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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
SUMMARY JUDGMENT AS
TO DEFENDANTS RICK AND
KIMTRAN RIZZOLO**



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1 Plaintiffs KIRK and AMY HENRY, by and through their attorneys of record, hereby file
2 the following Motion for Summary Judgment as to Defendants Rick and Kimtran Rizzolo.
3

4 **POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 Plaintiffs Kirk and Amy Henry's claim against Defendants Rick and Kimtran Rizzolo
7 arises out of Rick Rizzolo's sale of his interest in a business styled TEZ Real Estate LP. TEZ
8 Real Estate LP was part of a business venture between Rick Rizzolo, through the Lions Limited
9 Partnership, and Vincent Piazza, through the Piazza Family Limited Partnership, for the purpose
10 of operating a strip club in Philadelphia, PA.
11

12 After he was indicted, Rick Rizzolo sold his interest in TEZ Real Estate and planned to
13 use the proceeds as a hidden nest egg until his legal troubles were behind him. As part of this
14 plan, Rick Rizzolo transferred almost \$1 million to his father and stepmother in order to keep it
15 out of the hands of Plaintiffs and the Internal Revenue Service. These transfers make up just one
16 component of a complex familial conspiracy designed to assist Rick Rizzolo in avoiding the
17 financial consequences of his criminal conduct. The Court should now void Rick Rizzolo's
18 fraudulent transfers to Bart and Kimtran Rizzolo because there is no remaining issue of material
19 fact to be decided at trial.
20

21 **II. STATEMENT OF UNDISPUTED FACTS ("UDF") IN SUPPORT OF**
22 **PLAINTIFFS' ARGUMENT**

23 1. On August 8, 2006, Rick Rizzolo entered into the Settlement Agreement with
24 Plaintiffs. Therein, Rick Rizzolo agreed to pay \$10 million dollars to resolve the state court
25 action. In return, Plaintiffs agreed to release only those claims giving rise to the personal injury
26 action in state court (specifically, those that occurred as a result of the incident "that occurred on
27 or about the 20th day of September, 2001,..."). See Exhibit "1," Settlement Agreement. The
28



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1 Settlement Agreement was subsequently reduced to judgment based on Rick Rizzolo's failure to
2 comply with its terms. *See* Exhibit "2," Judgment.
3

4 2. Rick Rizzolo's obligation to Plaintiffs was also incorporated into the terms of his
5 guilty plea agreement with the United States Government in the form of restitution. *See* Exhibit
6 "3," Plea Agreement.

7 3. On or about February 2005, Rick Rizzolo invested approximately \$2 million in an
8 entity styled TEZ Real Estate LP with Vincent Piazza in Philadelphia, Pennsylvania. *See* Exhibit
9 "4," Deposition Testimony of Rick Rizzolo, p. 123-24; Exhibit "5," Deposition of Vincent
10 Piazza, p. 43. TEZ Real Estate LP was one of many business entities that were created to hold
11 assets related to a strip club in Philadelphia called the Crazy Horse. *See* Exhibit "6," Deposition
12 of Stuart Cohen, p. 27-29. Rick Rizzolo was also a principal of an entity styled TEZ
13 Management LLC which was formed to manage the business. *Id.*

14 4. Rick Rizzolo acted as a "consultant" for the Philadelphia club because he "was
15 not allowed to be on the [liquor] license or the property" due to his criminal history. *See* Exhibit
16 "5," Deposition of Vincent Piazza, p. 31-32. He did, however, provide the Crazy Horse in
17 Philadelphia with certain employees from his operation in Las Vegas. *Id.* These individuals
18 were subsequently terminated by Vincent Piazza after one or more of them was indicted by the
19 United States Government. *Id.*

20 5. Rick Rizzolo's participation was further complicated by the criminal charges
21 brought against him in United States District Court arising out of his operation of the Crazy
22 Horse Too in Las Vegas. *Id.* at 31-33; 44-47. Once Rick Rizzolo was indicted, he immediately
23 flew to Philadelphia to hold a face-to-face meeting with Vincent Piazza. *Id.* In that meeting,
24 Rick Rizzolo explained that he was facing serious legal problems which could result in his
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1 incarceration. *Id.* Accordingly, Rick Rizzolo asked Vincent Piazza to purchase his interest in
2 TEZ Real Estate LP and release him from any obligations to act as a “consultant.” *Id.* This
3 meeting led to the sale of Rick Rizzolo’s interest in TEZ Real Estate LP and his eventual receipt
4 of approximately \$3 million. *Id.*

6 6. Even though he was incarcerated at the time, Rick Rizzolo, through the
7 substantial assistance of Lisa Rizzolo, arranged to sell his ownership interest to Piazza on
8 October 17, 2007. *See* Exhibit “7,” Purchase Agreement. While in federal custody, Rick
9 Rizzolo also executed the First Amendment to the Purchase Agreement along with other assorted
10 closing documents on March 25-31, 2008. *See* Exhibit “8,” First Amendment to Purchase
11 Agreement.

13 7. On April 3, 2009—one day before his release from prison—Rick Rizzolo
14 received an initial payment of \$1 million as part of the sale of his interest in the Philadelphia
15 nightclub. *See* Exhibit “4,” Deposition Testimony of Rick Rizzolo, p. 151-66. After depositing
16 these funds in a Nevada Commerce Bank account in the name of the Lions Limited Partnership,
17 Rick Rizzolo transferred the entire amount to The RLR Trust in the Cook Islands. *Id.* Rick
18 Rizzolo then immediately disbursed the bulk of the funds as follows: \$600,000 to Lisa Rizzolo;
19 \$200,000 to Bart Rizzolo; and \$100,000 to the Law Firm of Patti Sgro & Lewis. *Id.* Shortly
20 thereafter, Rick Rizzolo arranged for the remainder—approximately \$90,000—to be brought
21 back from the Cook Islands and deposited in the Lions Limited Partnership account at Nevada
22 Commerce Bank. *Id.*

25 8. Pursuant to the First Amendment to the Purchase Agreement, Rick Rizzolo was
26 entitled to an additional \$2 million in payments which were due to begin on or about April 2009.
27 *See* Exhibit “8,” First Amendment to Purchase Agreement. These payments were contingent on
28



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1 sales of stock by Vincent Piazza. *Id.* Under the operative agreements, Rick Rizzolo would
2 receive the \$2 million in the form of monthly payments. *Id.*
3

4 9. On April 18, 2009, Rick Rizzolo executed an “assignment of proceeds” from the
5 sale of his interest in TEZ Real Estate LP to Bart Rizzolo in the amount of \$789,000. *See*
6 Exhibit “9,” Assignment of Proceeds. The assignment of the first \$789,000 owed under the
7 Purchase Agreement was then acknowledged by Vincent Piazza. *See* Exhibit “10,” Second
8 Amendment to Purchase Agreement.
9

10 10. Rick Rizzolo admitted he executed this assignment with Bart Rizzolo in order to
11 conceal assets from creditors such as Plaintiffs and frustrate their recovery of the funds owed to
12 them. *See* Exhibit “11,” Fax Cover Sheet; Exhibit “4,” Deposition Testimony of Rick Rizzolo, p.
13 293-95.

14 11. On April 20, 2009, Bart Rizzolo received the first monthly payment from the
15 assignment of proceeds from Rick Rizzolo. *See* Exhibit “12,” Breakdown of Stock Put
16 Payments; Exhibit “13,” Collection of Checks. From the period of April 20, 2009 and February
17 15, 2010, Bart Rizzolo received a total of \$325,513.81 from the assignment of proceeds. *Id.*
18

19 12. Bart Rizzolo died in March 2010 at which time the “entitlement” to funds under
20 the assignment of proceeds passed to his wife Kimtran Rizzolo. *See* Exhibit “14,” May 6, 2010
21 Letter to Jody Shepherdson. Kimtran Rizzolo was the executor of Bart Rizzolo’s Living Trust
22 and inherited all of his assets when he died. *Id.*; *see* Exhibit “15,” Deposition of Kimtran
23 Rizzolo, p. 82. Indeed, Kimtran Rizzolo inherited millions of dollars which are kept in a variety
24 of checking accounts, investment accounts, and annuities at multiple different financial
25



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1 institutions. *Id.* at 49-58.¹ She also received the couple's home in Las Vegas, NV which she
2 owns outright. *Id.* at 33-34.
3

4 13. Kimtran Rizzolo received \$407,482.22 from the period of April 15, 2010 until
5 October 19, 2010 when the final payment under the assignment of proceeds was made. *See*
6 Exhibit "12," Breakdown of Stock Put Payments; Exhibit "13," Collection of Checks. Together,
7 Bart and Kimtran Rizzolo received a total of \$732,996.03 under the assignment of proceeds. *Id.*
8

9 14. On October 19, 2010, payment "reverted back" to Rick Rizzolo when the final
10 disbursement was made to Kimtran Rizzolo. *Id.* Accordingly, Piazza directed a check to Lions
11 Limited Partnership in partial payment of the funds owed to Rick Rizzolo under the Purchase
12 Agreement. *See* Exhibit "16," October 19, 2010 Check to Lions Limited Partnership. Kimtran
13 Rizzolo returned this check to Piazza with instructions to reissue the check in her name. *Id.*
14

15 15. Subsequently, Rick Rizzolo's attorney Dominic Gentile ordered Piazza to refrain
16 from sending any funds to Rizzolo because the right to that money was in dispute. *See* Exhibit
17 "17," Correspondence. Although Piazza did not send Rick Rizzolo any more payments, he did
18 make four (4) more payments to Kimtran Rizzolo in the amount of \$30,000 each. *See* Exhibit
19 "12," Breakdown of Stock Put Payments; Exhibit "13," Collection of Checks. Kimtran Rizzolo
20 received these funds due to an "error" in the Piazza accounting department. *See* Exhibit "5,"
21 Deposition of Vincent Piazza, p. 77-80.
22

23 16. Once this "error" was discovered, Piazza immediately informed Kimtran Rizzolo of
24 the mistake and demanded that she promptly return the \$120,000. *See* Exhibit "18," March 25,
25

26 ¹ Plaintiffs are unsure of the full extent and location of Kimtran Rizzolo's assets because
27 she failed to adequately respond to written discovery responses which were served on September
28 9, 2011. Kimtran Rizzolo did not respond to discovery until November 7, 2011; the date of
filing of the instant motion. Moreover, Kimtran Rizzolo's belated discovery responses were
woefully deficient and demonstrably false in many cases. Accordingly, Plaintiffs intend to file a
motion to compel discovery as to her financial condition very soon.



1 2011 Letter. Despite this clear notification that the disputed funds were not hers, Kimtran
2 Rizzolo did not return the money. See Exhibit "15," Deposition of Kimtran Rizzolo, p. 111.
3
4 Further, Kimtran Rizzolo declared she has no intention of returning the money in the future even
5 though she admits that to possessing the necessary funds. *Id.* at 112.

6 17. On January 12, 2011, the United States Department of Parole and Probation filed
7 a Petition 12(c) in the case *United States v. Power Company, Inc. et al*, Case No. 2:06-cr-00186,
8 requesting that the Court address whether Rick Rizzolo violated the terms of his supervised
9 release. See Exhibit "19," Transcript of July 20, 2011 Revocation Hearing, p. 4-5. The
10 Government alleged that Rick Rizzolo failed to report the receipt of the initial \$1 million
11 disbursement from the sale of his interest in TEZ Real Estate LP. *Id.* The Government further
12 argued that Rick Rizzolo failed to disclose and obtain approval for a variety of financial
13 activities related to TEZ Real Estate LP in Philadelphia including the assignment of proceeds.
14 *Id.* Subsequently, the Government amended its Petition to include violations as to the non-
15 payment of taxes to the Internal Revenue Service. *Id.*

16
17
18 18. On July 20, 2011, the Court found that Rick Rizzolo "knowingly and willfully"
19 violated the terms of his supervised release. *Id.* at 14. As to Rick Rizzolo's participation in the
20 business venture known as TEZ Real Estate LP, the Court made the following finding:

21 [Rick Rizzolo] concealed relevant financial information relating to the October
22 2007 purchase agreement between [Lions Limited Partnership] and the Piazza
23 Partnership, which he entered into while still in prison through his ex-wife acting
24 on a power of attorney; and failed to disclose the March 2008 amendment to the
25 purchase agreement and the interest Lions would have in future cash flow Lions
26 subsequently assignment to Defendant's father, Mr. Bart Rizzolo.

27

28 In short, the Court finds the Defendant engaged in several financial transactions in
which he failed to disclose in his monthly reports and which minimized his
apparent ability to pay restitution to the Internal Revenue Service and the Henrys



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and anyone else entitled to recover funds, and which therefore compromised the ability of the United States Probation Office to effectively supervise his compliance with the provisions of the Court's Judgment and Commitment Order.

Id. at 9-10.

The Court proceeded to directly address the assignment of proceeds at issue herein:

Additionally, [Rick Rizzolo] failed to obtain permission from the Probation Office before executing an assignment of the first \$789,000 of the sale proceeds to his father, Bart, on April 18, 2008; and again, when in April 2009, he executed a second amendment to the purchase agreement between Lions and the Piazza Partnership providing for the Piazza Partnership to pay Mr. Bart Rizzolo that sum of money directly rather than through the Defendant.

Id. at 12.

The Court also made findings on the payment of monies to Bart Rizzolo arising out of the initial \$1 million disbursement of funds from the Piazza Family Limited Partnership as follows:

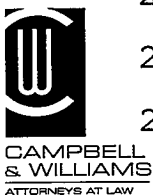
Similarly, he violated his obligation to secure approval from Probation for the April 24, 2008 payments to Lisa and Bart Rizzolo and to the law firm of Patti and Sgro. In doing so, Defendant Rizzolo effectively concealed from the Department of Probation the means by which he carried out his financial dealings, rendering the ability of Probation to effectively supervise next to impossible.

.....

Since his commencement on supervised release, the Defendant has paid very little in the way of restitution to anyone to whom he owed restitution, including the Henrys and the Internal Revenue Service. He has consistently structured and concealed his financial dealings in such a manner as to frustrate, effecting the restitution and tax obligations which he was ordered by the Court to comply with. And in April 2008, he effectively diverted \$200,000 to his father again, Mr. Bart Rizzolo, to enable Mr. Bart Rizzolo to pay his tax obligations while avoiding paying his own which I find to be in direct contravention of Special Condition Number 6 which the Court had imposed.

Id. at 13-14.

In sum, the Court found that "Defendant's financial dealings, structuring, machinations, consistently frustrated the ability of the Probation Office to supervise him, to comply with his obligations on supervised release and effectively defeated the ability to ensure compliance with



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1 his obligations not only to the Internal Revenue Service directly and also to the Henrys...² *Id.*
 2 at 13. The Court then sentenced Rick Rizzolo to nine (9) months in federal prison and an
 3 additional twenty-four (24) months of supervised release. *Id.* at 15.
 4

5 19. On October 27, 2011, the Court entered an Order confirming Plaintiffs
 6 entitlement to all proceeds arising out of Rick Rizzolo's sale of his interest in TEZ Real Estate
 7 LP. *See* Order (#482), *United States v. Power Company, Inc. et al*, Case No. 2:06-cr-00186.
 8

9 III. ARGUMENT

10 A. Legal Standard

11 A court may grant summary judgment when the submissions in the record "show that
 12 there is no genuine issue as to any material fact and that the movant is entitled to judgment as a
 13 matter of law." Fed. R. Civ. P. 56(c)(2). A "genuine issue" of material fact means that there
 14 must be sufficient evidence in favor of the non-moving party to allow a jury to return a verdict in
 15 its favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The burden is on the non-
 16 moving party to designate specific facts showing a genuine issue for trial. *See Celotex Corp. v.*
 17 *Catrett*, 477 U.S. 317, 322 (1986). A mere "scintilla" of evidence, however, will not suffice to
 18 meet that burden. *Anderson*, 477 U.S. at 252. Nor is it enough for the non-moving party to show
 19 that there is some "metaphysical doubt as to the material facts," provided that any inferences
 20 from the underlying facts are viewed in the light most favorable to the non-moving party.
 21 *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). Defendants are
 22 clearly unable to overcome the burden of demonstrating that a genuine issue of material fact
 23 exists in this matter.
 24
 25

26 _____
 27 ² The Court found other violations including Rick Rizzolo's failure to "disclose payments
 28 made to him by his father or his father's wife, Ms. Kimtran Rizzolo, in supposed consideration
 for jewelry — watches and jewelry that had been sold to the senior Mr. Rizzolo." *See* Exhibit
 "19," Transcript of July 20, 2011 Revocation Hearing, p. 10-11.



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B. The Assignment Of Proceeds Was Executed With The Clear Intention Of Frustrating Plaintiffs' Recovery Of The Debt Owed To Them By Rick Rizzolo

A creditor acting under the Nevada Uniform Fraudulent Transfer Act (“NUFTA”) may seek “avoidance of the [fraudulent] transfer...to the extent necessary to satisfy the creditor’s claim.” NRS 112.210. A transfer made by a debtor is fraudulent as to the creditor, whether the creditor’s claim arose before or after the transfer was made, if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor. NRS 112.180. In determining actual intent to hinder, delay, or defraud creditors, a court is generally required to consider certain badges of fraud that are delineated in the NUFTA. NRS 112.180(2)(a)-(k). Such an inquiry is unnecessary here, however, as *Rick Rizzolo admitted that the assignment of proceeds was executed with fraudulent intent.*

Initially, Rick Rizzolo’s fraudulent intent was reflected in the following communication between his attorneys Mark C. Hafer and John E. Dawson:

“Can Lions LP assign its rights to collect the balance due on the Philly sale to Bart before somebody else seeks to attach the payments which are not due to begin until approximately next February?”

See Exhibit “11,” Fax Cover Sheet (emphasis added).

Rick Rizzolo subsequently explained the reasoning behind this request to assign proceeds to Bart Rizzolo in his deposition as follows:

Question [Donald J. Campbell, Esq]: And you’ll see that the message there, again, is from Mark Hafer, your attorney; correct?

Answer [Rick J. Rizzolo]: Right.

Q: To John Dawson, another one of your attorneys; correct?

A: Right.

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Q: And then there is a second topic that's discussed. It says, quote, can Lions LP – that's limited partnership; correct?

A: Right. I think its an LLC though.

Q: “Can Lions LP assign its rights to collect the balance due on the Philly sale to Bart before somebody else seeks to attach the payments which are not due to begin until approximately next February? Please review and call me. This is what I forgot to ask you yesterday.”

Why was your attorney inquiring of yet another one of your attorneys as to whether or not future payments that were expected to be made pursuant to that sale could be transferred to your father?

A: Because I owed him money.

Q: Excuse me?

A: Because I owed him money.

Q: Well, but that's not what this document says. It says, before somebody else seeks to attach the payments.

Do you see that?

.....

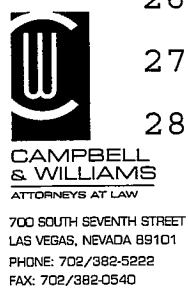
A: Yeah.

Q: *Who were you afraid was going to seek to attach those payments?*

A: *What do you mean, afraid?*

Q: *Well, who did you anticipate would seek to attach the payments?*

A: *Well, at that time the government, the IRS, everybody.*



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Q: *The Henrys?*

A: *The Henrys, whatever.*

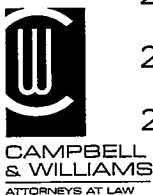
See Exhibit "4," Deposition Testimony of Rick Rizzolo, p. 293-295 (emphasis added).

In short, Rick Rizzolo admitted to assigning the first \$789,000 owed under the TEZ Real Estate LP Purchase Agreement to Bart Rizzolo to ensure that Plaintiffs did not locate the money.³ Upon Bart Rizzolo's death, Kimtran Rizzolo took control of all of his assets and received the remaining payments owed under the fraudulent assignment of proceeds. See Statement of UDF ¶ 10. Altogether Bart and Kimtran Rizzolo received \$732,996.03 which was secretly transferred to frustrate Plaintiffs' recovery of the debt owed under the settlement agreement. See Statement of UDF ¶ 11. Kimtran Rizzolo then wrongfully received an additional \$120,000 due to the fraudulent assignment of proceeds which she has absolutely no intention of returning to Plaintiffs. See Statement of UDF ¶ 15-16. There is simply no remaining issue of material fact that must be resolved at trial as to the fraudulent assignment of proceeds from Rick Rizzolo to Bart and Kimtran Rizzolo.

C. The Court Should Grant Summary Judgment In Favor Of Plaintiffs As To Rick Rizzolo's Disbursement Of \$200,000 To Bart Rizzolo In April 2008

As noted above, the Court already stated that Rick Rizzolo transferred \$200,000 to Bart Rizzolo as part of a scheme in which he "consistently structured and concealed his financial dealings in such a manner as to frustrate, effecting the restitution and tax obligations which he was ordered by the Court to comply with." See Statement of UDF ¶ 16. Moreover, Plaintiffs are rightfully entitled to all proceeds of Rick Rizzolo's sale of his interest in TEZ Real Estate

³ This confession is compounded by Magistrate Judge Foley's finding that the "trier of fact may conclude that Mr. Rizzolo's false or deceptive answers to interrogatories demonstrate an ongoing intent to conceal assets or the disposition of those assets." See Order (#437), p. 9 n. 3. His Honor recently acknowledged Rick Rizzolo's deception and its impact on the disposition of this matter. See Order (#536).



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including the \$200,000 which was transferred to Bart Rizzolo in April 2008. See Statement of UDF ¶ 17. In that regard, Kimtran Rizzolo inherited all of Bart Rizzolo’s assets when he passed away which amount to millions of dollars. See Statement of UDF ¶ 10. As such, the Court should grant summary judgment in favor of Plaintiffs as to the fraudulent transfer of \$200,000 arising out of the sale of Rick Rizzolo’s interest in TEZ Real Estate LP.

IV. CONCLUSION

Accordingly, it is respectfully requested that this Court grant summary judgment to Plaintiffs Kirk and Amy Henry in the amount of \$1,052,996.03. This sum represents the total amount of money that Rick Rizzolo fraudulently transferred to Bart and Kimtran Rizzolo in order to conceal assets from Plaintiffs and frustrate their recovery of the debt owed to them. All of these funds derive from Rick Rizzolo’s surreptitious sale of his interest in TEZ Real Estate and therefore rightfully belong to Plaintiffs.

DATED this 7th day of November, 2011.

HUNTERTON & ASSOCIATES

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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 7th day of November, 2011 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