



Matthew E. Malhiot  
1353 Riverstone Parkway, Suite 120-382  
Canton, Georgia 30114  
678-880-3171 (office) 678-880-3181 (fax)

Contract Number: 20120420

## **CONSULTING AND EXPERT WITNESS AGREEMENT**

This Agreement, entered in to this 17 Day of April 2012, is between the Client (as hereinafter defined), and Forensic Alcohol Consulting and Training, LLC and Matthew Malhiot (herein "FACT"). This Agreement is entered into for professional consulting (and expert witness testimony if applicable) only in relation to that certain cause of action bearing the Case Number/Civil Action Number 11-016445MM10A in which Robert Daniel is a party to said action (herein "the Third Party").

- 1. Scope and Limitation of Services.** FACT will provide services to Client as an independent professional for one (1) specific cause of action involving the Third Party named herein. The parties to this Agreement acknowledge that payment for services performed by FACT is not dependent upon any findings or on the outcome of any legal action pending in this matter. Forensic Alcohol Consulting and Training, LLC does not make any promise or guarantee regarding the outcome of any hearing, arbitration, mediation, or pending cause of action. This Agreement shall not apply to work performed for other Third Parties or other matters pertaining to the Client.
- 2. Qualifications.** The Client has had the opportunity to investigate and verify the credentials of FACT and Matthew Malhiot and states that they are qualified to perform the services of consultation and expert witness testimonial for the Third Party's case or matter. FACT shall bear no responsibility for (and shall be indemnified and held harmless for) any decision made or action taken by Client in reliance on the professional assertions, opinions or conclusions made by FACT or Matthew Malhiot.
- 3. Disclosure of Client's engagement of FACT or Matthew Malhiot to Other Interested Persons.** The Client (which shall at all times be deemed to include Client's staff, attorneys, principals, agents, and/or client's clients) shall not be permitted to disclose the Client's engagement of FACT or Matthew Malhiot to any other party, person or organization participating in or having an interest in the cause of action until this Agreement has been executed and the associated fee has been paid. "Disclosure" is any type of verbal or written communication to third parties having an interest in the outcome of the case in which Client states, suggests or implies that Client has consulted with FACT or Matthew Malhiot, and/or that FACT or Matthew Malhiot will review, has reviewed, offered a professional opinion, or has agreed to testify regarding the Third Party's particular case. Likewise, "disclosure" also includes any dissemination by the Client to other interested persons of Matthew Malhiot's Curriculum Vitae. This type of disclosure is only permitted according to the following:

- a. **Payment of Case Review and Audit Fee.** Upon signing of this Agreement and the payment by Client to FACT of the Case Review and Audit Fee, Client is permitted to disclose FACT and/or Matthew Malhiot as a “**consulting expert**”. This disclosure is not permitted if Client has paid only a Phone Consultation Fee (as described in the Fee Schedule).
- b. **Payment of Court Appearance/Expert Witness Fee.** Upon signing of this Agreement and the payment by Client to FACT of the Case Review Fee and the Court Appearance and Expert Witness Fee, Client is permitted to disclose FACT and/or Matthew Malhiot as a “**testifying expert witness**”.

Once the fee has been paid on an individual case, FACT and Matthew Malhiot are considered retained (and the above disclosures may be made) only for the Third Party’s identified case, excluding all other future or concurrent matters for Third Party or any other client of Client.

4. **Responsibility for Payment of Fees.** The Client is at all times contractually liable to FACT for the payment of fees, regardless of whether Client is being compensated or reimbursed by Client’s client or any other third party or organization. Such third-party compensation or reimbursement is not a condition precedent to the Client’s obligation to timely remit payment to FACT. The individual signing this Agreement states that he or she has the authority to bind not only himself or herself, but the law firm or entity by which he or she is employed. Payment of the fee is due prior to services being rendered, and in any event, payment is due within thirty (30) days of written invoice or demand for same to Client from FACT. Client acknowledges and agrees that a 1.5% per month service fee shall accrue for any payment not remitted within 30 days of receipt of invoice from FACT. Client acknowledges that FACT shall avail itself of all legal collection remedies, including the reporting of nonpayment to professional licensing boards, if necessary. FACT’s costs of collection of fees shall be borne by Client unless a court of competent jurisdiction determines that Client is not liable for the disputed fee.

It is further expressly understood and agreed that Client is responsible for the fees associated with additional consulting, hearings, depositions, testimony, court time and travel expenses which may have not been contemplated at the time of contract, and which may have been necessitated by opposing counsel or other interested persons. Client acknowledges that, although the likelihood of such extra testimony is impossible to predict for each case, it is a foreseeable expense for which Client is liable.

5. **Fees Nonrefundable.** Except for certain itemized travel expenses as outlined in the Fee Schedule, all fees are nonrefundable once remitted. This provision shall apply to any fee, regardless of the time expended by FACT or whether or not a court date has been scheduled. Client acknowledges that FACT and Matthew Malhiot have made accommodations of reserved time and resources in order to be available for Client’s case, and in many cases FACT has refused work for other parties in reliance on the fee paid by Client. FACT limits its number of open consulting and expert witness files in order to provide time and availability to each active client. Client acknowledges that all fees paid have been earned by FACT regardless of the outcome of the case or whether it has been settled prior to trial. The potential availability of Matthew Malhiot and the services of FACT for the Clients entire cause of action constitutes adequate consideration for all fees

paid.

- 6. Court Calendar Scheduling.** Court Calendar Scheduling is determined based upon the issuance of a written subpoena for a specific date of appearance. When timing conflicts arise in terms of determining the priority of scheduling for Matthew Malhiot's court testimony on behalf of Client and that of other clients of FACT and Matthew Malhiot, priority of scheduling is handled in the following manner: federal jurisdiction retains first priority, state court is second, county court is third, municipal court is fourth, followed by hearings, depositions and the like. In any event, a court with a higher jurisdiction will retain priority over a scheduling conflict in a lower jurisdictional venue.

It is imperative that Client contact FACT and Matthew Malhiot prior to committing to a date for testimony. Scheduling priority for courts with similar jurisdiction is based upon the order in which written subpoenas are received by FACT.

Matthew Malhiot will not commit to appearance on any court calendar until the Court Appearance/Expert Witness Fee has been paid in full.

- 7. Privileged Communication and Work Product.** Any work product produced by Forensic Alcohol Consulting & Training, LLC and Matthew Malhiot is privileged information provided in confidence only to Client and shall never be disclosed to any other party at any time, subject to standard and customary practice with respect to use of an expert witnesses' written analysis of a case. Accordingly, FACT shall not disseminate any work product, report, or written analysis to (nor will it discuss the case with) any third party, without express written permission from Client.
- 8. Termination of Services.** FACT may terminate this Agreement if Client fails to pay any fee upon demand, or if Client has misrepresented material facts or omitted material facts in its communication and case review with FACT, or if Client has misrepresented the professional statements or opinions of FACT to third parties.
- 9. Jurisdiction.** This Agreement for all purposes shall be construed according to the laws of the State of Georgia, and Client consents to the jurisdiction and venue of Cherokee County, Georgia for any cause of action resulting from the enforcement or interpretation of this Agreement.
- 10. Notice.** Notice to either party is deemed proper if sent by U.S. Certified Mail (return receipt requested) to the address stated below the signature line.
- 11. Entire Agreement.** This document (including the attached contracted fee schedule) constitutes the entire agreement between the parties, and no other extraneous written or verbal communication shall be deemed to supplement this Agreement unless same is signed by all parties and specifically stated as an Addendum or Amendment to this Agreement.

All of which is agreed to by the undersigned on the date and year first above written.

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Client's Initials \_\_\_\_\_

FACT

CLIENT

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Forensic Alcohol Consulting and Training, LLC  
By: Matthew E. Malhiot, Owner  
1353 Riverstone Parkway, Suite 120-382  
Canton, GA 30114  
Phone: (678) 880-3171  
Fax (678) 880-3181

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Mr. Carlos A. Canet, Attorney at Law  
Courthouse Place  
12 Southeast Seventh St., Suite 705  
Fort Lauderdale, Florida 33301

DATE: \_\_\_\_\_

Date: \_\_\_\_\_