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Attorneys for Interested Parties  
Kirk and Amy Henry

**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' KIRK AND AMY  
HENRY'S MOTION FOR  
CONTEMPT AGAINST  
DEFENDANT KIMTRAN  
RIZZOLO AND HER LEGAL  
COUNSEL AND FOR  
ENFORCEMENT OF  
MONETARY SANCTIONS  
UNDER FED. R. CIV. P. 37**



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5. Ms. Rizzolo did not produce any supplemental discovery responses on January 20, 2012.

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

7. 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 23rd day of January, 2012.

/s/ Philip R. Erwin  
PHILIP R. ERWIN, ESQ.

**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In short, Defendant Kimtran Rizzolo and her legal counsel Herb Sachs flatly refuse to comply with this Court’s unequivocal Order (#567) compelling the production of discovery. On September 9, 2011, Plaintiffs Kirk and Amy Henry propounded Interrogatories and Requests for Production related to Ms. Rizzolo’s fraudulent receipt of funds arising out of Defendant Rick Rizzolo’s sale of his interest in a Philadelphia strip club. Despite the passage of more than four months and the entry of the Order (#567), Ms. Rizzolo has yet to adequately respond. Ms. Rizzolo’s vexatious approach to discovery is entirely unsurprising and indicative of her fraudulent intent.

**II. ARGUMENT**

**A. The Court Should Hold Ms. Rizzolo and Her Legal Counsel In Contempt Of Court For Their Willful And Persistent Disregard For The Federal Rules Of Civil Procedure And The Authority Of This Court.**

Rule 37(b)(2)(D) provides for civil contempt in addition to other sanctions for a party’s failure to comply with an order of the court regarding the production of discovery. *See In re Heritage Bond Litigation*, 223 F.R.D. 527, 531 (C.D. Cal 2004). “Civil contempt is

1 characterized by the court's desire to compel a party's obedience to a specific and definite court  
2 order after the party has failed to take all reasonable steps within the party's power to comply."  
3  
4 *Id.* "Civil contempt is also characterized by the court's desire to compensate the contemnor's  
5 adversary for the injuries which result from the noncompliance." *Id.*

6 Civil contempt is established by clear and convincing evidence demonstrating that a party  
7 had notice of the terms of the court's order and violated that order. *See Hi-Tek Bags, Ltd. v.*  
8 *Bobtron Int'l, Inc.*, 144 F.R.D. 379, 383 (C.D. 1992) (citing *United States v. Powers*, 629 F.2d  
9 619, 626 n. 6 (9th Cir. 1980)). The contumacious act does not need to be intentional or willful.  
10  
11 *See In re Heritage Bond Litigation*, 223 F.R.D. at 531.

12 Plaintiffs' Motion to Compel (#555) discovery related to Ms. Rizzolo's fraudulent  
13 dealings was granted on December 20, 2011 and the Court subsequently entered a written Order  
14 (#567) memorializing His Honor's findings. In sum, the Court ordered the following:

15 Defendant Kimtran Rizzolo shall serve fully responsive supplemental responses  
16 to Interrogatories and Requests for Production discussed in this order on or before  
17 **January 13, 2012**. To the extent that Defendant, after exercising due diligence,  
18 cannot produce all required information and documents by this deadline, she shall  
19 state in her responses the efforts she has made to comply and shall promptly  
20 further supplement her responses as soon as additional information or documents  
21 are obtained.

22 *See* Order (#567), pgs. 12:24-13:2.

23 The Court expressly warned Ms. Rizzolo "that if she fails to comply with [the] order, she  
24 may be subject to appropriate sanctions under Rule 37(b)(2), which can include a citation for  
25 contempt of court." *Id.* at p. 6:3-6. Nevertheless, Ms. Rizzolo and her attorney Mr. Sachs did  
26 not produce *any* information or documents on or before January 13, 2012. *See* Declaration of  
27 Philip R. Erwin, Esq. In fact, they even failed to produce supplemental discovery responses  
28 when given additional time by Plaintiffs' counsel. *Id.* In light of the foregoing authority, His



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Honor should hold Rizzolo and her attorney Mr. Sachs in contempt as a result of their abject refusal to obey the Court's Order (#567).

**B. The Court Should Award Attorneys Fees And Costs Under FRCP 37 As Dictated By The Order (#567)**

In addition to warning Ms. Rizzolo about the potential for contempt sanctions, His Honor stated that if she "fails to fully and reasonably comply with this order, the Court will impose sanctions for such failure including, but not limited to, awarding Plaintiffs the expenses they incurred in prosecuting the...motion to compel as well as any future motion, together with other sanctions pursuant to Rule 37(a)(2), as may appear proper. *Id.* at p. 12:16-20. As such, Plaintiffs should be awarded all attorneys fees and costs incurred in their attempts to force Ms. Rizzolo to comply with discovery.

**III. CONCLUSION**

Accordingly, Plaintiffs Kirk and Amy Henry request that this Court enter an order holding Defendant Kimtran Rizzolo and her attorney Herb Sachs, Esq. in contempt of court for their successive violations of the Order (#567). Likewise, Plaintiffs ask that the Court impose monetary sanctions in the form of attorneys fees and costs incurred in bringing the Motion to Compel (#555) and the instant Motion. Finally, Plaintiffs request that the Court impose any other sanctions under Fed. R. Civ. P. 37(b)(2) that it deems appropriate under the circumstances.

DATED this 23th day of January, 2012.

HUNTERTON & ASSOCIATES

CAMPBELL & WILLIAMS

By /s/ C. Stanley Hunterton  
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By /s/ Philip R. Erwin  
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*Attorneys for Victim Amy Henry*

*Attorneys for Victim Kirk Henry*



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service of the foregoing was served on the 23rd day of January, 2012 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Philip R. Erwin, Esq.  
An Employee of Campbell & Williams



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January 17, 2012

VIA U.S. MAIL and FACSIMILE (702) 384-9495

Herbert Sachs, Esq.  
602 South Tenth Street  
Las Vegas, NV 89101

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

Dear Mr. Sachs:

I am writing to confirm our earlier telephone conversation.

In the December 20, 2011 hearing, Magistrate Judge Foley granted Plaintiffs' Motion to Compel Discovery (#555) from your client, Kimtran Rizzolo. Magistrate Judge Foley also gave an extensive description of the information and documents that your client was being compelled to produce in this matter.

On January 4, 2012, Magistrate Judge Foley entered a written Order (#567) granting Plaintiffs' Motion to Compel and, once again, instructing Ms. Rizzolo about her obligations in discovery. Therein, he explicitly commanded that Ms. Rizzolo serve "fully responsive supplemental responses to the Interrogatories and Requests or Production. . . on or before January 13, 2012." See Order (#567), p. 12:24-26. Additionally, Magistrate Judge Foley ordered that "[t]o the extent that [Ms. Rizzolo], after exercising due diligence, cannot produce all required information and documents by this deadline, she shall state in her responses the efforts she has made to comply and shall promptly further supplement her responses as soon as additional information or documents are obtained." *Id.* at pgs. 12:26-13:2.

Despite Magistrate Judge Foley's unequivocal instructions during the December 20, 2011 hearing and in the Order (#567), you and your client failed to supplement discovery on January 13, 2012. Indeed, we did not receive a single document or supplemental response. Likewise, we did not receive supplemental responses explaining why Ms. Rizzolo was unable to comply with the Court's directions.

Accordingly, I called you today to inquire into the status of your client's tardy discovery responses. You flatly informed me that your client would not supplement her discovery responses until Friday, January 20, 2012. You further stated that your client would be producing little to no new information in her supplemental responses.



Simply put, Ms. Rizzolo has been given numerous opportunities to comply with her obligations in discovery. Nevertheless, she has done next to nothing in more than four months since Plaintiffs propounded their discovery requests. This obstructionist approach to discovery is patently unacceptable.

Please provide fully responsive answers to Plaintiffs' First Set of Interrogatories and Requests for Production by Friday, January 20, 2012. Otherwise, I will be forced to seek all appropriate relief from the Court. Thank you in advance for your cooperation.

CAMPBELL & WILLIAMS

  
Philip R. Erwin, Esq.

cc: C. Stanley Hunterton, Esq. *via facsimile* (702) 388-0361  
Dominic P. Gentile, Esq. *via facsimile* (702) 369-2666  
Mark Bailus, Esq. *via facsimile* (702) 737-7702