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U.S. BANKRUPTCY COURT  
MARY A. SCOTT, CLERK

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

4 **UNITED STATES BANKRUPTCY COURT**

5 **DISTRICT OF NEVADA**

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 \_\_\_\_\_  
19 RICHARD BERGERON, an  
20 Individual,  
21 Counterclaimant,  
22 v.  
23 XYIENCE INCORPORATED, a  
24 Nevada corporation; FERTITTA  
25 ENTERPRISES, INC., a Nevada  
26 Corporation,  
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 BART DONOVAN  
IN SUPPORT OF AMENDED  
COUNTERCLAIM**  
Hearing Date: \_\_\_\_\_, 2008  
Time: 9:30 AM  
Location: 300 Las Vegas Blvd. South  
Courtroom #2  
Las Vegas, NV 89101

1                   **AFFIDAVIT OF BART DONOVAN IN SUPPORT OF AMENDED COUNTERCLAIM**

2                   **Bart Donovan**, being first duly sworn, states as follows:

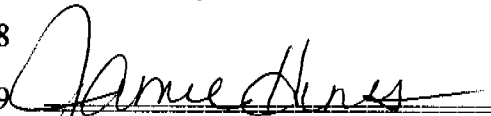
- 3
- 4                   1. I make this affidavit in support of Defendant and Counterclaimant Rich Bergeron's Amended
- 5                   Counterclaim against Xyience, Incorporated and Fertitta Enterprises.
- 6                   2. I have personal knowledge of, and I am competent to testify to the facts contained in this
- 7                   affidavit, except those matters based upon information and belief, and as to such matters I
- 8                   believe them to be true.
- 9                   3. On September 6, 2007 I received a visit from Gary Nelson (hereinafter Nelson).
- 10                  4. Nelson announced during the visit that he had good news about Xyience and presented me
- 11                  with a preliminary injunction order regarding Xyience's case against Bergeron.
- 12                  5. Nelson passed on details about the Xyience case against Bergeron that he had learned from
- 13                  Russell Pike.
- 14                  6. Nelson visited me in regards to Xyience and claimed Bergeron had been fined \$1,000 and
- 15                  would have to pay all of Xyience's legal fees in the company's case against him.
- 16                  7. Nelson went on to claim Bergeron was sentenced to a 30-day suspended jail sentence and
- 17                  would be held in contempt if all his stories regarding Xyience were not removed in 24 hours.
- 18                  8. Nelson also conveyed information he received from Russell Pike indicating Bergeron was on
- 19                  a "vendetta" against the company.
- 20                  9. Nelson further explained that Dana White, Lorenzo Fertitta, and Frank Fertitta would now be
- 21                  willing to provide Xyience with bridge financing for an IPO since Bergcron was out of the
- 22                  way.
- 23                  10. Nelson also reported that investment houses were competing for the Xyience IPO and the
- 24                  offering could take place as soon as January of 2008.
- 25                  11. Having communicated with Bergeron on several occasions I am convinced he is not and
- 26                  never has been out to harm Xyience and intends only to help the original Xyience
- 27                  shareholders as they seek justice for the transgressions of Fertitta Enterprises and the
- 28                  designees they assigned to improperly and fraudulently bankrupt Xyience.
12. Aside from the fact that Bergeron had an injunction issued against him, Nelson's claims

1 regarding the fine, legal fees, suspended jail term, and contempt stipulations were all later  
2 shown to me to be absolutely false.

3 *Dated November 3, 2008*

4   
5 -----  
6 BART DONOVAN, AFFIANT

7 Subscribed and Sworn to Before Me  
8 This 3rd Day of November, 2008

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10 NOTARY PUBLIC  
11 My Commission Expires:

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