IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

Sam Bean, Plaintiff, v. XYZ CO. Defendants.	CIVIL ACTION FILE NO. 21-F-12345

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINITFF'S MOTION TO LEAVE TO AMEND THE COMPLAINT TO ADD PARTY DEFENDANT

Plaintiff Sam Bean ("Plaintiff") hereby files this Reply to Defendants XYZ Defendants' Response in Opposition to Plaintiff's Motion for Leave to Amend the Complaint to Add Party Defendant. In support of his argument, Plaintiff shows this Court the following:

I. INTRODUCTION

Defendants' argument that this Court should deny Plaintiff's motion to add its corporate affiliate, AB-CD, LLC, to this lawsuit is neither evidentiary nor legally sound. To support its argument that AB-CD, LLC is an alter ego of XYZ Airlines, Defendants rely entirely on an affidavit that *never mentions* AB-CD, LLC. Instead, the document outlines the corporate relationship between XYZ Ohio and XYZ Airlines – a relationship that is wholly irrelevant to the instant inquiry. Defendants' argument that AB-CD, LLC's status as a subsidiary alone somehow protects it against liability in tort is contradicted by the very case law on which Defendants rely and other case law applicable to the issue. Defendants' argument that the distance between the distribution center and the site where Plaintiff was injured somehow

obviates AB-CD, LLC's responsibility deliberately disregards a fundamental principle of American negligence law – that the litmus test for determining liability turns on *foreseeability*, not distance. Finally, Defendants' argument that Plaintiff's motion to add AB-CD, LLC was unreasonably delayed is meritless. Plaintiff has violated no discovery deadlines, and Defendants point to no case law that suggests that adding AB-CD, LLC to this lawsuit at this time would be improper.

II. ARGUMENT AND CITATION TO AUTHORITY

A. AB-CD LLC IS *NOT* PROTECTED BY WORKERS' COMPENSATION EXCLUSIVITY.

1. The affidavit on which Defendants rely does not support its argument that AB-CD LLC is the alter ego of XYZ Airlines.

To support its argument that AB-CD LLC is the alter ego of XYZ Airlines, Defendants rely entirely on an affidavit that *doesn't even mention AB-CD, LLC*. See Generally Affidavit of Shannon Baisden. Instead, the affidavit describes the corporate relationship between United Parcel Service, Inc. ("XYZ Ohio") and United Parcel Service Co. ("XYZ Airlines"). See Id. at 31-9. Specifically, the affidavit highlights that

- *XYZ Ohio* and *XYZ Airlines* have the same directors;
- *XYZ Ohio and XYZ Airlines* have the same secretary and treasurer;
- *XYZ Ohio* and *XYZ Airlines* receive shared services;
- *XYZ Ohio* and *XYZ Airlines* are both covered by the same insurance policies.

See Id. at 3(a)-(g).

The only connection AB-CD, LLC has with *anything* mentioned in the affidavit is that it is also a subsidiary of XYZ Delaware, the parent company of XYZ Ohio and XYZ Airlines. Again, AB-CD, LLC is not mentioned in this affidavit. No facts on the record support the conclusion that AB-CD, LLC and *any* XYZ subsidiary share the same directors, officers, services, insurance policies, etc. Defendants have mounted its entire argument on the fact that

AB-CD, LLC is a wholly-owned subsidiary of XYZ Delaware, and the factually and legally unsupported statement that "corporate affiliates […] are treated collectively." Defendants' Brief at 2.[1] As Plaintiff will outline in greater detail below, neither of the above factors is relevant for determining AB-CD, LLC's alter ego status.

2. None of the cases Defendants cite are relevant to the instant issue.

To support their argument, Defendants rely on a series of cases that do not address the same thematic or contextual issues as those present in the instant dispute. Plaintiff will address each case and how it fails to support Defendants' arguments below.

a. Defendant is not an insurer.

In *Coker v. Great Am. Ins. Co*. (290 Ga. App. 342), an injured employee sued his employer and Great American, the insurance company that provided workers' compensation benefits to his employer. Defendants' Brief at 4. The injured employee argued that Great American was a third-party tortfeasor and, therefore, did not have tort immunity pursuant to O.C.G.A. § 34-9-1. Great American argued that it was entitled to tort immunity because it provided workers' compensation benefits to plaintiff's employer through American National, one of its wholly-owned subsidiaries, and in doing so, received premiums directly from the employer and was directly liable under the coverage to pay any eligible workers' compensation claim. *Coker v. Great Am. Ins. Co.*, 290 Ga. App. 342, 342 (2008).

[1] Defendants cite Plaintiff's Exhibit 1 at pages 8, 20, and 23 to support their statement that "AB-CD, LLC, and XYZ Ohio are corporate affiliates that are treated collectively." Nothing on those pages supports this statement. Page 9 (nine) in Plaintiff's Exhibit 1 (incorrectly identified as page 8 by Defendants) are property tax results for AB-CD, LLC. **The document makes *no mention* of XYZ Delaware.** The second document that Defendants refer to is an Economic Development Program Agreement between the City of Round Rock, Texas, XYZ Ohio, and AB-CD, LLC. The contract refers to AB-CD, LLC and XYZ Ohio – a branch of XYZ that was not mentioned in the affidavit—collectively as "XYZ." This contract has no bearing on the issue at hand. At the very most, this contract supports the conclusion that AB-CD, LLC became the agent of XYZ Ohio in the course of a specific transaction. *See Kissun v. Humana, Inc.,* 267 Ga. App. 419, 421 (1997). This potential agency agreement has nothing to do with the case at hand because not only does it have no bearing on the relationship between AB-CD, LLC and XYZ Airlines, it doesn't even concern the property at issue in the instant case.

> [L]ike many insurance carriers, [Great American] operates its insurance business through its wholly owned subsidiaries pursuant to a pooling agreement under which its subsidiaries issue certain insurance policies and then cede back to Great American the rights, obligations, and liabilities arising under those policies; and that under […] the policy at issue in this case, Great American would be the payor of any eligible workers' compensation benefits owed.

Coker v. Great Am. Ins. Co., 290 Ga. App. 342, 343-44 (2008). *Coker* stood specifically and exclusively for the rule that a "workers' compensation *insurer* is considered to be the alter ego of the actual employer for purposes of immunity." *Id.* at 344. (emphasis added). This rule makes sense both legally and logically – because the insurance company is responsible for paying out benefits, it would be inequitable for an insurance company to be twice liable for paying the same claim. That is not the situation in the instant case. XYZ is not an insurer of AB-CD, LLC, nor is AB-CD, LLC an insurer of XYZ. Nothing on the record establishes that AB-CD, LLC and any XYZ affiliates carry the same insurance. Nothing on the record establishes that the same insurance company would be twice liable for paying Plaintiff's claim. The rule propounded by the *Coker* court did not address the kind of corporate relationship at issue and is therefore irrelevant to the instant controversy.

b. Defendants haven't offered any evidence to support its contention that AB-CD, LLC is an alter ego of XYZ Airlines.

In *Heaton v. Home Transp. Co.* (659 F. Supp. 27), the plaintiff brought suit against his employer, Home, and the employer's wholly-owned subsidiary, AAA. Defendants' Brief at 4. To support its holding that the two entities were alter egos of each other, the *Heaton* court relied on a long list of factors, including:

- AAA and Home shared the same officers and directors;
- All management-level positions for AAA were occupied by Home employees; a great majority of all managerial and administrative functions relative to AAA operation were performed by home personnel;
- All AAA payroll and corporate accounting functions were handled by Home employees;

- AAA and Home filed consolidated tax returns, etc.

Heaton v. Home Transp. Co., 659 F. Supp. 27, 30 (N.D. Ga. 1986). Again, Defendants have established *none* of these factors between AB-CD, LLC and any XYZ affiliate. They *have* established some of these factors between XYZ Airlines and XYZ Ohio, but the instant argument has nothing to do with the relationship between those two entities. Because the factors on which the *Heaton* court based its holding are completely absent from the evidence that Defendant offered this court, the *Heaton* holding is irrelevant to this argument.[2]

Defendants are correct in their assertion that the Court of Appeals in *Sprowson v. Villalobos* (355 Ga. App. 279) held that the defendant's corporate affiliates were immune to tort action under the Workers' Compensation Act. But this ruling *alone* does not support Defendants' case. Because the plaintiff did not appeal, this Court is not aware of the factors that the trial court used to determine the alter ego status of the affiliated corporations, what rules of law the court implemented, and what precedent it followed. The *Sprowson* defendants likely presented actual documentary evidence relating to the alter ego statuses of the companies at issue, and not the statuses of companies that were not involved in the suit. Had the *Sprowson* plaintiff appealed the ruling, Defendants in the instant case might have precedent to support their argument, but they do not. Simply stating that a court has made a ruling that could theoretically support Defendants' argument does not establish the basis of the ruling or that the analysis that the court employed to reach its holding would bolster Defendant's position.

c. AB-CD, LLC is neither a holding company nor a joint venture.

[2] Defendants' unsupported statement that these companies are "treated collectively" is insufficient to support an argument that AB-CD, LLC is the alter ego of any XYZ affiliate.

Defendants' inclusion of *Rogers v. HHRM Self-Perform, LLC* (365 Ga. App. 86) is equally irrelevant. In their brief, Defendants write, without context and apropos of nothing, that "[t]he Court of Appeals of Georgia has expanded workers' compensation exclusivity to apply to members of joint ventures." Defendants' Brief at 5. Defendants never assert that AB-CD, LLC and XYZ are involved in a joint venture. Defendants only assert that AB-CD LLC is a wholly owned subsidiary of XYZ Delaware. Id. Joint ventures and wholly owned subsidiaries are not identical corporate structures. "A joint venture is created when two or more combine their property or labor, or both, in a joint undertaking for profit, with rights of mutual control, provided the arrangement does not establish a partnership." *Stallings v. Sylvania Ford-Mercury*, 242 Ga. App. 731, 735 (2000) (internal citations and punctuation omitted). By contrast, a wholly owned subsidiary is a company whose stock is 100% owned by another firm. *Black's Law Dictionary* (2nd edition). It follows that the analysis that applies to holding a joint venture liable under an alter ego framework cannot be applied whole-stock and without context to an analysis involving a wholly owned subsidiary.

Significantly, Defendant has not even proffered a reason as to why *Rogers* is relevant or why it was included as a point of reference for this Court. The portion of the holding on which Defendant relies is the rule that "whether a business association is classified as a partnership or a joint venture appears to be a distinction without a difference for purposes of the [Workers Compensation Act]." *Rogers v. HHRM Self-Perform*, LLC, 365 Ga. App. 862, 868 (2022) (internal citation and punctuation omitted).[3] Again, this case does not at all concern the

[3] This wording came directly from the trial court's order, but the Court of Appeals affirmed holding that, "[u]nder the facts of this case, where the allegations of the complaint disclose that Rogers was engaged in the business of the JV at the time he was injured, the trial court correctly ruled that the distinction between a partnership and a joint venture is of no consequence." *Rogers v. HHRM Self-Perform, LLC*, 365 Ga. App. 862, 869 (2022).

difference between a partnership and a joint venture, or how the relationship between the two corporate entities affects tort immunity under the Workers' Compensation Act.

The footnote to which Defendants refer from *Crisp Reg'l Hosp., Inc. v. Oliver* (621 S.E.2d 554) is similarly unhelpful. Specifically, in the footnote, the Court writes that because "Crisp Regional Health Services, Inc. was incorporated as a holding company for its subsidiary […] both companies occupy the same legal position." At no point has Defendant alleged that AB-CD, LLC was a holding company, that XYZ Delaware, XYZ Ohio, or XYZ Airlines were holding companies, or that the corporate relationship that existed between the entities in *Crisp was* even remotely related to the corporate relationships that exist in the instant case. Additionally, like *Sprowson*, the Court of Appeals in *Crisp* offers no reasoning, precedent, or evidence to support its finding that *for the purposes of appeal,* the two entities "occupy the same legal position." Much like *Sprowson*, this statement, lacking both context and legal analysis, does not support Defendants' case and, alone, is irrelevant to the instant controversy.

3. AB-CD, LLC's status as a wholly owned subsidiary does not make it an alter ego of XYZ Airlines.

As Defendants are undoubtedly aware, "[a] parent/subsidiary relationship does not in and of itself establish the subsidiary as either the alter ego of the parent or as the parent's actual or apparent agent." *Kissun v. Humana, Inc.*, 267 Ga. 419, 421 (1997) (internal citations and punctuation omitted). This separateness of business entities in the same corporate family is specifically why companies like XYZ create subsidiaries to carry out different business functions. The general rule in US law is "to recognize the individuality of corporate entities and the independent character of each in respect to their corporate transactions, and the obligations incurred by each in the course of such transactions, and to only disregard this recognized independence where the interests of justice and righteous dealing so demand." *Kranich v. TCAC,*

LLC, 2009 Ct. Sup. 5088 (Conn. Super. Ct. 2009). *See also In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 887 F. Supp. 1447, 1452 (N.D. Ala. 1995); *Anderson v. Abbott*, 321 U.S. 349, 362b (1944).

> The reluctance with which the alter ego theory is greeted stems from a rather straightforward principle of fairness: that one who has gained the advantages of separate incorporation must also be willing to accept the consequences of such incorporation. Hence, courts have developed the general rule that separate artificial corporate personalities are usually disregarded only when the corporate device is used to defraud creditors, create a monopoly, circumvent a statute or for other similar reasons.

Gregory v. Garrett Corp., 578 F. Supp. 871, 886-87 (S.D.N.Y. 1983) *quoting Boggs v. Blue Diamond Coal Co.*, 590 F.2d 655, 662 (6th Cir. 1979). *See also* Berle, The Theory of Enterprise Entity, 47 Colum.L.Rev. 343 (1947); Fuller, The Incorporated Individual, 51 Harv.L.Rev. 1373, 1401 (1938). *See also EnduraCare Therapy Mgmt. v. Drake*, 298 Ga. App. 809, 812 (2009) ("[C]ourts are reluctant to disregard the separate existence of related corporations by piercing the corporate veil, and have consistently given substantial weight to the presumption of separateness. The corporate entity may be disregarded only in exceptional circumstances").

Despite the general reluctance surrounding the issue, if Defendants want to pierce their own corporate veil, they must establish "that the stockholders' disregard of the corporate entity made it a mere instrumentality for the transaction of their own affairs; that there is such unity of interest and ownership that the separate personalities of the corporation and the owners no longer exist; and to adhere to the doctrine of corporate entity would promote injustice or protect fraud." *Heaton v. Home Transp. Co.*, 659 F. Supp. 27, 32 (N.D. Ga. 1986).[4]

[4] Note that *Heaton* is one of the cases on which Defendant relies in its brief.

In *United Steelworkers of America v. Connors Steel Co.*, 855 F.2d 1499 (11th Cir. 1988), the Eleventh Circuit set forth a list of factors that bear on whether a subsidiary is the alter ego of its parent:

> (1) the parent and the subsidiary have common stock ownership;
> (2) the parent and the subsidiary have common directors or officers;
> (3) the parent and the subsidiary have common business departments;
> (4) the parent and the subsidiary file consolidated financial statements and tax returns;
> (5) the parent finances the subsidiary;
> (6) the parent caused the incorporation of the subsidiary;
> (7) the subsidiary operates with grossly inadequate capital;
> (8) the parent pays the salaries and other expenses of the subsidiary;
> (9) the subsidiary receives no business except that given to it by the parent;
> (10) the parent uses the subsidiary's property as its own;
> (11) the daily operations of the two corporations are not kept separate; and
> (12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings.

Defendants establish *none* of the above factors. What Defendants' evidence does establish is that AB-CD, LLC is a separate corporate entity – albeit wholly owned by XYZ Delaware – with the specific mandate of owning and operating the physical building out of which XYZ runs its delivery service. XYZ consciously and deliberately chose to form AB-CD, LLC as a separate corporate entity to enjoy the limited corporate liability that creating these separate structures would afford. Nothing in the evidence suggests any reason that XYZ should not be allowed to abandon that intentionally created corporate structure so that it can now evade liability for Plaintiff's injuries.

4. The dual capacity/persona doctrine exists to address exactly the kind of liability Defendants attempt to avoid.

> For the dual persona doctrine to apply, the duties imposed upon the second persona must be totally separate from those imposed by the employer-employee relationship. Larson's Workmen's Compensation Law, § 72.81 (c). The issue thus becomes whether defendant acted as a separate legal entity in constructing and maintaining the building or merely acted in his representative capacity as the alter ego of the corporation-employer.

Doggett v. Patrick, 197 Ga. App. 420, 421 (1990).

In *Doggett v. Patrick* (197 Ga. App. 420), the Court of Appeals addressed a case in which the president of the company for which the plaintiff worked was also the owner of the property in which the company was located and leased it to the corporation that was Plaintiff's employer. , The plaintiff received workers' compensation benefits from the corporation but also sued the defendant under the theory of premises liability and alleged that negligent maintenance of the premises proximately caused his injuries. The Court of Appeals reversed the trial court's grant of summary judgment to the defendant. The court noted that because the defendant received monthly lease payments from the building, there was at least an issue of fact as to "whether the duties imposed upon defendant as a landowner were separate from those imposed upon him as a representative of plaintiff's employer." *Doggett v. Patrick*, 197 Ga. App. 420, 421 (1990).

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Id.

In the instant case, AB-CD, LLC was created for the sole and express purposes of owning, operating, and safely maintaining the XYZ distribution center. AB-CD, LLC was not Plaintiff's employer. There is nothing on the record to establish that AB-CD, LLC carried workers' compensation insurance for XYZ workers. AB-CD, LLC "acted as a separate legal entity in constructing and maintaining the building […]." *Id.* As a separate legal entity, the duties imposed on AB-CD were separate from those imposed upon XYZ. Because the record supports the conclusion that AB-CD, LLC acted as a separate legal entity in constructing and maintaining

the building from which XYZ ran its parcel delivery service, there remains an issue of fact as to whether AB-CD, LLC is liable under the dual persona doctrine.

In *Kranich v. TCAC, LLC* (2009 Ct. Sup. 5088), the Supreme Court of Connecticut addressed a case with an almost identical fact pattern to the one at issue. In *Kranich*, the employee was injured when she suddenly fell while walking on a defective and dangerous plywood walkway suspended from the ceiling. The employee worked for an athletic club, Healthworks, and the property was leased to Healthworks by TCAC. Both entities were Connecticut LLCs, formed on the same day, and comprised of the same three members. Because it was undisputed that the employee's injuries arose out of and were sustained during the course of her employment, she sought and recovered workers' compensation benefits from Healthworks. The employee also filed a premises liability suit against TCAC. TCAC filed for summary judgment and argued that the workers' compensation exclusivity provision precluded any further recovery and that, at the time of injury, the plaintiff "was employed by a common entity that consisted of Healthworks and TCAC, because of common ownership and the manner in which they operated." *Id*.

The court found the main issue in the case to be whether TCAC was also plaintiff's employer, as that term is used in the Worker's Compensation Act. Holding against TCAC, the court reasoned that, like in every other American jurisdiction,

> [t]he general and longstanding rule […] is to recognize the individuality of corporate entities and the independent character of each in respect to their corporate transactions, and the obligations incurred by each in the course of such transactions, and to only disregard this recognized independence where the interests of justice and righteous dealing so demand.

Id. at 5093. The court reasoned that "TCAC is asking the court to pierce its own corporate veil so as to shield it against the plaintiffs — a veil it has willingly donned and now wants to lay

aside." *Id*. The court held that it saw no reason "to extend the dual capacity doctrine where TCAC *made a conscious and deliberate choice to be a separate legal entity*." *Id.* (emphasis added).

Like the corporation in *Kranich,* XYZ made a conscious and deliberate choice to form a separate entity, AB-CD, LLC, that would own and lease the property from which XYZ ran its parcel delivery service. XYZ incorporated AB-CD, LLC, for the express and exclusive purpose of limiting its liability. And now, when that corporate structure no longer suits them, XYZ asks this court to pierce the veil that it willingly donned for the purposes of shielding itself from liability. Like the court in *Kranich*, this Court should not dismiss the corporate structure that XYZ intentionally created.

B. DEFENDANTS OVERSIMPLIFY THE HOLDINGS OF THE PREMISES LIABILITY CASES.

First, and importantly, *Martin v. Six Flags over Georgia, II* (301 Ga. 323) stands for the principle that "[n]othing in OCGA § 51-3-1 requires that the injuries caused by a property owner's failure to exercise due care actually be inflicted within the four corners of a landowner's premises and approaches in order for liability to attach." *Martin v. Six Flags Over Ga. II, L.P.*, 301 Ga. 323, 329 (2017). Other jurisdictions have also recognized and implemented the above rule. *See Pacheco v. United States,* 220 F.3d 1126 (9th Circuit) ("a landowner's duty of care encompasses a duty to avoid exposing persons to risks of injury that occur off-site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury off-site"); *Diocese of St. Petersburg, Inc. v. Arch Ins. Co*., 188 F. Supp. 3d 1289, 1294 (M.D. Fla. 2016) (noting that a premises liability action can exist where there is "a physical nexus between the location where the accident did occur and the premises"); *K. S. v. Santa Fe Pub. Schs*, No. 14-cv-385 SCY/KBM, 2015 U.S. Dist. LEXIS 193550, at *10-11 (D.N.M. June

11, 2015) (in which the court noted that despite not finding the defendant liable in premises liability because the injury did not occur on property immediately adjacent to the premises, that "[did] not necessarily mean that premises liability is limited to adjacent property; the Court could envision a scenario, such as a public entity's failure to contain nuclear waste, that could lead to liability beyond the immediately adjacent property"); *Bridges v. Dahl*, 108 F.2d 228, 230 (6th Cir. 1939) ("The act which proximately causes an accident may either result in immediate injury or may set in motion other acts or events, all constituting a natural and continuous chain, each having a close causal connection with its immediate predecessor, the final one immediately producing the injury as a natural and probable result of the first, and under such circumstances, the person responsible for starting the first link in the chain of events should, as one of ordinary experience and sagacity, *foresee* that the resulting injury might ensue") (emphasis added).

The above principle is seen again and again in the American legal system, and liability always turns on the foreseeability of the potential injury. "[W]hen a party brings an article upon his premises *known to be dangerous*, and liable to escape upon his neighbor's premises, and do injury, he is bound to see that it does not escape and do harm." *Parrott v. Barney*, 18 F. Cas. 1236, 1242, 1871 U.S. App. LEXIS 1757, *7. Courts have repeatedly held that defendants with knowledge that a dangerous condition exists on their land are liable for damages that that dangerous condition causes when it escapes from their land.

> The properties of water and gunpowder *are known to everybody*. The liability of water collected in large bodies to escape through pressure, and of gunpowder to violently explode and do injury, are known to all persons of common sense in civilized communities, no matter how ignorant they may be in literary and scientific matters. It is a part of the common and general knowledge of the community, of which everybody is presumed to be possessed and of which, as such, the courts are bound to take judicial notice. Any party who introduces these things into his premises, does so with a full knowledge of their dangerous properties, and of their liability, even with the utmost care and precaution, to elude his vigilance, baffle his control, escape and injure his neighbor.

Id. (emphasis added).

Dram shop laws are another example of the principle that a party who knowingly sets in motion a chain of events that could foreseeably lead to injury is liable for the injurious outcome whether or not it took place at the bar where the tortfeasor became intoxicated. The Supreme Court of Georgia has propounded the rule that "where one provides alcohol to a noticeably intoxicated individual knowing that he will soon be driving his car, it is *foreseeable* to the provider that the consumer will drive while intoxicated and a jury would be authorized to find that it is *foreseeable* to the provider that the intoxicated driver may injure someone." *Flores v. Exprezit! Stores 98-Georgia, LLC*, 289 Ga. 466, 468 (2011) (emphasis added). In dram shop cases, like in the cases cited above, the litmus test is foreseeability, not distance.

Plaintiff has previously provided this Court with the long and increasingly brutal history of gun violence against XYZ deliverymen. XYZ deliverymen in Atlanta have been particularly vocal about the ongoing threat of gun violence that they face on their routes. Because of this history of gun violence and its relentless rise, it was highly foreseeable that Plaintiff would fall victim to gun violence on his route. This foreseeability was only heightened by the dangerous situation created at the sorting facility owned and operated by AB-CD, LLC. The issue in this case is identical to those in the premises liability cases cited above and those confronted by Georgia's Dram Shop Act – AB-CD, LLC, through its negligent management of its property, set in motion a chain of events with the highly foreseeable outcome that Plaintiff would fall victim to gun violence. The foreseeability of Plaintiff's injury is the basis for AB-CD, LLC's liability and the reason why it must be added as a party defendant to this dispute.

C. THERE HAS BEEN NO UNDUE DELAY IN THIS CASE

To support its contention that Plaintiff must explain moving this court to add AB-CD, LLC now, Defendant relies on a case in which the moving party had already failed to meet then-expired court-imposed deadlines. The party then sought to extend those deadlines, and it is in the context of that motion that the court held that "[a] party seeking the extension of an already-expired scheduling order deadline must show both good cause and excusable neglect." *Estate of John Ellis v. Am. Advisors Grp.*, No. 2:18-cv-70, 2021 U.S. Dist. LEXIS 219347, at *2 (S.D. Ga. Mar. 30, 2021). The above has absolutely no bearing on the issue at hand. Plaintiff has missed no discovery deadlines, nor has Defendant argued that he has. Defendants have simply stated that, in its opinion, Plaintiff should have added AB-CD, LLC sooner – a flimsy argument for which there is no legal support. Defendants cannot impose their own irrelevant time limits on when Plaintiff should have discovered information and added relevant parties to his lawsuit.

Defendants' reliance on *Cartin v. Boles* (155 Ga. App. 248) likewise provides no support for their case. The quote which Defendants cite is not only contextless within their brief, but in the case itself. The *Cartin* court pointed to no facts which made the motion to add a party to that case untimely, therefore providing zero context for the holding. Again, this holding, on its own, lacking both legal and factual context, does not support the conclusion that Plaintiff's motion to add AB-CD, LLC to this case is untimely. Notably, Defendants point to absolutely no factors set forth by any court that would support their argument that this motion is untimely, instead choosing to rely completely on inapplicable, contextless quotes.

Defendants' argument that Plaintiff's motion to add AB-CD, LLC to this lawsuit is somehow time-barred is legally unsound, factually irrelevant and should be DENIED by this Court.

III. CONCLUSION

Defendants' contextless regurgitation of irrelevant case law has done nothing to support its argument that AB-CD, LLC is not a rightful party to this lawsuit. Defendant has offered this Court no evidence to support its contention that AB-CD, LLC is the alter ego of XYZ Airlines – an argument that has been outright rejected by almost every court that has confronted it. The litany of cases that Defendants cite in an attempt to define an outer limit to the distance at which an injury caused by a property owner can be contributed to him likewise fails – Georgia courts have *never* propounded this rule, and instead have held that *"[n]othing* in OCGA § 51-3-1 requires that the injuries caused by a property owner's failure to exercise due care actually be inflicted within the four corners of a landowner's premises and approaches in order for liability to attach." *Martin v. Six Flags Over Ga. II, L.P.*, 301 Ga. at 329. The courts have never placed a limit on distance in the context of premises liability, and the test has always turned on *foreseeability.* In the instant case, given the gun violence-riddled environment in which XYZ deliverymen work, it was highly foreseeable that Plaintiff would be the victim of gun violence, especially if he was believed to be carrying drugs shipped illegally through XYZ. Finally, Defendants' argument that Plaintiff's motion was untimely is based on the same method of cherry-picking out-of-context quotes that don't actually support their argument. Plaintiff's addition of AB-CD, LLC at this stage of litigation violates no discovery orders and is completely legitimate. Because Defendants have failed to make a case for why AB-CD, LLC should not be added to this lawsuit, Plaintiff's motion should be GRANTED, and AB-CD, LLC should be added as a party defendant to this dispute.