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U.S. BANKRUPTCY COURT
MARY A. SCHOTT, 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.

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

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

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

**AFFIDAVIT OF GARY NELSON
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 XYIENCE INCORPORATED, a
23 Nevada corporation; FERTITTA
24 ENTERPRISES, INC., a Nevada
25 Corporation,
26 Counterdefendants.

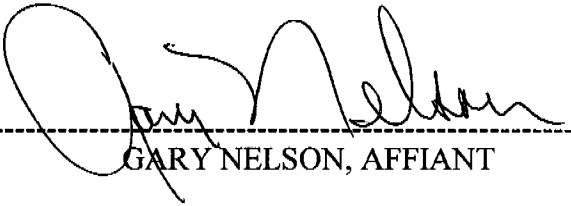
AFFIDAVIT OF GARY NELSON IN SUPPORT OF AMENDED COUNTERCLAIM

Gary Nelson, being first duly sworn, states as follows:

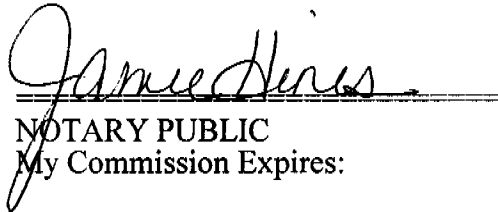
1. I make this affidavit in support of Defendant and Counterclaimant Rich Bergeron's Amended Counterclaim against Xyience, Incorporated and Fertitta Enterprises.
2. I have personal knowledge of, and I am competent to testify to the facts contained in this affidavit, except those matters based upon information and belief, and as to such matters I believe them to be true.
3. On September 6, 2007 I visited a Xyience shareholder named Bart Donovan, and his friend Mike Hilson was also present.
4. I told Mr. Donovan I had good news about Xyience and presented him with a preliminary injunction order regarding Bergeron's case against Xyience.
5. I communicated to Bart what I had learned from Russell Pike regarding Xyience and Bergeron.
6. I told Donovan Bergeron had been fined \$1,000 and would have to pay all of Xyience's legal fees.
7. I further explained that Bergeron was sentenced to a 30-day suspended jail sentence and would be held in contempt if all his stories regarding Xyience were not removed in 24 hours.
8. I also conveyed information I learned from Russell Pike indicating Bergeron was on a "vendetta" against the company.
9. I told Donovan that Dana White, Lorenzo Fertitta, and Frank Fertitta would now be willing to provide Xyience with bridge financing for an IPO since Bergeron was out of the way.
10. I also reported that investment houses were competing for the Xyience IPO and the offering could take place as soon as January of 2008.
11. Having communicated with Bergeron on several occasions I am convinced he is not out to harm Xyience or Fertitta Enterprises and intends only to help the original Xyience shareholders as they seek justice for the transgressions of Fertitta Enterprises and their designees assigned to improperly and fraudulently bankrupt Xyience.
12. Aside from the fact that Bergeron had an injunction issued against him, my claims regarding

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

3 *Dated November 3, 2008*

4 
5 -----
6 GARY NELSON, AFFIANT

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

9 
10 NOTARY PUBLIC
11 My Commission Expires:



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