

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO Court Address: 1100 Judicial Center Drive Brighton, CO 80601 303.659.1161	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: DAVE A. BOONE, Defendant: MVM, Inc. a California corporation that does business in Colorado	
Attorney or Party Without Attorney: Name: Lawrence W. Marquess Address: LITTLER MENDELSON 1200 17 th Street Suite 1300 Denver, CO 80202.5835 Phone Number: 303.629.6200 Fax Number: 303.629.0200 Atty. Reg #: 10255	<p style="text-align: center;">ANSWER TO AMENDED COMPLAINT</p>

Defendant MVM, Inc. (“MVM”), by and through its attorneys, Lawrence W. Marquess and Michael A. Freimann, of the law firm of Littler Mendelson, P.C., hereby responds to Plaintiff’s Amended Complaint as follows:

1. Paragraph 1 does not contain a factual allegation. To the extent that there is a factual allegation within paragraph 1, MVM denies the allegation.

Jurisdiction and Venue

2. Based on information and belief, MVM admits the allegations contained in paragraph 2.

3. Based on information and belief, MVM admits the allegations contained in paragraph 3.

4. MVM is without sufficient information to admit or deny the allegations in paragraph 4 and therefore denies those allegations.

5. MVM is without sufficient information to admit or deny the allegations in paragraph 5 and therefore denies those allegations.

6. MVM is without sufficient information to admit or deny the allegations in paragraph 6 and therefore denies those allegations.

7. MVM is without sufficient information to admit or deny the allegations in paragraph 7 and therefore denies those allegations.

8. MVM admits on the basis of information and belief that Plaintiff and his wife maintain their residence at 3565 W. 112th Circle, Westminster, CO 80031. MVM is without sufficient information to admit or deny the remaining allegations in paragraph 8 and therefore denies those allegations.

9. MVM is without sufficient information to admit or deny the allegations in paragraph 9 and therefore denies those allegations.

10. MVM is without sufficient information to admit or deny the allegations in paragraph 10 and therefore denies those allegations.

11. MVM denies the allegations of paragraph 11.

12. MVM is without sufficient information to admit or deny the allegations in paragraph 12 and therefore denies those allegations.

13. MVM denies the allegations of paragraph 13.

14. MVM is without sufficient information to admit or deny the allegations in paragraph 14 and therefore denies those allegations.

15. MVM denies the allegations of paragraph 15.

16. MVM admits that certain expenses incurred by the plaintiff in connection with the performance of his contractual services were reimbursed by MVM in accord with the contract between MVM and Plaintiff but denies the remaining allegations of paragraph 16.

17. MVM is without sufficient information to admit or deny the allegations in paragraph 17 and therefore denies those allegations.

18. MVM is without sufficient information to admit or deny the allegations in paragraph 18 and therefore denies those allegations.

19. MVM admits that it engages in very limited business in Colorado. MVM denies the remaining allegations contained in paragraph 19.

20. MVM denies the allegations of paragraph 20.

21. MVM denies the allegations of paragraph 21.

22. MVM denies the allegations of paragraph 22.

23. MVM denies the allegations of paragraph 23.

24. MVM denies the allegations of paragraph 24.

25. MVM denies the allegations of paragraph 25.

26. MVM denies the allegations of paragraph 26.

MVM

27. MVM admits the allegations of paragraph 27.

28. MVM admits the allegations of paragraph 28.

29. MVM admits the allegations of paragraph 29.

30. MVM admits that it engages in very limited business in Colorado. MVM denies the remaining allegations contained in paragraph 30.

31. MVM denies the allegations of paragraph 31.

32. MVM admits that at some times relevant to Plaintiff's claims herein, MVM had a contract with a client to provide security services in Iraq and otherwise denies the allegations of paragraph 32.

33. MVM admits that the identity of the client is classified information and otherwise denies the allegations of paragraph 33.

34. MVM denies the allegations of paragraph 34.

Plaintiff's Employment with MVM

35. MVM is without sufficient information to admit or deny the allegations in paragraph 35 and therefore denies those allegations.

36. MVM denies the allegations of paragraph 36.

37. MVM denies the allegations of paragraph 37.

38. MVM denies the allegations of paragraph 38.

39. MVM denies the allegations in paragraph 39.

40. MVM denies the allegations of paragraph 40.

41. MVM denies the allegations of paragraph 41.

42. MVM denies the allegations of paragraph 42.

43. MVM admits that it entered into a written one year contract with Plaintiff for the services of Plaintiff as an independent contractor (hereinafter the "contract") and otherwise denies the allegations of paragraph 43.

44. MVM denies the allegations of paragraph 44.

45. The contract speaks for itself. MVM otherwise denies the allegations of paragraph 45.

46. MVM denies the allegations of paragraph 46.

Plaintiff was a contract employee of MVM, not an independent contractor, and plaintiff could only be terminated for good cause.

47. MVM denies the allegations of paragraph 47.

48. MVM denies the allegations of paragraph 48.

49. MVM denies the allegations of paragraph 49.

50. MVM denies the allegations of paragraph 50.

51. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 51.

52. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 52.

53. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 53.

54. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 54.

55. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 55.

56. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 56.

57. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 57.

58. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 58.

59. MVM is without sufficient information to admit or deny the allegations in paragraph 59 and therefore denies those allegations.

60. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 60.

61. MVM denies the allegations of paragraph 13.

62. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 62.

63. MVM admits the allegations of paragraph 63.

64. MVM is without sufficient information to admit or deny the allegations in paragraph 64 and therefore denies those allegations.

65. MVM denies the allegations of paragraph 65.

66. MVM admits that the contract speaks for itself as to the terms under which either party might terminate the contract and otherwise denies the allegations of paragraph 66.

67. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 67.

68. MVM denies the allegations of paragraph 68.

69. MVM admits the allegations of paragraph 69.

70. MVM denies the allegations of paragraph 70.

71. MVM admits that the letter, Exhibit B of Plaintiff's Amended Complaint, speaks for itself and otherwise denies the allegations of paragraph 71.

72. MVM admits that the letter, Exhibit C7 of Plaintiff's Amended Complaint, speaks for itself and otherwise denies the allegations of paragraph 72.

MVM's Employee Manual and Standards of Conduct

73. MVM denies the allegations of paragraph 73.

74. MVM denies the allegations of paragraph 74.

75. MVM denies the allegations of paragraph 75.

76. Paragraph 76 does not contain a factual allegation. To the extent that there is a factual allegation within paragraph 76, MVM denies the allegation.

77. MVM admits that the contract speaks for itself and otherwise denies the allegations of paragraph 77.

78. MVM denies the allegations of paragraph 78.

79. MVM denies the allegations of paragraph 79.

80. MVM denies the allegations of paragraph 80.

Plaintiff's Deployments to Baghdad, Iraq

81. MVM denies the allegations of paragraph 81.

82. MVM is without sufficient information to admit or deny the allegations in paragraph 82 and therefore denies those allegations.

83. MVM admits that it determined the duration of periods when Plaintiff was to perform services under the contract and otherwise denies the allegations of paragraph 83.

84. MVM denies the allegations of paragraph 84.

85. MVM admits the allegations of paragraph 85.

86. MVM admits the allegations of paragraph 86.

87. MVM admits that while Plaintiff was in Iraq he performed services solely for MVM and otherwise denies the allegations of paragraph 87.

88. MVM denies the allegations of paragraph 88.

Plaintiff's Initial Deployment

89. MVM admits that Plaintiff performed services in Iraq under the contract during the period from March to June 2004 and otherwise denies the allegations of paragraph 89.

90. MVM is without sufficient information to admit or deny the allegations in paragraph 90 and therefore denies those allegations.

91. MVM is without sufficient information to admit or deny the allegations in paragraph 91 and therefore denies those allegations.

92. MVM denies the allegations of paragraph 92.

93. MVM denies the allegations of paragraph 93.

MVM Rehires Plaintiff

94. MVM denies the allegations of paragraph 94.

95. MVM denies the allegations of paragraph 95.

96. MVM denies the allegations of paragraph 96.

97. MVM denies the allegations of paragraph 97.

98. MVM denies the allegations of paragraph 98.

99. MVM denies the allegations of paragraph 99.

100. MVM is without sufficient information to admit or deny the allegations in paragraph 100 and therefore denies those allegations.

Plaintiff's Next Deployment

101. MVM admits that Plaintiff performed services in Iraq under the contract in the latter half of 2004 and otherwise denies the allegations of paragraph 101..

102. MVM denies the allegations of paragraph 102.

103. Upon information and belief, MVM admits the allegations contained in paragraph 103.

104. MVM is without sufficient information to admit or deny the allegations in paragraph 104 and therefore denies those allegations.

Plaintiff's Termination

105. MVM denies the allegations of paragraph 105.

106. MVM is without sufficient information to admit or deny the allegations in paragraph 106 and therefore denies those allegations.

107. MVM is without sufficient information to admit or deny the allegations in paragraph 107 and therefore denies those allegations.

108. MVM admits that the contract terminated in accord with its terms and otherwise denies the allegations of paragraph 108.

109. MVM admits that the contract terminated in accord with its terms and otherwise denies the allegations of paragraph 108.

110. MVM admits that the contract terminated in accord with its terms and otherwise denies the allegations of paragraph 108.

Nature of Security Work in Baghdad, Iraq

111. MVM admits the allegations of paragraph 111.

112. MVM admits the allegations of paragraph 112.

113. MVM admits the allegations of paragraph 113.

114. MVM admits that at some time during his services in Iraq under the contract, Plaintiff's team consisted of Michael Pietragallo, Thomas Smith, Tony Romanzo, Mickey Johnson and Oscar Hinojosa.

Plaintiff's Top Secret Security Clearance

115. Upon information and belief, MVM admits the allegations contained in paragraph 115.

116. MVM is without sufficient information to admit or deny the allegations in paragraph 116 and therefore denies those allegations.

117. MVM admits the allegations of paragraph 117.

118. MVM is without sufficient information to admit or deny the allegations in paragraph 118 and therefore denies those allegations.

119. MVM is without sufficient information to admit or deny the allegations in paragraph 119 and therefore denies those allegations.

120. MVM denies the allegations of paragraph 120.

121. MVM denies the allegations of paragraph 121.

Nov. 20, 2004 Action on the Airport Road

122. MVM admits the allegations of paragraph 122.

123. MVM admits the allegations of paragraph 123.

124. Upon information and belief, MVM admits the allegations contained in paragraph 124.

125. Upon information and belief, MVM admits the allegations contained in paragraph 125.

126. Upon information and belief, MVM admits the allegations contained in paragraph 126.

127. Upon information and belief, MVM admits the allegations contained in paragraph 127.

128. Upon information and belief, MVM admits the allegations contained in paragraph 128.

129. Upon information and belief, MVM admits the allegations contained in paragraph 129.

130. MVM is without sufficient information to admit or deny the allegations in paragraph 130 and therefore denies those allegations.

131. MVM is without sufficient information to admit or deny the allegations in paragraph 131 and therefore denies those allegations.

132. MVM is without sufficient information to admit or deny the allegations in paragraph 132 and therefore denies those allegations.

133. MVM is without sufficient information to admit or deny the allegations in paragraph 133 and therefore denies those allegations.

134. MVM is without sufficient information to admit or deny the allegations in paragraph 134 and therefore denies those allegations.

135. MVM is without sufficient information to admit or deny the allegations in paragraph 135 and therefore denies those allegations.

136. MVM is without sufficient information to admit or deny the allegations in paragraph 136 and therefore denies those allegations.

137. MVM is without sufficient information to admit or deny the allegations in paragraph 137 and therefore denies those allegations.

138. MVM is without sufficient information to admit or deny the allegations in paragraph 138 and therefore denies those allegations.

139. MVM is without sufficient information to admit or deny the allegations in paragraph 139 and therefore denies those allegations.

140. MVM is without sufficient information to admit or deny the allegations in paragraph 140 and therefore denies those allegations.

141. MVM is without sufficient information to admit or deny the allegations in paragraph 141 and therefore denies those allegations.

142. MVM is without sufficient information to admit or deny the allegations in paragraph 142 and therefore denies those allegations.

143. MVM is without sufficient information to admit or deny the allegations in paragraph 143 and therefore denies those allegations.

144. MVM is without sufficient information to admit or deny the allegations in paragraph 144 and therefore denies those allegations.

145. MVM is without sufficient information to admit or deny the allegations in paragraph 145 and therefore denies those allegations.

146. Upon information and belief, MVM admits the allegation contained within paragraph 146.

147. MVM is without sufficient information to admit or deny the allegations in paragraph 147 and therefore denies those allegations.

148. MVM is without sufficient information to admit or deny the allegations in paragraph 148 and therefore denies those allegations.

149. MVM admits that Plaintiff's statement, Exhibit G to his Amended Complaint, speaks for itself and otherwise denies the allegations of paragraph 149..

150. MVM is without sufficient information to admit or deny the allegations in paragraph 150 and therefore denies those allegations.

151. MVM is without sufficient information to admit or deny the allegations in paragraph 151 and therefore denies those allegations.

The After Action Report ("AAR")

152. MVM is without sufficient information to admit or deny the allegations in paragraph 152 and therefore denies those allegations.

153. MVM admits that the AAR speaks for itself and otherwise denies the allegations of paragraph 153.

154. MVM admits that the AAR speaks for itself and otherwise denies the allegations of paragraph 153.

155. MVM admits that the AAR speaks for itself and otherwise denies the allegations of paragraph 153.

156. MVM admits that the AAR speaks for itself and otherwise denies the allegations of paragraph 153.

157. MVM is without sufficient information to admit or deny the allegations in paragraph 157 and therefore denies those allegations.

158. MVM is without sufficient information to admit or deny the allegations in paragraph 158 and therefore denies those allegations.

159. MVM denies the allegations of paragraph 159.

160. MVM admits that 18 U.S.C. §1001(a) speaks for itself and otherwise denies the allegations of paragraph 160..

161. MVM denies the allegations of paragraph 161.

162. MVM denies the allegations of paragraph 162.

163. MVM is without sufficient information to admit or deny the allegations in paragraph 163 and therefore denies those allegations.

Plaintiff's Opposition to the AAR and to Other Improper Conduct by Scorpion PSD Team Members in Baghdad

164. MVM is without sufficient information to admit or deny the allegations in paragraph 164 and therefore denies those allegations.

165. Upon information and belief, MVM admits the allegations contained in paragraph 165.

166. MVM is without sufficient information to admit or deny the allegations in paragraph 166 and therefore denies those allegations.

167. MVM is without sufficient information to admit or deny the allegations in paragraph 167 and therefore denies those allegations.

168. MVM is without sufficient information to admit or deny the allegations in paragraph 168 and therefore denies those allegations.

169. MVM is without sufficient information to admit or deny the allegations in paragraph 169 and therefore denies those allegations.

Improper Romantic Relationship

170. MVM is without sufficient information to admit or deny the allegations in paragraph 170 and therefore denies those allegations.

171. MVM admits that the Uniform Code of Military Justice speaks for itself and otherwise denies the allegations of paragraph 171.

172. MVM denies the allegations of paragraph 172.

Illegal Weapons

173. MVM is without sufficient information to admit or deny the allegations in paragraph 173 and therefore denies those allegations.

174. MVM denies the allegations of paragraph 174.

175. MVM denies the allegations of paragraph 175.

176. MVM denies the allegations of paragraph 176.

MVM's Willful and Wanton Termination of Plaintiff

177. MVM denies the allegations of paragraph 177.

178. MVM admits that the contract terminated by its terms and otherwise denies the allegations of paragraph 178.

FIRST CLAIM FOR RELIEF
(Breach of Express or Implied Contract)

179. MVM realleges and incorporates by reference herein its responses to paragraphs 1 through 178.

180. MVM denies the allegations of paragraph 180.

181. MVM denies the allegations of paragraph 181.

182. MVM denies the allegations of paragraph 182.

183. MVM denies the allegations of paragraph 183.

184. MVM is without sufficient information to admit or deny the allegations in paragraph 184 and therefore denies those allegations.

185. MVM denies the allegations of paragraph 185.

186. MVM denies the allegations of paragraph 186.

187. MVM denies the allegations of paragraph 187.

188. MVM denies the allegations of paragraph 188.

189. MVM is without sufficient information to admit or deny the allegations in paragraph 189 and therefore denies those allegations.

190. MVM affirmatively denies that there existed any Employment Agreement or contractual or other enforceable obligation between Plaintiff and MVM other than the contract and denies the allegations of paragraph 190.

191. MVM denies the allegations of paragraph 191.

192. MVM denies the allegations of paragraph 192.

193. MVM denies the allegations of paragraph 193.

194. MVM denies the allegations of paragraph 194.

195. MVM denies the allegations of paragraph 195.

196. MVM denies the allegations of paragraph 196.

SECOND CLAIM FOR RELIEF

(Breach of Standards of Conduct and CENTCOM Rules)

197. MVM realleges and incorporates by reference herein its responses to paragraphs 1 through 196.

198. MVM denies the allegations of paragraph 198.

199. MVM admits that the Standards of Conduct speaks for itself and otherwise denies the allegations of paragraph 199..

200. MVM denies the allegations of paragraph 200.

201. MVM denies the allegations of paragraph 201.

202. MVM denies the allegations of paragraph 202

203. MVM denies the allegations of paragraph 203.

204. MVM denies the allegations of paragraph 204.

205. MVM denies the allegations of paragraph 205..

206. MVM denies the allegations of paragraph 206.

207. MVM denies the allegations of paragraph 207.

208. MVM admits that the Standards of Conduct speaks for itself and otherwise denies the allegations of paragraph n208..

209. MVM denies the allegations of paragraph 209.

210. MVM denies the allegations of paragraph 210.

211. MVM denies the allegations of paragraph 211.

212. MVM denies the allegations of paragraph 212.

213. MVM is without sufficient information to admit or deny the allegations in paragraph 213 and therefore denies those allegations.

214. MVM denies the allegations of paragraph 214.

215. MVM denies the allegations of paragraph 215.

216. MVM denies the allegations of paragraph 216.

217. MVM denies the allegations of paragraph 217.

THIRD CLAIM FOR RELIEF

(Wrongful Discharge in Violation of Public Policy)

218. MVM realleges and incorporates by reference herein its responses to paragraphs 1 through 217.

219. MVM denies the allegations of paragraph 219.

220. MVM denies the allegations of paragraph 220.

221. MVM is without sufficient information to admit or deny the allegations in paragraph 221 and therefore denies those allegations.

222. MVM denies the allegations of paragraph 222.

223. MVM is without sufficient information to admit or deny the allegations in paragraph 223 and therefore denies those allegations.

224. MVM denies the allegations of paragraph 224.

225. MVM is without sufficient information to admit or deny the allegations in paragraph 225 and therefore denies those allegations.

226. MVM denies the allegations of paragraph 226.

227. MVM admits the allegations of paragraph 227n on the basis of information and belief.

228. MVM is without sufficient information to admit or deny the allegations in paragraph 228 and therefore denies those allegations.

229. MVM is without sufficient information to admit or deny the allegations in paragraph 229 and therefore denies those allegations.

230. MVM admits that 18 U.S.C. §1001(a) speaks for itself and otherwise denies the allegations of paragraph 230.

231. MVM denies the allegations of paragraph 231.

232. MVM denies the allegations of paragraph 232.

233. MVM denies the allegations of paragraph 233.

234. MVM denies the allegations of paragraph 234.

235. MVM denies the allegations of paragraph 235.

236. MVM denies each and every allegation in the Amended Complaint which is not expressly admitted.

ADDITIONAL DEFENSES

FIRST DEFENSE

Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations.

THIRD DEFENSE

Plaintiff has failed to mitigate his damages, and his entitlement to recover such damages is reduced to the extent of such failure to mitigate.

FOURTH DEFENSE

Plaintiff's Amended Complaint fails to state facts sufficient to state a claim that would support an award of compensatory or punitive damages against MVM.

FIFTH DEFENSE

MVM designates all denials of material allegations as defenses to the extent necessary to provide MVM a complete defense of this matter.

SIXTH DEFENSE

This Court does not have jurisdiction over the subject matter alleged in Plaintiff's Amended Complaint.

SEVENTH DEFENSE

Plaintiff has not performed all conditions precedent and/or covenants of any alleged agreement(s) or contract(s) with MVM.

EIGHTH DEFENSE

Plaintiff's contractual claims are barred by the Statute of Frauds.

NINTH DEFENSE

Plaintiff's claims are barred to the extent the purported contract fails for lack of consideration.

TENTH DEFENSE

Plaintiff's claims are barred to the extent the purported contract is too indefinite to support Plaintiff's claim for breach of contract.

ELEVENTH DEFENSE

Any obligation or duty, contractual or otherwise, which Plaintiff claims to be owed by MVM, has been fully performed, satisfied and/or discharged.

TWELFTH DEFENSE

To the extent Plaintiff had any contract of employment with MVM as alleged in the Amended Complaint, MVM was excused from performance due to Plaintiff's material breach.

THIRTEENTH DEFENSE

Plaintiff's Amended Complaint and each cause of action asserted therein, are subject to the doctrine of accord and satisfaction and therefore, any remedy or recovery to which Plaintiff might have been entitled must be denied or reduced accordingly.

FOURTEENTH DEFENSE

Plaintiff failed to exhaust their administrative, statutory and/or contractual remedies.

FIFTEENTH DEFENSE

Plaintiff's claims are barred to the extent there was never a meeting of the minds regarding any contract alleged by Plaintiff.

SIXTEENTH DEFENSE

MVM alleges that Plaintiff has been paid and/or received all sums and benefits due under the contract.

SEVENTEENTH DEFENSE

MVM alleges that it acted in good faith and did not directly or indirectly perform any acts or fail to perform any acts whatsoever which would constitute a violation of duty or breach of duty, if any, owed to Plaintiff by MVM sounding in tort or contract.

EIGHTEENTH DEFENSE

Plaintiff's claims are barred because Plaintiff is an independent contractor as opposed to an employee of MVM and as such, lacks certain rights or advantages afforded to true employees of MVM.

WHEREFORE, premises considered, MVM respectfully prays that the Plaintiff's Amended Complaint be dismissed in its entirety and that MVM be awarded its costs, reasonable attorneys' fees, and any other and further relief that is just and proper in the circumstances.

Dated this 8th day of December, 2005.

s/ Lawrence W. Marquess

Lawrence W. Marquess, #10255

Michael Freimann, #35430

LITTLER MENDELSON

A Professional Corporation

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Denver, CO 80202.5835

ATTORNEYS FOR DEFENDANT
MVM, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2005, a true and correct copy of the foregoing **ANSWER TO AMENDED COMPLAINT** was electronically filed and served *via the CM/ECF system* which will send notification of such filing to the following. The duly signed original is on file at the office of Littler Mendelson, P.C.

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s/ Christine Keitlen

Christine Keitlen

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