

RECEIVED
NOV 3 3 08 PM '08
U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

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

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

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

No. BK-S-08-10474-MKN
Chapter 11
Eighth Judicial District Court
Las Vegas, Clark County, Nevada
Case No. A544781, Dept. XXIII

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

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

**AFFIDAVIT OF RICH
BERGERON IN SUPPORT OF
AMENDED COUNTERCLAIM**

15 v.
16 RICHARD BERGERON, an individual
17 Defendant.

Hearing Date: _____, 2008

Time: 9:30 AM

18 RICHARD BERGERON, an
19 Individual,
20 Counterclaimant,

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

21 v.
22
23 XYIENCE INCORPORATED, a
24 Nevada corporation; FERTITTA
25 ENTERPRISES, INC., a Nevada
26 Corporation,
27 Counterdefendants.

AFFIDAVIT OF RICH BERGERON IN SUPPORT OF AMENDED COUNTERCLAIM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

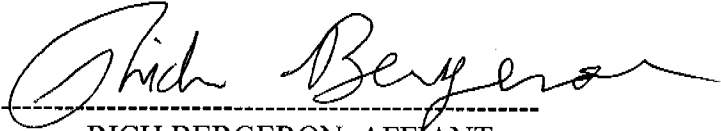
1. I make this affidavit in support of Defendant and Counterclaimant Rich Bergeron's Amended Counterclaim against Xyience, Incorporated and Fertitta Enterprises.
2. I have personal knowledge of, and I am competent to testify to the facts contained in this affidavit, except those matters based upon information and belief, and as to such matters I believe them to be true.
3. On September 7, 2007 I received an email from Mike Hilson regarding a visit his friend Bart Donovan, a Xyience investor, received from Xyience Roper Gary Nelson. (SEE EXHIBIT 11)
4. I have been investigating corruption at Xyience since late 2006 and have cultivated countless sources who have provided me inside information about the company.
5. In response to my initial reports a former Xyience official named John Chadwell, who identified himself as Xyience security, posted several derogatory comments in my blog from a Xyience registered IP address.
6. The same IP address later appeared attached to comments left anonymously that contained snippets from slanderous and defamatory blogs about me referring to me as a homosexual on a vendetta against Xyience with a man named Mark Neiber, who I have never met or talked with.
7. All but one of these blogs have since been removed from the internet.
8. The \$350 million credit facility undertaken by Zuffa, LLC in 2007 is directly related to their investment in Xyience, and witnesses from within Xyience have informed me that the covenants of that credit facility required strong sponsorship agreements with reputable, above board companies.
9. Inside sources at Xyience told me that Fertitta Enterprises invested in Xyience and propped it up only long enough to extend the company's sponsorship contract and pay off Xyience's outstanding debt to the Fertitta-owned Zuffa so as to avoid breaching the covenants of that credit facility.

- 1 10. I never made up any quotes from any source, and in regard to Attorney David Winterton there
2 was never any dispute as to his inclusion in my stories and the accuracy of his quotes.
- 3 11. I learned of an SEC investigation regarding AA Capital and Xyience shares in receivership
4 and reported on that investigation and what happened to those shares purchased out of
5 receivership.
- 6 12. I have been actively providing the SEC, IRS, and FBI information regarding Xyience and the
7 corruption going on there for several months, dating back to as early as Tuesday, March 13,
8 2007 when I sent an email about the Xyience situation to SEC Agent Sarit Klein.
- 9 13. I was informed by the SEC that they could not provide me updates about ongoing
10 investigations, but they did let me know they were looking into my findings.
- 11 14. I was told by a source very close to Russell Pike and Dana White that Pike and White
12 colluded with each other to sell an advertising contract with SPIKE TV to Xyience
13 shareholders even though the advertising would have been given to the UFC for free in
14 exchange for having the company's first season of The Ultimate Fighter reality series on the
15 SPIKE TV network.
- 16 15. An anonymous source who gave me his name and contact information but did not want to be
17 publicly identified told me that Pike and White split the money raised for the free advertising.
- 18 16. I have spoken with dozens of shareholders and former Xyience officials who have all told me
19 that Xyience has been defrauding investors from its inception through the actions of Russell
20 Pike and his various inner circle associates.
- 21 17. I have discovered evidence and heard witness reports of the current Xyience ownership
22 engaging in a completely fraudulent bankruptcy after promising shareholders they would
23 fund the company's expansion and inject capital to prevent bankruptcy.
- 24 18. Xyience never asked me to remove any of my stories about the company, though John
25 Chadwell did offer to fly me to Vegas for a tour of Xyience and a meeting with Dana White.
- 26 19. Chadwell offered the trip in exchange for me writing a positive story about Xyience.
- 27 20. I refused Chadwell's offer.
- 28 21. I have never been employed by Xyience or by any competitor of Xyience in any official, non-
official, or consultant capacity.
- 29 22. I am not now and never have been a homosexual.

- 1 23. I was never fined \$1,000 or forced to pay Xyience's legal fees in regards to this or any other
2 case.
- 3 24. I was never sentenced to any suspended jail term in relation to this case.
- 4 25. I have never been removed from any teaching position for any reason whatsoever.
- 5 26. At all times I have reported the facts correctly and accurately, only published verifiable
6 information, and only printed facts that were corroborated by at least two credible sources.
- 7 27. After appearing briefly on Casey Hendrickson's KXNT radio show in February of 2008,
8 Hendrickson read a statement he purported to be directly from Xyience on the air that
9 generally denounced me and defamed me. Xyience shareholder Ron Sanders witnessed the
10 reading of the statement and will submit to a deposition if necessary.
- 11 28. An article published in The Deal Magazine, which is based in New York City, included a
12 statement from Attorney Gregory Garman, who represents Fertitta Enterprises in this matter.
13 Mr. Garman was quoted in the piece saying "He [Bergeron] believes the best way to do
14 investigative journalism is to sue the company you are trying to investigate."
- 15 29. I do not believe the best way to investigate is through a lawsuit, as I am not a lawyer and do
16 not have any adequate income to initiate a powerful lawsuit brought by actual lawyers. I am a
17 writer first and foremost, not a litigator.
- 18 30. Mr. Garman neglects to remember that it is his client who inspired the suit against me by
19 promising \$15 million in capital for the removal of my stories from the Internet.
- 20 31. I was not previously aware that affidavits from me were necessary to substantiate and
21 authenticate exhibits and claims. Acting as a pro se attorney, I assumed that affidavits would
22 be redundant.
- 23 32. Since I have been recently made aware of the need for substantiating affidavits I will be
24 amending most of the motions I have already submitted and will have those motions and
25 affidavits filed within the next two weeks.
- 26 33. I plan to Amend the Motion for Rule 11 Sanctions first, followed by the Motion to Strike
27 Adam Frank's Declaration, and I will also re-vamp the motion for summary judgment and to
28 suspend the bankruptcy and pare that down to a single motion to suspend the bankruptcy. I
will also file a motion to revoke the state court's injunction since it amounts to a prior
restraint that is unconstitutional.

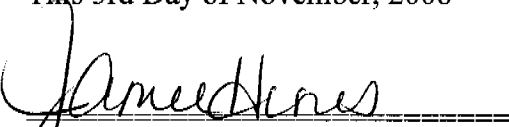
34. I fully expect to have all of the above-mentioned motions filed by November 21, 2008.

Dated November 3, 2008



RICH BERGERON, AFFIANT

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



NOTARY PUBLIC
My Commission Expires:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28