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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 KIRK and AMY HENRY,) CASE NO. 2:08-cv-635-PMP-GWF
10)
11 Plaintiffs,)
12)
13 vs.)
14)
15 FREDRICK RIZZOLO, etc. et al.)
16 Defendants.)
_____)

17 **MOTION FOR A NEW TRIAL OR IN THE ALTERNATIVE, TO ALTER**
18 **OR AMEND JUDGMENT**

19 COMES NOW Defendant Kimtran Rizzolo (Kim), by and through her attorney, Herbert
20 Sachs, Esq. and moves this Court for a New Trial, or in the Alternative, to Alter or Amend the
21 Summary Judgment rendered by this Court on April 19, 2012.

22 This motion is brought pursuant to Fed. Rule of Civil Procedure 59(a)(2) on the grounds that
23 Plaintiffs did not present any evidence that showed that neither Bart Rizzolo nor Kim were persons
24 who did not take the assignment of proceeds from Fredrick Rizzolo in good faith and for a
25 reasonable value.
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1 **MEMORANDUM OF POINTS AND AUTHORITES**

2 Fed. Rule of Civil Procedure 59(a)(2) provides:

3 (2) *Further Action After a Nonjury Trial.* After a nonjury
4 Trial, the court may, on motion for a new trial, open the
5 judgment if one has been entered, take additional testimony,
6 amend findings of fact and conclusions of law or make new
7 ones, and direct the entry of a new judgment.

8 Plaintiffs' entire summary judgment motion, and the judgment entered thereon, focus only
9 Fredrick Rizzolo's intent to defraud Plaintiffs by assigning his interests in further payments due him
10 to Bart Rizzolo, his father who is now deceased, and thereafter to Kim only as Executrix of Bart's
11 estate.

12 Pursuant to Nevada and Federal law, a transfer is not voidable against a person who took in
13 good faith and for a reasonably equivalent value or against any subsequent transferee. NRS
14 112.220(1). Federal Uniform Fraudulent Conveyance Act section 8(a). Further, even if Bart Rizzolo
15 did not take the assignment in good faith, it must be shown that Kim was not a subsequent transferee
16 who took the transfer in good faith.

17 In the alternative, the judgment should be amended as against Kim only to the extent that she
18 would be responsible for the money that she actually received after the death of her husband less the
19 value of loans which had previously been made to Fredrick Rizzolo and attorney fees paid on his
20 behalf.

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CONCLUSION

Based on the foregoing it is respectfully submitted that a new trial be ordered or in the alternative that the Court open the judgment and take additional oral testimony and documentary evidence. In the Alternative Kim requests that the judgment should be amended as against her and should only be in the amount of money she actually received after the death of her husband from the assigned periodic payments less amounts previously loaned to Fredrick Rizzolo and attorney fees paid on his behalf.

DATED: May 18, 2012

/s/ Herbert Sachs
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