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May 22, 2023

## **EMERGENCY MOTION FOR ZOOM HEARING**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**Lewis Brisbois Bisgaard & Smith LLP, §  
Plaintiff §**

**Civil Action 4:22-cv-3279**

**Michael Joseph Bitgood a/k/a “Michael §  
Easton,” et al §  
Defendants §**

**TO THE HONORABLE KEITH ELLISON:**

Dear Judge Ellison:

I respectfully request an emergency Zoom hearing on two matters:

1. **MOTION TO ABATE ALL PROCEEDINGS IN THIS MATTER.** At 9:55 a.m. today, the Fifth Circuit Court of Appeals confirmed the docketing of the Amended Notice of Appeal, Dkt. 170, filed May 22, 2023, to Dkt. 166, Order denying Motion for Reconsideration of Dkts. 127 & 128. This appeal of denial of our 59(e) motion affects the entire case, including Dkt. 165 and other discovery. I respectfully request to abate all proceedings including the Order, Dkt 165, ordering me to pay attorney’s fees and provide documents within 10 days, or by May 22, 2023. On May 3, 2023, Dkt 163, I inquired of the Plaintiff to tell me what it thinks I have regarding discovery and I had it, I would tender it. I had no response whatsoever from Plaintiff as to what it wanted in addition to what Mr. Bitgood, as custodian of records, had already provided. See Exhibit 1, Dkt 163, attached and incorporated herein.

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2. In addition, I have had no communication from Mr. Rivera regarding Dkt 169, my May 17, 2023, **Emergency Motion for a Zoom hearing regarding the incapacity of Michael J. Bitgood**, which I requested Mr. Rivera place before Your Honor.

Mr. Bitgood attempted to reach out to Mr. Rivera, and attached as Exhibit 2 is Mr. Rivera's response.

If the Court does grant my emergency motion to abate, without Mr. Bitgood's being allowed to participate, this would be an *ex parte* hearing, as would the continuation of proceedings in this matter, such as the deposition of Brad Beers scheduled for May 31. Mr. Bitgood's doctors have told him he can do nothing.

For the Court's convenience of referring to only one document, I re-enter the circumstances of Mr. Bitgood's incapacity provided in Dkt 169, which, after filing, was also provided by email to Mr. Rivera and served on Plaintiff:

Mr. Bitgood is incapacitated, having had surgery on May 9, 2023, to remove six (6) vertebrae and disks (C-3 through C-7 and T-1) and have them replaced with artificial vertebrae and disks. Mr. Bitgood is still in a Houston-area hospital one week post-surgery and his medical team expects him to be incapacitated for [now, from thirty (30) to] sixty (60) days post-surgery to attempt rehabilitation.

Mr. Bitgood cannot volitionally lift his right arm and use his right hand; is unable to walk; his left hand has his left three fingers curled and he cannot straighten them except with great difficulty; he cannot bend his head forward to look at a computer screen, but must hold his phone up to see the screen while lying on his back [I said "prone," in Dkt. 169, which should have been, "supine].

Mr. Bitgood requires assistance to accomplish even the most minimal activities of daily living, including, for example, brushing his teeth. I shall not further describe his other incapacity deficits out of respect for the Court's sensibilities, except to say that he is utterly incapable of doing much more than speaking.

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**I respectfully request an emergency hearing in this case so that the Court can enter the appropriate orders.**

Respectfully submitted,

/s/ Susan C. Norman  
Susan C. Norman

### **Certificate of Service**

I hereby certify that on the 22<sup>nd</sup> day of May, 2023, I electronically filed the foregoing document with the Clerk of the District Court through the ECF system and an email notice of the electronic filing was sent to all attorneys of record.

/s/ Susan C. Norman  
Susan C. Norman

### **Certificate of Conference**

I certify that on May 22, 2023, I sent an email to Shane Kotlarsky regarding abatement for 40 days based on Mr. Bitgood's condition as well as a 40-day continuance and as of the filing of this document, I have received no response.

/s/ Susan C. Norman  
Susan C. Norman