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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |
| DDenver County Court F1437 Bannock St., Room 256 CDenver, CO 80202(720) 865-8301 | ATE FILED: March 17, 2016 5:03 PM ILING ID: 1D49B57F25C9BASE NUMBER: 2015CV31709 |
| Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company; |  |
| v. |  |
| Defendants: SHAWN BEESON | **▲ COURT USE ONLY ▲** |
| Attorney for Plaintiff: | Case Number: 2015CV31709 |
| ABRAMS & ASSOCIATES, LLCRobert Abrams700 17th St., Suite 650Denver, CO 80202Phone #: (303) 322-4115Fax #: (303) 333-0708E-mail: Robert@AbramsLaw.net Atty. Reg. #: 37950 | Division: 409 |
| **PLAINTIFF’S MOTION *IN LIMINE* TO EXCLUDE ASSAULT EVIDENCE** |

COMES NOW, Plaintiff, Robert Abrams (hereinafter as the “Plaintiff”), through his attorney at Abrams & Associates, LLC and hereby submits his Motion *In Limine* to Exclude Assault Evidence. In support thereof, Plaintiff states and alleges as follows:

C.R.C.P. 121 § 1-15(8) Certification. Plaintiff’s counsel conferred in good faith with Defense counsel about this Motion. Defense counsel opposes the relief requested herein.

# INTRODUCTION

1. On or about October 1, 2015 plaintiff filed his Third Amended Complaint, which included a claim for Battery.
2. On October 21, 2015, defendant filed his Answer and counterclaim, which also included a claim for Battery.
3. In plaintiff’s initial complaint against defendant, plaintiff included a claim of false reporting for filing a false police report alleging plaintiff assaulted defendant. The Denver police issued plaintiff ticket #15GS006333 for the alleged assault, which subsequently was dismissed by the prosecution. *Exhibit A.* Plaintiff asserts defendant filed a false police report, which in fact was dismissed.
4. In defendant’s Battery claim he cites to an assault that occurred, which thereby generated a police report and the citation to plaintiff for an alleged assault. Plaintiff denies he committed assault and sues defendant for following plaintiff into his parking garage and attacking him over a past money dispute.
5. Abrams alleged assault case in Denver County Colorado is dismissed with prejudice. And, the District Court sealed Abrams’ record in the matter pursuant to Colorado law C.R.S. § 24-72-702. *Exhibit B*. Accordingly, the entire assault file pertaining to plaintiff is sealed and inadmissible in this or any other proceeding as if it never happened. *Id.*
6. Further, in defendant’s Rule 26 initial disclosure, defendant identifies inappropriate matters he intends to use at trial, which under the law, may not be introduced thereto. Specifically witness and exhibits as follows:
	1. Witnesses. The police officers involved in the assault ticket identified in ¶’s 2 and 3 of defendant’s Rule 26 disclosure.
	2. Documents. Police reports of any kind as stated in ¶’s 4-6; 10,11,17, 18, including anything pertaining to the assault ticket. *Exhibit C.*
7. Plaintiff, per his sealed record, now moves this court in *limine* to exclude all documents, witnesses, tickets, police reports, police statements, evidence, testimony or otherwise, pertaining to the alleged assault report or other evidence generated from the assault charge raised and dismissed in the related matter.
8. Pursuant to C.R.S. § 18-1.3-101, plaintiff moves the court to exclude all evidence of the alleged assault under the law stated herein, as this matter is now sealed and plaintiff is restored to his status prior to the alleged assault incident.

# LEGAL AUTHORITY

1. Motions *in Limine* aid in applying the rule of “legal relevancy” to avoid prejudice or immaterial side issues and thus assist the Court in balancing “probative value” against “probative dangers.” *Good v. A.B. Chance Co.,* 565 P.2d 217, 221 (Colo. App. 1977). *Good,* specifically recognizes “motions *in limine*” to deal with sensitive evidentiary issues which have the potential for prejudice and/or a mistrial if not delicately handled. *Id.*
2. C.R.S. § 18-1.3-101. Pretrial diversion

(9)(e) A defendant shall not be required to enter any plea to a criminal charge as a condition of pretrial diversion. Accordingly plaintiff never entered a plea in that matter.

(10)(b) Upon the defendant's satisfactory completion of and discharge from supervision, the court shall dismiss with prejudice all charges against the defendant. The effect of the dismissal is to restore the defendant to the status he or she occupied before the arrest, citation or summons. A successfully completed diversion agreement shall not be considered a conviction for any purpose. A person with an order of dismissal entered pursuant to this article may not be subject to charge, prosecution, or liability under Colorado law of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, citation, or summons in response to any inquiry made for any purpose. Plaintiff completed diversion; therefore, the issue of the alleged assault, under law, may not be brought into evidence in the instant case. *Exhibit A.*

1. (10) Diversion outcomes

(10)(c) At any point after a diversion agreement is completed, a defendant may petition the court to seal all arrest and other criminal records pertaining to the offense using the procedure described in section § 24-72-702, C.R.S. Unless otherwise prohibited under § 24-72-702(4)(a), C.R.S. the court shall issue a sealing order if requested by the defendant following successful completion of a diversion agreement. Such has occurred. *Exhibit B.* The sealing order will seal the assault incident as if it never happened and therefore all evidence of same is inadmissible in court.

(e) … Any other information concerning diversion, including participation in a diversion program… the terms of a diversion agreement, or statements made to treatment providers during a diversion program, shall not be admitted into evidence at trial for any purpose.

1. C.R.S. § 24-72-702 allows for the sealing of a criminal record when the underlying charge was dismissed. Plaintiffs underlying charge for alleged assault was dismissed; therefore, his record is appropriately sealed by the court. *Exhibits A, B.*

# ARGUMENT

1. C.R.S. § 24-72-702, because plaintiff’s assault case is sealed it may not be brought into evidence in any proceeding and plaintiff, under law, may deny its existence. Subsequent to sealing a criminal record, an individual may deny its existence. *D.W.M. v. District Court*, 751 P.2d 74 (Colo. 1988); *People v. Bushu*, 876 P.2d 106 (Colo. App. 1994).
2. C.R.S. § 18-1.3-101. Plaintiff never entered a plea in the assault case. Said case is dismissed with prejudice. Pursuant to C.R.S. § 18-1.3-101, plaintiff completed diversion, which shall not be considered a conviction for any purpose. A person with an order of dismissal entered pursuant to this article may not be subject to charge, prosecution, or liability under Colorado law of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, citation, or summons in response to any inquiry made for any purpose. Plaintiff’s record is now sealed and a sealed record closes the matter as if it did not exist. C.R.S. § 24-72-702.
3. Defendant seeks to introduce items stated in his Rule 26 disclosure pertaining to witnesses, statements, police reports, police statements, witness statements to police, an assault citation, diversion and other items identified therein, all of which are inappropriate and excluded in law that may not be admitted or examined in this proceeding pursuant to C.R.S. § 24-72-702 or C.R.S. § 18-1.3-101. Accordingly, the court must exclude this evidence.

# CONCLUSION

Plaintiff was cited for assault and contends the issue was a false report filed by defendant. In fact, prosecution in that matter dismissed the charge. Subsequent, the District Court sealed the records of the assault matter and under Colorado law, any evidence related and pertaining thereto, may not be used in the instant case. Accordingly, plaintiff moves the court *in limine* to exclude all items, evidence, witnesses, reports, other evidence and matters related to plaintiff’s alleged assault charge in this matter, which the District Court sealed in the assault matter.

WHEREFORE, Plaintiff Robert Abrams respectfully requests the Court grant his Motion *In Limine* and exclude any assault evidence relating in any way to case # 15GS006333 in this matter.

RESPECTFULLY SUBMITTED this 17th day of March, 2016.

ABRAMS & ASSOCIATES, LLC

*/s/Robert Abrams*

Robert Abrams, Attorney for Plaintiff

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

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 17th day of March, 2016, a true and correct and correct copy of the foregoing PLAINTIFF’S MOTION *IN LIMINE* TO EXCLUDE ASSAULT EVIDENCE was served via ICCES and/or United States Mail upon:

Michael P. Boyce

Law Office of Michael P. Boyce, PC

3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209

*Attorney for Defendant*

*/s/ Josiah Silverstein*

Josiah Silverstein, Paralegal

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