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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO** | DATE FILED: April 28, 2017 4:02 PMFILING ID: 2766B496E9391 CASE NUMBER: 2015CV31709 |
| **Denver County District Court Denver City & County Bldg. 1437 Bannock Street, Room 256****Denver, Colorado 80202** | ▲**COURT USE ONLY**▲ |
| **Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company** | **Case Number: 2015CV31709**Ctrm.: 275 |
| **v.** |  |
| **Defendant: SHAWN BEESON** |  |
| Wadi Muhaisen, 34470 **Muhaisen & Muhaisen, LLC** 1435 Larimer Street Ste 203Denver, Colorado 80202Phone Number: 303-872-0084Fax Number: 303-309-3995 wadi@muhaisenlaw.com |  |
| **PLAINTIFF’S RESPONSE IN OPPOSITION TO PLAINTIFFS’ “MOTION TO STIKE (SIC) ALEXANDER OSBORN’S ABSENTEE TRIAL TESTIMONY FOR****DEFENDANT’S FAILURE TO PROVE OSBORN’S UNAVAILABILITY”** |

COMES NOW, the Defendant above named (“Mr. Beeson”), by and through counsel, Muhaisen & Muhaisen, LLC, files this response opposing Plaintiffs motion to strike Alexander Osborn’s testimony (“Plaintiffs’ Motion”) on the grounds that the motion is baseless. At long last, this case should be resolved on the evidence and merits, and the relief requested by Plaintiffs would cause severe and unnecessary prejudice to Shawn Beeson’s presentation of evidence, and deny the fact-finder the opportunity to find the truth.

1. Plaintiffs’ cite C.R.C.P. 12(f) Plaintiffs’ Motion ¶2. That rule states:

C.R.C.P. 12(f). “Upon motion filed by a party within the time for responding to a pleading […] or upon the court’s own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).” C.R.C.P. 12(f).

1. At the Pretrial Conference, which Plaintiffs’ counsel submitting the Motion to Strike did not attend, the Court already ruled that Mr. Osborne can testify, and therefore has already

concluded that his testimony is not “redundant, immaterial, impertinent, or scandalous.” The Court referred to Mr. Osborne’s testimony as essential to the resolution of this case.

1. The Plaintiffs then cite C.R.C.P. 43 Defendant’s Motion ¶ 3, which is inapplicable at this stage since the court already ruled, and based its findings on the factors in Rule 43, when it granted Defendant’s Motion for Absentee Testimony.
2. The Court then gave the parties two options: 1) First, attempt to schedule a video testimony session with Mr. Osborne; with additional instructions on submission of expedited transcript to the court containing objections. And if the video testimony was not possible, then the Court permitted 2) Mr. Osborne to testify during trial by video or phone. In fact, the Court gave Mr. Beeson’s counsel permission to come to the division on Friday April 28, 2017 to explore the possibility of setting up a video conduit for Mr. Osborne. Plaintiffs’ Counsel who was not present for the Pretrial Conference misquotes the Court’s exact words, and of course doesn’t submit a mittimus or transcript exhibit. The Court, for example, never used the term

“burden” regarding Mr. Oborne’s availability for the video testimony option.

1. Mr. Osborn was not available to participate in video testimony because he already left to Germany, therefore the Court’s Order permitting him to testify by phone or video during trial applies. **Exhibit A.** Mr. Beeson’s counsel and Mr. Osborne have made arrangements for him to be available for testimony, and he has already made arrangements in Germany to make himself available.
2. The reasons upon which the Court granted Defendant’s Motion for Absentee Testimony are unchanged. The Plaintiffs have previously cross-examined Mr. Osborne under oath, they have access to his witness statement(s), they had every opportunity to depose him, and they will again have the full opportunity to cross-examine him.
3. The policy underlying the Colorado Rules of Evidence . . . is similar to that expressed in C.R.C.P. 43 [the rule upon which this Court already granted Defendant’s Motion]: to guarantee to each party an opportunity to present the testimony of . . . witnesses and to favor admissibility of their testimony so as to ascertain the truth within the bounds of fairness. *Berger*

*v. Coon*, 606 P. 2d 68, 70 (Colo. 1980). The Court has given Mr. Beeson that guarantee by approving the testimony of Mr. Osborne.

**WHEREFORE**, in reliance on the argument and supporting facts set forth above, Shawn Beeson respectfully asks the Court to deny the relief sought by Plaintiffs.

**DATED** this 28th day of April, 2017.

Respectfully Submitted,

\*S/ *Wadi Muhaisen* Wadi Muhaisen, 34470 Muhaisen & Muhaisen, LLC

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a copy of the foregoing pleading was delivered via ICCES and email to the following on this 28th day of April 2017:

Nathan Silver, Esq. nathan@silverlawdenver.com

 *Yvette Garcia*

Muhaisen & Muhaisen, LLC

\* *The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*