

E-Filed On 2-10-09

1 GORDON SILVER
 2 GREGORY E. GARMAN, ESQ.
 Nevada Bar No. 6654
 E-mail: ggarman@gordonsilver.com
 3 MATTHEW C. ZIRZOW, ESQ.
 Nevada Bar No. 7222
 E-mail: mzirzow@gordonsilver.com
 5 3960 Howard Hughes Pkwy., 9th Floor
 Las Vegas, Nevada 89169
 6 Telephone (702) 796-5555
 7 Facsimile (702) 369-2666
 Attorneys for Fertitta Enterprises, Inc.

8
 9 **UNITED STATES BANKRUPTCY COURT**
 10 **FOR THE DISTRICT OF NEVADA**

11 In re:
 12 XYIENCE, INCORPORATED,
 a Nevada corporation,
 13
 14 Debtor.

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

15 XYIENCE INCORPORATED,
 a Nevada corporation,
 16
 17 Plaintiff,
 18 v.
 19 RICHARD BERGERON, an individual,
 20
 Defendant.

Adversary No. 08-1082-MKN

21 RICHARD BERGERON, an individual,
 22
 23 Counterclaimant,
 24 v.
 25 XYIENCE INCORPORATED, a Nevada
 corporation; FERTITTA ENTERPRISES,
 26 INC., a Nevada corporation,
 27
 Counterdefendants.

**DECLARATION OF GREGORY E.
 GARMAN, ESQ. IN SUPPORT OF
 OPPOSITION OF
 COUNTERDEFENDANT, FERTITTA
 ENTERPRISES, INC., TO
 DEFENDANT/COUNTERCLAIMANT,
 RICHARD BERGERON'S MOTION FOR
 RULE 11 AND 9011 SANCTIONS**

Date: February 25, 2009
 Time: 9:30 a.m.

1 I, Gregory E. Garman, Esq., hereby declare as follows:

2 1. I am over the age of 18 and am mentally competent. I have personal knowledge
3 of the facts in this matter and if called upon to testify, could and would do so.

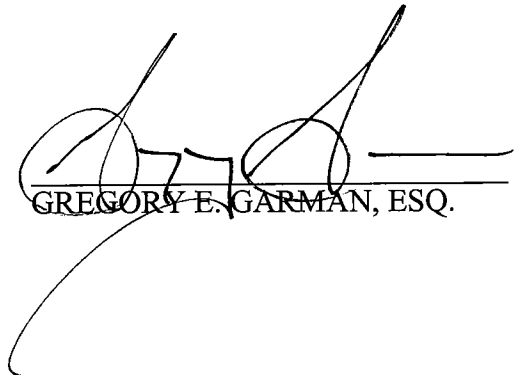
4 2. I am a shareholder with the law firm of Gordon Silver ("G&S"), counsel of record
5 for Fertitta Enterprises, Inc., a Nevada corporation ("Fertitta Enterprises"), in the above-
6 captioned adversary proceeding.

7 3. I make this Declaration in support of the Opposition of Counterdefendant, Fertitta
8 Enterprises, Inc. to Defendant/Counterclaimant, Richard Bergeron's Motion for Rule 11 and
9 9011 Sanctions (the "Opposition") in the above-captioned adversary proceeding.

10 4. Fertitta Enterprises incurred \$11,301.00 based upon 27.3 hours of attorneys fees
11 in preparing the Opposition. A true and correct copy of the itemized billings for work performed
12 on the Opposition is attached hereto as Exhibit "1."

13 I declare under penalty of perjury of the laws of the United States that these facts are true
14 to the best of my knowledge and belief.

15 DATED this 10th day of February, 2009.


GREGORY E. GARMAN, ESQ.

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EXHIBIT "1"

Transactions Listing

Search for: 101630-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Date: 1/5/2009						
1/5/2009	GEG	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Review three new pleadings from Rich Bergeron	F	0.50	500.00	250.00
				Date: 1/5/2009	0.50	250.00
Date: 1/25/2009						
1/25/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Reviewing Bergeron motion for sanctions, and declaration in support thereof.	F	0.60	410.00	246.00
1/25/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Preparing opposition to Bergeron new motion for sanctions, and legal research re: same.	F	0.90	410.00	369.00
				Date: 1/25/2009	1.50	615.00
Date: 1/26/2009						
1/26/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Continuing preparation of opposition to motion for sanctions, and legal research re: same.	F	6.60	410.00	2,706.00
				Date: 1/26/2009	6.60	2,706.00
Date: 1/28/2009						
1/28/2009	GEG	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Telephone call with [REDACTED] and revise bergeron docs	F	0.70	500.00	350.00
				Date: 1/28/2009	0.70	350.00
Date: 1/29/2009						
1/29/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Continuing preparation of opposition to Bergeron's new sanctions motion.	F	0.70	410.00	287.00
				Date: 1/29/2009	0.70	287.00

Transactions Listing

Search for: 101630-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Date: 1/30/2009						
1/30/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Continuing preparation of opposition to Bergeron's renewed sanctions motion.	F	5.60	410.00	2,296.00
1/30/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Reviewing court decisions re: Frank affidavit and granting dismissal of defamation claim.	F	0.40	410.00	164.00
				Date: 1/30/2009	6.00	2,460.00
Date: 2/2/2009						
2/2/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Continuing preparation of opposition to Bergeron's renewed motionf for sanctions.	F	2.90	410.00	1,189.00
				Date: 2/2/2009	2.90	1,189.00
Date: 2/3/2009						
[REDACTED]						
[REDACTED]						
[REDACTED]						
[REDACTED]						
2/3/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Preparing vexatious, litigant motion, and legal research in support thereof.*	F	1.80	410.00	738.00
				Date: 2/3/2009	[REDACTED]	[REDACTED]
Date: 2/4/2009						
2/4/2009	MCZ	[REDACTED]				
[REDACTED]						
[REDACTED]						
[REDACTED]						
				[REDACTED]	[REDACTED]	[REDACTED]

Transactions Listing

Search for: 101630-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Date: 2/7/2009						
2/7/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Finalizing opposition to motion for sanctions, e-mails with [REDACTED] re: Bergeron's late notice of hearing.	F	3.10	410.00	1,271.00
				Date: 2/7/2009	3.10	1,271.00

Date: 2/9/2009						
2/9/2009	MCZ	101630-001 / Fertitta Enterprises, Inc. Defense of Litigation/Removed to BK Court Continuing preparation of opposition to Bergeron new motion for sanctions.	F	3.50	410.00	1,435.00
2/9/2009	MCZ	[REDACTED]				
2/9/2009	GEG	[REDACTED]				
				Grand Total	[REDACTED]	[REDACTED]

27.3 hours
\$11,301.00

MDS Marsha D. Stallsworth

From: USBC☐NEVADA☐ nvb.uscourts.gov
Sent: Tuesday, February 10, 2009 6:26 PM
To: Courtmail☐ nvb.uscourts.gov
Subject: 08-01082-mkn Declaration

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U.S. Bankruptcy Court**District of Nevada**

Notice of Electronic Filing

The following transaction was received from ZIRZOW, MATTHEW C. entered on 2/10/2009 at 6:25 PM PST and filed on 2/10/2009

Case Name: XYIENCE INCORPORATED v. BERGERON
Case Number: [08-01082-mkn](#)
Document Number: [151](#)

Docket Text:

Declaration Of: GREGORY E. GARMAN, ESQ. IN SUPPORT OF OPPOSITION TO AMENDED MOTION FOR RULE 11 AND 9011 SANCTIONS Filed by MATTHEW C. ZIRZOW on behalf of FERTITTA ENTERPRISES (Related document(s)[150] Opposition, filed by Counter-Defendant FERTITTA ENTERPRISES.) (ZIRZOW, MATTHEW)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Bergeron Sanctions Declaration.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=989277954 [Date=2/10/2009] [FileNumber=11628761-0

] [46430b04f6d188644b555d88c8b8b9e9dec2f8333a1b1316354482a01ac0192dc

218a97c5198c564eac4547bcec649692109eb8974d7629261f62d3705a8af]]

08-01082-mkn Notice will be electronically mailed to:

LAUREL E. DAVIS ldavis@fclaw.com, mhurtado@fclaw.com;mlafrena@fclaw.com

GREGORY E GARMAN bankruptcynotices@gordonsilver.com, bknotices@gordonsilver.com

JON PEARSON jpearson@fclaw.com, mhurtado@fclaw.com

MATTHEW C. ZIRZOW bankruptcynotices@gordonsilver.com, bknotices@gordonsilver.com

2/11/2009

08-01082-mkn Notice will not be electronically mailed to:

RICH BERGERON
147 OLD COUNTY ROAD
EAST SANDWICH, MA 02537

BARTHOLOMEW DONOVAN
UNKNOWN
LAS VEGAS, NV 89101

GARY NELSON

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