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| DISTRICT COURT, DENVER COUNTY, STATE OF D  F  COLORADO C  Court Address: 1437 Bannock Street  Denver, CO 80202  **Plaintiff(s):** ROBERT ABRAMS  **v.**  **Defendant(s):** SHAWN BEESON, and individual, and CALIFORNIA STREET PARKING GARAGE, LLLP, a  Colorado limited liability limited partnership  Attorney for Defendant California Street Parking Garage, LLLP  Name: Thomas E. Hames, Esq. Address: 6060 S. Willow Drive, Suite 100  Greenwood Village, Colorado 80111 Phone No.: (720) 963-7019  Atty. Reg. 13743 | ATE FILED: October 12, 2015 1:37 PM  ILING ID: 5B2B0CA33FE2F ASE NUMBER: 2015CV31709  **▲ COURT USE ONLY ▲**  Case Number: 2015 CV 31709  Division: 409 |
| **DEFENDANT CALIFORNIA STREET PARKING GARAGE, LLLP’S MOTION TO DISMISS** | |

California Street Parking Garage, LLLP (hereinafter referred to as “Defendant California”), by and through its attorneys Ray Lego & Associates hereby submits its Motion to Dismiss, and as grounds therefore states:

CERTIFICATION: C.R.C.P. 121 § 1-15(8). The undersigned states that he has conferred with counsel for Plaintiff and the relief requested herein is necessary. See copies of 2 emails attached as **Exhibit A.**

# BACKGROUND OF CASE INCLUDING RELEVANT FACTS

1. Plaintiff is a licensed attorney in the state of Colorado, having been admitted on October 23, 2006. His attorney registration number is 37590. Plaintiff’s office is at 700 17th Street, Suite 650, Denver, CO 80202. Plaintiff represents himself in an action against the two Defendants in this case. Plaintiff alleges Defendant Beeson intentionally assaulted Plaintiff. Defendant California owns the parking garage where Plaintiff contends part of the assault occurred. Plaintiff’s claim against the Defendant California is based in some aspect of negligent security for California’s parking structure.
2. Plaintiff claims verbal altercations with Beeson on April 1, 2015 and April 15, 2015 (See Plaintiff’s Second Amended Complaint filed September 1, 2015 Paragraph 12). Plaintiff, in his Second Amended Complaint alleges Defendant Beeson and Abrams had a verbal altercation outside the California parking structure. (See Plaintiff’s Second Amended Complaint filed September 1, 2015 Paragraph 12) Plaintiff, in his second Amended Complaint alleges an assault on him by the Co-Defendant Shawn Beeson on May 13, 2015 at approximately 12:05 p.m. (See Plaintiff’s Second Amended complaint filed September 1, 2015 Paragraph 14). It appears that Defendant Beeson and Plaintiff Abrams were on the sidewalk as the verbal altercation started “in public”. (See Plaintiff’s Second Amended Complaint filed September 1, 2015 Paragraph 14). Plaintiff contends on May 1, 2015 Beeson followed Plaintiff into a parking garage and physically attacked him. (See Plaintiff’s Second Amended Complaint filed September 1, 2015 Paragraph 15).
3. Plaintiff claims in Paragraph 23 of his Second Amended Complaint:” Beeson’s assault on Abrams occurred inside the fenced and gated doors of the California Street Parking Garage.” Plaintiff contends he is a long standing customer and tenant of California, parking his car in the same location for years. (See Plaintiff’s Second Amended Complaint filed September 1, 2015 Paragraph 25).
4. The gravamen of Plaintiff complaint against Defendant California is found in three Paragraphs of Plaintiff’s Complaint, 27, 28 and 29. “At all times relevant hereto, California keeps it south garage door locked at all times. (Paragraph 27). “California does not keep its north customer access door locked. This is the door that Beeson entered to attack Abrams. (Paragraph 28). “The assault on Abrams occurred inside the north door at the elevators. (Paragraph 29).
5. Plaintiff has one claim against California based in a violation of the Premises Liability Act. (See Plaintiff’s Second Amended Complaint Paragraphs 44-57.) Plaintiff must show that there was a dangerous condition on the property that caused or contributed to causing his claimed injuries and that a duty was owed by California to Plaintiff.
6. For purposes of this Motion only; California admits it owns the parking facility in question, that there is a public sidewalk on California Street in front of the California parking facility and that Plaintiff was an invitee. The issues are whether Defendant California was a land owner of the public sidewalk, did Defendant California know or should have known of a dangerous condition on the public sidewalk which Plaintiff claims injured him, and did Defendant California owe Plaintiff any duty. Plaintiff’s contention is that the north customer door was unlocked and this was a danger to him. (See Plaintiff’s Second Amended complaint filed September 1, 2015 Paragraph 49). Plaintiff further contends that by failing to lock the north door thereby allowing anyone to enter same, it could lead to events similar to the assault that occurred. (See Plaintiff’s Second Amended complaint filed September 1, 2015 Paragraph 50).
7. As shown below, Plaintiff cannot make a claim against this facility for failing to secure a certain door, because it is a public facility open 24 hours a day 7 days a week to the

public. The access to the building is provided in a number of different ways. The building has signage indicating that it is open to the public and no security is being provided. Plaintiff should then have had no expectation that the building was secure or any security was being provided to him on the date and time in question. Finally, Plaintiff was the aggressor in the altercation that occurred on May 13, 2015 between Plaintiff and Co-Defendant Beeson. His claim against Defendant California should be dismissed.

1. ARGUMENT
2. Plaintiff fails to allege notice to Defendant California of the April 1 or 15, 2015 alleged verbal altercations. As such this Defendant had no notice of any ongoing dispute between Plaintiff and Defendant Beeson. Plaintiff fails to prove Defendant California knew of Beeson’s alleged violent tendencies or his frequenting the area. As such there is nothing specific to the alleged assault upon Plaintiff Abrams that Defendant California knew before the time of the assault. Further Plaintiff failed to alert the proper authorities such as the Denver Police Department or take any actions to protect himself from Co-Defendant Beeson.
3. Defendant California owns and operates a public parking structure. Vehicle access is had through two large openings, shown in photographs **Exhibits B and C**. These openings are open 24 hours a day 7 days a week. These openings are within feet of the 2 doors Plaintiff contends should have been more secure. These garage doors are wide enough so that a vehicle can enter or exit and at the same time a pedestrian can enter and exit. As such, free access is provided to this building at all times. This facility has continuous access for motor vehicles and pedestrians.
4. Plaintiff, a long time user of this parking structure would pass signs alerting him to the fact this parking structure is open 24 hours a day. See **Exhibit D** the sign on the north vehicle entrance. It is through this entrance that Plaintiff would have gained access to the Defendant California’s parking structure while driving. It is unlikely Plaintiff can claim he was unaware of this sign. This sign is a public declaration of the security status of the Defendant’s parking structure.
5. Plaintiff parked at a facility that was open 24 hours a day, 7 days a week. He has two prior verbal altercations with Co-Defendant Beeson and did not report them to Defendant California. He did not report them because he knew this parking structure was open for business. Despite parking at a structure that told those parking there that it was open 24 hours a day, Plaintiff claims Defendant California should have provided him with a locking door to protect him from an assailant who entered off the public sidewalk. See Affidavit of Kelly Begg attached to this Motion as **Exhibit E** confirming the above facts.
6. **LAW & LEGAL ARGUMENT**
7. **Motion to Dismiss should be granted on Plaintiff’s claims of premises liability because while Defendant California Street Parking Garage, LLP is a landowner as**

**to its facility within the definition of the Premises Liability Act, there is no duty owed to this Plaintiff under these circumstances.**

An injured person may bring a claim under the premises liability statute only against a “landowner.” *Burbach v. Canwest Invest., LLC*, 224 P.3d 437, 441 (Colo. App. 2009). A “landowner” is defined as 1) a person in possession of real property; 2) an authorized agent of a person in possession of real property; 3) a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property. C.R.S. § 13- 21-115(1).

1. Here, Defendant California was not in possession of the property *outside* of the parking structure, an authorized agent of a person in possession of the property *outside* of the building, or a person legally responsible for the condition of the property *outside* of the building or for the activities conducted or circumstances existing on the property *outside* of the building. Defendant California owned the area *inside* the building. The sidewalk where Mr. Abrams was initially claims he was accosted is a public sidewalk on California Street. Furthermore, areas such as the parking areas and pedestrian sidewalks, such as the location where Mr. Abrams claimed the initial incident occurred is a public sidewalk area not under the control or right of control of Defendant California.
2. Moreover, also consistent with *Van Schaack* and *Colo. Prac.* cited above, the parking lot and sidewalks were areas over which Defendant California had no possessory interest or control. Therefore, Defendant California was never a “landowner,” as that term is defined in

C.R.S. 13-21-115, with respect to the sidewalk. With respect to its building, it does not purport to be a secure area, but instead warns individuals that the building is open 24 hours a day 7 days a week.

1. Finally, there is no Colorado decision, state or federal, that has imposed a duty under the Premises Liability Act upon a neighboring landowner to warn of or correct potential hazards that exist on a property owned and controlled by another (here the City and County of Denver sidewalk). Therefore, the premises liability claim alleged by Plaintiff against Defendant California should be dismissed as a matter of law as Plaintiff cannot establish that Defendant California was a landowner and thereby subject to the Premises Liability Act. As a matter of law, Defendant California owes no duty to provide security when it communicates no such security is being provided.

# Motion to Dismiss should be granted on Plaintiff’s claims of negligence as Defendant California did not owe a duty to Plaintiff*.*

1. To establish a prima facie case of negligence, a plaintiff must show 1) a legal duty of care on the Defendant’s part, 2) breach of that duty, 3) injury to the plaintiff, and 4) causation. *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 929 (Colo. 1997). The existence of a legal duty of care is a question of law for the trial court. *Metro. Gas Repair Serv., Inc. v. Kulik*, 621

P.2d 313, 317 (Colo. 1980). Here, California did not owe a duty to Plaintiff with respect to the allegation of security on the property.

1. Where the law does not impose a duty on a defendant to act for the plaintiff’s benefit, a negligence claim must fail. *Woods v. Delgar Ltd.*, 226 P.3d 1178, 1180 (Colo. App. 2009). Here, California did not owe a duty of care to Plaintiff when the initial confrontation on the sidewalk occurred and when the structure is open 24 hours a day 7 days a week. *Woods* is controlling in this circumstance, as it involves a similar legal issue - whether one has a duty to guard against off-premises hazards, in this case an individual who intended Plaintiff harm. The Court of Appeals upheld the trial court’s ruling that the tenant has no such duty under circumstances that are similar to this case.
2. Mr. Woods suffered a head injury after falling on a patch of ice on a sidewalk. Delgar operated a restaurant in an adjacent building in space it leased from the building owner. Evidence indicated that ice formed after water dripped from an awning and froze on the sidewalk. *Woods*, at 1179-1180.
3. When determining whether a defendant owes a duty, courts look to the defendant’s ownership, possession, and control of the injury-causing circumstances or instrumentality. *Woods* at 1180, *citing to*, *University of Denver v. Whitlock,* 744 P.2d 54 (Colo.1987). Additionally, “a lessee has a duty when it creates or contributes to a dangerous condition, occupies and controls the entire building, has been given the right to alter or repair the premises, or has covenanted with the landlord to fulfill the landlord’s duty of care with regard to adjacent sidewalks. *Woods,* at 1180-81. None of these conditions is present in California’s case.
4. The court held that “[a]bsent evidence that lessee controlled, constructed, or maintained the awning from which the water allegedly dripped, there can be no duty.” *Woods,* at 1182. The Court of Appeals held that the trial court had properly granted summary judgment in favor of Delgar. The Court of Appeals further rejected the argument that because accumulation of ice was foreseeable, the tenant had a duty to remove or mitigate the danger. *Woods,* at 1182. Here, California did not maintain, own, possess, or control of the injury-causing circumstance, the Co-Defendant Beeson and the sidewalk adjacent to the California property. If this incident had occurred a few hundred feet north or south on California Street and Plaintiff had run into a business such as a restaurant or retail store, that business would similarly have no duty to Plaintiff.
5. California is not responsible and did not contribute to the Co-Defendant’s animosity toward Plaintiff. Like *Woods*, there is no evidence that Defendant California controlled, constructed, or maintained the sidewalk or had any control over the Co-Defendant Beeson. The evidence before the Court demonstrates quite the opposite- that California had no ownership, possession or control over the sidewalk and no control over the Co-Defendant Beeson. Therefore, Defendant California had no duty to Plaintiff. Thus, Plaintiff’s negligence claim against Defendant California should be dismissed as a matter of law.

# C. Plaintiff was the aggressor and is responsible for his claimed injuries, damages and losses

1. This incident between Beeson and Plaintiff Abrams stems from Abrams representation of Beeson as his attorney. It is therefore a private matter between two adults. The fact the incident began on the public sidewalk and one of the parties ran into a near-by business does not make that business responsible for the internal argument between two grown men. The incident occurred at the lunch hour when all businesses, including the parking structure, expect the public to freely come and go.
2. At the September 11, 2015 hearing, testimony from a neutral eyewitness to the incident confirmed it was Abrams who attacked Defendant Beeson. Defendant California requests this Court hold in abeyance this Motion to Dismiss to afford Defendant California to have the transcript of the September 11, 2015 hearing transcribed and made part of the record of this motion. At that time, this Motion could then be set for hearing, at the Court’s discretion, and the Motion would be ripe for determination.

**REQUEST FOR COSTS AND ATTORNEY FEEES**

**ASSOCIATED WITH THIS MOTION**

1. In addition to this Motion to Dismiss Defendant seeks its costs incurred in bringing this Motion. This Court may order the responding party, in this case the Plaintiff, to pay the reasonable fees and expenses incurred in bringing this Motion if Plaintiff’s claim lacks merit. Accordingly, Defendants request their reasonable attorney’s fees and expenses in bringing this Motion. Plaintiff’s claims are substantially without merit and Plaintiff has filed a lawsuit that lack factual and legal justification triggering an award of attorney fees and costs under §13-17- 102, groundless and frivolous claims statute. The fat Plaintiff is an attorney, representing himself, makes his lack of substantial merit more important. In essence, Plaintiff knew better, but despite such knowledge, he chose to forward a specious and unsubstantiated lawsuit against Defendant California.

WHEREFORE, Defendant California Street Parking Garage, LLLP respectfully requests the Court to Dismiss this matter for Defendant California’s costs and attorney fees in having to file this Motion to Dismiss and to enter such other and further relief that the Court deems necessary and just under the circumstances.

DATED this 12th day of October, 2015.

Respectfully submitted,

A duly signed copy of the foregoing is on file in the office of Ray Lego & Associates

/s/ Thomas E. Hames Thomas E. Hames, Esq.

*ATTORNEY FOR DEFENDANT CALIFORNIA STREET PARKING GARAGE, LLLP*

**CERTIFICATE OF SERVICE**

This is to certify that on this 12th day of October, 2015 a true and correct copy of the foregoing

# DEFENDANT CALIFORNIA STREET PARKING GARAGE, LLLP’S

**MOTION TO DISMISS** was forwarded via either U.S. Mail, postage prepaid or ICCES, file and serve, and addressed to the following:

Robert Abrams, Esq. Abrams & Associates, LLC 700 17th Street, Ste. 650

Denver, CO 80202

*Attorney for Plaintiff*

Michael P. Boyce, Esq.

Law Office of Michael P. Boyce, PC 3773 Cherry Creek Drive North, Ste. 575 Denver, CO 80209

*Attorney for Defendant Shawn Beeson*

A duly signed copy of the foregoing is on file in the office of Ray Lego & Associates

/s/ Karen A. Taylor Karen A. Taylor