

12 THE COURT: Here's the Court's ruling. The Court is going to deny without
13 prejudice the motion to stay portion of the motion. The Court is going to grant the
14 alternative relief to continue the trial. So this is a motion to stay litigation and
15 continue trial on OST, The Court is granting in part and denying in part. The Court
16 is, like I said, denying the portion with regards to staying the litigation because
17 based on the further explanation of the movants they don't wish to stay the rulings
18 before the Court. Discovery is already over other than the specific agreed upon
19 deposition of the expert in Arizona, Mr. Tatalovich or close thereto. And the only
20 other request really of the parties is to have the motion in limine date, since the
21 Court is granting the alternative or partial relief requested, the motion to continue
22 trial, it addresses the parties' joint stipulation with regard to the motions in limine
23 because I'm tying the motions in limine to the new trial date six months out. It's
24 giving the parties the relief with regards to the portion of continuing the trial for

1 six months to allow -- to see if there's resolution of the writ.

2 Obviously if we're getting -- well, I'm going to set a status check on this
3 anyway, and if we get to that status check that the Court needs to address further
4 relief, the Court will do so, but I'm really inclined to set that status check after my
5 February 17th hearing when we see what is -- I say hearing, but February 17th
6 is a Friday so it's a chambers; still a hearing for my purposes but it's a chambers
7 calendar hearing, no appearances necessary. So on February 17th, if not before,
8 when you get the ruling on the summary judgment and/or the ruling on the motion
9 on the motion to dismiss combined, in one of those two orders you're going to have
10 a status check date placed on it, depending on how the Court rules on those two
11 pending matters. And that will be a status check. I'll tell you the status check is
12 going to be about -- well, do you want a status check date today? I'll give it to you
13 today.

14 MS. RENWICK: Sure.

15 THE COURT: It will be 45 days before the six month date.

16 MR. CARRANZA: Okay.

17 THE COURT: So the six month date for trial would be when, Madame
18 Clerk?

19 THE CLERK: Six months from today, Your Honor?

20 THE COURT: Six months from their prior date, is what I understood.

21 MR. CARRANZA: Right.

22 THE COURT: That was the Court's intention. That really meant I was
23 doing September.

24 THE CLERK: September.

1 THE COURT: That means on the September 5th five week stack. So
2 I moved you from the March 13th stack. Here, I'll just say it. That means you're
3 on the September 5th five week stack, okay, which means you're going to -- your
4 motion in limine dates will be eight weeks before that, triggered to that new five
5 week stack. That means your pretrial conference is going to be August 3rd. That
6 means your calendar call will be August 29th. That means -- that means I'm going
7 to do a status check on June 29th. I'm just trying to avoid for you all's sake the 4th
8 of July holiday, which was about the thirtieth day, so I might as well say June 29th
9 will be a status check. We'll see where everything is.

10 And obviously that would be vacated depending on how the Court
11 rules on any of the two pending motions before it, which I'm going to have to go
12 back and look at the summary judgment because now you're asking me -- I may
13 or may not be able to advance it from the February 17th date in light of the
14 continuation of the trial. The Court may or may not do that because I have to look
15 at the rest of my schedule and determine that, and I can't do that right now when
16 I have everyone patiently waiting who really wants me to handle their cases as well.
17 And then we have the motion to dismiss on February 17th as well. Okay?

18 That should address -- and I appreciate -- so I'm denying your
19 countermotion to the extent it asks me to stay the enforcement of the sanction order
20 only because I'm really deferring the ruling on that sanction order to my February
21 17th because of the pending motion to dismiss. Does that make sense?

22 MR. CHURCHILL: Yeah.

23 MS. RENWICK: Yes, Your Honor.

24 THE COURT: Okay.

1 MS. RENWICK: We'll prepare an order and circulate.

2 THE COURT: Please do. And please do 7.21 because you realize it has
3 unfortunately real life problems when people don't do that. Okay?

4 Thank you so very much.

5 MS. RENWICK: We definitely got a taste of that, Your Honor, earlier in
6 your calendar. I made a note.

7 MR. CHURCHILL: Yes.

8 THE COURT: It's not just a silly rule. I mean, it does have -- it's reeking
9 havoc in more than one case, unfortunately.

10 MR. CARRANZA: Thank you, Your Honor.

11 MS. RENWICK: Thank you, Your Honor.

12 THE COURT: Thank you so very much.

13 (PROCEEDINGS CONCLUDED AT 11:15 A.M.)

14 * * * * *

15
16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/video proceedings in the above-entitled case to the best of my ability.

18

19


20

21

22

23

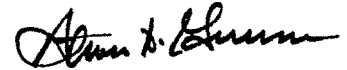
24



Liz Garcia, Transcriber
LGM Transcription Service

Exhibit 6

Exhibit 6



CLERK OF THE COURT

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

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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 X'ZAVION HAWKINS,
14 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.

25 GGP MEADOWS MALL LLC, a Delaware
26 Limited Liability Company; MYDATT
27 SERVICES, INC. dba VALOR SECURITY
28 SERVICES, an Ohio Corporation; MARK
WARNER, individually,

Third Party Plaintiffs,

vs.

ASHLEY CHRISTMAS, individually;
ZACCHAEUS BERRY, aka ZAK BERRY,

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

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANTS GGP
MEADOWS MALL LLC, MYDATT
SERVICES, INC., DBA VALOR
SECURITY SERVICES, AND MARK
WARNER'S MOTION TO STAY
LITIGATION AND CONTINUE TRIAL
AND DENYING PLAINTIFF'S
COUNTERMOTION**

Date: January 17, 2017
Time: 9:30 a.m.

LEE, HERNANDEZ, LANDRUM
& GAROFALO
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

1 aka ZACHARY BERRY, aka ZACHARIAS
2 BERRY individually; DOES 1 through 10;
3 and ROE ENTITIES 11 through 20,
4 inclusive,

Third Party Defendants.

5 **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART**
6 **DEFENDANTS GGP MEADOWS MALL LLC, MYDATT SERVICES, INC., DBA**
7 **VALOR SECURITY SERVICES, AND MARK WARNER'S MOTION TO STAY**
8 **LITIGATION AND CONTINUE TRIAL AND DENYING PLAINTIFF'S**
9 **COUNTERMOTION**

10 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

11 PLEASE TAKE NOTICE that the ORDER GRANTING IN PART AND DENYING IN
12 PART DEFENDANTS GGP MEADOWS MALL LLC, MYDATT SERVICES, INC., DBA
13 VALOR SECURITY SERVICES, AND MARK WARNER'S MOTION TO STAY
14 LITIGATION AND CONTINUE TRIAL AND DENYING PLAINTIFF'S
15 COUNTERMOTION was entered on February 7, 2017 a true and correct copy
16 which is attached hereto as Exhibit "A."

17 Dated: February 7, 2017.

18 LEE, HERNANDEZ, LANDRUM
19 & GAROFALO, APC

20 */s/ Charlene N. Renwick*

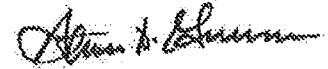
21 By:

22 DAVID S. LEE, ESQ.
23 Nevada Bar No. 6033
24 CHARLENE N. RENWICK, ESQ.
25 Nevada Bar No. 010165
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dlee@lee-lawfirm.com
crenwick@lee-lawfirm.com

Attorneys for Defendants

LEE, HERNANDEZ, LANDRUM
& GAROFALO
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

Exhibit "A"



CLERK OF THE COURT

1 **ORDER**
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
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12 dlee@lee-lawfirm.com
13 crenwick@lee-lawfirm.com

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

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

13 **X'ZAVION HAWKINS,**

14 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.

25 GGP MEADOWS MALL LLC, a Delaware
26 Limited Liability Company; MYDATT
27 SERVICES, INC. dba VALOR SECURITY
28 SERVICES, an Ohio Corporation; MARK
WARNER, individually,

Third Party Plaintiffs,

vs.

ASHLEY CHRISTMAS, individually;
ZACCHAEUS BERRY, aka ZAK BERRY,
aka ZACHARY BERRY, aka ZACHARIAS

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

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
GGP MEADOWS MALL LLC,
MYDATT SERVICES, INC. DBA
VALOR SECURITY SERVICES, AND
MARK WARNER'S MOTION TO STAY
LITIGATION AND CONTINUE TRIAL
AND DENYING PLAINTIFF'S
COUNTERMOTION**

Date of Hearing: January 17, 2017
Time of Hearing: 9:30 a.m.

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

LEE, HERNANDEZ, LANDRUM & GAROFALO
3575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9759

1 BERRY individually; DOES 1 through 10;
2 and ROE ENTITIES 11 through 20,
3 inclusive,

4 Third Party Defendants.

5 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS GGP**
6 **MEADOWS MALL LLC, MYDATT SERVICES, INC. DBA VALOR SECURITY**
7 **SERVICES, AND MARK WARNER'S MOTION TO STAY LITIGATION AND**
8 **CONTINUE TRIAL AND DENYING PLAINTIFF'S COUNTERMOTION**

9 This matter having come for hearing on the 17th day of January, 2017, at 9:30 a.m., the
10 Honorable Joanna S. Kishner presiding; Charlene Renwick, Esq. appearing on behalf of
11 Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. dba Valor Security Services and
12 Mark Warner (collectively "Defendants"), Edgar Carranza, Esq. appearing on behalf of
13 Defendants Mydatt Services, Inc. dba Valor Security Services and Mark Warner, and David
14 Churchill, Esq. appearing on behalf of Plaintiff X'Zavion Hawkins ("Plaintiff"); Defendants
15 having filed a Motion to Stay Litigation and Continue Trial on an Order Shortening Time; this
16 Court having granted the Order Shortening Time and set hearing on this matter in shortened
17 course for January 17, 2017 at 9:30 a.m.; the Plaintiff having filed a Limited Joinder to
18 Defendants' Motion to Stay the Litigation and Continue Trial, and a Renewed Countermotion to
19 Stay Order Pending Writ Before Nevada Supreme Court; the Court having considered the Motion,
20 Limited Joinder and Renewed Countermotion, and oral arguments presented at the hearing, and
21 good cause appearing therefore:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 23 1. Defendants' Motion to Stay Litigation is DENIED, without prejudice;
- 24 2. Defendants' Motion to Continue Trial is GRANTED;
- 25 3. Plaintiff's Renewed Countermotion to Stay Order Pending Writ Before Nevada
26 Supreme Court is DENIED;
- 27 4. The trial date in this matter shall be continued to September 5, 2017;
- 28 5. Discovery in this matter is closed, with the sole exception of the deposition of
defense expert Dwayne Tatalovich, which is currently scheduled for January 27,
2017;

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

6. Motions in Limine shall be due eight (8) weeks before the trial date;
7. The Pre Trial Conference shall be held on August 3, 2017;
8. Calendar Call shall be held on August 29, 2017;
9. A Status Check hearing shall be held on June 29, 2017; and
10. The Court shall issue its decisions on the Defendants' pending Motions for Summary Judgment and to Strike/Dismiss Plaintiff's Complaint, in Chambers, on or before February 17, 2017.

IT IS SO ORDERED.

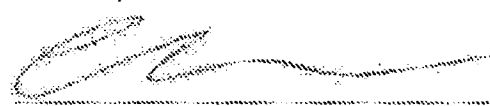
DATED this 1 day of January, 2017.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted by:

LEE, HERNANDEZ, LANDRUM
& GAROFALO, APC

By:


DAVID S. LEE, ESQ.
Nevada Bar No. 6033
CHARLENE N. RENWICK, ESQ.
Nevada Bar No. 010165
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(702) 880-9750
Fax; (702) 314-1210
Attorneys for Defendants, GGP MEADOWS
MALL, LLC, MYDATT SERVICES, INC.
dba VALOR SECURITY SERVICES and MARK WARNER.

///

///

LPE, HERNANDEZ LANDRUM & GAROFALO
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LAS VEGAS, NV 89128
(702) 880-9150

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

13 INJURY LAWYERS OF NEVADA
14

15 By: 

16 DAVID J. CHURCHILL, ESQ.
17 Nevada Bar No. 7308
18 JOLENE J. MANKE, ESQ.
19 6900 Westcliff Drive, Suite 707
20 Las Vegas, Nevada 89145
21 Attorneys for Plaintiff X'ZAVION HAWKINS
22
23
24
25
26
27
28

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1 Approved as to Form and Content:

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3
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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 By: 

14 DAVID J. CHURCHILL, ESQ.
15 Nevada Bar No. 7308
16 JOLENE J. MANKE, ESQ. NV BAR 7436
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18 Las Vegas, Nevada 89145
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HAWKINS v. GGP MEADOWS MALL, LLC

I HEREBY CERTIFY that on the 7th day of February, 2017, I served a copy of the above and foregoing NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS GGP MEADOWS MALL LLC, MYDATT SERVICES, INC., DBA VALOR SECURITY SERVICES, AND MARK WARNER'S MOTION TO STAY LITIGATION AND COUNTINUE TRIAL AND DENYING PLAINTIFF'S COUNTERMOTION 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.
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Fax: (702) 872-5545
Email: ecarranza@backuslaw.com
**Co-Counsel for Mydatt Services, Inc.
Dba Valor Security Services and
Mark Warner**

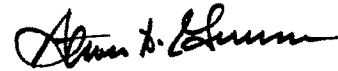
s/ Diane Meeter

By:

An employee of LEE, HERNANDEZ,
LANDRUM & GAROFALO

Exhibit 5

Exhibit 5



CLERK OF THE COURT

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

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.

20 AND RELATED ACTIONS.

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

**PLAINTIFF'S LIMITED JOINDER TO
DEFENDANTS' MOTION TO STAY
LITIGATION AND CONTINUE TRIAL
ON AN ORDER SHORTENING TIME
AND RENEWED COUNTERMOTION
TO STAY ORDER PENDING WRIT
BEFORE NEVADA SUPREME COURT**

Date of Hearing: 01/17/2017
Time of Hearing: 9:30 a.m.

18 Plaintiff X'ZAVION HAWKINS by and through his attorneys INJURY LAWYERS OF
19 NEVADA, hereby presents his limited joinder to Defendants GGP MEADOWS MALL LLC,
20 MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER's motion
21 to stay litigation and continue trial on an order shortening time. Plaintiff is also moving this Court for
22 an Order staying enforcement of the October 17, 2016, court order pending Writ before the Nevada
23 Supreme Court.

24 ///

25 ///

26 ///


27 ///

28 ///

1 This limited joinder and counter motion are made and based upon the points and authorities set
2 forth herein, the pleadings and papers on file relating to this matter, and any oral argument that might
3 be entertained at the time of the hearing.

4 DATED this 13TH day of January, 2017.

5 INJURY LAWYERS OF NEVADA

6
7 
8 DAVID J. CHURCHILL (SBN: 7038)
9 SOLENE J. MANKE (SBN: 7436)
6900 Westcliff Drive, Suite 707
Las Vegas, NV 89145
Attorneys for Plaintiff

10 **POINTS AND AUTHORITIES**

11 **I. STATEMENT OF FACTS**

12 On or about August 17, 2013, Meadows Mall participated in the nationwide special event of
13 releasing the Nike Air Jordan 4 "Green Glow" shoe launch. Meadows Mall held a special event
14 specifically for this shoe launch. Despite the special event, Defendants GGP MEADOWS MALL LLC
15 ("GGP"), MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES ("Mydatt") and MARK
16 WARNER ("Warner") failed to provide security to monitor the restless crowd. Patrons of Meadows
17 Mall participating in the shoe launch began "camping out" for the special event at approximately 11:00
18 p.m. on August 16, 2013, while waiting for Meadows Mall to open at 9:00 a.m. on August 17, 2013.
19 Despite the special event taking place overnight, Meadows Mall and Mydatt would not employ security
20 guards to monitor the line until 6:00 a.m. Plaintiff X'Zavion Hawkins was shot by follow mall patrols
21 after a 5-10 argument and fight wherein security did nothing to intervene.
22

23
24 On October 7, 2016, this Court issued a minute order imposing a sanction of \$41,635.00 against
25 Plaintiff for Defendants' attorney fees relating to Defendants' motion to dismiss Plaintiff's complaint
26 and the subsequent evidentiary hearing. (Please see a true and correct copy of the minute order attached
27 hereto as Ex. 1.) In so doing, this Court awarded \$19,846.00 to the conflicted law firm of Lewis
28 Brisbois Bisgaard & Smith ("LBBS") relating to work the firm performed that was directly adverse to

1 Plaintiff. While this Court ultimately recognized the conflict of interest and disqualified LBBS, on
2 October 17, 2016, this Court entered an order setting forth the sanction against Plaintiff, including the
3 payment to LBBS for adverse work performed during the period of the conflict. (See Ex. 2.)

4 Plaintiff timely filed a Petition For Extraordinary Writ Relief with the Nevada Supreme Court on
5 November 22, 2016. (See Ex. 3.) Importantly, Plaintiff's Writ seeks relief directly relating to LBBS'
6 misconduct in performing work directly adverse to Plaintiff despite fully being aware of the direct
7 conflict of interest. As this Court is aware, as a partner at LBBS previously represented Mr. Hawkins in
8 this exact same action. Specifically, LBBS seeks an award of \$19,846.00 against Mr. Hawkins despite
9 the fact that LBBS ethically NEVER should have agreed to defend Mydatt and Warner against Plaintiff.
10

11 When Defendants' filed their motion to strike Plaintiff's complaint for failure to comply with the
12 Court's October 17, 2016, order relating to the sanction, Plaintiff opposed the motion and counter
13 motioned this Court to stay the October 17, 2016, order pending a decision on the Extraordinary Writ by
14 the Nevada Supreme Court. (See Ex. 4.) During the hearing on Defendants' motion to strike on
15 December 20, 2016, defense counsel vehemently argued against staying this action and represented that
16 they were ready for trial currently set for March 13, 2017. Now, Defendants' are moving to stay
17 litigation and continue trial on order shortening time. Plaintiff both potentially agrees and disagrees
18 with Defendants' current position as follows:
19

20 **III. LEGAL ARGUMENT**

21 It is Plaintiff's position that the entirety of the October 17, 2017, order must be stayed or the
22 entirety of the action must be stayed, not just certain parts of the October 17, 2016, order. The Nevada
23 Supreme Court has directed writ petitioners to first seek a stay with the District Court before seeking a
24 stay from the Nevada Supreme Court. The Nevada Supreme Court directs the District Court as follows:
25

26 In deciding whether to issue a stay, this court generally considers the following factors:

- 27 (1) Whether the object of the appeal or writ petition will be defeated if the stay is
28 denied;

- 1 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay
is denied;
2 (3) Whether respondent/real party in interest will suffer irreparable or serious injury
if the stay is granted; and
3 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or
4 writ petition. *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986
(2000).

5
6 The Nevada Supreme Court determined, "we have not indicated that any one factor carries more
7 weight than the others." *Id.*

8 A. Whether Object Of Writ Will Be Defeated If Stay Is Denied

9 If this Court does not stay the entire October 17, 2016, order, or the entirety of the litigation, the
10 object of Plaintiff's Writ will be defeated. The central issue revolves around LBBS' misconduct as a
11 conflicted law firm seeking compensation for work performed during the period of the conflict. Most
12 injurious is that LBBS seeks compensation from the aggrieved client against whom they were
13 conflicted.
14

15 Plaintiff seeks extraordinary relief to prevent LBBS' from being compensated by the very person
16 LBBS wronged. Additionally, Plaintiff is seeking relief to prevent Defendants from benefiting from the
17 legal work LBBS performed that was directly adverse to Plaintiff. This is a matter of public interest and
18 the integrity of the entire legal profession. The public cannot have faith in the legal system if the
19 aggrieved client is required to pay a conflicted and disqualified law firm for work performed that was
20 directly adverse to the client and the work performed by the law firm is allowed to stand against the
21 aggrieved client.
22

23 B. Irreparable Injury If Stay Is Denied

24 If this Court does not stay the entirety of the October 17, 2016, order, or, alternatively, stay the
25 entirety of the litigation, Plaintiff will be irreparably injured by potential dismissal of his action. As this
26 Court is aware, Plaintiff became disabled and physically handicapped as a direct result of Defendants'
27 negligence and wanton disregard for his safety during the shoe launch. He lives in government
28

1 subsidized housing and survives on modest disability benefits. Even if Plaintiff drastically modified his
2 budget, he does not have reserves to satisfy this Court's October 17, 2,016.

3 C. Whether Defendants Will Suffer Irreparable Harm If Stay Is Granted

4 There is no irreparable harm to Defendants if this Court stays the entirety of the October 17,
5 2016, order, or stays the entire litigation. It is Plaintiff's first choice not to stay the entire case, but to
6 stay the entirety of the October 17, 2016, order. This Court could enter a judgment for the award of
7 attorney fees against Plaintiff.¹ If Plaintiff prevails in his Writ, and the work LBBS performed against
8 Plaintiff does not stand, the October 17, 2016, order would be moot and Defendants would not suffer
9 irreparable harm as they were never entitled to the sanctions. Alternatively, the Nevada Supreme Court
10 could allow the adverse work performed by LBBS to stand, but find that LBBs is not entitled to any
11 compensation from if Plaintiff, or if Plaintiff does not prevail on his Writ whatsoever, Defendants would
12 still not be prejudiced as they would be entitled to an offset of any judgment against them that they
13 would owe Plaintiff for their negligent security.
14

15
16 D. Plaintiff Likely To Prevail On The Merits

17 The Nevada Supreme Court has not directly addressed the issue of whether a conflicted and
18 disqualified law firm may seek compensation from the aggrieved client and whether or not the work
19 performed to the detriment of the client should be allowed to stand. However, California courts have
20 addressed the issue of whether conflicted law firms may benefit from work performed relating to
21 conflicted matters, and they have long determined that forfeiture and disgorgement of attorneys' fees is
22 appropriate. In *Sheppard Mullin Richter & Hampton LLP v. J-M Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253
23 (Cal. App. 4th 2016), a California appellate court relied on California's long-standing precedent to
24
25
26

27
28 ¹ This Court stated, "This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment." Seemingly, this Court intended to have the attorney fee award reduced to judgment in its October 7, 2016 minute order. See Exhibit 1, page 3.

1 require a conflicted law firm to disgorge and forfeit millions of dollars in legal fees based on the firm's
2 failure to disclose an actual conflict of interest.

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

13
14
15 South Tahoe brought a successful motion to disqualify the Sheppard Mullin firm in the Qui Tam
16 action. *Id.* After Sheppard Mullin was disqualified, J-M refused to pay approximately \$1.3 million in
17 outstanding legal fees. *Id.* Sheppard Mullin sued J-M to recover those outstanding fees and compel
18 arbitration where the arbitration panel awarded the firm a majority of its attorneys' fees. *Id.* at 261. The
19 arbitration panel found that "Sheppard Mullin's conduct was not so serious or egregious as to make
20 disgorgement of fees appropriate" where the representation of the adverse client "was unrelated to the
21 subject of the J-M representation, and therefore the conflict did not pervade the whole relationship with
22 J-M ..." *Id.* A California trial court affirmed the arbitration award, but J-M appealed, arguing that the
23 violation of CRPC 3-310 on conflicts of interest rendered the engagement contract illegal or void as a
24 matter of public policy. *Id.* at 261.

25
26 Turning to the merits, the court held that Sheppard Mullin "[was] not entitled to its fees for the
27 work it did for J-M while there was an actual conflict with [its other client]." *Id.* at 274. In reaching this
28

1 conclusion, the court relied primarily on two California appeals court cases from the 1970's. *See, Id.* at
2 272 (analyzing *Goldstein v. Lees*, 120 Cal.Rptr. 253 (Cal. App. 1975) and *Jeffry v. Pounds*, 136
3 Cal.Rptr.373 (Cal. App. 1977)). The *Goldstein* court found an engagement contract "void for reasons of
4 public policy" where counsel represented a minority shareholder and director in a proxy fight to gain
5 control of a company for which the attorney had served as in-house counsel several years prior to the
6 proxy fight. 120 Cal.Rptr. at 254-255. Central to the decision was the fact that the attorney possessed
7 "corporate secrets that [were] material to the proxy fight." *Id.* at 255. In *Jeffry*, a small law firm's lead
8 partner represented both a husband in a personal injury action and his wife in her divorce proceeding
9 against the husband. 67 Cal.App 3d at 374-375. There, the court denied any fees for work performed
10 after the conflict arose even though the representations involved "unrelated matters" and the law firm
11 did not have a "dishonest purpose" or engage in "deliberately unethical conduct." *Id.* at 377.
12

13
14 Besides arguing for all its fees, Sheppard Mullin also argued that despite its violation of CRPC
15 3-310, quantum meruit should be allowed for its representation of J-M in the Qui Tam action. *Id.* at
16 274. However, the court pointed out that the California Supreme Court had found that quantum meruit
17 recovery must be denied in cases of ethical violations. *Id.* (citing *Huskinson & Brown v. Wolf*, 32 Cal.4th
18 453, 9 Cal. Rptr.3d 693, 84 P.3d 379 (2004).) The *Sheppard Mullin* court further found that "when a
19 conflict of interest is asserted as a "[d]efense in the attorney's action to recover fees or the reasonable
20 value of services[, a] violation of the fiduciary obligation will defeat recovery." *Id.* at 272. (citing 1
21 Witkin, Cal. Proc. 5th (2008) Attys, 104, p. 142.) The *Sheppard Mullin* court found that "Sheppard
22 Mullin's violation of Rule 3-310 preclude[d] if from receiving compensation [whatsoever] for services
23 provided to J-M in the Qui Tam Action." *Id.* Likewise, LBBS' violation of its fiduciary duty to
24 X'Zavion created by its failure to provide notice of its employment of Mr. Shpirt must preclude it from
25 looking to X'Zavion for any compensation for services provided defending Mydatt and Warner against
26 X'Zavion.
27
28

1 The *Sheppard Mullin* court was swayed by the *Fair* decision, in which the court found
2 disgorgement of attorney fees appropriate regardless of any proof of damages when a conflict of interest
3 is involved, *See, Fair*, 125 Cal.Rptr.3d at 779. Besides precluding a conflicted firm from seeking
4 recovery from the aggrieved client, the *Sheppard Mullin* decision arguably sets precedent for the
5 automatic disgorgement of all attorneys' fees incurred while a conflict of interest violation exists.
6

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

11 Lastly, the *Sheppard Mullin* court found that Sheppard Mullin's breach of the duty of loyalty set
12 forth in Rule 3-310 was a violation of public policy. A finding that Sheppard Mullin was nonetheless
13 entitled to its attorney fees as if no breach had occurred would undermine the same public policy. We
14 therefore follow the reasoning of *Goldstein* and *Jeffry* and hold that Sheppard Mullin is not entitled to its
15 fees for the work it did for J-M while there was an actual conflict with South Tahoe. *Id.* at 274.
16

17 From the inception of LBBS' representation of Mydatt and Warner, it had a direct conflict of
18 interest with X'Zavion pursuant to NRPC 1.9 and 1.10. No exception under the State Bar of Nevada's
19 Formal Opinion from the Standing Committee on Ethics, No. 39 applied to LBBS' employment of Mr.
20 Shpirt because LBBS never provided notice to X'Zavion that Mr. Shpirt was employed with LBBS.
21 X'Zavion never had the opportunity to consent or withhold his consent for LBBS to represent
22 Defendants Mydatt and Warner in this matter.
23

24 At the time LBBS filed the motion to dismiss against X'Zavion on behalf of Mydatt and Warner,
25 the firm was actively violating its duty of loyalty to X'Zavion. Such action is against public policy.
26 LBBS seeking to recover attorneys' fees from X'Zavion for the very work it performed while it was
27 acting contrary to his interests is also against public policy.
28


1 Plaintiff submits that both public policy and fundamental fairness require this Court to stay the
2 October 17, 2016 order pending adjudication from the Nevada Supreme Court. Clearly, the legal
3 standard is total disgorgement of funds for work performed while ethically conflicted. Total
4 disgorgement means total disgorgement. The law does not recognize an exception for a "sanction."
5 Lewis Brisbois is required to totally disgorge all funds for its unethical behavior. Any other result
6 would encourage such behavior by unscrupulous attorneys in the future.
7

8 **IV. CONCLUSION**

9 Based upon the foregoing, Plaintiff respectfully requests that this Court either stay the entirety of
10 the October 17, 2016, order or stay the entirety of this matter pending Writ before the Nevada Supreme
11 Court.

12 DATED this 13TH day of January, 2017.

13 INJURY LAWYERS OF NEVADA

14
15 
16 DAVID J. CHURCHILL (SBN: 7038)
17 JOLENE J. MANKE (SBN: 7436)
18 6900 Westcliff Drive, Suite 707
19 Las Vegas, NV 89145
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I hereby certify that on the 13th day of
3 January, 2017, I served the foregoing **PLAINTIFF'S LIMITED JOINDER TO DEFENDANTS'**
4 **MOTION TO STAY LITIGATION AND CONTINUE TRIAL ON ORDER SHORTENING**
5 **TIME AND RENEWED COUNTERMOTION TO STAY ORDER PENDING WRIT BEFORE**
6 **NEVADA SUPREME COURT** on the following parties via Electronic Service as follows:
7

8
9 DAVID S. LEE (SBN: 6033)
10 CHARLENE N. RENWICK (SBN: 10165)
11 LEE, HERNANDEZ, LANDRUM &
12 GAROFALO
13 7575 Vegas Drive, Suite 150
14 Las Vegas, Nevada 89128
15 E-Mail: dlee@leelawfirm.com
crenwick@lee-lawfirm.com
Attorneys for Defendants
GGP MEADOWS MALL LLC;
MYDATT SERVICES, INC.
d/b/a VALOR SECURITY SERVICES; and
and MARK WARNER

EDGAR CARRANZA (SBN: 5902)
BACKUS, CARRANZA & BURDEN
3050 S. Durango Drive
Las Vegas, Nevada 89117
E-Mail: ecarranza@backuslaw.com
Attorneys for Defendants
MYDATT SERVICES, INC. d/b/a VALOR
SECURITY SERVICES and MARK WARNER

16 
17 an employee of Injury Lawyers of Nevada
18
19
20
21
22
23
24
25
26
27
28

Exhibit 4

Exhibit 4

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

1 **MSTY**
2 DAVID S. LEE, ESQ.
3 Nevada Bar No.: 6033
4 CHARLENE N. RENWICK, ESQ.
5 Nevada Bar No. 010165
6 LEE, HERNANDEZ, LANDRUM
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12 dlee@lee-lawfirm.com
13 crenwick@lee-lawfirm.com

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

19 EDGAR CARRANZA, ESQ.
20 Nevada State Bar No. 5902
21 BACKUS, CARRANZA & BURDEN
22 3050 S. Durango Drive
23 Las Vegas, Nevada 89117
24 (702) 872-5555
25 Fax: (702) 872-5545
26 ecarranza@backuslaw.com

27 Attorneys for Defendants,
28 MYDATT SERVICES, INC. dba VALOR
SECURITY SERVICES and
MARK WARNER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

X'ZAVION HAWKINS,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANTS GGP MEADOWS MALL
LLC, MYDATT SERVICES, INC. DBA
VALOR SECURITY SERVICES, AND
MARK WARNER'S MOTION TO STAY
LITIGATION AND CONTINUE TRIAL
ON AN ORDER SHORTENING TIME**

DEPARTMENT XXXI

NOTICE OF HEARING

DATE 1/17/17 TIME 9:30 am
APPROVED BY Jew

Electronically Filed
01/06/2017 10:03:31 AM


CLERK OF THE COURT

LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
LAS VEGAS, NV 89128
(702) 880-9730

1 GGP MEADOWS MALL LLC, a Delaware
2 Limited Liability Company; MYDATT
3 SERVICES, INC. dba VALOR SECURITY
4 SERVICES, an Ohio Corporation; MARK
5 WARNER, individually,

6 Third Party Plaintiffs,

7 vs.

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

14 Third Party Defendants.

15 **DEFENDANTS GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. DBA**
16 **VALOR SECURITY SERVICES, AND MARK WARNER'S MOTION TO STAY**
17 **LITIGATION AND CONTINUE TRIAL ON AN ORDER SHORTENING TIME**

18 **COME NOW** Defendants/Third Party Plaintiffs, GGP MEADOWS MALL LLC,
19 MYDATT SERVICES, INC. dba VALOR SECURITY SERVICES and MARK WARNER, by
20 and through its attorneys, LEE, HERNANDEZ, LANDRUM, GAROFALO, APC, and
21 BACKUS, CARRANZA & BURDEN, on behalf of MYDATT SERVICES, INC. dba VALOR
22 SECURITY SERVICES and MARK WARNER only, and pursuant to NRAP 8(a)(1) and EDCR
23 7.30 (a), hereby move this Honorable Court for an Order staying litigation, and continuing trial
24 as outlined herein, on an Order Shortening Time.

25 ///

26 ///

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

1 This Motion is based on the pleadings and papers herein, the affidavit of counsel, the
2 following points and authorities, and any oral argument that this Court may entertain at the time
3 of hearing.

4 DATED this 30th day of December, 2016

5 LEE, HERNANDEZ, LANDRUM &
6 GAROFALO

7 By: 

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

18 ORDER SHORTENING TIME

19 Upon application, the supporting affidavit of Charlene N. Renwick, Esq., counsel for
20 Defendants GGP MEADOWS MALL LLC, MYDATT SERVICES, INC. dba VALOR
21 SECURITY SERVICES and MARK WARNER's ("Defendants"), and good cause appearing
22 therefor:

23 IT IS HEREBY ORDERED that the time for hearing on Defendants' Motion to Stay
24 Litigation and Continue Trial on an Order Shortening Time is hereby is shortened. Said Motion
25 shall be heard on the 17th day of January, 2017 at 9:30 A.m. in Department XXXI of the
26 above-entitled Court.

27 DATED this 4 day of January, 2017.

28 Motion must be filed/served by: 1/17 noon

Opposition must be filed/served by: 1/17 noon

Reply must be filed/served by: 1/17 noon

Please provide courtesy copies to Chambers upon filing

JOANNA S. KISHNER

DISTRICT COURT JUDGE

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

**AFFIDAVIT OF CHARLENE N. RENWICK, ESQ. IN SUPPORT OF MOTION
TO STAY LITIGATION AND CONTINUE TRIAL ON ORDER SHORTENING TIME**

STATE OF NEVADA }
COUNTY OF CLARK } ss

I, CHARLENE N. RENWICK, ESQ., depose and state under oath as follows:

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

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

3. The current trial date in this matter is set for March 13, 2017.

4. On or about August 24, 2016, the Court entered an Order Denying in Part and Granting in Part Defendant's Motion to Dismiss Plaintiff's Complaint.

5. The relief granted in said Order included,

... a curative jury instruction(s) that seeks to address the harm caused by Plaintiff's discovery abuses by establishing inter alia that if Plaintiff had complied with his obligations under NRCP 16.1, NRCP 30, NRCP 33 and NRCP 36, evidence and testimony would have been discovered which would have more accurately reflected the circumstances involved in the altercation at issue between Plaintiff and the assailants as indicated in the voluntary statement provided to LVMPD. The applicable curative jury instruction(s) will be crafted by the parties and this Court contemporaneous with the submission of all jury instructions closer to the time of trial.

6. Further, said Order also granted, upon a showing of good cause and a timely request by Defendants, a trial continuance.

7. On November 22, 2016, Plaintiff filed a Petition for Extraordinary Writ Relief with the Nevada Supreme Court, specifically challenging: a) the court's allowance of the Motion to Dismiss based on the work of the disqualified law firm Lewis Brisbois Bisgaard and Smith; b),

LEE. HERNANDEZ, LANDRUM & GAROFALO
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1 the Court's award of attorneys' fees and costs awarded to the disqualified law firm; and c) the
2 Court's granting of a curative jury instruction.

3 8. On December 15, 2016, the Nevada Supreme Court entered an Order directing
4 Defendants, as Real Parties in Interest, to file an Answering Brief to the Plaintiff's Writ by no
5 later than January 16, 2017 (30 days from Order), specifically addressing whether attorney fees
6 may be awarded as sanctions when the attorneys generating the fees were disqualified from the
7 case under NRPC. Said Order also directed Plaintiff to file a Reply Brief within 15 days of
8 service of Defendants' Answering Brief, which would be no later than February 1, 2017.


9 9. Based on the Nevada Supreme Court's historical timeline for issuing decisions on
10 pending Writs, it is Defendants' reasonable belief that the Nevada Supreme Court will not issue a
11 decision on the Plaintiff's pending Writ in advance of the March 13, 2017 trial date in this matter.

12 10. Given that Plaintiff's Writ challenges the curative jury instruction(s) that this Court
13 awarded to Defendants, litigation in this matter must be stayed, and the trial date necessarily
14 continued, as the allowance of such a jury instruction(s) is a central issue to the trial.

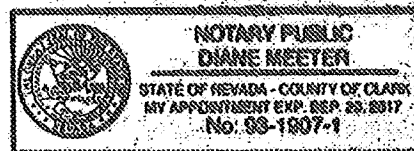
15 11. Given that the jury instruction(s) issue must be decided before trial commences in
16 this matter, good cause exists to stay the litigation, and continue trial, and should be granted
17 pursuant to the District Court's August 24, 2016 Order, NRAP 8 (a)(1) and EDCR 7.30 (a).


18 FURTHER THIS AFFIANT SAYETH NAUGHT.

19 DATED this 30th day of December, 2016.

20 
21 CHARLENE N. RENWICK, ESQ.

22 SUBSCRIBED AND SWORN to before
23 me this 30th day of December, 2016.



25 
26 NOTARY PUBLIC in and for said
27 county and state.
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As this Court will recall from the arguments raised in briefing by Defendants, Mydatt Services, Inc. and Mark Warner's (collectively "Mydatt") in their recent Motion to Strike Plaintiff's Complaint and Dismissal, the Plaintiff in this matter is seeking to avoid payment of the previously awarded sanctions for discovery abuses, while proceeding to trial with his claims, demonstrating blatant disrespect for the judicial system, and specifically the decisions and orders of this Court. The instant Motion seeks continuance of trial in this matter, as the Plaintiff's strategy of contesting this Court's August 24, 2016 Order Denying in Part and Granting in Part Defendants Motion to Dismiss Plaintiff's Complaint, along with the October 7, 2016 Order on fees and costs, by way of filing a Writ Petition with the Nevada Supreme Court, is a transparent attempt to cripple the judicial process in this matter. Specifically, this Court will note that Plaintiff is challenging this Court's award of a curative jury instruction to address Plaintiff's deceit and perjury during the discovery process, however, he has intentionally not sought a stay of the litigation pending the Nevada Supreme Court's decision on the same, as he is seeking to force trial in this matter while avoiding the attorney's fees and jury instruction sanctions, knowing full well that this Court cannot permit the awarded instruction while the same is being contested. As such, Defendants contend that until the Nevada Supreme Court rules on Plaintiff's pending Writ, which specifically challenges the curative jury instruction(s) awarded to the defense in this Court's August 24, 2016 Order, litigation must be stayed in this matter, and trial must be continued.

It should be noted that the requested stay and trial continuance will not impact discovery, which closed on September 16, 2016 (and will not be reopened), other than the deposition of defense expert Dwayne Tatalovich, which is outstanding due to the expert's medical issues. The only other deadlines which will be impacted by the requested stay and should be continued in relation to the same, are the deadlines for motions in limine, the pre-trial memorandum deadline,

1 and the pre-trial conference and calendar call dates, which are the only trial related deadlines that
2 remain in this case.

3 The Defendants timely filed their Motion for Summary Judgment on October 31, 2016,
4 and as this Court will recall, the decision on the same has been deferred to February 17, 2017.
5 Given that the pending Motion for Summary Judgment is entirely unrelated to Plaintiff's Writ
6 Petition, and cannot be impacted by any decision issued by the Nevada Supreme Court, this Court
7 is not precluded from issuing its decision on said Motion, and Defendants request that the date for
8 decision on the same not be continued or stayed. Further, as the Court also deferred its decision
9 on Mydatt's pending Motion to Strike to February 17, 2017, Defendants request that the Court's
10 decision on the same not be continued.

11 II.

12 PROCEDURAL BACKGROUND

13 This Court heard Defendants' Motion to Dismiss Plaintiff's Complaint on May 3, 2016,
14 and held a subsequent evidentiary hearing on July 21, 2016. Following the evidentiary hearing,
15 this Court denied dismissal of Plaintiff's Complaint, however, it granted sanctions against
16 Plaintiff for his discovery abuses as follows: a) attorney's fees and costs; b) a curative jury
17 instruction(s) to address the harm caused by Plaintiff's discovery abuses by establishing inter alia
18 that if Plaintiff had complied with his obligations under NRCP 16.1, NRCP 30, NRCP 33 and
19 NRCP 36, evidence and testimony would have been discovered which would have more
20 accurately reflected the circumstances involved in the altercation at issue between Plaintiff and
21 the assailants as indicated in the voluntary statement provided to LVMPD; and c) a continuation
22 of the discovery period and trial, at the Defendants' timely request for the same.

23 Following the Court's Order on the Motion to Dismiss, Defendants filed a Motion for
24 Attorney's Fees and Costs. On October 7, 2016, the Court issued an Order awarding the defense a
25 total of \$196.66 in costs and \$41,635 in attorney's fees, which was broken down as follows:
26 \$19,846 for the Lewis Brisbois firm; \$11,629.50 for the Lee Law Firm, and \$10,159.50 for the
27 Backus Carranza firm. Plaintiff ignored this Court's Order, much like he completely disregarded
28 the rules of discovery in this litigation which led to the original Motion to Dismiss, and refused to

1 pay the ordered fees and costs. Instead, on November 22, 2016, Plaintiff filed a Petition for
2 Extraordinary Writ Relief with the Nevada Supreme Court, specifically challenging: a) the court's
3 allowance of the Motion to Dismiss based on the work of the disqualified law firm Lewis
4 Brisbois; b), the Court's award of attorneys' fees and costs awarded to the disqualified law firm;
5 and c) the Court's granting of a curative jury instruction to the defense. It should be noted that
6 nowhere in the Writ does Plaintiff challenge the award of attorney's fees to the non-disqualified
7 attorneys for the defense, however, he refused to timely pay the same in the hopes of proceeding
8 with trial, while ignoring the sanctions ordered by this Court for his prior discovery abuses.

9 As this Court will also recall, trial in this matter was previously set to commence on
10 November 14, 2016, however, the same was continued to March 13, 2017, as Defendants Mydatt
11 and Mark Warner's expert, Dwayne Tatalovich, has a serious medical condition that precludes
12 him from being deposed until January 2017. Based on the same, the parties entered into a
13 Stipulation and Order, entered on October 13, 2016, which confirms the following: 1) discovery
14 in this matter closed on September 16, 2016, with the sole exception of agreed upon expert
15 depositions¹; 2) the deadline for dispositive motions is October 31, 2016; 3) the deadline for
16 motions in limine is December 9, 2016 (which was later changed to January 16, 2017, by the
17 Court's October 17, 2016 Amended Order Setting Civil Jury Trial); 4) the deadline for motions in
18 limine related to Mr. Tatalovich is January 27, 2017; 5) trial is continued to March 13, 2017 at
19 9:00 a.m.; 6) the Pre-Trial Conference is February 9, 2017 at 10:15 a.m.; and 7) Calendar Call is
20 March 7, 2017 at 9:00 a.m.

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27
28 ¹ Plaintiff's expert, Anthony Niecher was deposed on December 6, 2016, and defense expert Dwayne Tatalovich's deposition is the only remaining discovery to be completed.

III.

LEGAL STANDARD

The Nevada Rules of Appellate Procedure require that:

A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending.

See NRAP 8 (a)(1) (emphasis added). The Nevada Supreme Court has held that NRAP 8 is not only applicable to matters on appeal, but should also apply to writ petitions when the order challenged by the petition is issued by a district court. Hansen v. Eighth Judicial District Court, 116 Nev. 650, 657, 6 P.3d 982 (2000).

(1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing NRAP 8 (c); Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948)). As discussed in further detail below, the above factors weigh in favor of staying litigation in this matter, as the issue of the curative jury instruction is a crucial element of the trial, and without a final decision on Plaintiff's Writ which challenges the same, litigation must be stayed and trial must be continued.

///

///

Further, pursuant to the Eighth Judicial District Court Rules,

Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

See EDCR 7.30 (a). In determining whether a trial continuance should be granted, "[e]ach case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." Higgs v. State, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010) (citing Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978)). Whether a motion to continue trial should be granted is within the sound discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of discretion. Batson v. State, 113 Nev. 669, 941 P.2d 478 (1997); See also Southern Pacific Transportation Company v. Fitzgerald, 94 Nev. 241, 577 P.2d 1234 (1978) and Sheeketski v. Bortoli, 86 Nev. 704, 475 P.2d 675 (1970).

IV.

ARGUMENT

Defendants request that litigation in this matter be stayed, and trial continued until the Nevada Supreme Court issues its decision on Plaintiff's pending Writ as the same specifically challenges the curative jury instruction(s) that this Court awarded to the defense as a result of Plaintiff's grave discovery abuses in this case.

A. Litigation Should be Stayed Pursuant to NRAP 8.

i. Object of Writ Petition will be Defeated if Stay is Denied.

Based on the factors outlined in the Hansen case, litigation in this matter should be stayed pending the Nevada Supreme Court's decision on Plaintiff's pending Writ. To begin, one of the central issues of Plaintiff's Writ is whether or not the District Court improperly awarded Defendants a curative jury instruction. As this Court noted in its August 24, 2016 Order Denying in Part and Granting in Part Defendants Motion to Dismiss Plaintiff's Complaint, Plaintiff failed to provide Defendants with necessary information that was within his knowledge, custody and control, related to the altercation which led to his shooting. Recognizing the severe prejudice to

1 Defendants as a result of Plaintiff's intentional discovery abuses, this Court sought to balance the
2 same by awarding the defense a curative jury instruction(s),

3that seeks to address the harm caused by Plaintiff's discovery abuses by
4 establishing inter alia that if Plaintiff had complied with his obligations under
5 NRCP 16.1, NRCP 30, NRCP 33 and NRCP 36, evidence and testimony would
6 have been discovered which would have more accurately reflected the
circumstances involved in the altercation at issue between Plaintiff and the
assailants as indicated in the voluntary statement provided to LVMPD.²

7 Given that the jury instruction award is a central issue in Plaintiff's Writ Petition, procedurally,
8 litigation and trial in this matter cannot go forward until said issue is decided by the Nevada
9 Supreme Court. If litigation were to continue and this matter were to proceed to trial on March 13,
10 2017, Defendants will request that the Court provide the previously ordered curative jury
11 instruction. This will clearly defeat the object of Plaintiff's Writ Petition. Alternatively, if
12 litigation continues and this matter proceeds to trial, Defendants will be severely prejudiced if the
13 curative jury instruction, which was awarded to address Plaintiff's grievous discovery abuses, is
14 not provided to the defense at trial.

15 **ii. Harm or Serious Injury to the Parties if the Stay is Granted.**

16 Plaintiff will not suffer any harm or injury in this matter if the case is stayed and trial is
17 continued, as he is the party challenging this Court's pre-trial orders in this case, specifically the
18 curative jury instruction. If litigation continues and this matter proceeds to trial, Defendants will
19 insist on the curative jury instruction(s) that this Court previously awarded to the defense, which
20 would ultimately harm Plaintiff at the time of trial, as he is challenging the validity of such
21 instruction. As such, the requested stay benefits Plaintiff. Defendants, on the other hand, would
22 suffer irreparable harm and injury if they were forced to proceed to trial without having a decision
23 on whether the jury instruction is permissible, given that said instruction seeks to correct the
24 Plaintiff's acts of perjury and deceit during the discovery process, which have

25 ///

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27
28 ² See Exhibit 1, *District Court Order Denying in Part Granting in Part Motion to Dismiss*, pages 6 -7, lines 22-25; 1-6 (August 24, 2016).

Defendants' from obtaining relevant evidence about the facts and circumstances surrounding his injuries and claims.

iii. Whether Plaintiff will Prevail on the Merits.

With respect to whether the Plaintiff will prevail on the Writ, and specifically the issue of the curative jury instruction, Defendants do not believe that Plaintiff will prevail on the merits. This is supported by the fact that the Nevada Supreme Court's Order directing real parties in interest to file an answering brief, specifically identified the issue of whether attorneys' fees may be awarded to disqualified attorneys. With that said, the defense cannot divine what the Nevada Supreme Court's ultimate decision on the Writ Petition will be. Moreover, the Nevada Supreme Court has "not indicated that any one factor carries more weight than the others, although . . . [it] recognizes that if one or two factors are especially strong, they may counterbalance other weak factors." Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (internal citation omitted). Based on the same, whether or not the Plaintiff will prevail on the Writ is not a crucial factor for this Court's determination here. What this Court must take into consideration is the fact that a central issue of the Writ is determinative of a critical element of trial (i.e. whether or not a curative jury instruction is issued for Defendants), and this alone precludes litigation and trial from proceeding in this matter until the pending Writ is decided by the Nevada Supreme Court.

B. Good Cause Exists for Staying Litigation and Continuing Trial.

In light of the additional briefing ordered by the Nevada Supreme Court, and given the fact that the Court's historical timelines for issuing decisions on Writ Petitions are typically much longer than 30 days, stretching into a year if not longer, it is not reasonable to believe that the Court will issue a decision on Plaintiff's Writ in advance of the March 13, 2017 trial date. Again, without a decision on Plaintiff's Writ Petition, which challenges an element of proposed trial procedure in this case, good cause exists to stay the litigation and continue trial.

Further, this Court specifically made allowance for a trial continuance in its August 24, 2016 Order, as another sanction against Plaintiff for his discovery abuses. Pursuant to the same, upon timely request and good cause shown, the Order states that this Court "shall" grant an

1 extension of trial.³ As discussed above, Defendants are not seeking to continue discovery in this
2 matter, and the same should not be reopened, as discovery closed on September 16, 2016, other
3 than the remaining deposition of defense expert Dwayne Tatalovich. The only dates which would
4 be impacted by the requested trial continuance, and should be stayed in relation to the same, are
5 the deadlines for motions in limine, the pre-trial memorandum deadline, and the pre-trial
6 conference and calendar call dates, which are the only trial related deadlines that remain in this
7 case. Further, Defendants request that the February 17, 2017 date that this Court provided for the
8 issuance of its decisions on the pending Motions for Summary Judgment and to Strike Plaintiff's
9 Complaint and Dismissal not be continued, as there is no reason for the same. None of the
10 arguments raised in the Motion for Summary Judgment are at issue in the Writ, and cannot
11 possibly be impacted by the same. As such, there is nothing precluding this Court from issuing its
12 decision on the same. With respect to the pending Motion to Strike, as this Court noted during
13 oral argument for the same, Plaintiff does not challenge the Court's award of attorney's fees to the
14 two non-disqualified law firms, and the Court may rule on said Motion with respect to Plaintiff's
15 violation of that part of its prior Order.

16 V.

17 CONCLUSION

18 Based on the foregoing, Defendants respectfully request that litigation be stayed and trial
19 continued, with no further allowance of discovery other than the outstanding deposition of Mr.
20 Tatalovich, and that the remaining trial deadlines be continued accordingly. This request will not
21 result in any prejudice to Plaintiff, who himself has put this matter in the very path of a stay and
22 trial continuance by challenging the Court's prior orders in this case, which are central to the
23 determination of this case by a jury. On the other hand, failure to stay the litigation and continue
24 the March 13, 2017 trial date will result in severe prejudice to the defense as Defendants require a
25 decision on the curative jury instruction issue, which Plaintiff is seeking to preclude at the time of

26 ///

27 _____
28 ³ Id. at page 7, lines 9-14.

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

1 trial. As such, Defendants have demonstrated good cause, and the instant Motion should be
2 granted.

3 DATED this 30th day of December, 2016

4 LEE, HERNANDEZ, LANDRUM &
5 GAROFALO

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
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Exhibit "1"

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 X'ZAVION HAWKINS,

5
6 Plaintiffs,

7 vs.

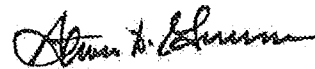
8 GGP MEADOW MALL LLC, a Delaware
9 Limited Liability Company; MYDATT
10 SERVICES, INC. d/b/a VALOR SECURITY
11 SERVICES, an Ohio Corporation; MARK
12 WARNER, individually; DOES I through 10;
13 DOE SECURITY GUARDS 11 through 20;
and ROE ENTITIES 21 through 30, inclusive,

12 Defendants,
13

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

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

22 (2) Sanctions—Party. If a party or an officer, director, or
23 managing agent of a party or a person designated under Rule
24 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
25 order to provide or permit discovery, including an order made
26 under subdivision (a) of this rule or Rule 35, or if a party fails to
27 obey an order entered under Rules 16, 16.1, and 16.2, the court in
28 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
29 parties were able to provide witness testimony and evidence, Plaintiff failed to
30 provide information requested by Mydatt in the written discovery and by Mydatt

31 ¹ See, *Precision Instrument Manufacturing Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 804, 814-
32 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

- 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
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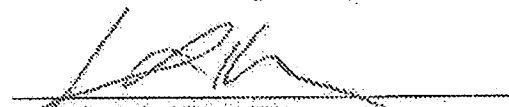
27 ² 106 Nev. 88 (1990).
28

1 33 and NRCF 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:

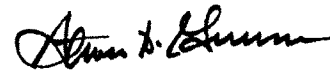
ALL PARTIES SERVED VIA E-SERVICE


TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

Exhibit 3

Exhibit 3

RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

X'ZAVION HAWKINS,

Plaintiff,

v.

GGP MEADOWS MALL, LLC, ET AL.

Defendants.

CASE NO. A-15-717577-C

DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 20, 2016

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Plaintiff: DAVID J. CHURCHILL
Law Office of David J. Churchill

For the Defendants: EDGAR CARRANZA
Backus, Carranza & Burden
Attorneys at Law

CHARLENE RENWICK
Lee, Hernandez, Landrum, Garofalo,
& Blake
Attorneys at Law

RECORDED BY: RACHELLE HAMILTON



1 TUESDAY, DECEMBER 20, 2016 AT 9:58 A.M.

2 THE COURT: GGP Meadow Mall, LLC, et al., 717577.

3 Counsel, would you like to come forward and make
4 your appearances?

5 MS. RENWICK: Good morning, Your Honor. Charlene Renwick
6 on behalf of all Defendants, GGP, Mydatt, and Mark Warner.

7 MR. CARRANZA: Good morning, Your Honor. Edgar Carranza
8 for Mydatt and Mark Warner.

9 MR. CHURCHILL: Good morning, Your Honor. David
10 Churchill for the Plaintiff, X'Zavion Hawkins.

11 THE COURT: Okay. Thank you. Today we have teed up
12 Defendant Mydatt DBA Valor Security Services, Mark Warner's
13 motion to strike, Plaintiff's complaint and dismissal. We
14 have a status check on the trial order.

15 So the Court received Plaintiff's counsel --
16 Plaintiff had filed a writ. It looks -- the Supreme Court
17 requested a responsive briefing on the writ is the last
18 medication that this court has. So in light of that, then it
19 appears that this court may not be able to hear the motion to
20 strike, because it's the very issue before the Supreme Court
21 on the writ, because the payment of the sanction amount is
22 tied to the writ. That's the Court's quick inclination.

23 Go ahead. It's your motion. I'm sure you wish to
24 be heard, and I'm glad to hear it. But I'm just questioning
25 my jurisdiction to hear the very essence of what they're

1 deciding.

2 MR. CARRANZA: Yeah, Your Honor. I mean rather than
3 going to the merits of the motion, maybe we can discuss the
4 appropriateness of whether or not --

5 THE COURT: Sure.

6 MR. CARRANZA: -- really there's a stay, in essence, a
7 stay as to the enforcement of the order, which was really the
8 -- as we pointed out in our papers, there wasn't an opposition
9 to our motion to strike. And quite frankly, I wouldn't see
10 how a substantive opposition could have been formed as to why
11 or what justification Mr. Hawkins had for not complying with
12 this court's order and paying the sanctions that this court
13 determined were appropriate, which I remind everyone was in
14 lieu of what we had asked for back in July, which was actually
15 a dismissal of the case, given the egregiousness of the
16 discovery abuses by Mr. Hawkins during the entire discovery
17 proceedings.

18 THE COURT: Uh-huh.

19 MR. CARRANZA: There was no opposition to the motion to
20 strike. What there was was a countermotion to stay the
21 enforcement of the order, which sounds like what we need to
22 discuss here today and whether or not a stay of the
23 enforcement of the order versus a stay of the proceedings
24 overall might be more appropriate, given what we've outlined
25 in our papers are pretty transparent reasons of Mr. Hawkins'

1 behavior throughout the case.

2 I mean, throughout this case, he's tried to get to
3 the finish line. He's tried to rush through everything and
4 get to trial before the Defendants discovered that he was
5 lying throughout discovery, before this court had an
6 opportunity to sanction him. And now after the sanctions have
7 been ordered, he's trying to rush to trial before complying
8 with the Court's order on sanctions. And keep in mind that
9 it's not just the monetary sanctions, the \$40,000 in fees.
10 We're also talking the cost that were awarded to the
11 Defendants for having to go through the motion -- the original
12 motion to dismiss and the evidentiary hearing, the attorney's
13 fees that were ordered to be paid to the Lee Hernandez Firm,
14 the attorney's fees that were ordered to be paid to my law
15 firm, both of which aren't impacted by Mr. Hawkins' argument
16 about the appropriateness of awarding fees as sanctions for a
17 disqualified law firm.

18 Fortunately, this court had the wisdom to delineate
19 the different the different components.

20 THE COURT: To break them out.

21 MR. CARRANZA: Yeah, to break them out. Exactly. To
22 break them out by law firm, by component. And the other
23 components that aren't subject to the petition for writ
24 haven't been complied with either, Your Honor. And that's the
25 -- and we pointed that out and out papers as another -- yet

1 another reason why this court should strike the complaint,
2 because we don't see the merit of the petition for writ. I
3 think it's pretty transparent and shows the true intent, which
4 is yet another attempt by Mr. Hawkins to get around and make
5 an end run around the rules of this court, the orders of this
6 court to try to get to the finish line without complying with
7 any of those.

8 THE COURT: Okay. A couple of quick questions.

9 MR. CARRANZA: Sure.

10 THE COURT: And I'm having my law clerk go and grab the
11 Supreme Court -- my recollection, when I read it, it is it
12 just required a responsive briefing. It didn't have the
13 parsed-out delineation in this court's order. And it's not up
14 to a District Court to say what is intended by the Nevada
15 Supreme Court was the Nevada Court of Appeals.

16 MR. CARRANZA: Right.

17 THE COURT: So therein lies my jurisdictional quandary --

18 MR. CARRANZA: Sure.

19 THE COURT: -- is because it's -- you're representing the
20 same party that the prior firm was -- parties -- excuse
21 me -- in part. You have an overlap. You've been in this from
22 the get-go. Your -- you know what I mean? But I have an
23 overlap --

24 MR. CARRANZA: Sure.

25 THE COURT: -- of parties --



1 MR. CARRANZA: Sure.

2 THE COURT: -- some of which are subject to a writ. The
3 noncompliance in your underlying motion, in some respects,
4 because once again it doesn't delineate in the answers -- you
5 know what I mean -- fees and costs. And I still have parties
6 specific. So I appreciate you asking me to look at counsel.
7 I was saying I had to look at parties, don't I?

8 MR. CARRANZA: Sure. And just in anticipation of your
9 clerk three in the order, my recollection of the order from
10 the Supreme Court specified that they wanted an answer from
11 the responding parties to help them ascertain --

12 THE MARSHAL: Turn your phones off.

13 MR. CARRANZA: -- to help them ascertain --

14 THE COURT: Just a second. Can you mind wetting for a
15 second, because someone has kept their phone on despite the
16 eight signs around the courtroom. And presumably, you'd like
17 a clear record.

18 MR. CARRANZA: Sure.

19 THE COURT: Thank you very much.

20 MR. CARRANZA: My recollection is that the order from the
21 Supreme Court asked for an answer from the responding parties
22 to help them determine whether or not the sanctions in the
23 context or in the matter of fees for the disqualified firm. I
24 think that's specific in that order -- were appropriate. They
25 didn't make any mention about the other components of your

1 order for sanctions, including the fees to our two law firms,
2 the costs. And keep in mind that order also included a jury
3 instruction that was to be crafted closer to trial and the
4 potential for the continuance of discovery in the trial
5 itself.

6 That didn't -- that wasn't mentioned at all in the
7 Supreme Court's order. All they wanted briefing on was the
8 appropriateness of the fees relative to that disqualified law
9 firm.

10 THE COURT: Okay. Let me hear from somebody else real
11 briefly. And I'm sure everyone is anxiously interested in
12 this very novel topic of what this court says may be a first
13 impression. Go ahead.

14 MS. RENWICK: The only thing I would add, Your Honor, is
15 there is -- there was no opposition to the portion of your
16 order which awarded the fees to our firm and Mr. Carranza's
17 firm. That's not identified in the opposition. And it
18 certainly wasn't identified in the writ.

19 THE COURT: Okay. Let me hear from Plaintiff.

20 MR. CHURCHILL: Actually, Your Honor, it was -- it's all
21 part of the same order. It's all in the --

22 THE COURT: Well, wait a second. Their parsing out --
23 does your writ --

24 MR. CHURCHILL: Yeah.

25 THE COURT: -- contest the award of fees to the other two

1 firms or -- and does it contest --

2 MR. CHURCHILL: It does.

3 THE COURT: -- the cost.

4 MR. CHURCHILL: It contests the entire order, Your Honor.

5 And the reason being --

6 THE COURT: Do you have a copy of your writ by chance?

7 MR. CARRANZA: It's Exhibit 3.

8 MR. CHURCHILL: It's our exhibit. We attached it.

9 THE COURT: Right. Right, but --

10 MR. CHURCHILL: But we are -- no, Your Honor. We are
11 challenging the entire order. There are certainly stronger
12 arguments than others. And the contested firm in question
13 that you've awarded literally tens of thousands of dollars to,
14 Your Honor, is an issue of public trust. I mean, essentially,
15 Your Honor, you've awarded, what was it, nearly \$20,000 to the
16 firm, ordered by Mr. Hawkins to pay the conflicted firm for
17 the work they did on the case that they should have never
18 done. This is very much an issue of public trust, Your Honor.

19 But outside of that, outside of -- I mean I think
20 that's a -- with all due respect, Your Honor, I think that is
21 an issue of public concern. I think the Nevada Supreme Court
22 or the Court of Appeals recognizes that that is an issue of
23 public concern. But in addition to that, Your Honor, the
24 entirety of the order itself is being challenged. They keep
25 representing that the Plaintiff lied, the Plaintiff is a

1 perjurer. Your Honor, those types of issues are in the
2 purview of the jury. Okay. Mr. Hawkins has recognized that
3 he provided incorrect information in his deposition, in the
4 same deposition from the very beginning, he told everybody
5 because of the amount of narcotics that he's taking, he has
6 difficulty --

7 THE COURT: Counsel, we're not rearguing yours, the
8 order. You've filed your writ.

9 MR. CHURCHILL: Well, it --

10 THE COURT: What I'm trying -- mine was a very specific
11 question just to focus in --

12 MR. CHURCHILL: And, Your Honor, what I'm trying to
13 say --

14 THE COURT: -- on what -- whether this court has
15 jurisdiction to hear the pending motion --

16 MR. CHURCHILL: -- we're challenging the entire --

17 THE COURT: -- or I just need to move to the trial status
18 check.

19 MR. CHURCHILL: All I was saying is we're challenging the
20 entirety of the order. Obviously, there are things that are,
21 in our opinion, more egregious than others, but we are
22 challenging the entirety of the order.

23 THE COURT: Okay. And are you asserting that the Supreme
24 -- that the order by the appellate court --

25 [Court and clerk confer]

1 THE COURT: You all have a copy handy by chance.

2 MR. CHURCHILL: We do.

3 THE COURT: Okay. We're just grabbing it.

4 Are you asserting that the appellate court's order
5 for an answer covers all your basis? Are you -- is that what
6 you're saying?

7 MR. CHURCHILL: What I'm saying, Your Honor, is the writ
8 itself --

9 THE COURT: My question is on the response, on the
10 Supreme Court's response --

11 MR. CHURCHILL: Yeah. I don't have it in front of me, so
12 I don't --

13 THE COURT: It seems to be to make the most sense, since
14 it's taking my staff to a few moments to get it, can I recall
15 you all in a few moments and call another case?

16 MR. CARRANZA: Absolutely, Your Honor.

17 MS. RENWICK: Absolutely, Your Honor.

18 MR. CARRANZA: And if you -- would you like me to step
19 outside, maybe have my office fax it over or email it over?

20 THE COURT: Well, it seemed to me that if I -- yeah. It
21 was my subtle way of saying you all can step outside and
22 prepare your response on that by each checking with your
23 respective offices, right?

24 MR. CARRANZA: Yes, thank you.

25 MS. RENWICK: Thank you, Your Honor.

1 THE COURT: Thank you.

2 [Recess at 10:09 a.m.]

3 THE COURT: So we're going to recall -- thank you so
4 much, everyone, for your patience. We warn people when they
5 put on for day's hearing. Pages 18 and 19 on the 9:00,
6 717577. Since I called intervening cases, I need your
7 appearances again, please.

8 MR. CHURCHILL: David Churchill for the Plaintiff.

9 MR. CARRANZA: Edgar Carranza for Mydatt and Mike Warner.

10 MS. RENWICK: Charlene Renwick on behalf of GGP, Mydatt
11 and Mike Warner.

12 THE COURT: Okay. So you all -- A, I've got a copy of
13 the order directing answer. If you all haven't had a chance
14 to see it, I can hand whoever wants to see my copy. Or B, you
15 probably have had a chance, since I've seen at least one
16 counsel looking at the phone --

17 MR. CARRANZA: And I apologize for having my phone on.

18 THE COURT: It's on airplane mode, right?

19 MR. CARRANZA: Yes.

20 THE COURT: Okay. As long as it's on --

21 So you've had a chance to look as well, Plaintiff's
22 counsel?

23 MR. CHURCHILL: Yes.

24 THE COURT: And other defense counsel, you have?

25 MS. RENWICK: Yes, Your Honor.



1 THE COURT: Okay. What -- my question when we last left
2 the Court was whether or not the order directing answer
3 addressed the other aspects of your writ or whether or not it
4 limited to the sanctions for the --

5 MR. CHURCHILL: Yeah.

6 THE COURT: -- DQ'd counsel. And so, I wanted your
7 perception on that.

8 MR. CHURCHILL: Yeah, Your Honor. I had -- your initial
9 I think was absolutely correct. I think that this now is with
10 the jurisdiction of the Nevada Supreme Court. It's the
11 entirety of the order that's being challenged.
12 The -- granted, the Nevada Supreme Court does say, in
13 particular, they're interested in this one issue, but that's
14 not to the exclusion of the other issues. In our issues
15 presented, Your Honor, we presented three of them. That
16 particular issue is -- they indicated, in particular, that one
17 was of interest to them. But, Your Honor, it's the entirety
18 of the order. And I -- it appears that they have jurisdiction
19 of this matter now.

20 MR. CARRANZA: Your Honor, obviously, we disagree. We
21 think that the Supreme Court's order is very clear, regardless
22 of the litany of issues that Mr. Hawkins may or may not have
23 raised in his petition for writ. The Supreme Court
24 specifically directs the Respondents to the area of inquiry
25 they want to address. And that is the -- whether attorney's

1 fees may be awarded as sanctions when the attorneys generating
2 the fees were disqualified based on violations of Nevada Rules
3 of Professional conduct. It doesn't have anything to do with
4 the remaining issues, including this court's order relative to
5 the fees that were supposed to be paid to my firm, the fees
6 that were supposed to be paid to the Lee Hernandez Firm, the
7 costs and the other sanctions that were included in there,
8 Your Honor.

9 THE COURT: Do you wish to be heard as well, counsel?

10 MS. RENWICK: Your Honor, I would just repeat again I
11 would challenge counsel to point to anything in his opposition
12 or in the writ which challenges the award for fees and costs
13 to our firm and Mr. Carranza's firm. And the one thing I
14 would also like to address, just for the record, Your Honor,
15 is with respect to the earlier argument that the entire orders
16 is at issue because the disqualified counsel should never have
17 been able to have brought the motion to dismiss in the first
18 place. Just to remind the Court that GGP --

19 THE COURT: The Court is aware of the chronology.

20 MS. RENWICK: Right. That GGP filed the joinder. And at
21 the disqualification hearing, it was addressed the we would be
22 going forward with the motion regardless of the
23 disqualifications. So the challenge of that, of the hearing
24 on the motion to dismiss, it has no merit.

25 THE COURT: The Court has already ruled. That's no

1 longer in my hands. That's upstairs unless everybody has
2 started moving across the street. So --

3 Okay. Page 11. One moment, please. What I was
4 trying to look at is --

5 See, counsel, the reason why I was asking these
6 questions, I was looking at your underlying writ and I was
7 re-going back, comparing page 11 of your underlying writ, the
8 section 4, issues presented, right?

9 MR. CHURCHILL: Yes.

10 THE COURT: Because, presumably, that's the issues
11 presented --

12 MR. CHURCHILL: Correct.

13 THE COURT: -- at least by your own viewpoint, right?
14 And under issues presented, I got District Court improperly
15 allowed work performed by conflicted firm to stand against the
16 aggrieved client when it undermines Petitioner's case to the
17 point of possible dismissal. Dismissal is now being requested
18 by the substituted law firm. Well -- based on work performed
19 by the conflicted law firm. The Court is not going to take
20 any position. My order is my order.

21 Did the District Court improperly make and award
22 attorney's fees and costs against Petitioner in favor of the
23 conflicted law firm, working completely against Petitioner.
24 And three, did the District Court improperly decide to craft a
25 jury instruction as a sanction for alleged discovery abuse,

1 and the Petitioner had already produced an errata sheet
2 correcting his deposition testimony before any motion was
3 filed.

4 When I look at those three issues, I'm somewhat at a
5 loss to see how it impacts the fees and costs, at least by
6 your own issues presented in the writ, to the other -- when I
7 say yeah, fees and costs as to the other parties. Now, once
8 again, you're the master of your own pleading. I'm only
9 reading your issues presented section. Okay. And I
10 appreciate that's only part of 27 pages of your writ.

11 However, in the abundance of caution concept, when I
12 read the order directing answer, the original petition and
13 writ of mandamus challenging the District Court's sanctions
14 order, having reviewed the petition, we conclude that an
15 answer would assist the Court in resolving the petition.
16 Therefore, real party in interest on behalf of this order
17 shall have 30 days from the date of this order within which to
18 file and serve an answer including authorities against
19 issuance of the requested writ. NRAP 21(b)(1).

20 In particular, real parties in interest should
21 address whether attorney's fees may be awarded as sanctions
22 when the attorneys generating the fees were disqualified based
23 on violations in the matter of rules of professional conduct.
24 Petitioner shall, from 15 days from service of the answer, to
25 file and serve a reply. It is so ordered. And then

1 signed -- signature and cc's.

2 It's whether I read it in the conjunctiva the
3 disjunctive, the first, the second sentence and the fourth
4 sentence. And this court can't interpret what was in Acting
5 Chief Justice's Cherry's mind when he signed that. So --

6 MR. CARRANZA: Your Honor, if I could address that. I
7 mean --

8 THE COURT: You know, can I at least finish my sentence
9 before you address it? You're correctly anticipating where
10 I'm going, but for clarity of record.

11 MR. CARRANZA: Sure.

12 THE COURT: This court is -- you know, this is not
13 something where I can underline. You're asking for underlying
14 dismissal of the underlying case where at least a portion of
15 the sanction award is having a order directing an answer. So
16 this court doesn't feel it has the appropriate jurisdiction
17 only to not address today the motion to strike the complaint
18 in dismissal as sanctions for not paying the very -- at
19 least -- well, part of the sanctions. And I appreciate that
20 the order directing answer is -- may not viewed as consistent
21 with what I read on the issues presented section. However, I
22 have to go with what is the Supreme Court of the United
23 States -- I mean Supreme Court of the State of Nevada order.
24 You know what I mean? And if they want to expand the scope or
25 narrow the scope, I don't know. That's really up to you all

1 to decide with whatever answer you choose to provide. But to
2 do a motion to strike a complaint and dismissal when that is
3 pending I think presents at least a question that this court
4 shouldn't do so. That's why I'm inclined not to do so today.
5 However, I am inclined that there's a request, in light of it,
6 to continue the trial date to grant such an oral motion. And
7 that's not an advisory opinion, which is because you already
8 raised it in your initial argument that it was rushing to
9 trial. And so, the Court finds that, you know, that was the
10 concern. So I think that's a balance of an equity, but I have
11 to hear if that's being requested.

12 Go ahead, counsel.

13 MR. CARRANZA: It's not being requested --

14 THE COURT: Okay.

15 MR. CARRANZA: -- today, Your Honor, no.

16 MS. RENWICK: No, Your Honor.

17 THE COURT: Okay. So, counsel, would you like to respond
18 to the Court's inclination?

19 MR. CARRANZA: Your Honor, my only response is that we've
20 looked at both the -- Mr. Hawkins' petition for writ, and he
21 listed his three issues that he was raising in that writ, none
22 of which had to do with the fees that we've already talked
23 about. And then we've looked at the order from the Nevada
24 Supreme Court, which further limited those from the three
25 issues that he raised. They really wanted to focus only on

1 the one issue, that is, the appropriateness of the fees for
2 the disqualified law firm. I don't think there's another way
3 to read that other than that's the issue that they're looking
4 at.

5 They never were presented with the issue about the
6 appropriateness of the fees and costs for the other two law
7 firms. And they certainly haven't indicated in their order
8 that that's what they're going to look at. All they want from
9 the Respondents is the appropriateness is a writ relief in
10 this situation and whether or not the fees for the
11 disqualified law firm are appropriate. That's it.

12 And regardless of how that is ruled on or determined
13 by the Nevada Supreme Court, Mr. Hawkins is still in contempt
14 of this court's order on the other considerations, the other
15 components of the sanctioning order that it issued following
16 the July 21st evidentiary hearing. At the end of the day,
17 even if the Nevada Supreme Court agrees with them that that
18 one component of your order was inappropriate, they've still
19 violated the other four components of the order. And that
20 alone warrants the dismissal. It becomes almost an academic
21 exercise for the Nevada Supreme Court. I understand that it
22 may be a worthwhile exercise. But for purposes of this
23 litigation, Mr. Hawkins can't get around the violation and
24 failure to abide by the Court's order, at least for the other
25 three components.

1 THE COURT: Anything else from your end?

2 MS. RENWICK: As outlined in the reply, Your Honor, it's
3 just Plaintiff, once again, thumbing his nose at the Court's
4 order and sanctions and just looking for a free ride to get to
5 trial.

6 THE COURT: So you all want to go to trial in March, so
7 March -- five-week stack date currently set, which would
8 precipitate you're all fine with that date.

9 MS. RENWICK: Yes, Your Honor.

10 THE COURT: I mean is your -- Plaintiff's counsel, is
11 your client asserting that it doesn't have to pay the sanction
12 award as to the other two firms when you didn't address that
13 in your writ?

14 MR. CHURCHILL: Your Honor, we are challenging the order
15 in its entirety.

16 THE COURT: Can you point to me any aspect of your writ
17 where you're challenging the attorney's fees and costs from
18 the Lee Hernandez Firms and Backus Carranza Firm --

19 Sorry if I'm not naming all your partners. I'm just
20 trying to make it sure and easy.

21 MR. CHURCHILL: Well, in -- it's not -- that,
22 specifically, is not in the issues presented.

23 THE COURT: Is it -- that's why I asked the general
24 question. Is it anywhere in the writ?

25 MR. CHURCHILL: I'd have to review the entire writ, Your

1 Honor. But off the top of my head, I simply don't recall.

2 But there are other issues. I mean let me put it this way.

3 THE COURT: But remember, the Court -- see, the Court
4 did -- you know what I mean? Whether -- obviously, you don't
5 agree with my order, which is perfectly fine. That's the
6 right of anyone to do. It's perfectly fine. But the order
7 did specifically parse out firm by firm, right?

8 MR. CHURCHILL: Right.

9 THE COURT: All parties will agree? Okay. And the Court
10 did reduce all firms after it reviewed it. This court finds I
11 did it appropriately, obviously, but that's up to appellate
12 review. So if there's no challenge, okay, by parsing it
13 out -- and the only aspect of the challenge is whether or not
14 the fees could be derived from a disqualified firm, right, and
15 the jury instruction. But the jury instruction is not at
16 issue right now, because the jury instruction was deferred to
17 the time of trial. So by definition, it can't be at issue
18 either in, A, their motion to dismiss or, B, in their response
19 to motion to dismiss, because it hasn't come to fruition yet,
20 because you don't have a trial date till March, right?

21 So the only aspects they're seeking enforcement of
22 would be the cost and fees to Lee Hernandez and Backus
23 Carranza. That's the way I understood their motion.

24 Is that correct?

25 MR. CARRANZA: That's correct, Your Honor.



1 MS. RENWICK: Yes, Your Honor.

2 MR. CARRANZA: Yeah, failure to abide by any of the
3 components in the order, including the specific ones and, most
4 importantly, for the Lee Hernandez Firm, Backus Carranza Firm,
5 the costs that weren't paid, those three components.

6 THE COURT: So is there any reason why your client did
7 not pay those amounts that were due on or about November 17th?
8 I'm saying on or about because it was 30 days from notice of
9 entry and order, and I'm within a few days.

10 MR. CHURCHILL: There are multiple reasons, reasons put
11 forth in my opposition. I mean this is a gentleman that lives
12 on, you know, government assistance. I mean issue number one.
13 But, Your Honor, the bigger point is, and Your Honor has
14 already recognized it, the order itself is being challenged,
15 and I don't know --

16 THE COURT: Only to the extent of your writ petition,
17 right? You can't challenge -- right? There's only writ
18 petition; is that correct?

19 MR. CHURCHILL: Well, Your Honor, the Nevada Supreme
20 Court could come back and say that the work that was done by
21 this -- let me give you an example, okay? Before I finish
22 that thought, let me give you an example. The prejudice
23 that -- from this disqualified firm continues right now.

24 If you look at Mr. Carranza's reply brief, what does
25 he cite? What does he cite in support of his position? He

1 cites a letter from Robert Eglet to the Plaintiff, indicating
2 that he doesn't want to pursue this case because of issues on
3 liability.

4 Now let me ask you a question, Your Honor. How does
5 Mr. Carranza have that letter?

6 THE COURT: Counsel, I --

7 MR. CHURCHILL: How does he have the letter?

8 THE COURT: Counsel.

9 MR. CHURCHILL: The point is --

10 THE COURT: Short answer is didn't you provide it,
11 honestly? You provided it. Remember, the Court specifically
12 noted that in the order. You provided that letter.

13 MR. CHURCHILL: But why?

14 THE COURT: Well --

15 MR. CHURCHILL: Because of the --

16 THE COURT: They have it because you provided it.

17 MR. CHURCHILL: -- disqualification.

18 THE COURT: Isn't that the answer? I mean the Court
19 can't go to each of your specifics. But if you provided it,
20 then that's how they got it, right?

21 MR. CHURCHILL: But why did we provide?

22 THE COURT: Is that correct?

23 MR. CHURCHILL: We provided it.

24 THE COURT: Okay. So you knew the answer to your own
25 question, counsel?

1 MR. CHURCHILL: Well, the -- but the real answer is
2 because the Lewis Brisbois Firm, right, was doing work against
3 the very client they had to protect, because of a conflict of
4 interest. Okay.

5 THE COURT: But --

6 MR. CHURCHILL: We had to provide it. Your Honor, I
7 don't know what the Nevada Supreme Court is going to do when
8 they look at the totality of the circumstances regarding that
9 particular firm. And that's the bigger issue, Your Honor.
10 The entire proceeding is in question. It's tainted because of
11 the involvement of that prior firm. And we don't know what
12 the Nevada Supreme Court is going to do with it. Your
13 Honor --

14 THE COURT: But, counsel, I don't think you've answered
15 my specific question.

16 MR. CHURCHILL: Sure.

17 THE COURT: I do need to move on, because I have everyone
18 patiently waiting in the -- you know, gave you time to go back
19 and look at things. Okay. I'm going to have to conduct the
20 status check portion. So let's get the status check portion,
21 and I'll go back to this portion in just a second.

22 Status check. Complaint was filed on April 27,
23 2015. So what I'm hearing on the status check portion is that
24 all parties are requesting to stay on target with the March
25 3rd five-week stack. Is that correct or that is that

1 incorrect?

2 MR. CARRANZA: That's correct.

3 MS. RENWICK: That is correct, Your Honor.

4 THE COURT: Okay. So nobody is requesting anything
5 different with regard to the status check? Anyone requesting
6 a settlement conference or anything? I know you already went
7 to one, but --

8 MR. CHURCHILL: No. And I think we have some pending
9 motions that I know the Court took under advisement that we
10 were waiting on orders. That may change some --

11 MS. RENWICK: That's the motion for summary, Your Honor.

12 THE COURT: Right, because I had this issue of a writ,
13 remember?

14 MS. RENWICK: However, again, Your Honor, the motion for
15 summary judgment is -- it's not tied to the writ. The writ
16 isn't challenging any of the arguments raised in the summary
17 judgment order.

18 THE COURT: Okay. That's not what Plaintiff's counsel
19 told me.

20 MR. CARRANZA: I think we've outlined pretty clearly,
21 Your Honor, that his intent and his goal is to get that finish
22 line. And so, I can tell you he's wanting to avoid every
23 obstacle and every hurdle to get there, including summary
24 judgment, including failure to pay the -- any of the law firms
25 involved, anything -- including tell the truth at the

1 beginning of this case, which is why we're all here to -- this
2 is a year-long effort that was brought up simply by Mr.
3 Hawkins failing to abide by the simplest requirement of any
4 litigant any case, and that is to tell the truth.

5 MS. RENWICK: Your Honor, if I also may point out, at the
6 onset of the motion for summary judgment, you did address to
7 all parties whether or not the writ impacted your ability to
8 hear that motion that day. And there was no objection raised
9 by Plaintiff at that point. There is no reason why you cannot
10 rule on the motion for summary judgment.

11 THE COURT: Well, you remember, at that juncture, we
12 didn't have an order directing an answer. I only had a writ,
13 and no one knew whether or not an order directing answer would
14 issue or not. So I have a little bit of a different
15 procedural posture, but that's for the Court to determine.

16 Well, here's what I currently have. The
17 Court -- have I given you all an opportunity -- do you want to
18 argue it substantively? If not, I'm going to have to call a
19 couple other cases, because here's where my inclination really
20 is. My inclination is that the Court does have concerns to
21 address any portion of the motion that, in any way, impacts
22 the writ. However, and the Court not addressing the motion
23 today, the Court, in no way, is saying that those underlying
24 amounts aren't due and owing to the Lee Hernandez Firm and the
25 Backus Firm and the costs that don't have to do with the Lewis

1 Brisbois Firm.

2 So at this juncture, I don't have a stay request
3 with regard to this motion. I mean I don't have a stay of the
4 underlying proceedings.

5 MR. CHURCHILL: We did request a stay, Your Honor, of the
6 order.

7 MR. CARRANZA: Only of the enforcement of the order, Your
8 Honor.

9 THE COURT: And the Court denied that.

10 MR. CHURCHILL: I don't know if Your Honor denied that.
11 That was part -- that was our countermotion today.

12 THE COURT: I'm going back to the summary judgment. You
13 orally said it at the time of the summary judgment.

14 MR. CARRANZA: He had no objection to that, correct. But
15 as part of -- yeah, his -- there was no opposition to this
16 motion, but there was a countermotion where he requested a
17 stay of the enforcement of this order.

18 MR. CHURCHILL: Correct.

19 THE COURT: Right. And that's the pending summary
20 judgment.

21 THE COURT: Okay. Well, it seems to me what I'm going to
22 do is follows. Your trigger date was 30 days from December
23 15th, okay? Right?

24 MR. CHURCHILL: To file the answer to the Supreme Court,
25 yes.

1 THE COURT: Yes, the Supreme Court. Yes. I'm going to
2 do for my ruling to the Chambers calendar immediately after
3 your 30 day date. Excuse me. Excuse me. What to do after
4 the 45-day date. So I'm going to do your 30-day date and I'm
5 going to do Plaintiff's counsel 15-day date.

6 I'm going to trigger a chambers decision both on the
7 summary judgment and this motion to dismiss for,
8 basically -- it's going to be a week after that 45-day,
9 because I'm going to see what's teed up, what you all are
10 saying is teed up. And if no one -- does anyone object to the
11 Court saying what your pleadings are going to say to the
12 Supreme Court, scope of the issue?

13 MR. CARRANZA: Not at all, Your Honor.

14 MS. RENWICK: No, Your Honor.

15 MR. CHURCHILL: I -- Your Honor, let me ask you this
16 question. Would it be fair if Plaintiff decides to pay those
17 two firms -- I mean if that's your court's -- if that's Your
18 Honor's inclination, he may be willing to pay those
19 undisputed, or less disputed I guess is the proper way to put
20 it, prior to that time. Is --

21 THE COURT: Well, I'm going to have to deal with what I
22 have at the time that I'm going to make a ruling. I can't
23 make any advisory opinions, because if you say that then
24 they're going to say well, if these other factors happen,
25 blah-blah-blah. All things not before me --

1 MR. CARRANZA: Your Honor, that ship has -- yeah, that
2 ship has sailed. He's had 60 days to pay out the components
3 related to our law firms.

4 THE COURT: The Court is --

5 MR. CARRANZA: He's in violation of that order.

6 THE COURT: Right. Currently, your client is in
7 violation of the order is where it's at. I mean -- so, but
8 for the pending motions, just so we're clear, what I'm going
9 to do -- and do you have it triggered from when you have the
10 date in which your reply brief is due? Because I don't -- do
11 you have your 30 day date?

12 MR. CARRANZA: If I could turn that back on?

13 THE COURT: Sure, service of the answer. Because I'm not
14 exactly sure when you're going to file your -- you know what I
15 mean? You have within 30 days, and your 15 is triggered from
16 whenever they do it. So it seems to me if I put the 60 days
17 from today, then I've covered that, right?

18 MR. CARRANZA: Very likely, Your Honor. I mean in light
19 of the holidays, I can't anticipate that we're going to file
20 any sooner than the 30-day limit.

21 THE COURT: Okay. So if I put this decision on the
22 chambers calendar, next available chambers calendar after 60-
23 day date, what I've done is I've taken care of the broadest
24 scope of when you're going to file things subject to any
25 request that you make before the Supreme Court to the

1 extension of briefs. But if you do that, then you created
2 your own procedural quandary here.

3 So that means -- taking December 19th, that means
4 February 17th, chambers calendar for decision on both the
5 pending motion for stay, the motion for summary judgment, the
6 motion to dismiss. In so putting it through my chambers
7 decision, this court is taking no position as to the
8 underlying noncompliance. Okay. There is nothing currently
9 in effect, so the status is what the status is, okay?

10 In so doing, please do not quote that this court is
11 continuing a chambers calendar for any -- I'm just going to
12 read your briefs, so that I know what you all are saying
13 you're teed up, because you're arguing different here on what
14 you say you're going to tee up there. I'm not going to take
15 into account -- just so we're clear, I'm not going to take
16 into account what you say in those briefs for purposes of
17 ruling. I'm just going to do that for purposes -- if there's
18 any clarification as to the scope of the writ. Does either
19 party object to the Court doing it for that limited purpose?

20 MR. CARRANZA: Not at all, Your Honor.

21 MS. RENWICK: Not at all, Your Honor.

22 MR. CHURCHILL: No, Your Honor. But may I make a
23 request?

24 THE COURT: Sure. I can hear it. I don't know if I'm
25 going to agree with it --

1 MR. CHURCHILL: Yeah.

2 THE COURT: -- but go ahead.

3 MR. CHURCHILL: Give Plaintiff 30 days to pay the less
4 disputed amounts.

5 THE COURT: But then I've mooted their pending --

6 MR. CARRANZA: Correct.

7 MS. RENWICK: Exactly, Your Honor.

8 THE COURT: -- without giving -- and they're objecting to
9 me mooted their pending motion. Whether you do or don't and
10 whether or not I have that before me, the Court takes no
11 position, okay? So I can't. You understand why can't?

12 MR. CHURCHILL: Not really, no.

13 MS. RENWICK: Again, Your Honor, they're trying to get a
14 free ride.

15 MR. CHURCHILL: Oh. We're --

16 MR. CARRANZA: Nothing --

17 MR. CHURCHILL: -- saying we'll pay, and that's a free
18 ride? Okay.

19 THE COURT: Okay. Counsel, you all have a difference of
20 opinion, okay? But what I'm saying is please do not quote the
21 fact that I'm moving that -- I'm doing that purely just from a
22 jurisdictional standpoint. I'm not saying I don't have
23 jurisdiction. I just think that that is the most clear way to
24 allow that clarity. And since both -- all parties are in
25 agreement that the Court can only look at those briefs just to

1 see if there's anything that gives a clarity as to what you
2 all intend to scope of the issue before the Supreme Court
3 is -- and you all have said that I can do that, right?

4 MS. RENWICK: Yes, Your Honor.

5 MR. CARRANZA: Yes, Your Honor.

6 THE COURT: Was it a yes or was it a yes but, or was it a
7 no?

8 MR. CHURCHILL: Well --

9 THE COURT: I'm just making it clear. Because if you
10 object, I'm not going to do it and I'm still going to put it
11 off 60 days, and I'm not going to look at the briefs.

12 MR. CHURCHILL: Then we would object.

13 THE COURT: Since there's an objection, then the Court is
14 going to have to take the record as I currently have it. So
15 then instead of 60 days, do you want a decision in chambers
16 calendar earlier than 60 days?

17 MR. CHURCHILL: I -- Your Honor, I guess I don't
18 understand --

19 THE COURT: What would you like Plaintiff's counsel?
20 Sure.

21 MR. CHURCHILL: -- exactly what Your Honor is proposing.

22 THE COURT: What I was trying to do is you were saying
23 that the writ had a broader scope than what counsel at the
24 defense table is saying the writ has. Okay. So there's two
25 ways to do that. One, I rule on what I think the scope of the

1 writ is in the sling just your oral argument. The second
2 choice was since you all would be arguing the scope of the
3 writ is if -- that's why was asking if all parties were in
4 agreement -- if you wished the Court to look at the briefs you
5 filed before the Supreme Court or if it gets transferred to
6 the Court of Appeals -- it doesn't matter for purposes of my
7 statement. If you all are requesting that I look at those
8 briefs merely for the purpose to see what you're arguing the
9 scope is, okay, not --

10 MR. CHURCHILL: Okay.

11 THE COURT: -- for any affirmative assertions that you
12 may make in those briefs that would be different or the same
13 that you made here, but just for that sole purpose, then the
14 Court was willing to do so. I've got other things to do than
15 to read additional briefs that aren't even before me. But if
16 that would have assisted the parties, this court was willing
17 to take the extra time and effort to do that if you all wanted
18 me to do that. However, if one party doesn't want me to do
19 it, then I'm not going to do it. I'm only going to take the
20 record I currently have. So I was trying to give you all the
21 opportunity if you wanted it. If you don't want it, you're
22 not requesting me to do it, then I'm not going to do it.

23 MR. CHURCHILL: Okay. I understand better now what Your
24 Honor is indicating, and we would agree to that. We would
25 agree to allowing Your Honor to review the writ, the reply, et



1 cetera, before issuing a decision.

2 THE COURT: Okay. For the limited purpose that the Court
3 outlined?

4 MR. CHURCHILL: Correct.

5 THE COURT: What's the position since they --

6 MR. CARRANZA: We're still in agreement, Your Honor.

7 MS. RENWICK: In agreement, Your Honor.

8 THE COURT: Okay. Then chambers calendar for decision on
9 both the pending motion for summary judgment, motion for stay,
10 in today's motion for -- to dismiss February 17th.

11 Only -- the Court would potentially change that date if there
12 was some request by the parties either, A, to issue a decision
13 sooner or some joint request to issue it later, okay?

14 MR. CARRANZA: Okay.

15 MS. RENWICK: Thank you, Your Honor.

16 THE COURT: Does that work for all parties? Thank you so
17 very much for your time.

18 MR. CARRANZA: Thank you.

19 THE COURT: Thank you, everyone else, for your patience.
20 Okay.

21 MS. RENWICK: Happy Holidays, Your Honor.

22 THE COURT: Happy Holidays. And thank you. Sorry. I
23 mean to say Happy Holidays. Appreciate it.

24 [Proceedings concluded]

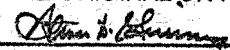
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above entitled case to the best of my ability.



ANTOINETTE M. FRANKS, CET-683
Transcriber

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

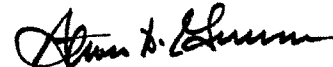

CLERK OF THE COURT

FEB 07 2017



Exhibit 2

Exhibit 2



CLERK OF THE COURT

OPPS

DAVID J. CHURCHILL (SBN: 7308)

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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 OPPOSITION TO
DEFENDANTS MYDATT SERVICES,
INC. D/B/A VALOR SECURITY
SERVICES AND MARK WARNER'S
MOTION TO STRIKE PLAINTIFF'S
COMPLAINT AND DISMISSAL AND
COUNTER MOTION TO STAY ORDER
PENDING WRIT BEFORE NEVADA
SUPREME COURT**

Date of Hearing: 12/20/2016
Time of Hearing: 9:00 a.m.

AND RELATED ACTIONS.

Plaintiff X'ZAVION HAWKINS by and through his attorneys INJURY LAWYERS OF NEVADA, hereby opposes Defendants MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES and MARK WARNER's motion to strike and dismiss and moves this Court for an Order staying enforcement of court order pending writ before the Nevada Supreme Court. This opposition and counter motion are made and based upon the points and authorities set forth herein, the pleadings and papers on file relating to this matter, and any oral argument that might be entertained at the time of the hearing.

1 POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS

3 On or about August 17, 2013, Meadows Mall participated in the nationwide special event of
4 releasing the Nike Air Jordan 4 "Green Glow" shoe launch. Meadows Mall held a special event
5 specifically for this shoe launch. Despite the special event, Defendants GGP MEADOWS MALL LLC
6 ("GGP"), MYDATT SERVICES, INC. d/b/a VALOR SECURITY SERVICES ("Mydatt") and MARK
7 WARNER ("Warner") failed to provide security to monitor the restless crowd. Patrons of Meadows
8 Mall participating in the shoe launch began "camping out" for the special event at approximately 11:00
9 p.m. on August 16, 2013, while waiting for Meadows Mall to open at 9:00 a.m. on August 17, 2013.
10 Despite the special event taking place overnight, Meadows Mall and Mydatt would not employ security
11 guards to monitor the line until 6:00 a.m. Plaintiff X'Zavion Hawkins was shot by follow mall patrols
12 after a 5-10 argument and fight wherein security did nothing to intervene.
13

14 On October 7, 2016, this Court issued a minute order imposing a \$41,635.00 sanction against
15 X'Zavion Hawkins for Defendants' attorney fees relating to Defendant's motion to dismiss and
16 subsequent evidentiary hearing. Attached hereto as **Exhibit 1**. In so doing, this Court awarded
17 \$19,846.00 to Lewis Brisbois law firm despite the fact that Lewis Brisbois maintained a conflict of
18 interest with X'Zavion Hawkins while it performed work against Mr. Hawkins. Ultimately, this Court
19 recognized the conflict of interest and disqualified Lewis Brisbois. On October 17, 2016, this Court
20 entered an order setting forth the sanction against Mr. Hawkins. See **Exhibit 2**.
21

22 Mr. Hawkins timely filed a Petition For Extraordinary Writ Relief with the Nevada Supreme
23 Court on November 22, 2016. See **Exhibit 3**. Importantly, the Writ seeks relief that deals with the
24 misconduct of Lewis Brisbois that continued to work against Mr. Hawkins despite fully being aware of a
25 direct conflict of interest with Mr. Hawkins as a partner at Lewis Brisbois previously represented Mr.
26 Hawkins in this same action. Specifically, Lewis Brisbois seeks an award of \$19,846.00 against Mr.
27 Hawkins despite the fact that Lewis Brisbois ethically NEVER should have taken the case against Mr.
28

1 Hawkins. As this matter deals with the misconduct of disqualified attorney and their seeking of
2 payment from the very person against whom they had a direct conflict of interest in the same matter, the
3 integrity of legal profession is at issue. As such, Plaintiff submits that this Court's October 17, 2016
4 order be stayed pending a decision on the Extraordinary Writ by the Nevada Supreme Court.
5

6 **III. LEGAL ARGUMENT**

7 The Nevada Supreme Court has directed writ petitioners to first seek a stay with the
8 District Court before seeking a stay from the Nevada Supreme Court. The Nevada Supreme Court
9 directs the District Court as follows:
10

11 In deciding whether to issue a stay, this court generally considers the following factors:

- 12 (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- 13 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- 14 (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- 15 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986
16 (2000).
17

18 The Nevada Supreme Court determined, "we have not indicated that any one factor carries more
19 weight than the others." *Id.*

20 **A. Whether Object Of Writ Will Be Defeated If Stay Is Denied**

21 Here, Plaintiff maintains that the object of the writ will be defeated if the stay is denied. First
22 and foremost, at issue is the misconduct of a disqualified law firm which seeks monetary remuneration
23 for work they performed while conflicted. Even worse, Lewis Brisbois seeks remuneration from the
24 very person against whom they were conflicted.
25

26 Plaintiff seeks extraordinary relief to prevent the injustice of Lewis Brisbois from being paid by
27 the very person Lewis Brisbois wronged. Importantly, this is a matter of public interest and the integrity
28 of the entire legal profession. Surely, the public will lose faith in the legal system if a disqualified law

1 firm is permitted to be remunerated for work performed while conflicted by the person it was conflicted
2 against.

3 B. Irreparable Injury If Stay Is Denied

4 Here, X'Zavion Hawkins is disabled and physically handicapped. Importantly, Mr. Hawkins is
5 disabled related directly to negligence and wanton disregard for his safety by the Defendants in this
6 case. Mr. Hawkins lives in government housing and survives on meager disability benefits. Mr.
7 Hawkins cannot spare any resources to satisfy this Court's order, especially under these circumstances.
8 Mr. Hawkins would be irreparably harmed because Mr. Hawkins necessitates all his resources for
9 medical care related to his disability.
10

11 C. Whether Defendants Will Suffer Irreparable Harm If Stay Is Granted

12 Here, there is absolutely no irreparable harm to Defendants is the stay is granted. To be clear,
13 Plaintiff is not seeking to stay the entire case. Rather, Plaintiff merely seeks to stay this Court's October
14 17, 2016 order. In other words, this Court could enter a judgment for the award of attorney fees against
15 Mr. Hawkins.¹ If Plaintiff prevails in his writ, obviously, the Court order would be moot and defendant
16 would not suffer irreparable harm as they were never entitled to their attorney fees. Even if Plaintiff
17 does not prevail on his writ, Defendants still would not be prejudiced as they would be entitled to an
18 offset of any Judgment against them that they would owe Mr. Hawkins for their negligent security.
19

20 D. Plaintiff Likely To Prevail On The Merits

21 When California courts have addressed the issue of whether conflicted law firms may benefit
22 from work performed relating to conflicted matters, they have long determined that forfeiture and
23 disgorgement of attorneys' fees is appropriate. In *Sheppard Mullin Richter & Hampton LLP v. J-M*
24

25
26 ¹ This Court stated, "This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the
27 Court to make such disposition effective as an Order or Judgment." Seemingly, this Court intended to have the attorney fee
28 award reduced to judgment in its October 7, 2016 minute order. See Exhibit 1, page 3.

1 *Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253 (Cal. App. 4th 2016), a California appellate court relied on
2 California's long-standing precedent to require a conflicted law firm to disgorge and forfeit millions of
3 dollars in legal fees based on the firm's failure to disclose an actual conflict of interest.

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

14 South Tahoe brought a successful motion to disqualify the Sheppard Mullin firm in the Qui Tam
15 action. *Id.* After Sheppard Mullin was disqualified, J-M refused to pay approximately \$1.3 million in
16 outstanding legal fees. *Id.* Sheppard Mullin sued J-M to recover those outstanding fees and compel
17 arbitration where the arbitration panel awarded the firm a majority of its attorneys' fees. *Id.* at 261. The
18 arbitration panel found that "Sheppard Mullin's conduct was not so serious or egregious as to make
19 disgorgement of fees appropriate" where the representation of the adverse client "was unrelated to the
20 subject of the J-M representation, and therefore the conflict did not pervade the whole relationship with
21 J-M ..." *Id.* A California trial court affirmed the arbitration award, but J-M appealed, arguing that the
22 violation of CRPC 3-310 on conflicts of interest rendered the engagement contract illegal or void as a
23 matter of public policy. *Id.* at 261.

1 Turning to the merits, the court held that Sheppard Mullin “[was] not entitled to its fees for the
2 work it did for J-M while there was an actual conflict with [its other client].” *Id.* at 274. In reaching this
3 conclusion, the court relied primarily on two California appeals court cases from the 1970’s. *See, Id.* at
4 272 (analyzing *Goldstein v. Lees*, 120 Cal.Rptr. 253 (Cal. App. 1975) and *Jeffry v. Pounds*, 136
5 Cal.Rptr.373 (Cal. App. 1977)). The *Goldstein* court found an engagement contract “void for reasons of
6 public policy” where counsel represented a minority shareholder and director in a proxy fight to gain
7 control of a company for which the attorney had served as in-house counsel several years prior to the
8 proxy fight. 120 Cal.Rptr. at 254-255. Central to the decision was the fact that the attorney possessed
9 “corporate secrets that [were] material to the proxy fight.” *Id.* at 255. In *Jeffry*, a small law firm’s lead
10 partner represented both a husband in a personal injury action and his wife in her divorce proceeding
11 against the husband. 67 Cal.App 3d at 374-375. There, the court denied any fees for work performed
12 after the conflict arose even though the representations involved “unrelated matters” and the law firm
13 did not have a “dishonest purpose” or engage in “deliberately unethical conduct.” *Id.* at 377.

14
15
16 Besides arguing for all its fees, Sheppard Mullin also argued that despite its violation of CRPC
17 3-310, quantum meruit should be allowed for its representation of J-M in the Qui Tam action. *Id.* at
18 274. However, the court pointed out that the California Supreme Court had found that quantum meruit
19 recovery must be denied in cases of ethical violations. *Id.* (citing *Huskinson & Brown v. Wolf*, 32 Cal.4th
20 453, 9 Cal. Rptr.3d 693, 84 P.3d 379 (2004).) The *Sheppard Mullin* court further found that “when a
21 conflict of interest is asserted as a “[d]efense in the attorney’s action to recover fees or the reasonable
22 value of services[, a] violation of the fiduciary obligation will defeat recovery.” *Id.* at 272. (citing 1
23 Witkin, Cal. Proc. 5th (2008) Attys, 104, p. 142.) The *Sheppard Mullin* court found that “Sheppard
24 Mullin’s violation of Rule 3-310 preclude[d] if from receiving compensation [whatsoever] for services
25 provided to J-M in the Qui Tam Action.” *Id.* Likewise, LBBS’ violation of its fiduciary duty to
26 X’Zavion created by its failure to provide notice of its employment of Mr. Shpirt must preclude it from
27
28

1 looking to X'Zavion for any compensation for services provided defending Mydatt and Warner against
2 X'Zavion.

3 The *Sheppard Mullin* court was swayed by the *Fair* decision, in which the court found
4 disgorgement of attorney fees appropriate regardless of any proof of damages when a conflict of interest
5 is involved, *See, Fair*, 125 Cal.Rptr.3d at 779. Besides precluding a conflicted firm from seeking
6 recovery from the aggrieved client, the *Sheppard Mullin* decision arguably sets precedent for the
7 automatic disgorgement of all attorneys' fees incurred while a conflict of interest violation exists.
8

9 If anything, the facts relating to X'Zavion and LBBS are more egregious than those relating to
10 *Sheppard Mullin*. While the work Sheppard Mullin performed for South Tahoe was completely
11 unrelated and quite minor, the work performed by LBBS defending Mydatt and Warner was directly
12 related to X'Zavion and so adverse that LBBS filed a motion to dismiss X'Zavion's complaint.
13

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

19 From the inception of LBBS' representation of Mydatt and Warner, it had a direct conflict of
20 interest with X'Zavion pursuant to NRPC 1.9 and 1.10. No exception under the State Bar of Nevada's
21 Formal Opinion from the Standing Committee on Ethics, No. 39 applied to LBBS' employment of Mr.
22 Shpirt because LBBS never provided notice to X'Zavion that Mr. Shpirt was employed with LBBS.
23 X'Zavion never had the opportunity to consent or withhold his consent for LBBS to represent
24 Defendants Mydatt and Warner in this matter.
25

26 At the time LBBS filed the motion to dismiss against X'Zavion on behalf of Mydatt and Warner,
27 the firm was actively violating its duty of loyalty to X'Zavion. Such action is against public policy.
28

1 LBBS seeking to recover attorneys' fees from X'Zavion for the very work it performed while it was
2 acting contrary to his interests is also against public policy.

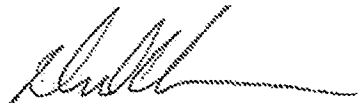
3 Plaintiff submits that both public policy and fundamental fairness require this Court to stay the
4 October 17, 2016 order pending adjudication from the Nevada Supreme Court. Clearly, the legal
5 standard is total disgorgement of funds for work performed while ethically conflicted. Total
6 disgorgement means total disgorgement. The law does not recognize an exception for a "sanction."
7 Lewis Brisbois is required to totally disgorge all funds for its unethical behavior. Any other result
8 would encourage such behavior by unscrupulous attorneys in the future.

9
10 **IV. CONCLUSION**

11 Based upon the foregoing, Plaintiff respectfully requests that Defendants MYDATT SERVICES,
12 INC. d/b/a and MARK WARNER's motion to strike complaint and dismiss be denied. Plaintiff requests
13 the award of attorney fees against him be reduced to judgment and bearing interest against him pending
14 resolution from the Nevada Supreme Court. In the event Plaintiff prevails in his negligence claims
15 against Defendants, Defendants would be entitled to an offset.

16 DATED this 9th day of December, 2016.

17 INJURY LAWYERS OF NEVADA

18 

19 DAVID J. CHURCHILL (SBN: 7038)
20 JOLENE J. MANKE (SBN: 7436)
21 6900 Westcliff Drive, Suite 707
22 Las Vegas, NV 89145
23 *Attorneys for Plaintiff*
24
25
26
27
28

CERTIFICATE OF E-SERVICE

Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4), I hereby certify that on the 9th day of December, 2016, I served the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS MYDATT SERVICES, INC. D/B/A VALOR SECURITY SERVICES AND MARK WARNER'S MOTION TO STRIKE PLAINTIFF'S COMPLAINT AND DISMISSAL AND COUNTER MOTION TO STAY ORDER PENDING WRIT BEFORE NEVADA SUPREME COURT** on the following parties via Electronic Service as follows:

DAVID S. LEE (SBN: 6033)
CHARLENE N. RENWICK (SBN: 10165)
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SECURITY SERVICES and MARK WARNER



an employee of Injury Lawyers of Nevada

EXHIBIT “1”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability	COURT MINUTES	October 07, 2016
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A-15-717577-C	X'Zavion Hawkins, Plaintiff(s) vs. GGP Meadows Mall, LLC, Defendant(s)
---------------	--

October 07, 2016	3:00 AM	Defendants' Motion for Attorney Fees and Costs
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HEARD BY: Kishner, Joanna S.	COURTROOM: Chambers
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COURT CLERK: Sandra Harrell

RECORDER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANTS' MOTION FOR ATTORNEYS FEES AND COSTS

This matter came on for hearing on Defendants' Motion for Attorney's Fees and Costs, which was filed on August 19, 2016, and set for hearing on Department XXXI's motion calendar for September 20, 2016. At the hearing, David J. Churchill appeared on behalf of Plaintiff; Edgar Carranza appeared on behalf of Mark Warner and Mydatt Services; and Charlene Renwick appeared on behalf of GGP Meadows Mall, Mydatt Services, and Mark Warner.

At the hearing, during oral argument, Plaintiff stated that he had discovered a new case which, although was not set forth in the pleadings, impacted the Court's ruling and he accordingly asked that he be allowed to supplement his Opposition. In order to allow both parties to brief and address the case referenced by Plaintiff's counsel, the Court allowed each party to provide a supplemental brief and issued a briefing schedule consistent with the parties' request. As the parties jointly requested that the Court issue its decision from Chambers, taking into account the pleadings, oral argument, and the supplemental briefs, the Defendants' Motion for Fees and Costs was continued to Department XXXI's Chamber's Calendar for decision on October 7, 2016.

After a full review of the record including the pleadings, supplemental briefs, and oral argument of the parties and consistent with the ruling of the Court after an extensive evidentiary hearing on Defendants' Motion to Dismiss which was the underlying Motion that precipitated the fee request, the Court finds as follows:

Pursuant to the Notice of Entry of Order and the attached Order dated October 5, 2016, the Court found that Defendants were entitled to an award of attorney fees and costs due to the actions of Plaintiff. The amount of that sanction award was deferred to allow the parties to provide their written and oral arguments as to what amount of fees and costs should be awarded consistent with applicable law. Defendants' Motion for Attorney Fees and Costs sought a total of \$54,325.00 in fees and \$208.00 in costs, which took into account time and costs expended by three law firms involved in the underlying Motion and Evidentiary Hearing. In their Supplemental Brief, Defendants seek an additional \$3,000.00 for the time spent at the hearing and for preparation of the supplemental pleadings. Defendants contend that all the fees and costs sought were reasonable in light of the facts and procedural process in the case.

In their Opposition and Supplemental brief, Plaintiff contended that the time spent by the law firm of Lewis, Brisbois, Bisgaard & Smith ("Lewis Brisbois") should not be considered as Plaintiff's Motion to Disqualify the firm had been granted between the time the Motion to Dismiss was first filed and the Evidentiary Hearing on the Motion to Dismiss was concluded. Plaintiff also contended that the amounts sought by the other two firms, Lee, Hernandez, Landrum & Garfalo ("Lee Hernandez") and Backus, Carranza, & Burden ("Backus Carranza") were excessive.

In the present case, the Court has to look at what is the proper amount of fees and costs to be awarded as a sanction against Plaintiff due to his conduct consistent with the Court's prior ruling. In looking at the proper amount of fees and costs to award as sanctions, the Court takes into account many factors including whether the applicable case law allows or precludes any of the fees from being sought as a sanction, as well as the reasonableness and necessity of the fees.

First, the Court determined whether there was any authority that allowed or precluded the sanction award. As the Court had already made a ruling after a full consideration of the record including conducting an Evidentiary Hearing, the Court finds that there is the appropriate basis to award sanctions in the form of fees and costs against Plaintiff for his conduct. Although Plaintiff contends that inter alia, Sheppard Mullin Richter & Hampton LLP v. J.M. Mfg. Co Inc., 198 Cal. Rptr. 3d 253 (Cal. App 4th) (2016), precludes the Court from awarding any fees to Lewis Brisbois, the Court adopts the arguments set forth in Defendants' Supplemental Brief and rejects Plaintiff's contention.

As there is a proper basis to award as a sanction, the fees and costs reasonably incurred by all three firms, the next step the Court must consider is what is the proper and reasonable amount of fees and costs that were necessarily incurred which could properly be an appropriate sanction amount consistent with the Court's prior Order after the Evidentiary Hearing. In determining that amount,

the Court looks inter alia to NRCP 37, the Court's inherent powers; *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 350, 455 P.2d 31 (1969); as well as the other basis set forth in the record. After a full review of the record, and the applicable Rules and case law, the Court finds that Defendants' Motion for Attorneys' Fees and Costs is GRANTED in part and DENIED in part. (1)

(1) Plaintiff had included in his underlying Opposition to the Motion for Attorney Fees and Costs, a Counter-Motion for Attorney Fees and Costs which was DENIED at the Hearing; and thus, need not be addressed in this Minute Order.

The Court finds inter alia that the rates charged by each of the counsel, their skills and expertise, as well as the result obtained, all merit granting their fee request consistent with the Court's prior Order. The Court finds, however, given the number of lawyers and law firms involved in the Motion and Hearing at issue, it was appropriate to reduce the fee amount of each of the respective firms to be consistent with the nature and scope of the record and applicable law. Accordingly, the Motion is GRANTED as to Lewis Brisbois' fees in the amount of \$19,846.00; Lee Hernandez's fees in the amount of \$11,629.50; and Backus Carranza's fees in the amount of \$10,159.50, for a total fee sanction in the amount of \$41,635.00. The Court DENIES the remaining request for fees, both contained in the Original Motion and the Supplement, without prejudice, as the analysis for fees and costs is looked at from a sanction's standpoint. This ruling does not set forth any opinion as to whether the fees may be allowed pursuant to some other standard as that is not before the Court.

The Court also found that one of the mileage cost entries, in the amount of \$11.34, was not properly supported as being related to the underlying Motion. The rest of the costs were properly supported for purposes of the instant ruling. Thus, the Cost portion of the sanction award is \$196.66.

Accordingly, IT IS ORDERED that Defendants are awarded Sanctions in the amount of \$41,831.66 against Plaintiff. Said payment of sanctions shall be paid within 30 days of the Notice of Entry of the Order memorializing this disposition.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

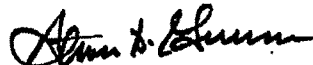
Counsel for one of the Defendants is to prepare the Order and submit it to Chambers for consideration within ten (10) days in accordance with EDCR 7.21, after circulating the Order to all parties to sign as to form and content.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Edgar Carranza, Esq., Charlene Renwick, Esq. and David Churchill, Esq. \sjh 10-7-16

EXHIBIT “2”

ORDER

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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



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

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

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.

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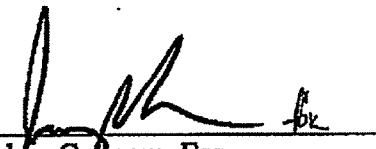
1 IT IS FURTHER ORDERED, DECREED AND ADJUDGED that Plaintiff shall make the
2 above payment to Defendants within 30 days of the Notice of Entry of this Order by the Court.
3

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

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

EXHIBIT “3”

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 FOR EXTRAORDINARY WRIT RELIEF

DAVID J. CHURCHILL, Nev. Bar No. 7301
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1 **NRAP 21(a)(1) ROUTING STATEMENT**

2 Pursuant to Nevada Rule of Appellate Procedure 17, this Petition for
3 Extraordinary Writ Relief should be retained by the Nevada Supreme Court. Initially,
4 this matter invokes the original jurisdiction of the Nevada Supreme Court. *See* NRAP
5 17(a)(1); *see also* NRS 34.160. Second, this matter raises, as a principal issue, a question
6 of first impression involving Nevada Rules of Professional Conduct—specifically,
7 whether the Nevada Rules of Professional Conduct prohibit a conflicted law firm from
8 seeking attorneys’ fees and costs from an aggrieved client. *See* NRAP 17(a)(13). Third,
9 this matter raises, as a principal issue, a question of statewide public importance. *See*
10 NRAP 17(a)(14); *see also City of Oceanside v. Superior Court*, 96 Cal. Rptr. 2d
11 621, 630 (2000) (holding application of independent acts exception to joint public safety
12 operations would contravene “public policy consideration[s].”). Finally, this matter does
13 not involve a discovery order or an order resolving a motion in limine. *See* NRAP
14 17(b)(8).

15 Accordingly, Petitioner respectfully requests that the Nevada Supreme Court
16 retain, hear, and decide this matter.

1 X'Zavion Hawkins ("Petitioner") petitions this Court to issue an extraordinary writ
2 of mandamus vacating the Order granting Defendants in the underlying matter's motion
3 for attorneys' fees and costs relating to their motion to dismiss Petitioner's complaint
4 which was both denied and granted.

5 Alternatively, Petitioner petitions this Court to issue an extraordinary writ of
6 mandamus vacating the Order both denying and granting Defendants' motion to dismiss
7 Petitioner's complaint which was drafted by the conflicted law firm of Lewis Brisbois
8 Bisgaard & Smith ("LBBS") against the aggrieved client, Petitioner.

9 This Court's intervention at this time is both necessary and appropriate because:

- 10 • The directly adverse work LBBS performed against Petitioner violates
11 public policy holding the attorney-client privilege inviolate in all but a small
12 number of instances.
- 13 • The public interest in the administration of justice will be significantly
14 impacted as LBBS is seeking \$19,846.00 of the ordered \$41,635.00 in
15 attorneys' fees for a discovery motion seeking to have Petitioner's case
16 dismissed.
- 17 • As the ultimate injury to Petitioner, the substituted law firm of Backus
18 Carranza & Burden ("BCB") filed a motion to strike and dismiss Petitioner's
19 complaint on November 18, 2016, all arising from the work performed by
20 LBBS before its disqualification.
- 21 • The intent of the statutes at issue (NRPC 1.9 and 1.10) are: 1) to prevent
22 disclosure of confidential information that could be used to a former client's
23 disadvantage; and 2) the scrupulous administration of justice.

24 ///

25 ///

26 ///

- 1 • LBBS' violations of NRPC 1.9 and 1.10 should bar any recovery of
2 attorneys fees and costs against Petitioner. However, the District Court
3 determined Petitioner would not be harmed by the conflicted law firm
4 seeking such recovery. The District Court's determination was erroneous as
5 a matter of law.
- 6 • Even though Petitioner produced an errata to his deposition testimony
7 clarifying his memory problems surrounding people involved in the shooting
8 without being compelled to do so, the District Court intends to craft a jury
9 instruction commenting on Petitioner's failure to identify these witnesses
10 pursuant to NRCP 16.1, which could potentially invade the jury's
11 province to determine credibility.
- 12 • This Court has examined NRPC 1.9 and 1.10 in various contexts, but it has
13 never addressed the precise questions presented here – whether the
14 conflicted law firm may seek to recover attorneys fees and costs from the
15 aggrieved client, and whether the work performed by the conflicted law firm
16 should be allowed to stand, potentially to the ultimate harm of dismissal of
17 the aggrieved client's action.
- 18 • Under California's counterpart to NRPC 1.9 and 1.10 (Cal. RPC 3-310), the
19 specific issues presented here have been addressed by the California
20 Supreme Court and the Courts of Appeal, all of whom have squarely held
21 that not only is it improper for a conflicted law firm to seek to benefit from
22 the conflict, but that such a conflict necessitates "disgorgement" of
23 attorneys' fees.
- 24 • The District Court nevertheless determined that Petitioner should pay LBBS
25 for the directly adverse work it performed against Petitioner, which may
26 lead to complete dismissal of his cause of action against Defendants.

This decision is plainly wrong—as a matter of law and public policy—and this Court’s intervention is necessary.

DATED this 21st day of November, 2016.

INJURY LAWYERS OF NEVADA

/S/JOLENE J. MANKE

By:

DAVID J. CHURCHILL

JOLENE J. MANKE

Attorneys for Petitioner

1 **I. INTRODUCTION**

2 The facts pertinent to this matter are not disputed. While attending the Nike Air
3 Jordan Green Glow Shoe Launch taking place at Meadows Mall during the early morning
4 hours of August 17, 2013, Petitioner was shot multiple times by another patron.¹ The
5 shooter was with a group of other patrons.² As a result of the shooting, Petitioner is
6 paralyzed from the waist down.³

7 Before litigation commenced, Petitioner was represented by Jason W. Barrus, Esq.
8 and Lloyd W. Baker, Esq. of Baker Law Firm.s.⁴ On December 18, 2014, Petitioner, his
9 mother and Messrs. Barrus and Baker met with Paul A. Shpirt, Esq. and Tracy A. Eglet,
10 Esq. of Eglet Law Group n/k/a Eglet Prince to discuss referring Petitioner's matter to
11 Eglet Law Group for litigation.⁵ Eglet Law Group decided to accept the referral.⁶
12 Accordingly, during the meeting on December 18, 2014, Mr. Shpirt signed the retainer
13 agreement with Petitioner.⁷ He also signed the attorney fee sharing agreement between
14 Eglet Law Group, Baker Law Firm and Petitioner.s.⁸ Mr. Barrus provided a thumb drive
15 containing materials relating to Petitioner's matter to Eglet Law Group.⁹

16 On March 16, 2015, Mr. Shpirt telephoned Mr. Barrus to advise him that Eglet
17 Law Group would not be able to continue representing Petitioner.¹⁰ That same day, Mr.
18 Shpirt sent an e-mail to Messrs. Baker and Barrus memorializing his conversation with
19

20 ¹ See e.g., Petitioner's Appendix ("PA") Vol. 1, Ex. 1, at 3.
21 Hereinafter, citations to Petitioner's Appendix will immediately be preceded by the
22 volume number, followed by an Exhibit number, followed by a pincite to the Appendix
23 pagination (e.g., "2PA, Ex. 14, at 198").

24 ² *Id.* at 3.

25 ³ *Id.* at 7. (*See also*, 4PA, Ex. 25, at 824.)

26 ⁴ 4PA, Ex. 25, at 824.

27 ⁵ *Id.*

28 ⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 Mr. Barrus that Eglet Law Group would not be able to continue representing Petitioner
2 because of “some of the problems we see with liability in this case” and because “the
3 police report creates a lot of issues for us.”¹¹

4 Baker Law Firm then referred Petitioner’s matter to Injury Lawyers of Nevada.¹²
5 On April 27, 2015, Injury Lawyers of Nevada filed Petitioner’s complaint alleging claims
6 for negligence, respondeat superior and gross negligence against Meadows Mall, Mydatt
7 Services, Inc. d/b/a Valor Security Services (“Mydatt”) and Mark Warner (“Warner”).¹³

8 Sometime in July of 2015, Mr. Shpirt left Eglet Law Group and returned to LBBS
9 where he had practiced previously.¹⁴ In October of 2015, Josh Cole Aicklen, Esq., a
10 partner with LBBS, was retained to monitor the defense of Mydatt and Warner being
11 provided by Lee, Hernandez, Landrum & Garofalo.¹⁵ Also in October of 2015, Messrs.
12 Aicklen and Shpirt realized Mr. Shpirt had represented Petitioner while practicing with
13 Eglet Law Group.¹⁶ LBBS took efforts to screen off Mr. Shpirt from Petitioner’s
14 matter.¹⁷ However, LBBS did not send notice to Petitioner that Mr. Shpirt was practicing
15 with LBBS.¹⁸ On November 16, 2015, LBBS filed a notice of association of counsel for
16 Mydatt and Warner.¹⁹

17 Thereafter, LBBS filed a motion to dismiss Petitioner’s complaint based on an
18 allegation of unclean hands relating to information obtained from Det. William Majors,
19 the Metro detective who oversaw the investigation of Petitioner being shot at Meadows
20

21 10 *Id.*

22 11 *Id.*

23 12 *Id.*

24 13 *Id.* (See also 1PA, Ex. 1, at 1.)

25 14 4PA, Ex. 25 at 824. (See also 3PA, Ex. 19, at 550-551; 580-581.)

26 15 *Id.*

27 16 *Id.*

28 17 *Id.*

18 *Id.*

19 *Id.*

1 Mall.²⁰ The discovery motion was based on Petitioner's deposition testimony that he did
2 not recall information relating to the shooters.²¹ Defendants cited NRCp 37 as the basis
3 for their motion. Without any motion practice compelling him to do so, Petitioner
4 produced an errata clarifying his deposition testimony on March 31, 2016.²² At the
5 hearing on the motion to dismiss on May 3, 2016, the Court determined an evidentiary
6 hearing was required.²³

7 During the evidentiary hearing on May 3, 2016, Mr. Aicklen argued against
8 Petitioner as follows:

9 ... We find this out and I take his deposition and based upon his written
10 discovery responses, I think he's going to lie to me. And, based on 26 years
11 of practicing law, I think he's going to lie in his depo, but I had no idea how
12 much he was going to lie. Other than his name, I don't believe the man
13 spoke the truth throughout the entire time of his reported deposition.²⁴

12 ... I don't talk about my work. My wife this morning said: What are you
13 doing today? You've got your suit on. I said: I'm going down to get justice.
14 I'm going down to get a case dismissed of a perjurer, a liar, a man who
15 crafted his lies to try and get money under oath.²⁵

15 Mr. Aicklen was very passionate against Petitioner and did not accurately reflect
16 the entirety of the facts on at least one occasion during the hearing as follows:

17 And I apologize. That is a mistake. He did not identify anybody in the first
18 one. In the second one, he did, and I apologize. I was wrong. First one, he
19 did not. Second one, he did.²⁶

19 On May 11, 2016, Petitioner brought a motion to disqualify LBBS on order
20 shortening time based upon Mr. Shpirt's prior representation of Petitioner at Eglet Law
21 Group, the imputed conflict to LBBS and LBBS' failure to provide notice to Petitioner
22 that Mr. Shpirt was practicing at LBBS after LBBS began representing Mydatt and

23
24 ²⁰ *Id.* at 825.

25 ²¹ *See generally*, 1PA, Ex. 11.

26 ²² 2PA, Ex. 14, at 335-338.

27 ²³ 4PA, Ex. 25, at 825; 5PA, Ex. 37, at 1018-1029.

28 ²⁴ 5PA, Ex. 37, at 994.

²⁵ *Id.*

1 Warner.²⁷ During an evidentiary hearing on June 8, 2016, the Court determined there
2 was a conflict of interest pursuant to NRPC 1.9 because: 1) Mr. Shpirt as an attorney with
3 Eglet Law Group was viewed to have represented Petitioner; 2) Petitioner's matter with
4 Eglet Law Group was the same matter currently pending before the Court; Mr. Shpirt was
5 currently practicing with LBBS which firm was then representing Mydatt and Warner
6 whose interests are directly adverse to Petitioner in this matter.²⁸ Petitioner specifically
7 did not expressly consent to waive any potential conflict.²⁹ The Court also determined
8 that Mr. Shpirt's conflict was imputed to LBBS because "importantly, no evidence was
9 presented demonstrating compliance with the requirement that written notice be promptly
10 given to the former client."³⁰

11 Even though LBBS was determined to be a conflicted law firm, the adverse work
12 performed by LBBS was permitted to stand. At a subsequent evidentiary hearing the
13 Court denied Defendants' motion to dismiss Petitioner's complaint.³¹ However, the
14 Court indicated an intent to craft a jury instruction regarding Petitioner's failure to
15 identify the shooters pursuant to NRCP 16.1.³² The Court also indicated a motion for
16 attorneys' fees and costs by Defendants would be entertained.³³ Subsequently, the Court
17 granted Defendants' motion for attorneys' fees and costs against Petitioner for the motion
18 to dismiss, including an award of \$19,846.00 to the conflicted law firm of LBBS.³⁴

19 Because the District Court's granting of Defendants' motion for attorneys fees and
20 costs is erroneous as a matter of law, this Court should issue a writ of mandamus vacating
21

22 ²⁶ *Id.* at 1017.

23 ²⁷ 4PA, Ex. 25, at 825.

24 ²⁸ *Id.* at 826.

25 ²⁹ *Id.* at 827.

26 ³⁰ 4PA, Ex. 25, at 826.

27 ³¹ *See generally*, 4PA, Ex. 24. (*See also generally*, 6PA, Ex. 39.)

28 ³² 4PA, Ex. 24, at 820-821.

29 ³³ 4PA, Ex. 25, at 820.

30 ³⁴ 4PA, Ex. 34, at 950.

1 the District Court's order and instructing the District Court to deny the motion with
2 prejudice. Alternatively, the District Court's granting and denying of Defendants'
3 motion to dismiss Petitioner's complaint is erroneous as a matter of law, and this Court
4 should issue a writ of mandamus vacating the District Court's order and instructing the
5 District Court to deny the motion with prejudice.

6 **II. STATEMENT OF FACTS**

7 **A. The Parties.**

8 **1. Petitioner.**

9 Mr. X'Zavion Hawkins ("X'Zavion") is an individual who at all relevant times,
10 including the date of the incident on August 17, 2013, did and does now reside in Clark
11 County, Nevada. (1PA, Ex 1, at 2.)

12 **2. Defendants.**

13 GGP Meadows Mall, LLC is a Delaware Limited Liability Company ("GGP") that
14 operates the Meadows Mall located at 4300 Meadows Lane in Clark County, Nevada.
15 On August 17, 2013, stores located within Meadows Mall were participating in the Nike
16 Air Jordan Green Glow shoe launch. (*Id.* at 2; 4.)

17 Mydatt Security Services d/b/a Valor Security, Inc. ("Mydatt") is an Ohio
18 corporation that was providing security services for Meadows Mall on August 17, 2013.
19 (*Id.* at 2-3.)

20 On August 17, 2013, Mr. Mark Warner was employed by Mydatt as the head of
21 security for Meadows Mall. (*Id.* at 3.)

22 **III. PROCEDURAL HISTORY**

23 **A. Petitioner Files His Complaint Against Defendants.**

24 On April 27, 2015, Petitioner brought claims against the Real Parties in Interest
25 (GGP, Mydatt and Warner) for negligence, respondeat superior and gross negligence
26 relating to their handling of the shoe launch. (*See generally* 1PA, Ex. 1, at 1-10.)

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1 performed against X'Zavion went forward at an evidentiary hearing on Defendants'
2 motion to dismiss X'Zavion's complaint on July 21, 2016. (See generally, 4PA, Ex. 25;
3 5PA, Ex. 38; 5PA Ex. 39.)

4 Although the Court denied Defendants' motion to dismiss X'Zavion's complaint, it
5 indicated an intent to craft a jury instruction regarding Petitioner's failure to identify the
6 shooters pursuant to NRCP 16.1. (4PA, Ex. 24, at 820-821.)³⁵ The Court also indicated
7 a motion for attorneys' fees and costs by Defendants would be entertained. (Id. at 820.)

8 **E. Defendants' Move for Attorneys' Fees and Costs Against Petitioner on Behalf**
9 **of All Law Firms, Including Lewis Brisbois Bisgaard & Smith; the District**
10 **Court Grants the Motion as to all Defense Law Firms. Now, Defendants are**
11 **Moving to Dismiss Petitioner's Complaint Based on the Order Granting**
12 **Attorneys' Fees and Costs.**

13 The Court granted Defendants' motion for attorneys' fees and costs against Petitioner
14 for the motion to dismiss, including an award of \$19,846.00 to the conflicted law firm of
15 LBBS. (4PA, Ex. 34 at 950.) Now, based upon the Court's granting of attorneys' fees
16 and costs against X'Zavion, Defendants are moving to strike X'Zavion's complaint. (See
17 generally, 4PA, Ex. 36.)

26 ³⁵

1 **IV. ISSUES PRESENTED**

2 Did the District Court improperly allow work performed by a conflicted law firm
3 to stand against the aggrieved client when it undermines Petitioner's case to the point of
4 possible dismissal, and dismissal is now being requested by the substituted law firm
5 based upon work performed by the conflicted law firm?

6 Did the District Court improperly make an award of attorney fees and costs against
7 Petitioner and in favor of a conflicted law firm working completely against Petitioner?

8 Did the District Court improperly decide to craft a jury instruction as a sanction for
9 an alleged discovery abuse when Petitioner had already produced an errata sheet
10 correcting his deposition testimony before any motion was filed?

11 **V. RELIEF REQUESTED**

12 Petitioners seek a writ of mandamus vacating the District Court's order and
13 compelling the District Court to enter an order denying Defendants' motion for attorney
14 fees and costs against Petitioner because of the work performed by the conflicted law
15 firm of LBBS, especially when Defendants are now seeking the ultimate sanction of
16 dismissal of Petitioner's complaint based upon work performed by the conflicted law
17 firm. The District Court denied Respondent's underlying motion to dismiss Petitioner's
18 complaint, public policy must prohibit a conflicted law firm from working completely
19 against the aggrieved client to the benefit of another client and from monetarily profiting
20 from the conflict, and a jury instruction potentially touching on Petitioner's credibility
21 must not be allowed when such a determination is soundly within the province of the trier
22 of fact.

23 **VI. TIMING OF PETITION**

24 Extraordinary writ relief must be timely sought. *Moseley v. Eighth Jud. Dist. Ct.*,
25 124 Nev. 654, 659 n.6, 188 P.3d 1136, 1140 n.6 (2008) (concluding that the equitable
26 doctrine of laches did not preclude writ relief where the petition was filed approximately

1 four months after entry of the underlying order); *State v. Eighth Jud. Dist. Ct.*, 118 Nev.
2 140, 148, 42 P.3d 233, 238 (2002) (finding writ petition filed four months after the
3 district court denied a motion to dismiss did “not present inexcusable delay.”).

4 Here, the District Court’s Order denying the Motion for Summary Judgment was
5 entered on January 5, 2016. (Order.) Notice of entry of the Order was filed on January 6,
6 2016. (Notice of Entry of Order.) MedicWest filed this Petition in a timely manner—
7 approximately one month following the entry of the Order. *See Moseley*, 124 Nev. at 659
8 n.6, 188 P.3d at 1140 n.6; *State*, 118 Nev. at 148, 42 P.3d at 238.

9 VII. EXTRAORDINARY RELIEF IS APPROPRIATE

10 A writ of mandamus is available to compel the performance of an act which the
11 law requires as a duty resulting from an office, trust or station, or to control a manifest
12 abuse or an arbitrary or capricious exercise of discretion. This Court has original
13 jurisdiction to issue writs of mandamus. Nev. Const. Art. 6 § 4; *see also* NRS 34.160
14 (“The writ [of mandamus] may be issued by the Supreme Court . . .”). A writ of
15 mandamus is “available to compel the performance of an act that the law requires or to
16 control an arbitrary or capricious exercise of discretion.” *Nevada Yellow Cab Corp. v.*
17 *Dist. Ct.*, 123Nev. 44, 49, 152 P.3d 737, 740 (2007). Petitioner has the burden of
18 demonstrating why extraordinary writ relief is warranted. *Pan v. Dist. Ct.*, 120 Nev. 222,
19 228, 88 P.3d 840, 844 (2004). This Court has broad discretion to decide whether to
20 consider a petition for a writ of mandamus. *See Leibowitz v. Dist. Ct.*, 119 Nev. 523, 529,
21 78 P.3d 515, 519 (2003) (citing NRS 34.170). In exercising its discretion, “this [C]ourt
22 may entertain mandamus petitions when judicial economy and sound judicial
23 administration militate in favor of writ review.” *Scarbo v. Dist. Ct.*, 125 Nev. 118, 121,
24 206 P.3d 975, 977 (2009).

25 A writ of mandamus should issue here because the District Court committed an
26 arbitrary and capricious exercise of discretion when it both granted and denied the motion

1 to dismiss the complaint based on work performed by the conflicted law firm and
2 subsequently entered an order granting attorneys' fees and costs to the conflicted law
3 firm. *See Int'l Game Tech., Inc. v. Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088, 1096
4 (2006) ("A writ of mandamus . . . is appropriate when the district court manifestly abuses
5 its discretion."). The relief is warranted in the name of judicial economy and sound
6 judicial administration, because Petitioner's case is in jeopardy of dismissal based on
7 work performed by the conflicted law firm and Petitioner could alternatively be forced to
8 litigate the remainder of this case before he could appeal the District Court's orders. *See,*
9 *Walters*, 127 Nev. at ___, 263 P.3d at 234.

10 Additionally, a writ is also appropriate because this matter involves an important
11 matter of public policy in which the Court could provide further guidance and
12 clarification. *See Walters*, 127 Nev. at ___, 263 P.3d at 234. Specifically, entertaining the
13 writ will provide the Court with an opportunity to clarify whether it is appropriate for a
14 conflicted law firm to seek attorneys' fees and costs from the aggrieved client and
15 whether the work performed by the conflicted law firm should stand. *See Goldstein v.*
16 *Lees*, 120 Cal.Rptr. 253 (Cal. App. 1975)(holding conflicted attorney must be denied
17 attorney's fees when the attorney possessed corporate secrets that were material); *Jeffry*
18 *v. Pounds*, 136 Cal.Rptr. 373 (Cal. App. 1977)(holding that **attorney must be denied**
19 **any fees for work performed after a conflict arose even though the representations**
20 **involved unrelated matters**)[Emphasis Added.]; *Sheppard Mullin Richter & Hampton*
21 *LLP v. J-M Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253 (Cal. App. 4th 2016)(holding that
22 applying Cal. RPC 3-310 prohibiting attorney-client conflicts without written consent
23 **requires disgorgement of attorneys' fees** by conflicted law firm consistent with the
24 purpose of the statute even when the conflict relates to completely different
25 matters)[Emphasis Added].

26 ///

1 **VIII. A WRIT SHOULD ISSUE**

2 **A. Standard of Review.**

3 Questions of law, such as those at issue in this petition, are reviewed de novo.
4 *Marquis & Aurbach v. Eighth Jud. Dist. Ct.*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136
5 (2006); *Borger v. Eighth Jud. Dist. Ct.*, 120 Nev. 1021, 1026, 102 P.3d 600, 604 (2004).

6 **B. The District Court Erred as a Matter of Law By Awarding**
7 **Attorneys Fees to the Conflicted Law Firm of Lewis Brisbois**
8 **Bisgaard & Smith**

9 1. The Rules Prohibiting Attorney-Client Conflicts are Well Established.

10 At the evidentiary hearing on June 8, 2016, the District Court determined that
11 LBBS violated NRPC 1.9 and 1.10 relating to its defense of Mydatt and Warner against
12 Petitioner. (*See generally*, 4PA, Ex. 25 and 5PA, Ex. 38.) NRPC 1.9 provides as
13 follows:

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

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

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

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

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

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

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

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

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

8
9 Further, NRPC 1.10 provides as follows:

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

11 (a) While lawyers are associated in a firm, none of them shall
12 knowingly represent a client when any one of them practicing alone would
13 be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition
14 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.

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

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

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

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

22 (d) Reserved.

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

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

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

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

6 2. Public Policy Cannot Condone Conflicted Attorneys Benefitting a
7 Directly Adverse Client to the Detriment of an Aggrieved Client

8 Messrs. Aicklen and Shpirt conceded that Mr. Shpirt had a conflict relating to
9 X'Zavion. (3PA, Ex. 19, at 550-551, 580-583; 4PA, Ex. 25, at 826.) The Court
10 determined that the conflict was imputed to LBBS because of the failure to provide
11 X'Zavion notice of the conflict. (*Id.*) From the inception of LBBS' representation of
12 Mydatt and Warner, it had a direct conflict of interest with X'Zavion pursuant to NRPC
13 1.9 and 1.10. No exception under the State Bar of Nevada's Formal Opinion from the
14 Standing Committee on Ethics, No. 39 applied to LBBS' employment of Mr. Shpirt
15 because LBBS never provided notice to X'Zavion that Mr. Shpirt was employed with
16 LBBS. X'Zavion never had the opportunity to consent or withhold his consent for LBBS
17 to represent Defendants Mydatt and Warner in this matter.

18 Every jurisdiction has rules prohibiting attorney-client conflicts, and California
19 RPC 3.310 comports with NRPC 1.9 and 1.10, providing as follows:

20 **Rule 3-310 Avoiding the Representation of Adverse Interests**

21 (A) For purposes of this rule:

22 (1) "Disclosure" means informing the client or former client of the relevant
23 circumstances and of the actual and reasonably foreseeable adverse
24 consequences to the client or former client;

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

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

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

- 1 (1) The member has a legal, business, financial, professional, or personal
2 relationship with a party or witness in the same matter; or
3 (2) The member knows or reasonably should know that:
4 (a) the member previously had a legal, business, financial, professional, or
5 personal relationship with a party or witness in the same matter; and
6 (b) the previous relationship would substantially affect the member's
7 representation; or
8 (3) The member has or had a legal, business, financial, professional, or
9 personal relationship with another person or entity the member knows or
10 reasonably should know would be affected substantially by resolution of the
11 matter; or
12 (4) The member has or had a legal, business, financial, or professional
13 interest in the subject matter of the representation.
14 (C) A member shall not, without the informed written consent of each client:
15 (1) Accept representation of more than one client in a matter in which the
16 interests of the clients potentially conflict; or
17 (2) Accept or continue representation of more than one client in a matter in
18 which the interests of the clients actually conflict; or
19 (3) Represents a client in a matter and at the same time in a separate matter
20 accept as a client a person or entity whose interest in the first matter is
21 adverse to the client in the first matter.

22 At the time LBBS filed the motion to dismiss against X'Zavion on behalf of
23 Mydatt and Warner, the firm was actively violating its duty of loyalty to X'Zavion. Such
24 action is against public policy. LBBS seeking to recover attorneys' fees from X'Zavion
25 for the very work it performed while it was acting contrary to his interests is also against
26 public policy. Again, based upon X'Zavion's belief that LBBS never should have had
27 any adversarial involvement in this matter, Defendants should not be allowed to benefit
28 from LBBS conflict with X'Zavion. Now, based upon the work performed by LBBS
while it was conflicted against X'Zavion, his complaint is potentially in jeopardy of being
dismissed. (*See generally*, 4PA, Ex. 36.)

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1 3. Public Policy Cannot Permit Conflicted Attorneys to Monetarily
2 Benefit from the Conflict.

3 While this Court has not specifically addressed the issue of conflicted law firms
4 monetarily benefitting from the conflict, California courts have done so. When
5 California courts have addressed the issue of whether conflicted law firms may benefit
6 from work performed relating to conflicted matters, they have long determined that
7 forfeiture and disgorgement of attorneys' fees is appropriate. In *Sheppard Mullin Richter*
8 *& Hampton LLP v. J-M Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253 (Cal. App. 4th 2016), a
9 California appellate court relied on California's long-standing precedent to require a
10 conflicted law firm to disgorge and forfeit millions of dollars in legal fees based on the
11 firm's failure to disclose an actual conflict of interest.

12 Specifically, the Sheppard court found as follows:

13 Sheppard Mullin's breach of the duty of loyalty set forth in Rule 3-310 was
14 a violation of public policy. A finding that Sheppard Mullin was
15 nonetheless entitled to its attorney fees as if no breach had occurred would
16 undermine the 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. *Id.* at 274.

17 In *Sheppard*, the law firm had billed over \$3.8 million defending its client J-M
18 Manufacturing Co., Inc., the world's largest manufacturer of polyvinyl chloride (PVC)
19 pipe in a large Qui Tam lawsuit involving numerous parties. *Id.* at 257. Prior to its
20 engagement, the firm ran a standard conflicts check that indicated the firm had
21 represented one of the adverse intervening parties in the Qui Tam action, South Tahoe
22 Public Utility District, on certain unrelated employment matters. *Id.* Several weeks later
23 the firm also undertook a new and minor unrelated matter for South Tahoe, but failed to
24 disclose the existing conflict with J-M or obtain an informed waiver of the conflict from
25 either of its clients. *Id.* at 258. Neither the court nor J-M disputed the limited scope of
26
27
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1 the work performed by the firm on behalf of South Tahoe. The most important fact was
2 the firm's failure to give notice of its ongoing, adverse representation. *Id.* at 260.

3 South Tahoe brought a successful motion to disqualify the Sheppard Mullin firm in
4 the Qui Tam action. *Id.* After Sheppard Mullin was disqualified, J-M refused to pay
5 approximately \$1.3 million in outstanding legal fees. *Id.* Sheppard Mullin sued J-M to
6 recover those outstanding fees and compel arbitration where the arbitration panel
7 awarded the firm a majority of its attorneys' fees. *Id.* at 261. The arbitration panel found
8 that "Sheppard Mullin's conduct was not so serious or egregious as to make
9 disgorgement of fees appropriate" where the representation of the adverse client "was
10 unrelated to the subject of the J-M representation, and therefore the conflict did not
11 pervade the whole relationship with J-M ..." *Id.* A California trial court affirmed the
12 arbitration award, but J-M appealed, arguing that the violation of CRPC 3-
13 310 on conflicts of interest rendered the engagement contract illegal or void as a matter
14 of public policy. *Id.* at 261.

15 First, the California appeals court determined that, under the applicable arbitration
16 agreement and California law, the court should make a de novo determination as to
17 whether the engagement contract was enforceable. *Id.* at 262-265. Second, the court
18 determined that, despite standard waivers of both current and future conflicts contained in
19 their client's engagement agreements, Sheppard Mullin had failed to obtained informed
20 written consent as required by Rule 3-310(C)(3). *Id.* at 266-267. Third, the court found
21 that the "attorney's duty of undivided loyalty that forms the basis of Rule 3-310
22 constitutes the very foundation of an attorney-client relationship" and, thus, the
23 engagement agreement was invalid and unenforceable because it "violated an expression
24 of public policy." *Id.* at 272-273.

25 Turning to the merits, the court held that Sheppard Mullin "[was] not entitled to its
26 fees for the work it did for J-M while there was an actual conflict with [its other client]."

1 *Id.* at 274. In reaching this conclusion, the court relied primarily on two California
2 appeals court cases from the 1970's. *See, Id.* at 272 (analyzing *Goldstein v. Lees*, 120
3 Cal.Rptr. 253 (Cal. App. 1975) and *Jeffry v. Pounds*, 136 Cal.Rptr.373 (Cal. App. 1977)).
4 The *Goldstein* court found an engagement contract "void for reasons of public policy"
5 where counsel represented a minority shareholder and director in a proxy fight to gain
6 control of a company for which the attorney had served as in-house counsel several years
7 prior to the proxy fight. 120 Cal.Rptr. at 254-255. Central to the decision was the fact that
8 the attorney possessed "corporate secrets that [were] material to the proxy fight." *Id.* at
9 255. In *Jeffry*, a small law firm's lead partner represented both a husband in a personal
10 injury action and his wife in her divorce proceeding against the husband. 67 Cal.App 3d
11 at 374-375. There, the court denied any fees for work performed after the conflict arose
12 even though the representations involved "unrelated matters" and the law firm did not
13 have a "dishonest purpose" or engage in "deliberately unethical conduct." *Id.* at 377.

14 Besides arguing for all its fees, Sheppard Mullin also argued that despite its
15 violation of CRPC 3-310, quantum meruit should be allowed for its representation of J-M
16 in the Qui Tam action. *Id.* at 274. However, the court pointed out that the California
17 Supreme Court had found that quantum meruit recovery must be denied in cases of
18 ethical violations. *Id.* (citing *Huskinson & Brown v. Wolf*, 32 Cal.4th 453, 9 Cal. Rptr.3d
19 693, 84 P.3d 379 (2004).) The *Sheppard Mullin* court further found that "when a conflict
20 of interest is asserted as a "[d]efense in the attorney's action to recover fees or the
21 reasonable value of services[, a] violation of the fiduciary obligation will defeat
22 recovery." *Id.* at 272. (citing 1 Witkin, Cal. Proc. 5th (2008) Attys, 104, p. 142.) The
23 *Sheppard Mullin* court found that "Sheppard Mullin's violation of Rule 3-310
24 preclude[d] if from receiving compensation [whatsoever] for services provided to J-M in
25 the Qui Tam Action." *Id.* Likewise, LBBS' violation of its fiduciary duty to X'Zavion
26 created by its failure to provide notice of its employment of Mr. Shpirt should have

1 precluded it from looking to X'Zavion for any compensation for services provided
2 defending Mydatt and Warner against X'Zavion.

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

9 The facts relating to X'Zavion and LBBS are more egregious than those relating to
10 *Sheppard Mullin*. While the work Sheppard Mullin performed for South Tahoe was
11 completely unrelated and quite minor, the work performed by LBBS defending Mydatt
12 and Warner was directly related to X'Zavion and so adverse that LBBS filed a motion to
13 dismiss X'Zavion's complaint. Now, based on the Court's granting of Defendants'
14 motion for attorneys' fees and costs against X'Zavion, his complaint is in jeopardy of
15 being dismissed. (*See generally*, 4PA, Ex. 36.)

16 **C. The District Court Erred as a Matter of Law Granting and**
17 **Denying Defendants' Motion to Dismiss Because Petitioner**
18 **Corrected His Deposition Testimony Without Being Compelled to**
19 **Do So and He Did Not Disobey A Court Order**

20 *1. Petitioner Voluntarily Corrected His Deposition Testimony.*

21 NRCP 37 relates to compelling disclosure or discovery, and provides a remedy
22 when a party fails to do so. Defendants never brought a motion to compel against
23 Petitioner. Defendants filed a motion to dismiss Petitioner's complaint. (*See generally*,
24 1PA, Ex. 11.) Petitioner told Defendants at the outset of his deposition that he takes a
25 number of pain medications (morphine, hydrocodone, bacopin and gabapentin.) (1PA,
26 Ex. 11, at 119.) He also testified that he probably would not be able to give his best

1 testimony because "I forget sometimes." (*Id.*) Petitioner testified repeatedly that he did
2 not know the answer to specific questions relating to the shooters. (*Id.*, generally.)
3 Petitioner voluntarily produced an errata sheet clarifying his deposition testimony. (2PA,
4 Ex. 14, at 335-338.) Defendants never moved to compel Petitioner to participate in
5 discovery, and Petitioner never refused to do so. (4PA, Ex. 24, at 819.) Accordingly, it
6 was proper for the Court to deny Defendants' motion to dismiss Petitioner's complaint.
7 (*Id.*) However, the granting of Defendants' motion for attorneys' fees and costs is now
8 potentially acting as a dismissal of Petitioner's complaint. (*See generally*, 4PA, Ex. 36.)

9 2. *Crafting a Jury Instruction Relating to Petitioner's Failure to Identify*
10 *the Shooters Pursuant to NRCP 16.1 Potentially Invades the Jury's*
11 *Province to Determine Credibility.*

12 The District Court intends to craft a jury instruction relating to Petitioner's failure
13 identify the shooters pursuant to NRCP 16.1. (4PA, Ex. 34, at 820-821.) Such a jury
14 instruction potentially invades the province of the jury to determine credibility.
15 Specifically, "[c]redibility is a matter to be decided by the jury." *United States v. Binder*,
16 769 F.2d 595, 602 (9th Cir. 1985).

17 The responsibility of the jury relating to witness credibility is clearly stated in
18 Nevada Jury Instruction No. 2.07 which specifically provides as follows:

19 The credibility or believability of a witness should be determined by his
20 manner upon the stand, his relationship to the parties, his fears, motives,
21 interests or feelings, his opportunity to have observed the matter to which he
22 testified, the reasonableness of his statements and the strength or weakness
23 of his recollections.

24 If you believe that a witness has lied about any material fact in the case, you
25 may disregard the entire testimony of that witness or any portion of his
26 testimony which is not proved by other evidence.

27 The District Court's role is to determine the proper application of the law, not the
28 weight of witness testimony. The District Court cannot invade the province of the jury to

1 determine credibility while remaining impartial. The District Court specifically advises
2 the jury regarding its impartiality in Nevada Jury Instruction No. 1.08 as follows:

3
4 If, during this trial, I have said or done anything which has suggested to you
5 that I am inclined to favor the claims or position of any party, you will not
be influenced by any such suggestion.

6 **I have not expressed, nor intended to express, nor have I intended to**
7 **intimate, any opinion as to which witnesses are or are not worthy of**
8 **belief, what facts are or are not established, or what inferences should be**
drawn from the evidence. **If any expression of mine has seemed to**
indicate an opinion relating to any of these matters, I instruct you to
disregard it. [Emphasis added.]

9 The determination of whether Petitioner is or is not being honest, and the weight
10 his testimony should be given is an issue that should be left for the jury. Any benefit
11 from allowing the District Court to craft a jury instruction relating to Petitioner's
12 credibility would be "substantially outweighed by the danger of unfair prejudice, of
13 confusion of the issues or of misleading the jury." NRS 48.035. Neither the District
14 Court nor counsel should be permitted to express an opinion concerning the credibility of
15 parties per Nevada Rule of Professional Conduct 3.4(e). *See also Lioce v. Cohen*, 124
16 Nev. 1, 174 P.3d 970 (2008). Allowing the District Court to craft a jury instruction
17 relating to Petitioner's credibility would be contrary to Nev. J.I. 1.08 and would obviate
18 Nev. J.I. 2.07. Stepping outside the bounds of determining the proper law to apply to the
19 facts and assuming determining witness credibility would be appealable error.

24 IX. CONCLUSION

25 As explained above, public policy must prohibit a conflicted law firm from using
26 confidential information to act contrary to the aggrieved client's interests to the point of

1 dismissal of his complaint and adding to insult to injury by forcing the aggrieved client to
2 pay for the conflicted law firm's Accordingly, Petitioner respectfully requests that the
3 Court issue a writ of mandamus vacating the District Court's order and directing the
4 District Court to enter an order denying Respondents' motion for attorney fees and costs
5 and an adverse jury instruction.

6 DATED this 21st day of November, 2016.

7 **INJURY LAWYERS OF NEVADA**

8 */s/ Jolene J. Manke*

9 By: _____

10 DAVID J. CHURCHILL

11 JOLENE J. MANKE

12 *Attorneys for Petitioner*

1 **VERIFICATION OF X'ZAVION HAWKINS**

2 I, X'Zavion Hawkins declare as follows:

3 1. I am a resident of Clark County, Nevada.

4 2. The foregoing Petition is true of my own knowledge except as to those
5 matters stated on information and belief, and that, as to such matters, I believe them to b
6 true.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 EXECUTED this 21 day of November, 2016.

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12 X'Zavion Hawkins
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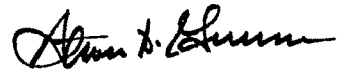
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Exhibit 1

Exhibit 1



CLERK OF THE COURT

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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

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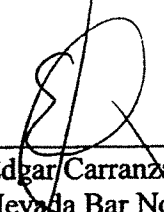
BACKUS, CARRANZA & BURDEN
3050 SOUTH DURANGO DRIVE
LAS VEGAS, NEVADA 89117
TELE: (702) 872-5555 FAX: (702) 872-5545

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.

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

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 I. INTRODUCTION

27 On July 21, 2016, an evidentiary hearing was held after Defendants uncovered Plaintiff's
28 misrepresentations in discovery of information readily at his disposal. These discovery abuses
included, *inter alia*, Plaintiff's failure to disclose information about the identity of one of the
assailants as part of his NRCP 16.1 disclosures, failure to accurately respond to written discovery
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 "within 30 days of the Notice of Entry of this Order by the Court."³
8

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 Compliant;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.

28 ¹² Exhibit A, 5:10-13.

¹³ Exhibit A, 5:13-18.

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).

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

2
3 Dated this 18th day of November, 2016.

4 **BACKUS, CARRANZA & BURDEN**

5
6
7 By: 

8 Edgar Carranza, Esq.
9 Nevada Bar No. 5902
10 3050 South Durango Drive
11 Las Vegas, Nevada 89117
12 Attorneys for Defendants
13 MYDATT SERVICES, INC. d/b/a VALOR
14 SECURITY SERVICES and MARK
15 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 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

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

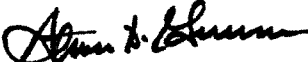
7
8 GGP MEADOW MALL LLC, a Delaware
9 Limited Liability Company; MYDATT
10 SERVICES, INC. d/b/a VALOR SECURITY
11 SERVICES, an Ohio Corporation; MARK
12 WARNER, individually; DOES I through 10;
13 DOE SECURITY GUARDS 11 through 20;
and ROE ENTITES 21 through 30, Inclusive,

14 Defendants.

) **Case No. A717577**

) Electronically Filed

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

) 

) **CLERK OF THE COURT**

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,
27
28

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

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

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
24
25
26
27
28

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
judgment by default against the disobedient party;

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

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

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

15
16 4. Courts are empowered, pursuant to the unclean hands doctrine, to
17 close the doors to the courthouse to a litigant who is "tainted with inequity
18 or bad faith relative to the matter in which he seeks relief."¹

19 5. NRCP 1 provides courts the inherent discretion to construe and
20 administer the rules of civil procedure "to secure the just, speedy, and
21 inexpensive determination of every action."
22

23 6. This Court finds that after a full evidentiary hearing where both
24 parties were able to provide witness testimony and evidence, Plaintiff failed to
25 provide information requested by Mydatt in the written discovery and by Mydatt
26

27 ¹ See, *Precision Instrument Manufacturing Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 804, 814-
28 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
- 16 A. Defendants, Mydatt and GGP, shall be awarded, and Plaintiff shall
17 pay, reasonable attorney's fees and costs in an amount to be
18 determined by this Court after proper submissions by all parties.
19 The amount shall be paid by Plaintiff within 14 days of the entering
20 of the Order setting forth the sanction amount;
- 21 B. If requested by Defendant(s), the Court shall provide a curative jury
22 instruction(s) that seeks to address the harm caused by Plaintiff's
23 discovery abuses by establishing *inter alia* that if Plaintiff had
24 complied with his obligations under NRCP 16.1, NRCP 30, NRCP
25

26

27 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
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


CLERK OF THE COURT

ORDER
Edgar Carranza, Esq.
Nevada State Bar No. 5902
BACKUS, CARRANZA & BURDEN
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,

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
ROB 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

BACKUS, CARRANZA & BURDEN

3050 SOUTH DURANGO

LAS VEGAS, NEVADA 89117

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LAS VEGAS, NEVADA 89117
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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*, NRCF 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. Leo 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
28


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

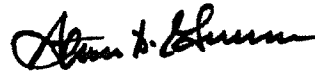
12 
13 Edgar Carranza, Esq.
14 Nevada Bar No. 5902
15 3050 South Durango Drive
16 Las Vegas, Nevada 89117
17 Attorneys for Defendants
18 MYDATT SERVICES, INC. d/b/a VALOR
19 SECURITY SERVICES and MARK WARNER
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EXHIBIT C

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

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 **X'ZAVION HAWKINS,**

12 **Plaintiffs,**

13 **vs.**

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

21 **Defendants.**

) **Case No. A717577**

) **Dept. XXXI**

22 **NOTICE OF ENTRY OF ORDER**

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

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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1 **CERTIFICATE OF SERVICE**

2 I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years
3 and not a party to the within action. My business address is: 3050 S. Durango Drive, Las Vegas,
4 Nevada, 89117. On October 19th, 2016, I served this document on the parties listed on the
5 attached service list via one or more of the methods of service described below as indicated next to
6 the name of the served individual or entity by a checked box:

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

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

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

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

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

27 I declare that under penalty of perjury under the laws of the State of Nevada that the above
28 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.

29 
30 An employee of BACKUS, CARRANZA & BURDEN

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SERVICE LIST

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<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>

1 DAVID J. CHURCHILL (SBN: 7308)
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10 *Attorneys for Petitioner*

Electronically Filed
Feb 13 2017 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 IN THE SUPREME COURT OF THE STATE OF NEVADA

9 X'ZAVION HAWKINS,

10 *Petitioner,*

11 vs.

12 EIGHTH JUDICIAL DISTRICT
13 COURT OF THE STATE OF
14 NEVADA, IN AND FOR THE
15 COUNTY OF CLARK; THE
16 HONORABLE JOANNA KISHNER,
17 DISTRICT JUDGE,

18 Respondent,

19 -and-

20 GGP MEADOWS MALL LLC, a
21 Delaware Limited Liability Company;
22 MYDATT SERVICES, INC. d/b/a
23 VALOR SECURITY SERVICES, an
24 Ohio Corporation; MARK WARNER, an
25 individual.

26 *Real Parties in Interest*

Case No.: 71759

District Court Case No.: A-15-717577

**MOTION TO STAY DISTRICT
COURT PROCEEDINGS
PENDING RESOLUTION OF
PETITION FOR
EXTRAORDINARY WRIT RELIEF**

(Expedited Consideration Respectfully
Requested)

22 Petitioner X'Zavion Hawkins hereby respectfully requests (the "Motion") that
23 this Court, pursuant to Nevada Rule of Appellate Procedure 8, enter an order
24 staying proceedings in the District Court pending the resolution of their Petition
25 for Extraordinary Writ Relief ("Writ Petition"), filed on November 22, 2016. In
26 the Writ Petition, Petitioner contends that the District Court erred when it issued an Order
27 granting Defendants in the underlying matter's motion for attorneys' fees and costs
28

1 relating to their motion to dismiss Petitioner's complaint which was both denied and
2 granted. Petitioner is also petitioning this Court to issue an extraordinary writ of
3 mandamus vacating the Order both denying and granting Defendants' motion to dismiss
4 Petitioner's complaint which was drafted by the conflicted law firm of Lewis Brisbois
5 Bisgaard & Smith ("LBBS") against the aggrieved client, Petitioner.

6 Petitioner brings this Motion to conserve the District Court's valuable judicial
7 resources and to allow the parties to avoid incurring substantial costs in litigating and
8 preparing this matter for trial until this Court decides the Writ Petition. Significant harm
9 could result if this matter is not stayed because on February 17, 2017, the District Court
10 intends to rule on Defendants' motion to dismiss Petitioner's case for failure to comply
11 with the entirety of the Order of October 17, 2016, which is the subject of the Writ
12 Petition. Moreover, Defendants would not face irreparable harm if a stay were entered—
13 a mere delay does not constitute irreparable harm sufficient to oppose a stay. *See Mikohn*
14 *Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

15 Additionally, Petitioner respectfully requests that this Motion be heard on an
16 expedited basis because on January 17, 2017, the District Court indicated a ruling will be
17 entered on February 17, 2017, regarding Defendants' motion to dismiss based on
18 Petitioner's failure to comply with the October 17, 2016, Order which is the subject of
19 the Writ Petition. Significant potential irreparable harm to Petitioner will be avoided if
20 the stay is entered. If a stay is not entered, Petitioner's underlying case is in jeopardy and
21 the parties may incur substantial costs and the District Court may waste its valuable
22 resources, defeating the object of the Writ Petition.

23 ///

24 ///

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26 ///

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28 ///

1 This Motion is made and based on the papers and pleadings on file, the
2 following Memorandum of Points and authorities attached hereto, and any oral
3 argument that this Court may hear.

4 DATED this 25th day of January, 2017.

5 INJURY LAWYERS OF NEVADA

6 /s/ Jolene J. Manke

7 By: _____

8 DAVID J. CHURCHILL

9 JOLENE J. MANKE

10 Attorneys for Petitioner

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 Petitioner requests that this Court stay the District Court's proceedings in this
14 matter pending this Court's resolution of the Writ Petition regarding the granting of
15 Defendants' motion for attorneys' fees and costs relating to their motion to dismiss
16 Petitioner's complaint which was both denied and granted. Petitioner is also petitioning
17 this Court to issue an extraordinary writ of mandamus vacating the Order both denying
18 and granting Defendants' motion to dismiss Petitioner's complaint which was drafted by
19 the conflicted law firm of Lewis Brisbois Bisgaard & Smith ("LBBS") against the
20 aggrieved client, Petitioner. As explained in the Writ Petition, this Court has examined
21 NRPC 1.9 and 1.10 in various contexts, but it has never addressed the precise questions
22 presented here – whether the conflicted law firm may seek to recover attorneys fees and
23 costs from the aggrieved client, and whether the work performed by the conflicted law
24 firm should be allowed to stand, potentially to the ultimate harm of dismissal of the
25 aggrieved client's action. Under California's counterpart to NRPC 1.9 and 1.10 (Cal.
26 RPC 3-310), the specific issues presented here have been addressed by the California
27 Supreme Court and the Courts of Appeal, all of whom have squarely held that not only is
28 it improper for a conflicted law firm to seek to benefit from the conflict, but that such a

1 conflict necessitates “disgorgement” of attorneys’ fees. Thus, the District Court’s Order
2 granting Defendants’ motion for attorneys fees and the underlying Order granting and
3 denying Defendants’ motion to dismiss Petitioner’s complaint was erroneous as a matter
4 of law.

5 If this Court does not stay further proceedings, the object of the Writ Petition may
6 be defeated. Specifically, on February 17, 2017, the District Court may grant Defendants’
7 motion to dismiss Petitioner’s Complaint for failure to comply with the Order which is
8 the subject of the Writ Petition. Moreover, a stay will not harm the Defendants. While
9 the matter may be continued, “a mere delay in pursuing discovery and litigation normally
10 does not constitute irreparable harm” sufficient to oppose a stay.³ Accordingly, Petitioner
11 respectfully requests that this Court stay the proceedings below pending its resolution of
12 the Writ Petition.¹

13 **II. STATEMENT OF FACTS**

14 **A. Petitioner Files His Complaint Against Defendants.**

15 On April 27, 2015, Petitioner brought claims against the Real Parties in Interest
16 (GGP, Mydatt and Warner) for negligence, respondeat superior and gross negligence
17 relating to their handling of the shoe launch. (*See generally* 1PA, Ex. 1, at 1-10.)²

18 **B. LBBS’ Representation of Mydatt and Warner.**

19 In October of 2015, Messrs. Aicklen and Shpirt knew Mr. Shpirt had a conflict
20 with X’Zavion. At the same time, Mr. Aicklen, a partner with LBBS, was retained to
21 monitor the defense of Mydatt and Warner being provided by Lee, Hernandez, Landrum
22 & Garofalo. (3PA, Ex. 19, at 550-551; 580-583.) LBBS took efforts to screen off Mr.
23

24 ¹ *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39
25 (2004).

26 ² Hereinafter, citations to Petitioner’s Appendix will immediately be preceded by the
27 Volume number, followed by an Exhibit number, followed by a pin cite to the Appendix
28 pagination (e.g., 4 PA, Ex. 25, at 826.)

1 Shpirt from Petitioner's matter. (4PA, Ex. 25, at 826.) However, LBBS did not send
2 notice to Petitioner that Mr. Shpirt was practicing with LBBS. (*Id.*) On November 16,
3 2015, LBBS filed a notice of association of counsel for Mydatt and Warner. (*See*
4 *generally*, 1PA, Ex. 10.)

5 **C. Petitioner Moves to Disqualify LBBS; the District Court Grants the Motion.**

6 At an evidentiary hearing on June 8, 2016, the Court determined there was a
7 conflict of interest pursuant to NRPC 1.9 because: 1) Mr. Shpirt as an attorney with Eglet
8 Law Group was viewed to have represented X'Zavion; 2) Petitioner's matter with Eglet
9 Law Group was the same matter currently pending before the Court; Mr. Shpirt was
10 currently practicing with LBBS which firm was then representing Mydatt and Warner
11 whose interests are directly adverse to X'Zavion in this matter. (4PA, Ex. 25, at 826.)
12 X'Zavion specifically did not expressly consent to waive any potential conflict. (*Id.* at
13 827.) The Court also determined that Mr. Shpirt's conflict was imputed to LBBS because
14 "importantly, no evidence was presented demonstrating compliance with the requirement
15 that written notice be promptly given to the former client." (*Id.* at 826.)

16 **D. Defendants Move to Dismiss Petitioner's Complaint; the District Court Denies**
17 **the Motion, but Grants Sanctions.**

18 Before its disqualification, LBBS filed a motion to dismiss X'Zavion's complaint
19 on behalf of Mydatt and Warner based on NRP 37 and the case of *Young v. Johnny*
20 *Ribiero Bldg.*, 106 Nev. 88 (1990). (*See generally*, 1PA, Ex. 11.) Although LBBS was
21 disqualified as a conflicted law firm at the hearing on June 8, 2016, the work LBBS
22 performed against X'Zavion went forward at an evidentiary hearing on Defendants'
23 motion to dismiss X'Zavion's complaint on July 21, 2016. (*See generally*, 4PA, Ex. 25;
24 5PA, Ex. 38; 5PA Ex. 39.)

25 Although the Court denied Defendants' motion to dismiss X'Zavion's complaint, it
26 indicated an intent to craft a jury instruction regarding Petitioner's failure to identify the
27 shooters pursuant to NRCP 16.1. (4PA, Ex. 24, at 820-821.) The Court also indicated a
28 motion for attorneys' fees and costs by Defendants would be entertained. (*Id.* at 820.)

1 **E. Defendants' Move for Attorneys' Fees and Costs Against Petitioner on Behalf**
2 **of All Law Firms, Including Lewis Brisbois Bisgaard & Smith; the District**
3 **Court Grants the Motion as to all Defense Law Firms.**

4 The Court granted Defendants' motion for attorneys' fees and costs against
5 Petitioner for the motion to dismiss, including an award of \$19,846.00 to the conflicted
6 law firm of LBBS. (4PA, Ex. 34 at 950.)

7 **F. Defendants Mydatt and Warner Move to Strike and Dismiss Petitioner's**
8 **Underlying Complaint ; Petitioner Opposes the Motion to Strike and Dismiss**
9 **and Countermotions Seeking a Stay in the District Court; the District Court**
10 **Declines to Enter a Stay.**

11 On November 18, 2016, Defendants Mydatt and Warner filed a motion to strike
12 Petitioner's underlying complaint for failure to pay the attorney's fees, including the
13 award to the conflicted law firm of LBBS. (See Exhibit 1, Defendants', [sic] Mydatt
14 Services, Inc. d/b/a Valor Security Services and Mark Warner, [sic] motion to strike
15 Plaintiff's Complaint and Dismissal, November 18, 2016.)

16 On December 9, 2016, Petitioner filed an opposition to Defendants Mydatt and
17 Warner's motion to strike Petitioner's complaint and dismiss and counter motioned to
18 stay Order pending Writ before the Nevada Supreme Court. (See Exhibit 2, Plaintiff's
19 Opposition and Countermotion.)

20 On December 20, 2016, the Court held a hearing on Defendant's Mydatt and
21 Warner's motion to strike and dismiss and Petitioner's countermotion to stay. (See
22 generally Exhibit 3, Transcript of Hearing on Motion to Strike and Dismiss and
23 Countermotion to Stay, December 20, 2016 ["Tr. Hrg. Mot. Strike/Dismiss
24 Countermotion Stay"].) The District Court took Defendant's Mydatt and Warner's
25 motion to strike and dismiss under advisement and declined Petitioner's countermotion to
26 stay. (Tr. Hrg. Mot. Strike/Dismiss Countermotion Stay at 33:8-13.)

27 ///

28 ///

1 **G. Petitioner Seeks Extraordinary Writ Relief.**

2 On November 22, 2016, Petitioner filed a Petition for Extraordinary Writ Relief
3 with this Court. (See Doc. No. 16-71759, Petition for Extraordinary Writ Relief, Nov. 22,
4 2016 [“Writ Petition”].)

5 **H. This Court Enters Order Directing Answer.**

6 On December 15, 2016, this Court entered an Order Directing Answer pursuant to
7 NRAP 21(b)(1). (See Doc., Order Directing Answer, Dec.15, 2016.)

8 **I. All Defendants File a Motion to Stay Litigation and Continue Trial on Order**
9 **Shortening Time; Petitioner files a Limited Joinder Renews His**
10 **Countermotion Seeking a Stay in the District Court; the District Court**
11 **Declines to Enter a Stay.**

12 On January 6, 2017, Defendants GGP, Mydatt and Warner filed a motion to stay
13 litigation and continue trial on order shortening time. (See Exhibit 4, Defendants GGP
14 Meadows Mall LLC, Mydatt Services, Inc. d/b/a Valor Security Services, and Mark
15 Warner’s Motion to Stay Litigation and Continue Trial on an Order Shortening Time,
16 January 6, 2017.)

17 Because Defendants’ motion only addressed staying certain parts of the litigation,
18 on January 13, 2017, Petitioner filed a limited joinder to Defendants’ motion and
19 renewed his countermotion to stay Order pending Writ before Nevada Supreme Court.
20 (See Exhibit 5, Plaintiff’s Limited Joinder to Defendants’ Motion to Stay Litigation and
21 Continue Trial and Renewed Motion to Stay Order Pending Writ before Nevada Supreme
22 Court, January 13, 2017.)

23 On January 17, 2017, the District Court held a hearing on Defendants’ motion to
24 stay litigation and continue trial on order shortening time and Petitioner’s countermotion
25 to stay pending Writ before the Nevada Supreme Court. The District Court continued
26 trial to its September 5, 2017, stack, indicated a ruling would be issued on Defendants’
27 motion to strike and dismiss on February 17, 2017, and denied Petitioner’s renewed
28 countermotion to stay. (See generally Notice of Entry of Order Granting in Part and

Denying in Part Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. d/b/a Valor Security Services, and Mark Warner's Motion to Stay Litigation and Continue Trial on an Order Shortening Time and Denying Plaintiff's Countermotion, February 7, 2017; Exhibit 7 Transcript of Hearing on Defendants GGP Meadows Mall LLC, Mydatt Services, Inc. dba Valor Security Services, and Mark Warner's Motion to Stay Litigation and Continue Trial on Order Shortening Time, January 17, 2017)

J. On February 17, 2017, the Court Intends to Issue a Ruling on Defendants' Pending Motion to Dismiss Petitioner's Complaint Based on the Order Granting Attorneys' Fees and Costs.

Now, based upon the Court's granting of attorneys' fees and costs against X'Zavion, Defendants are moving to strike X'Zavion's complaint. (*See generally*, 4PA, Ex. 36.) On January 17, 2017, the Court indicated she would issue a ruling on Defendants' motion strike and dismiss on February 17, 2017. (*See* Exhibit 7 at 19:12-14; 13:1-13.)

III. ARGUMENT

A. Standard of Decision.

In deciding whether to stay proceedings pending resolution of a writ petition, this Court "will generally consider the following factors: (1) whether the object of the . . . writ petition will be defeated if the stay or injunction is denied; (2) whether . . . [the] petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether . . . [the] real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether . . . [the] petitioner is likely to prevail on the merits in the . . . writ petition." NRAP 8(c). "[I]f one or two factors are especially strong, they may counterbalance other weak factors." *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Applying these standards, this Court should stay the District Court's proceedings in this case pending this Court's consideration of the Writ Petition. If Petitioner's motion to stay is denied, his Complaint in the underlying action is in serious

1 jeopardy of being stricken based on the very reason why Petitioner has brought the Writ
2 Petition before this Court.

3 **B. The Object of the Writ Will be Defeated Unless a Stay is Granted.**

4 Petitioner maintains that the object of his Writ Petition will be defeated if the stay
5 is denied. First and foremost, at issue is the misconduct of the disqualified law firm
6 which seeks monetary remuneration for work it performed during the conflict. Even
7 worse, LBBS seeks remuneration from the very person against whom it was directly
8 conflicted. Petitioner seeks extraordinary relief to prevent the directly adverse work
9 performed by LBBS from being paid by the very person the firm wronged. Importantly,
10 this is a matter of public interest and the integrity of the entire legal profession. Surely,
11 the public will lose faith in the legal system if an aggrieved client must pay a disqualified
12 law firm for work performed that was so directly adverse to the client that it may result in
13 the client's matter being dismissed.

14
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16
17 **C. None of the Defendants Will Suffer Serious Injury or Irreparable Harm if the**
18 **Matter is Stayed.**

19 There is no irreparable harm to Defendants if the stay is granted. If Petitioner
20 prevails in his Writ Petition, obviously, the Court order would be moot and Defendants
21 would not suffer irreparable harm as they were never entitled to their attorney fees. If
22 Petitioner does not prevail on his Writ Petition, Defendants would still not be prejudiced
23 as they would be in the same position that they are in right now, which could lead to
24 potential dismissal of Petitioner's underlying Complaint.

25 **D. Petitioner is Likely to Prevail on the Merits of His Writ Petition.**

26 Although this Court has not directly addressed the issue of whether a conflicted
27 and disqualified law firm may seek compensation from the aggrieved client and whether
28

1 or not the work performed to the detriment of the client should be allowed to stand,
2 Petitioner believes he is likely to prevail on the merits of his Writ Petition based on the
3 following. California courts have addressed the issue of whether conflicted law firms
4 may benefit from work performed relating to conflicted matters, and they have long
5 determined that forfeiture and disgorgement of attorneys' fees is appropriate. In
6 *Sheppard Mullin Richter & Hampton LLP v. J-M Mfg. Co., Inc.*, 198 Cal.Rptr.3d 253
7 (Cal. App. 4th 2016), a California appellate court relied on California's long-standing
8 precedent to require a conflicted law firm to disgorge and forfeit millions of dollars in
9 legal fees based on the firm's failure to disclose an actual conflict of interest.

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

1 South Tahoe brought a successful motion to disqualify the Sheppard Mullin firm in
2 the Qui Tam action. *Id.* After Sheppard Mullin was disqualified, J-M refused to pay
3 approximately \$1.3 million in outstanding legal fees. *Id.* Sheppard Mullin sued J-M to
4 recover those outstanding fees and compel arbitration where the arbitration panel
5 awarded the firm a majority of its attorneys' fees. *Id.* at 261. The arbitration panel found
6 that "Sheppard Mullin's conduct was not so serious or egregious as to make
7 disgorgement of fees appropriate" where the representation of the adverse client "was
8 unrelated to the subject of the J-M representation, and therefore the conflict did not
9 pervade the whole relationship with J-M ..." *Id.* A California trial court affirmed the
10 arbitration award, but J-M appealed, arguing that the violation of CRPC 3-
11 310 on conflicts of interest rendered the engagement contract illegal or void as a matter
12 of public policy. *Id.* at 261.

17 Turning to the merits, the court held that Sheppard Mullin "[was] not entitled to its
18 fees for the work it did for J-M while there was an actual conflict with [its other client]." *Id.*
19 at 274. In reaching this conclusion, the court relied primarily on two California
20 appeals court cases from the 1970's. *See, Id.* at 272 (analyzing *Goldstein v. Lees*, 120
21 Cal.Rptr. 253 (Cal. App. 1975) and *Jeffry v. Pounds*, 136 Cal.Rptr.373 (Cal. App. 1977)).
22 The *Goldstein* court found an engagement contract "void for reasons of public policy"
23 where counsel represented a minority shareholder and director in a proxy fight to gain
24 control of a company for which the attorney had served as in-house counsel several years
25 prior to the proxy fight. 120 Cal.Rptr. at 254-255. Central to the decision was the fact that
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1 the attorney possessed “corporate secrets that [were] material to the proxy fight.” *Id.* at
2 255. In *Jeffry*, a small law firm’s lead partner represented both a husband in a personal
3 injury action and his wife in her divorce proceeding against the husband. 67 Cal.App 3d
4 at 374-375. There, the court denied any fees for work performed after the conflict arose
5 even though the representations involved “unrelated matters” and the law firm did not
6 have a “dishonest purpose” or engage in “deliberately unethical conduct.” *Id.* at 377.
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9 Besides arguing for all its fees, Sheppard Mullin also argued that despite its
10 violation of CRPC 3-310, quantum meruit should be allowed for its representation of J-M
11 in the Qui Tam action. *Id.* at 274. However, the court pointed out that the California
12 Supreme Court had found that quantum meruit recovery must be denied in cases of
13 ethical violations. *Id.* (citing *Huskinson & Brown v. Wolf*, 32 Cal.4th 453, 9 Cal. Rptr.3d
14 693, 84 P.3d 379 (2004).) The *Sheppard Mullin* court further found that “when a conflict
15 of interest is asserted as a “[d]efense in the attorney’s action to recover fees or the
16 reasonable value of services[, a] violation of the fiduciary obligation will defeat
17 recovery.” *Id.* at 272. (citing 1 Witkin, Cal. Proc. 5th (2008) Attys, 104, p. 142.) The
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19 *Sheppard Mullin* court found that “Sheppard Mullin’s violation of Rule 3-310
20 preclude[d] it from receiving compensation [whatsoever] for services provided to J-M in
21 the Qui Tam Action.” *Id.* Likewise, LBBS’ violation of its fiduciary duty to Petitioner
22 created by its failure to provide notice of its employment of Mr. Shpirt must preclude it
23 from looking to Petitioner for any compensation for services provided defending Mydatt
24 and Warner against Petitioner.
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1 The *Sheppard Mullin* court was swayed by the *Fair* decision, in which the court
2 found disgorgement of attorney fees appropriate regardless of any proof of damages
3 when a conflict of interest is involved, *See, Fair*, 125 Cal.Rptr.3d at 779. Besides
4 precluding a conflicted firm from seeking recovery from the aggrieved client, the
5 *Sheppard Mullin* decision arguably sets precedent for the automatic disgorgement of all
6 attorneys' fees incurred while a conflict of interest violation exists.
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9 If anything, the facts relating to Petitioner and LBBS are more egregious than
10 those relating to *Sheppard Mullin*. While the work *Sheppard Mullin* performed for South
11 Tahoe was completely unrelated and quite minor, the work performed by LBBS
12 defending Mydatt and Warner was directly related to Petitioner's underlying matter and
13 so adverse that LBBS filed a motion to dismiss Petitioner's Complaint.
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16 Lastly, the *Sheppard Mullin* court found that *Sheppard Mullin's* breach of the duty
17 of loyalty set forth in Rule 3-310 was a violation of public policy. A finding that
18 *Sheppard Mullin* was nonetheless entitled to its attorney fees as if no breach had occurred
19 would undermine the same public policy. The Court indicated it would follow the
20 reasoning of *Goldstein* and *Jeffry* and hold that *Sheppard Mullin* was not entitled to its
21 fees for the work it did for J-M while there was an actual conflict with South Tahoe. *Id.*
22 at 274.
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25 From the inception of LBBS' representation of Mydatt and Warner, it had a direct
26 conflict of interest with Petitioner pursuant to NRPC 1.9 and 1.10. No exception under
27 the State Bar of Nevada's Formal Opinion from the Standing Committee on Ethics, No.
28

1 39 applied to LBBS' employment of Mr. Shpirt because LBBS never provided notice to
2 Petitioner that Mr. Shpirt was employed with LBBS. Petitioner never had the
3 opportunity to consent or withhold his consent for LBBS to act directly to his interested
4 in defending Mydatt and Warner in the underlying matter.
5

6 At the time LBBS filed the motion to dismiss against Petitioner on behalf of
7 Mydatt and Warner, the firm was actively violating its duty of loyalty to Petitioner. Such
8 action is against public policy. LBBS seeking to recover attorneys' fees from Petitioner
9 for the very work it performed while it was acting contrary to his interests is also against
10 public policy.
11

12 **IV. CONCLUSION**

13 For the reasons set forth above, Petitioner respectfully requests this Court stay the
14 District Court's proceedings pending resolution of the Writ Petition. If a stay is not
15 entered, the object of the Writ Petition will be defeated – Petitioner's Complaint may be
16 stricken, conservation the District Court's judicial resources will be thwarted and the
17 parties will continue to incur substantial costs in litigating and preparing this matter for
18 trial. *See Mikohn Gaming Corp.*, 120 Nev. 248, 252-53, 89 P.3d at 39.
19

20 DATED this 10th day of February, 2017.
21

22 **INJURY LAWYERS OF NEVADA**

23 */s/ Jolene J. Manke*

24 By: _____

25 DAVID J. CHURCHILL

26 JOLENE J. MANKE

27 *Attorneys for Petitioner*
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