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CAMPBELL & WILLIAMS
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KIRK and AMY HENRY,)
)
Plaintiffs,)
)
vs.)
)
FREDRICK RIZZOLO aka RICK RIZZOLO,)
)
an individual; LISA RIZZOLO, individually)
)
and as trustee of The Lisa M. Rizzolo Separate)
)
Property Trust and as successor trustee of)
)
The Rick J. Rizzolo Separate Property Trust;)
)
THE RICK AND LISA RIZZOLO FAMILY)
)
TRUST; THE RICK J. RIZZOLO SEPARATE)
)
PROPERTY TRUST; THE LISA M. RIZZOLO)
)
SEPARATE PROPERTY TRUST; THE RLR)
)
TRUST; and THE LMR TRUST,)
)
)
Defendants.)
)
_____)

Case No. 2:08-CV-635-PMP-GWF

**PLAINTIFFS' MOTION TO
QUASH SUBPOENAS OF
DONALD J. CAMPBELL AND
C. STANLEY HUNTERTON
AND FOR PROTECTIVE
ORDER**

COMES NOW Plaintiffs KIRK and AMY HENRY, by and through their attorneys of record, DONALD J. CAMPBELL, ESQ. and PHILIP R. ERWIN, ESQ., of the law firm CAMPBELL & WILLIAMS, and C. STANLEY HUNTERTON, ESQ., of the law firm HUNTERTON & ASSOCIATES, and hereby file the following Motion to Quash Subpoenas of Donald J. Campbell and C. Stanley Hunterton and for Protective Order.

This Motion is made and based upon all the pleadings and papers on file herein, together with the affidavits and exhibits attached thereto, and any and all oral arguments.

DATED this 11th day of March, 2010.

CAMPBELL & WILLIAMS

HUNTERTON & ASSOCIATES

By _____ /s/_____
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kirk Henry

By _____ /s/_____
C. STANLEY HUNTERTON, ESQ. (1891)
333 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Amy Henry

DECLARATION OF PHILIP R. ERWIN IN SUPPORT OF PLAINTIFFS' MOTION TO QUASH SUBPOENAS OF DONALD J. CAMPBELL AND C. STANLEY HUNTERTON AND FOR PROTECTIVE ORDER

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, PHILIP R. ERWIN, declare under penalty of perjury as follows:

1. I am a resident of Clark County, Nevada. I am over the age of eighteen (18) years and I am in all respects, competent to make this Declaration. This Declaration is based upon my personal knowledge, and if called upon to testify, I would testify as set forth in this Declaration.

1 2. I am a licensed attorney in the State of Nevada Bar Number 11563. I am an
2 associate in the law firm CAMPBELL & WILLIAMS. I am one of the attorneys representing
3 Plaintiffs Kirk and Amy Henry in the above-captioned action.
4

5 3. On February 12, 2010, Lisa Rizzolo's counsel, Mr. Mark B. Bailus, Esq., sent a
6 letter to Plaintiffs' counsel, Jack F. DeGree, Esq., informing Mr. DeGree of his intention to
7 depose Plaintiffs' attorneys Donald J. Campbell and C. Stanley Hunterton in Las Vegas, Nevada
8 during the week of March 8, 2010. *See* Exhibit "1," Letter of February 12, 2010.

9 4. On February 24, 2010, Defendant Lisa Rizzolo served subpoenas duces tecum for
10 production of documents on Plaintiffs' attorneys Donald C. Campbell and C. Stanley Hunterton
11 (#291-92).
12

13 5. On February 24, 2010, Plaintiffs' counsel sent Mr. Bailus a letter which informed
14 him that the respective subpoenas duces tecum would be objected to in a timely manner pursuant
15 to FRCP 45(c)(2)(B). *See* Exhibit "2," Letter of February 24, 2010.

16 6. On February 25, 2010, Mr. Bailus unilaterally sent a letter to Mr. DeGree stating
17 that Mr. Campbell's deposition would be noticed for March 12, 2010 and Mr. Hunterton's
18 deposition would be noticed for March 14, 2010. *See* Exhibit "3," Letter of February 25, 2010.
19 That same day, Defendant Lisa Rizzolo issued subpoenas duces tecum to Mssrs. Campbell and
20 Hunterton to give deposition testimony on those dates (#297-98).
21

22 7. On February 26, 2010, Plaintiffs' counsel timely objected to the subpoenas duces
23 tecum for production of documents which were issued to Mssrs. Campbell and Hunterton. *See*
24 Exhibit "3," Letter of February 26, 2010.

25 8. On March 3, 2010, Mr. DeGree and I conducted a telephonic meet-and-confer
26 with Mr. Bailus and George Kelesis, Esq., regarding the depositions of Mssrs. Campbell and
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Hunterton. Plaintiffs’ counsel restated our belief that the proposed subjects of inquiry for the noticed depositions of Mssrs. Campbell and Hunterton were irrelevant, vague, overbroad, and protected by both attorney-client privilege and the work-product doctrine. Defense counsel disagreed and we were unable to resolve this discovery dispute.

9. I present to the Court pursuant to LR 26-7(b) that, after personal consultation and sincere effort to do so, I have been unable to resolve the matter without court action.

10. I certify that all attached exhibits are true and correct copies.

11. I declare under penalty of perjury of the laws of the United States and the State of Nevada that the foregoing is true and correct.

DATED this 11th day of March, 2010.

/s/
PHILIP R. ERWIN

POINTS AND AUTHORITIES

I. INTRODUCTION

The instant action arises out of a series of fraudulent transfers committed by Defendants in order to frustrate Plaintiffs’ recovery of debts owed pursuant to a settlement agreement in the state court case. Simply put, Defendants’ fixation on attacking the actions of Plaintiffs’ attorneys rather than defending their own fraudulent conduct is becoming a major distraction in this proceeding. Initially, Defendants cast aspersions to the Court about the performance of Plaintiffs’ attorneys in the state court action and the circumstances surrounding the settlement agreement. Defendants subsequently filed a Motion to Disqualify Plaintiffs’ Attorneys Donald J. Campbell and C. Stanley Hunterton as necessary fact witnesses at trial (#194), which was denied.

1 More recently, Defendants issued Subpoenas to Produce Documents to the Custodians of
2 Records of Campbell & Williams and Hunterton & Associates as well as Mssrs. Campbell and
3 Hunterton themselves (#291-94). The foregoing subpoenas contain overbroad requests
4 pertaining to all facets of the state court action and Plaintiffs' attempts to amicably resolve the
5 matter. It is Plaintiffs' position that the document requests are clearly irrelevant and intended to
6 invade attorney-client privilege and work-product doctrine.¹ Defendants have now issued
7 Subpoenas to Testify at a Deposition to Mssrs. Campbell and Hunterton (#297-98). Plaintiffs
8 anticipate that Defendants will seek deposition testimony on the same topics as the
9 aforementioned subpoenas to produce documents.
10
11

12 At the outset, the Court should quash the subpoenas issued to Plaintiffs' counsel because
13 conducting depositions of opposing attorneys is strongly discouraged and Defendants are unable
14 to meet the stringent test required to justify such action. As part and parcel of the foregoing
15 request, the Court should also enter a protective order prohibiting the depositions of Plaintiffs'
16 counsel because they will impinge on subjects which are wholly irrelevant to the instant action or
17 protected by the attorney client-privilege and work-product doctrine. As such, the Court should
18 grant Plaintiffs' Motion in its entirety.
19

20 **II. ARGUMENT**

21 **A. Legal Standard**

22 Plaintiffs seek to quash the subpoenas of Plaintiffs' counsel Donald J. Campbell and C.
23 Stanley Hunterton pursuant to Federal Rule of Civil Procedure 45. Rule 45(c) provides for an
24 order quashing a subpoena if it "requires disclosure of privileged or other protected matter and
25 no exception of waiver applies." Fed. R. Civ. P. 45(c)(3)(A)(iii). In addition, Plaintiffs request
26

27 ¹ Pursuant to FRCP 45, Plaintiffs timely objected to these Subpoenas on February 26,
28 2010. Accordingly, the subpoenas are not addressed in the instant Motion.

1 that the Court enter a protective order pursuant to Federal Rule of Civil Procedure 26 prohibiting
2 the depositions of Msrs. Campbell and Hunterton in general. Rule 26 provides that “the court
3 may, for good cause, issue an order to protect a party or person from annoyance, embarrassment,
4 oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The Court should grant
5 Plaintiffs’ Motion for the many reasons detailed below.
6

7 **B. Courts Strongly Disfavor Depositions Of Opposing Counsel And The**
8 **Present Circumstances Do Not Justify Such An Extraordinary Action**

9 In short, Defendants are utterly incapable of meeting the strict requirements that would
10 allow the depositions of Msrs. Campbell and Hunterton. Plaintiffs do not suggest that there is
11 an express prohibition of attorney depositions; however, such requests are held to a substantially
12 more stringent standard than the average request to depose a third-party. The Ninth Circuit has
13 not rendered a conclusive opinion on the subject but *Shelton v. American Motors Corp.*, 805 F.2d
14 1323 (8th Cir. 1986), “is generally regarded as the leading case on attorney depositions.” See
15 e.g., *Mass. Mutual Life Insur. Co. v. Cerf*, 177 F.R.D. 472 (N.D. Cal. 1998); *Bybee Farms, LLC*
16 *v. Snake River Sugar Co.*, 2008 WL 820186 (E.D. Wash.) (“[d]istrict courts in this circuit have
17 uniformly followed the Eighth Circuit when analyzing whether to permit the deposition of
18 counsel”).
19

20 Prior to its analysis of whether the particular attorney deposition in that case was
21 permissible, the *Shelton* court proffered the following reasons to discourage the practice:
22

23 Taking the deposition of opposing counsel not only disrupts the adversarial
24 system and lowers the standards of the profession, but it also adds to the already
25 burdensome time and costs of litigation. It is not hard to imagine additional
26 pretrial delays to resolve work-product and attorney-client objections, as well as
27 delays to resolve collateral issues raised by the attorney’s testimony. Finally, the
28 practice of deposing opposing counsel detracts from the quality of client
representation. Counsel should be free to devote his or her time and efforts to
preparing the client’s case without fear of being interrogated by his or her

1 opponent. Moreover, the “chilling effect” that such practice will have on the
2 truthful communications from the client to the attorney is obvious.

3 *Shelton*, 805 F.2d at 1327. The *Shelton* court did recognize that rare circumstances exist where
4 deposing opposing counsel may be necessary but stated that “those circumstances should be
5 limited to where the party seeking to take the deposition has shown that 1) no other means exist
6 to obtain the information than to depose opposing counsel; 2) the information sought is relevant
7 and nonprivileged; and 3) the information is crucial to the preparation of the case. *Id.*; see also
8 *Bybee Farms*, 2008 WL 820186 (restating and applying *Shelton* test); *Cerf*, 177 F.R.D. at 479-83
9 (same). The burden of meeting the foregoing elements is on the party seeking to conduct the
10 attorney deposition. *Id.*

11
12 **1. The Information Sought By Defendants Through The Depositions Of**
13 **Plaintiffs’ Counsel Is Readily Available By Other Means**

14 Although *Shelton* places the burden of proof squarely on Defendants, Plaintiffs will
15 highlight the flaws in their misguided attempts to depose Msrs. Campbell and Hunterton. Based
16 on Defendants’ subpoena requests and prior representations to the Court, Plaintiffs anticipate that
17 the scope of the proposed deposition testimony will focus on Counsels’ actions throughout the
18 entire progression of the Henrys’ lawsuit(s) from the date of the incident through the present.
19 Specifically, Defendants will seek all-encompassing testimony regarding the settlement
20 agreement, plea memorandum, entry of forfeiture, and reviews of Defendants’ financial
21 condition as well as testimony about Defendants’ own divorce proceedings among other things.
22

23 It is incomprehensible that Plaintiffs’ counsel would have unique knowledge about the
24 foregoing events that is not obtainable from other sources. Defendants are already in possession
25 of all pertinent documents and information surrounding the settlement agreement, plea
26 memorandum, entry of forfeiture, and other related agreements as well as the divorce pleadings.
27
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1 Further, Defendants are inquiring into well-publicized events which involved many different
2 parties who are not lead counsel for Plaintiffs in this matter. Defendants have the burden of
3 proving that the subject testimony is unavailable from any other source but Plaintiffs' counsel
4 and it is clear that they will be unable to do so.
5

6 **2. Defendants Intend To Broach Subject-Matter That Is Both Wholly**
7 **Irrelevant And Absolutely Shielded**

8 **a. Defendants Seek To Inquire Into Irrelevant Matters Not**
9 **Reasonably Calculated To Lead To The Discovery Of**
10 **Admissible Evidence**

11 Defendants' never-ending focus on the prior conduct of Plaintiffs' counsel distracts from
12 the plain fact that the discovery sought through these attorney depositions is entirely irrelevant to
13 the instant action. Defendants "may obtain discovery regarding any matter, not privileged, that
14 is relevant to the claim or defense of any party." Fed. P. Civ. P. 26(b)(1). "Relevant information
15 for the purposes of discovery is information reasonably calculated to lead to the discovery of
16 admissible evidence." *Survivor Media, Inc. v. Survivor Productions*, 406 F.3d 625, 635 (9th
17 Cir. 2005).

18 First and foremost, Defendants' proposed subjects of inquiry pertain almost exclusively
19 to events involving Plaintiffs, not Defendants, during the underlying state court action and its
20 corollary proceedings. Defendants seem to concentrate on conduct of Plaintiffs' counsel that
21 would evidence the parties' intent in relation to the settlement agreement, plea memorandum,
22 and entry of forfeiture. Defendants also intend to dissect the actions and thought process of
23 Plaintiffs' counsel during their pursuit of a non-litigious resolution to the underlying state court
24 action.
25

26 Once again, Defendants miss the overriding point. Notwithstanding the obvious
27 implications of attorney-client privilege and work-product, any information or testimony about
28

1 negotiations of the settlement agreement, plea memorandum, entry of forfeiture, or other
2 attempts to amicably resolve the dispute is completely inconsequential and inadmissible in the
3 instant UFTA action. There is a final, binding settlement agreement which establishes
4 Defendant Rick Rizzolo's debt to Plaintiffs and conclusively embodies the intent of all parties.
5 Similarly, the plea memorandum and entry of forfeiture are final expressions of the parties'
6 respective intentions. Simply put, Defendants' fishing expedition is not calculated to lead to
7 admissible evidence. They seek to delve into the past when, for the purposes of this litigation,
8 such events are wholly irrelevant to whether Defendants' engaged in fraudulent conduct to
9 frustrate Plaintiffs' recovery of the debt.
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12 Further, Defendants wish to elicit testimony from Plaintiffs' counsel about internal
13 preparations for trial in the state court action including their opinions or conclusions about
14 Defendants' financial condition and the value of their assets and property. Once again, this
15 information is totally irrelevant. It is undisputed that Mssrs. Campbell and Hunterton are not
16 experts in finance, real estate, or property appraisal. Their opinions as to those subjects,
17 therefore, would be meaningless. Moreover, any supposed valuations, appraisals or reviews of
18 Defendants' financial condition during the state court action would be inconsequential because
19 such information would not lead to admissible evidence of whether Defendants' engaged in a
20 series of fraudulent transfers as alleged by Plaintiffs.
21

22 In sum, Defendants' proposed depositions of Plaintiffs' counsel and their discovery in
23 this case as a whole is bogged down in side issues and irrelevant subject-matter. Defendants
24 apparently do not wish to focus on the plain facts underlying Plaintiffs' claims such as the
25 substantial debt owed or the alleged fraudulent transactions. Instead, Defendants seek to explore
26 the actions and thoughts of Plaintiffs' counsel throughout the Henrys' nine-year ordeal in a
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1 manner which is clearly not calculated to lead to admissible evidence in this case. No doubt the
2 facts from the underlying state court case and its corollary proceedings provide a background to
3 the instant action but for the purposes of resolving Plaintiffs' UFTA and fraud claims, they are
4 irrelevant.
5

6 **b. The Proposed Depositions Of Plaintiffs' Counsel Will**
7 **Undoubtedly Invade Upon Attorney-Client Privilege**

8 Aside from the obvious relevance issues, Defendants also seek to breach the broad
9 principle of confidentiality codified in Nevada's version of attorney-client privilege. Because
10 Plaintiffs' claims are governed by state law, their claims of attorney-client privilege will be as
11 well. Fed. R. Evid. 501. Accordingly, Nevada has codified its version of attorney-client
12 privilege as follows:

13 A client has a privilege to refuse to disclose, and to prevent any other person from
14 disclosing, confidential communications:

- 15 1. Between himself or his representative and his lawyer or his lawyer's
16 representative;
- 17 2. Between his lawyer and the lawyer's representative;
- 18 3. Made for the purpose of facilitating the rendition of professional legal
19 services to the client, by him or his lawyer to a lawyer representing
20 another in a matter of common interest.

21 NRS 49.095. "Implicit in the protection against testimonial compulsion is recognition of the
22 importance of attorney-client privilege" which "is predicated upon the need for confidentiality."
23 *See Tahoe Regional Planning Agency v. McKay*, 769 F.2d. 534, 540 (9th Cir. 1985) (addressing
24 NRS 49.095). The Ninth Circuit noted the breadth of the attorney-client privilege in Nevada
25 when it stated: "Nevada's statutory rule against testimonial compulsion is simply an evidentiary
26 manifestation of a broader, more basic principle. To construe the privilege purely as an
27 evidentiary rule not only emasculates that rule; it ignores the reason for the rule itself." *Id.*
28

1 As noted above, Defendants wish to glean testimony on the thought process and case
2 preparation of Plaintiffs' counsel as well as the inner workings of their respective law firms. Not
3 only would simple contact between the attorneys and the Henrys be implicated but broader
4 communications between Mssrs. Campbell and Hunteerton, their respective staff, and associated
5 third parties would also fall under the umbrella of Defendants' proposed inquiry. This scope of
6 prospective testimony is directly shielded by the provisions of NRS 49.095. As such,
7 Defendants' attempt to meet the *Shelton* test fails on this point in addition to the shortcomings
8 detailed above.
9

10 **c. Defendants' Subjects Of Inquiry Are Protected By The**
11 **Doctrine Of Attorney Work-Product**

12 Finally, even if the Court finds that the testimony sought from Plaintiffs' counsel is
13 relevant to this proceeding and unprotected by attorney-client privilege, Defendants will be
14 unable to demonstrate that such testimony is not shielded by the attorney work-product doctrine.
15 FRCP 26 essentially codified the doctrine of attorney work-product as set forth by the U.S.
16 Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947). Rule 26(b)(3) provides a "qualified
17 immunity protecting from discovery documents and tangible things prepared by a party or his
18 representative in anticipation for litigation." *Admiral Insur. Co. v. United States District Court*,
19 881 F.2d 1486, 1494 (9th Cir. 1989).
20

21 A party seeking discovery of attorney work-product materials must make a
22 "demonstration of substantial need or inability to obtain the equivalent without undue hardship."
23 *Id.* Even in the rare case that a court does order the production of work-product, the court must
24 still "protect against disclosure of the mental impressions, conclusions, opinions, or legal
25 theories of an attorney or other representative of a party concerning the litigation." Fed. R. Civ.
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1 P. 26(b)(3). The purpose of the work-product rule is to “prevent exploitation of a party’s efforts
2 in preparing for litigation.” *Admiral*, 881 F.2d at 1494.

3
4 Defendants will try to breach the long-held protections of the attorney work-product
5 doctrine by using the proposed depositions to inquire into the mental impressions and case
6 preparation of Plaintiffs’ counsel. A brief glance at the subpoenas for document production to
7 Plaintiffs’ counsel makes this intent transparent. Indeed, among the subjects implicated are
8 negotiations and correspondence related to the settlement agreement, plea memorandum, entry of
9 forfeiture, and any other information which would evidence Plaintiffs’ intent with regard to those
10 agreements. Moreover, Defendants seek testimony about Plaintiffs’ prior reviews of their
11 financial condition, asset searches, and appraisals/valuations of real property. Again, the
12 overbroad scope of Defendants’ proposed discovery includes the state court action and its
13 corollary proceedings as well as the instant action. It is inconceivable that Defendants can
14 dispute the clear implications of the attorney work-product doctrine in any deposition of
15 Plaintiffs’ counsel.
16

17 And therein lies a fatal flaw in Defendants’ attempt to meet the *Shelton* test: either the
18 testimony sought from Plaintiffs’ counsel is readily available by other means as detailed above or
19 it is confined to case preparation and mental impressions of Plaintiffs’ counsel. There is simply
20 no middle ground under their broad requests. Under either scenario, Defendants’ proposed
21 depositions of Mssrs. Campbell and Hunterton are prohibited. Regardless, Defendants cannot
22 meet the burden under *Shelton* to prove that the deposition testimony sought from Plaintiffs’
23 counsel is not protected by the attorney work-product doctrine.
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3. Defendants Ask For Deposition Testimony Which Cannot Be Considered Crucial In Any Manner

It is fitting that the burden is on Defendants to demonstrate that the requested deposition testimony is crucial to their defense because Plaintiffs cannot identify a single plausible explanation for this fishing expedition. Plaintiffs allege that Defendants engaged in a series of fraudulent transfers to frustrate their recovery of the debt memorialized in the settlement agreement. The fraudulent conduct began with Defendant Rick and Lisa Rizzolo's sham divorce in 2006 which was aimed at shielding their assets from creditors such as the Henrys. Plaintiffs' further allege that Defendants engaged in other fraudulent transfers and loans using various trust devices to frustrate the Henrys' recovery of the debt. Accordingly, Plaintiffs' course of discovery has been solely focused on unearthing evidence which proves these claims such as the unearthing of hidden loans funneled through concealed offshore trusts.

Defendants, on the other hand, do not seem to be interested in disproving the allegations being leveled against them but instead wish to attack Plaintiffs' counsel. It is utterly inconceivable that the conduct and thought process of Plaintiffs' counsel will be crucial to proving or disproving Defendants' fraudulent conduct at trial. In fact, the only overriding purpose that the proposed depositions seem to serve is to establish Plaintiffs' counsel as necessary fact witnesses at trial and, therefore, attempt to disqualify Messrs. Campbell and Hunterton from the case. Defendants will be hard-pressed to demonstrate that they have not strived for this result throughout discovery. Defendants will be even more hard-pressed to demonstrate that the requested deposition testimony from Plaintiffs' counsel will constitute anything more than background information to the instant action let alone material that is crucial to the preparation of their defense. As such, the court should quash the subpoenas which demand

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deposition testimony of Mssrs. Campbell and Hunterton and enter a protective order prohibiting the same.²

III. CONCLUSION

Accordingly, it is respectfully requested that the Court grant Plaintiffs' Motion to Quash Subpoenas of Donald J. Campbell and C. Stanley Hunterton and for Protective Order.

DATED this 11th day of March, 2010.

CAMPBELL & WILLIAMS

HUNTERTON & ASSOCIATES

By _____/s/
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kirk Henry

By _____/s/
C. STANLEY HUNTERTON, ESQ. (1891)
333 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Amy Henry

² In the improbable event that the Court allows the depositions of opposing counsel to go forward under the *Shelton* test, Plaintiffs request that the Court enter a protective order limiting the scope of the deposition to testimony which is strictly relevant and unprotected by any privilege.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 11th day of March, 2010, serve upon the attorneys in this action a copy of the foregoing **PLAINTIFFS' MOTION TO QUASH SUBPOENAS OF DONALD J. CAMPBELL AND C. STANLEY HUNTERTON AND FOR PROTECTIVE ORDER** via the Court's CM/ECF filing system to the following:

Mark B. Bailus, Esq.
Bailus, Cook & Kelesis, Ltd.
400 South Fourth Street, #300
Las Vegas, Nevada 89101

*Attorneys for Defendant/Cross Claimant
Lisa Rizzolo, The Lisa M. Rizzolo
Separate Property Trust, and The LMR Trust*

Kenneth G. Frizzell, III
Law Offices of Kenneth G. Frizzell
509 South Sixth Street
Las Vegas, Nevada 89101

*Attorneys for Rick Rizzolo,
The Rick and Lisa Rizzolo Family Trust,
The Rick J. Rizzolo Separate Property Trust,
And The RLR Trust*

C. Stanley Hunterton, Esq.
Hunterton & Associates
333 South Sixth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Amy Henry

/s/
PHILIP R. ERWIN, ESQ (11563)
An Employee of Campbell & Williams

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February 12, 2010

VIA HAND DELIVERY

Donald J. Campbell, Esq.
Jack F. DeGree, Esq.
CAMPBELL & WILLIAMS
700 S. Seventh Street
Las Vegas, Nevada 89101

C. Stanley Hunterton, Esq.
HUNTERTON & ASSOCIATES
333 S. Sixth Street
Las Vegas, NV 89101

Re: *Rizzolo adv. Henry*

Dear Counsel:

Please be advised that we intend to schedule the following depositions during the week of
March
8, 2010:

Kirk Henry
Amy Henry
Donald J. Campbell
C. Stanley Hunterton

Please advise by Wednesday, February 24, 2010, as to your and your respective clients' availability during that week. Thank you for your courtesy and cooperation.

Very truly yours,
BAILUS COOK & KELESIS, LTD.


MARK B. BAILUS

MBB/sdg

cc: Kenneth G. Frizzell, III, Esq. (*via hand delivery*)

2



February 24, 2010

VIA U.S. MAIL & FACSIMILE (702) 737-7712

Mark B. Bailus, Esq.
BAILUS COOK & KELESIS
400 South Fourth Street, Suite 300
Las Vegas, NV 89101

Re: *Henry, et al. v. Rizzolo, et al.*

Dear Mr. Bailus:

In response to your request for deposition availability the week of March 8, 2010, please be advised as follows. The subpoena duces tecum you served on Mr. Campbell and Mr. Hunterton will be objected to in a timely manner pursuant to FRCP 45(c)(2)(B). Accordingly, no deposition testimony will be provided until such time as these objections have been addressed by the Court. The Henrys will be available for deposition testimony to be taken telephonically on Thursday March 11, 2010. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

CAMPBELL & WILLIAMS

A handwritten signature in black ink, appearing to read 'Jack F. DeGree'.

Jack F. DeGree, Esq.

cc: C. Stanley Hunterton, Esq. *via facsimile* (702) 388-0361
Kenneth G. Frizzell, III, Esq. *via facsimile* (702) 384-9961

700 SOUTH SEVENTH STREET
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February 25, 2010

HAND DELIVERED

Jack F. DeGree, Esq.
CAMPBELL & WILLIAMS
700 S. Seventh Street
Las Vegas, Nevada 89101

Re: *Rizzolo adv. Henry*

Dear Mr. DeGree:

This is in response to your letter of February 24, 2010. Along with this correspondence, we are serving a notice scheduling the depositions of Kirk and Amy Henry for March 11, 2010. However, we are not willing to agree to conduct these depositions telephonically. Accordingly, we expect the Henrys to be present for their depositions as noticed so as to allow us to evaluate their demeanor and credibility as witnesses.

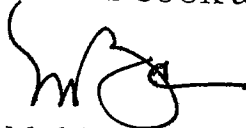
With respect to the subpoenas that were served on Mr. Campbell and Mr. Hunterton on February 17, 2010, I would expect Mr. Campbell and Mr. Hunterton to produce the subpoenaed documents subject to their objections or, to the extent they may claim privilege, then a privilege log should be provided. Moreover, we would point out that as the subpoenas were for the production of documents only, any objections that may be filed have no bearing on our request for dates for Mr. Campbell's and Mr. Hunterton's testimony. As you did not provide us with Mr. Campbell's and Mr. Hunterton's availability, we have noticed their depositions for March 12th and March 14, 2010,

Jack F. DeGree, Esq.
February 25, 2010
Page 2

respectively. Pursuant to our telephone of this date wherein you agreed to accept service of the deposition subpoenas on behalf of Mr. Campbell and Mr. Hunterton, we are also delivering said subpoenas along with this correspondence.

Very truly yours,

BAILUS COOK & KELESIS, LTD.

A handwritten signature in black ink, appearing to be 'MB' followed by a stylized flourish and a horizontal line.

Mark B. Bailus, Esq.

MBB/sdg

cc: Donald J. Campbell, Esq.
C. Stanley Hunterton, Esq.
Kenneth G. Frizzell, III, Esq.
(All via delivery)

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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

February 26, 2010

VIA U.S. MAIL & FACSIMILE (702) 737-7712

Mark B. Bailus, Esq.
BAILUS COOK & KELESIS
400 South Fourth Street, Suite 300
Las Vegas, NV 89101

Re: *Henry, et al. v. Rizzolo, et al.*

Dear Mr. Bailus:

This letter is in response to the Fed. R. Civ. P. 45 subpoenas you caused to be served on the Custodian of Records at Campbell & Williams ("C&W") on Friday February 12, 2010 and Donald J. Campbell on Wednesday February 17, 2010. The former commands the deposition testimony of the custodian in addition to a duces tecum production covering 16 requests for documents on Tuesday March 2, 2010 at 10:00 a.m. The latter commands a duces tecum production covering 18 requests for documents on March 5, 2010 at 10:00 a.m. C&W and Mr. Campbell hereby object to the subpoenas in their entirety for reasons discussed herein as follows.

First and foremost, not one single request in each of the foregoing subpoenas is reasonably calculated to lead to the discovery of admissible evidence. Moreover, these subpoenas are intended to harass the subpoenaed parties and are burdensome, overbroad, vague, and ambiguous. Lastly, each of the subpoenas on their face seek to invade upon the attorney-client privilege and attorney work product. To that end, in our review we have identified several documents which would fall under the scope of these protections and have listed them in the enclosed log. However, due to the breadth of your request, we reserve the right to supplement this log accordingly as we are still conducting our review. In sum, C&W and Mr. Campbell will respond appropriately in the event you bring these improper requests before the Court. In light of the foregoing, it is further requested that you vacate the custodian's March 2, 2010 deposition.

Very truly yours,

CAMPBELL & WILLIAMS

Jack F. DeGree, Esq.

Encl.

cc: Kenneth Frizzell, Esq. *via facsimile* (702) 384-9961
C. Stanley Hunterton, Esq. *via facsimile* (702) 384-9961

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