|  |  |
| --- | --- |
| DISTRICT COURT, DENVER COUNTY, COLORADO |  |
| DATE  Court Address: Denver County Court FILING  1437 Bannock St., Room 256 CASE  Denver, CO 80202  (720) 865-8301 | ILED: September 26, 2016 4:23 PM ID: 7249C23338F58  UMBER: 2015CV31709 |
| 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 Silver  Silver Law Firm, LLC 700 17th Street, Suite 650  Denver, Colorado 80202  Phone: (303) 328-8510  E-m[ail: nathan@silverlawdenver.com](mailto:nathan@silverlawdenver.com) Atty. Reg. # 28836 | Division: 409 |
| ABRAMS & ASSOCIATES, LLC  Robert Abrams  700 17th St., Suite 650  Denver, CO 80202  Phone #: (303) 322-4115  Fax #: (303) 333-0708  E-m[ail: Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net) Atty. Reg. # 37950 |  |
| **PLAINTIFFS’ RESPONSE AND OBJECTION TO DEFENDANT’S MOTION FOR CONTINUANCE OF TRIAL DATE** | |

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

Objection to Defendant’s Motion for Continuance of Trial Date. In support thereof, Plaintiffs state and allege as follows:

# INTRODUCTION

1. Trial in this matter is currently set for November 28, 2016.
2. Opposing counsel improperly moves this court, without legal authority, to continue trial and provides no basis thereto. To extend time under litigation deadlines requires a C.R.C.P. Rule 6 motion and in this instance, continuation of trial, requires the foundation arguably present in *Todd v. Bear Valley Village Apartments,* 980 P.2d 973 (1999)*.* None of which is present in defendant’s motion.
3. Trial in this matter was scheduled for May 2, 2016. On April 29th, 2016, the Friday before trial was to commence, this court granted Defendant a continuance for the limited purpose of retaining substituted counsel to assemble and put forth evidence as to Defendant’s future medical damages pertaining to an alleged shoulder injury. These shoulder injury damages were again confirmed as the basis of the continuance in the parties’ subsequent May 20, 2016 hearing.
4. The Court was very reluctant in granting this continuance under the representations of Defendant’s attorney Mike Boyce and the basis of his argument of ineffective assistance of counsel as the basis for the continuance. That said, the court granted the continuance.
5. Defendant’s substituted counsel, Mr. Muhaisen, now seeks to continue this trial again, which will result in further delay of these proceedings and further prejudice to Plaintiff in additional litigation expenses.
6. Mr. Muhaisen argues, as grounds for continuance, he allegedly has a scheduling conflict precluding him from being available during the scheduled trial dates as a result of a criminal case which he was assigned.
7. Mr. Muhaisen allegedly learned of the dates of the criminal case the same day he was substituted into this proceeding, May 20, 2016. This is the first time Defendant’s counsel mentions having a scheduling conflict, four months after the trial date was set, while admitting in his motion he allegedly learned of it the same day.
8. As this court remembers, the sole purpose of continuing trial the first time was for Defendant to endorse an expert to speak to future medical expenses Defendant may incur relating to his shoulder. To this date, Defendant failed to put forward any evidence to this affect, nor has Defendant endorsed any expert witness to speak to these alleged damages. In fact, by the record, Mr. Muhaisen has done nothing in this case to prove any alleged future shoulder injury damages. Accordingly, Plaintiffs deem this is another delay tactic employed by Defendant to buy more time to either delay or assemble his case, all to Plaintiff’s prejudice of additional litigation expenses.
9. Furthermore, Mr. Muhaisen’s firm employs multiple attorneys in addition to himself, which have authored filings in this case. Mr. Muhaisen can easily have another member of his firm represent Defendant in the instant action, or in the alternative, represent the Defendant in the “conflicting criminal action.” Either way, the trial should continue on schedule with the evidence assembled and presented in this case.
10. To grant Defendant’s motion will result in further delay of these proceedings and unnecessary prejudice to Plaintiffs. As such, Plaintiffs request this court deny Defendant’s motion.

# LEGAL AUTHORITY

10. The basis for a trial continuance is surprise. Trial continuances "should be limited to circumstances in which unforeseen and exceptional circumstances require diligent attorneys to

request an adjournment." *Todd v. Bear Valley Village Apartments,* 980 P.2d 973 (1999). (*emphasis added).* In *Todd,* the exceptional circumstance was plaintiff’s counsel needed emergency back surgery. Here, Defendant’s counsel, months after learning another judge allegedly wants him to take a criminal trial, notifies Plaintiffs he can’t go to trial. This is beyond an unreasonable delay 8 weeks before trial. It appears this is a delay tactic because Defendant has no expert witnesses to support his alleged shoulder injury damages. Plaintiff again moves the court to continue to trial with the evidence the parties have and/or have another lawyer in Defendant’s counsel’s firm try the case. Another delay tactic on a baseless excuse is no reason to delay the trial. On the face of counsel’s argument he does not meet the *Todd* elements for continuance.

WHEREFORE, Plaintiffs respectfully request this Court deny Defendant’s motion and order the trial to continue as scheduled to commence on November 28, 2016.

RESPECTFULLY SUBMITTED this 26th day of September, 2016.

SILVER LAW FIRM, LLC

*/s/ Nathan Silver*

Nathan Silver

*(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 26th day of September, 2016, via ICCES, served a true and correct and correct copy of the foregoing PLAINTIFFS’ RESPONSE AND OBJECTION TO DEFENDANT’S MOTION FOR CONTINUANCE OF TRIAL DATE upon:

Wadi Muhaisen

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Neil S. Sullenberger*

Neil S. Sullenberger, Law Clerk

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