

1 Rich Bergeron
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2 East Sandwich, MA 02537
Telephone: (617) 209-4325
3 Defendant as Pro Se Attorney

4 **UNITED STATES BANKRUPTCY COURT**

5 **DISTRICT OF NEVADA**

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8 In Re:
9 XYIENCE, INC., A Nevada Corporation
10 Debtor.

11 _____
12 XYIENCE INCORPORATED, a
13 Nevada Corporation,
14 Plaintiff,

15 v.

16 RICHARD BERGERON, an individual
17 Defendant.

18 RICHARD BERGERON, an
19 Individual,

20 Counterclaimant,

21 v.

22
23 XYIENCE INCORPORATED, a
Nevada corporation; FERTITTA
24 ENTERPRISES, INC., a Nevada
25 Corporation,

26 Counterdefendants.

No. BK-S-08-10474-MKN
Chapter 11

Eighth Judicial District Court
Las Vegas, Clark County, Nevada
Case No. A544781, Dept. XXIII

CASE NO. BK-2-08-AP-01082-MKN

**AFFIDAVIT OF RICH BERGERON IN
SUPPORT OF DEFENDANT AND
COUNTERCLAIMANT'S AMENDED
MOTION FOR RULE 11 AND 9011
SANCTIONS**

Hearing Date: _____, 2008

Time: 9:30 AM

Location: 300 Las Vegas Blvd. South
Courtroom #2
Las Vegas, NV 89101

1 **AFFIDAVIT OF RICH BERGERON IN SUPPORT OF DEFENDANT AND**
2 **COUNTERCLAIMANT’S AMENDED MOTION FOR RULE 11 AND 9011**
3 **SANCTIONS**

4 Rich Bergeron, being first duly sworn, states as follows:

- 5 1. I make this affidavit in support of Defendant and Counterclaimant Rich Bergeron’s Amended
6 Motion For Rule 11 and 9011 Sanctions.
- 7 2. I have personal knowledge of, and I am competent to testify to the facts contained in this
8 affidavit, except those matters based upon information and belief, and as to such matters I
9 believe them to be true.
- 10 3. I received all the communications in the exhibits attached to the motion from sources with a
11 direct connection to Xyience.
- 12 4. All the exhibits I have presented are valid and are the result of hundreds of hours of research.
- 13 5. I have reached out to about 80 shareholders in the past two weeks, although I’ve only spoken
14 to a few.
- 15 6. People’s lives have been ruined by this loss of high price stock.
- 16 7. Family trusts have been wiped out.
- 17 8. Over 100 shareholders from the State of Nevada alone have been defrauded, and in excess of
18 350 shareholders are deserving of relief.
- 19 9. I recently made a trip to Las Vegas paid for by interested shareholders who wanted to know
20 what to do next.
- 21 10. I helped lead a meeting with Former Xyience CEO Bill Underhill to explain to these folks
22 what we could do.
- 23 11. Underhill explained to me that the company began to unravel after he was forced out not long
24 after Jan Hall resigned.
- 25 12. All the allegations and factual contentions made in the instant motion are accurate and true.
- 26 13. I have seen all the signs of a complete lack of an investigation in this case on the part of all the
27 attorneys and parties deserving sanctions.
- 28 14. These lawyers have never reached out to speak to me in person after Jamie Cogburn tried to

- 1 settle the case on tape for a “box of sodas” and then \$1,000.
- 2 15. Kirk Sanford and Adam Frank offered me \$5,000 in an after the fact email, marking the end of
- 3 negotiations that truly did not start until after I returned from the Xyience-paid trip to UFC 78
- 4 in Newark, New Jersey on November 17, 2007.
- 5 16. UFC 78 was the last event the Xyience symbol was placed in the middle of the mat for.
- 6 17. Exhibit 57, the funding consent letter, is dated just one day after the September 13th, 2007
- 7 injunction order against me in hit the docket in the Clark Country District Court.
- 8 18. The email following the funding consent letter was forwarded to me by a Xyience shareholder
- 9 and celebrates the sealing of the Fertitta funding.
- 10 19. The Fertittas are managing partners of Station Casinos.
- 11 20. Previous to granting the injunction, Judge Williams had been endorsed in a campaign for his
- 12 seat by Station Casinos.
- 13 21. Still, Fertitta Enterprises had to use their pawns Adam Frank and Kirk Sanford to put the
- 14 pressure on to get the deal ratified or get people ready to go bankrupt, as is outlined in Exhibit
- 15 23, which I received from an insider at Xyience.
- 16 22. Exhibit 52 consists of some of the emails I have sent and received from SEC agents implying
- 17 that the Xyience situation would be looked into. These are just a fraction of the
- 18 communications I’ve sent to the same agents and to other agencies.
- 19 23. Exhibits 53 and 54 are The October 10th Press release in first draft (54) and final product form
- 20 (53) illustrating the Xyience funding with the draft mentioning the Fertittas and the official
- 21 version leaving them out of it.
- 22 24. Exhibits 55 and 56 are direct communications through email that I’ve had with Laurel Davis,
- 23 John Mowbray, and Jon Pearson of Fennemore Craig.
- 24 25. Exhibit 58 is an email I received from Gary Nelson containing the draft Xyience press release
- 25 attached and dated the day before the final release went public.
- 26 26. Exhibit 59 consists of email communications I had with Kirk Sanford, some of which Adam
- 27 Frank was also sent.
- 28 27. These November emails represent the true extent and timing of actual negotiating of
- settlement figures.

- 1 28. Exhibit 60 shows Hunterton and Associates representing Adam Frank and Kirk Sanford in
2 Clark County District Court against Xyience Founder Russell Pike. It is taken directly from
3 the Clark County Courts on-line database.
- 4 29. Exhibit 61 is a public record available in a simple internet search for Frank Fertitta, Jr. and
5 consists of a donation stub made out for Frank Junior where he registers the political donation
6 as “Chairman of the Board” of Fertitta Enterprises.
- 7 30. Bergeron has been told by more than one reliable source that Frank Fertitta, Jr. put much of
8 his own money into the Xyience funding deal.
- 9 31. Exhibit 62 details one of Frank Fertitta, Jr.’s most significant major public scandals in Nevada.
10 Harry McBride appears to have hesitated to testify in Gaming license hearings against Frank
11 Junior due to the Fertitta family tradition of political influence. This is a copy of the original
12 article written by Ned Day.
- 13 32. Sheriff Bill Young left office as the Vegas Sheriff to a high paying job at Station Casinos as
14 his heir apparent and successor Doug Gillespie got \$65,000 in campaign contributions from
15 Fertitta family members and business interests.
- 16 33. David Winterton has sent me several emails and explained that he never told Xyience officials
17 I made his quotes up.
- 18 34. Winterton sent me the emails in Exhibit 64 when Xyience “consultant” John Chadwell was
19 harassing me on-line under different screen names but the same Xyience IP address. He
20 emailed Winterton and myself, and these are some of the pertinent segments.
- 21 35. Xyience’s own pleadings reveal a complete lack of accounting for the First Amendment
22 issues, the actual facts of the case, and the tendency to avoid adding anything of substance to
23 the record.
- 24 36. Exhibit 65 comes from Xyience’s own pleading, embracing the old evidence and relying on it
25 and nothing much else but baseless argument to prove I committed some kind of offense here.
- 26 37. Exhibit 66 is the outline of the complete bankruptcy picture, how it happened, and who
27 benefited most. I received this from a few different shareholders forwarded to me at different
28 stages of the process.

- 1 38. I have been investigating the background of Xyience since late 2006 and never acted out of
2 any desire to injure the company or interfere with any of the company's contracts.
- 3 39. I printed the facts and the testimony I was given from individuals who were around during the
4 earliest days of the company.
- 5 40. I have never personally spoken with any of the attorneys currently engaged in this litigation.
- 6 41. I was never interviewed by Attorney Jamie Cogburn as to my editorial policies.
- 7 42. Attorney Pamela Lawson sought a default order against me in District Court on false
8 pretenses and utilizing a process that never gave me an adequate opportunity to respond.
- 9 43. The default was set aside and Lawson actually asked for her fees to be paid by me for her
10 mere appearance.
- 11 44. Attorney Greg Garman and Attorney Matthew Zirzow were never in any position to know if
12 Bergeron recorded the hearing that was the subject of the show cause hearing in this case on
13 September 10th, 2008.
- 14 45. Garman and Zirzow filed a pleading in that instance that they knew to be frivolous.
- 15 46. Garman also made another later groundless verbal attempt to deny me my telephonic
16 appearance privileges.
- 17 47. At all times attorneys engaging in pressing this litigation and/or attempting to deny culpability
18 have not even been able to muster a cursory investigation into the "facts" purported and
19 alleged in the initial complaint.
- 20 48. Such an investigation would prove I have done nothing wrong.
- 21 49. The exhibits, pleadings, and other papers filed herein and before this date, all inclusive of all
22 exhibits presented, are the product of intensive investigation of all the parties involved in the
23 conspiracy to silence me.
- 24 50. The Xyience bankruptcy is a fraud, and it was promoted by a false promise to shareholders
25 that benefited Zuffa and Fertitta interests above all others.
- 26 51. Xyience shareholders deserve to be compensated for their loss as a result of Bergeron being
27 silenced and unable to warn them of the impending disaster that resulted in this ugly
28 bankruptcy.
52. Fertitta Enterprises appears to be using the Xyience situation as a "dress rehearsal" for the

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Station Casinos bankruptcy or first-lien maneuver that recently failed leaving the company in a position where those in the press are predicting bankruptcy.

53. Xyience, while owned by Fertitta Enterprises, paid off all its obligations and made new ones to Zuffa interests the Fertittas had considerable ownership interests in at the same time they owned Xyience and at the same time Xyience owed multiple other creditors, including Cott Beverages.

54. Xyience actively discouraged adequate bids to save the company from bankruptcy and foreclosed on their note as soon as possible.

55. The opposing attorneys have abused the law, their positions as attorneys, and their charge to investigate claims and pleadings before they file, press and support them.

56. The plaintiff in this case has produced no substantive new evidence to support the initial claim and has not sufficiently amended the claim or made any attempts to bring this bogus litigation to an end despite being served with another Rule 11 Motion and being duly warned of the fraudulent nature of this instant case and the core bankruptcy proceeding.

57. The Fertitta Family's connection to organized crime has deep roots in Texas and is the subject of several high profile investigations and inquiries into Frank Fertitta, Jr.'s past over the years.

58. Frank Fertitta, Jr. is at the center of the Major business entity that struck this deal in the first place as the lead investor as the Chairman of the Board of Fertitta Enterprises.

Dated December 12, 2008



RICH BERGERON, AFFIANT

Subscribed and Sworn to Before Me
This 12th Day of December, 2008

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Carlos Cartagena

NOTARY PUBLIC
My Commission Expires:

