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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
|  | D | ATE FILED: March 6, 2017 1:45 PM |
| Court Address: Denver County Court1437 Bannock St., Room 256 | F C | LING ID: 44B1E04094A9D ASE NUMBER: 2015CV31709 |
| Denver, CO 80202 |  |  |
| (720) 865-8301 |  |  |
| Plaintiffs: ROBERT ABRAMS and ABRAMS & |  |  |
| ASSOCIATES, LLC, a Colorado limited liability |  |  |
| company; |  |  |
| v. |  | **COURT USE ONLY** |
| Defendants: SHAWN BEESON |  |  |
| Attorneys for Plaintiffs: |  |
|  | Case Number: 2015CV31709 |
| Nathan SilverSilver Law Firm, LLC 700 17th Street, Suite 650Denver, Colorado 80202Phone: (303) 328-8510E-mail: nathan@silverlawdenver.com Atty. Reg. # 28836 | Division: 275 |
| ABRAMS & ASSOCIATES, LLCRobert Abrams700 17th St., Suite 650Denver, CO 80202 |  |
| Phone #: (303) 322-4115Fax #: (303) 333-0708E-mail: Robert@AbramsLaw.net Atty. Reg. # 37950 |  |
| **PLAINTIFFS’ MOTION TO COMPEL DISCOVERY PURSUANT TO C.R.C.P. 37** |

COMES NOW, Plaintiffs Robert Abrams and Abrams & Associates, LLC, by their attorneys at Silver Law Firm, LLC and Abrams & Associates, LLC, and hereby file their Motion to Compel Discovery Pursuant to C.R.C.P. 37. In support thereof, Plaintiffs state and allege as follows:

C.R.C.P. 121 § 1-15, ¶8 Certification: Plaintiff contacted defense counsel in good faith regarding this Motion. Defendant opposes the relief requested herein.

# INTRODUCTION

1. This case stems from a fight between the parties that occurred in May of 2015.

Defendant alleges he is the victim of battery and sustained injuries to his shoulder and back in the fight. Plaintiff denies defendant is the victim and asserts defendant followed plaintiff into plaintiff’s parking garage and attacked him from behind.

1. Plaintiff was defendant’s prior counsel in a case defendant brought against Denver Health in 2012. In that case, defendant alleged he received the exact same back injuries as this case, at the hands of Denver Health and had surgery thereto. Defendant has a long history of back injuries, including at least two prior surgeries before the May 2015 incident. Further, defendant’s current doctor states, “patient has a long history of shoulder pain.” Accordingly, defendant’s pre-existing conditions are relevant to this proceeding.
2. On January 12, 2017, Plaintiffs served their first set of written discovery on Defendant. Defendant’s deadline to answer was February 16, 2017. The non-pattern interrogatories and RFP’s are reasonable and would lead to relevant admissible evidence. *Exhibit 2.* To date, Defendant failed to adequately answer said discovery requests.
3. On February 22, 2017, both counsel discussed this issue and opposing counsel assured plaintiffs that 100% of all discovery would be produced by close of business, Friday, February 24, 2017. *Exhibit 1.* Such has not occurred.
4. On or about February 28, 2017, Plaintiffs sent Defendant’s counsel a letter detailing deficiencies in Defendant’s response and allowed until March 3, 2017 to correct same. *Exhibit 3.* To date, Plaintiffs have received no response thereto.
5. Plaintiffs respectfully request this Court enter an order compelling Defendant’s production, as well as sanctions, as requested herein.

# LEGAL AUTHORITY

1. CR.C.P. 37(a)(2)(B) provides that motions to compel are appropriate where a party fails to timely answer discovery and grants the Court its authority to order same. “[U]nder

C.R.C.P. 37(c), a trial court has a duty to sanction a party for failure to comply with certain

discovery deadlines by precluding evidence or witnesses, *unless* the party’s failure to comply is *either* substantially justified *or* harmless.” *Todd v. Bear Valley Village Apartments,* 980 P.2d 973, 975 (Colo. 1999).

1. C.R.C.P. 37(c) and (d) mandate the Court’s award of reasonable expenses incurred in making the motion to compel, including attorney’s fees, in addition to compelling the discovery.
2. C.R.C.P. 37(d) states that when a party fails to answer discovery, the Court may make any order as is “just,” including ordering that the disobedient party be prohibited from supporting or opposing related claims or defenses, the pleadings or portions thereof be stricken, or the action be dismissed against the disobedient party.
3. C.R.C.P. 6, allows a party to request an extension from the court to expand or contract a Rules deadline. Defendant’s counsel has no such request, regarding discovery, currently pending before the court. As such, his deadline is missed, discovery is not produced and the court should grant remedies under Rule 37.

# ARGUMENT

1. Defendant’s deadline to answer Plaintiffs’ discovery requests was February 16, 2017. To date, Defendant has failed to answer said discovery requests.
2. Opposing counsel never discussed with plaintiffs, defendant’s discovery would be late, nor inquired of plaintiffs’ position on the matter. Simply, no discovery was timely produced. Plaintiffs believe there is no substantially justified or harmless reason for Defendant’s failure to timely disclose the requested discovery. For these reasons, the Court should exercise its

duty to compel Defendant’s answers and sanction Defendant pursuant to C.R.C.P. 37.

1. The Court set Plaintiffs’ deadline to obtain and disclose an expert witness for February 28, 2017. *See Court’s Order, filed January 31, 2017.* However, Plaintiffs’ choice of expert and need therefor is dependent upon the answers to Plaintiffs’ discovery requests.
2. The Court granted Defendant expanded discovery that forced Plaintiffs to serve discovery and potentially the need to disclose an expert. Defendant’s refusal to answer discovery means Plaintiffs are unable to determine whether or what sort of an expert is necessary. Therefore, plaintiffs’ have no medical records of defendant’s pre-existing conditions, from which plaintiffs’ expert could give his opinion. Accordingly plaintiffs are prejudiced.
3. Plaintiffs respectfully request this Court enter an order compelling Defendant’s answers to ALL Plaintiffs’ first set of written discovery within 5 days of its order, extending Plaintiffs’ deadline to disclose an expert until 30 days after said production occurs, and granting sanctions including reasonable attorney’s fees and costs for this Motion to Compel, and for any other relief the Court deems just and proper under the circumstances.

# CONCLUSION

Defendant has a long history of back and shoulder injuries (pre-existing conditions), all of which he failed to disclose in this matter. Plaintiffs, with prior knowledge of these injuries, requested proper discovery from defendant, which has not been answered, nor objected to; accordingly, plaintiffs are prejudiced in this matter and seek relief under C.R.C.P 37.

WHEREFORE Plaintiffs respectfully request the Court enter an order compelling Defendant’s answers and for sanctions and/or attorney fees, as pled herein, and for such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 6th day of March, 2017.

SILVER LAW FIRM, LLC

*/s/ Nathan Silver*

Nathan Silver, Attorney at Law

*(Original signature on file at Silver Law Firm, LLC, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 6th day of March, 2017, via ICCES, served a true and correct and correct copy of the foregoing PLAINTIFFS’ MOTION TO COMPEL DISCOVERY PURSUANT TO C.R.C.P. 37 upon:

Wadi Muhaisen

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Michael A. Gubiotti*

Michael A. Gubiotti, Law Clerk

*(Original signature on file at Abrams & Assoc. LLC pursuant to C.R.C.P. 121 § 1-26)*