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 UNITED STATES DISTRICT COURT  
 10  
 DISTRICT OF NEVADA  
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12 UNITED STATES OF AMERICA  
 13  
 Plaintiff,  
 14 vs.  
 15 FREDRICK RIZZOLO aka RICK RIZZOLO  
 16  
 Defendant.

CASE NO. 2:06-CR-186-PMP/PAL

**MOTION TO STAY SURRENDER TO  
 DESIGNATED CORRECTIONAL  
 FACILITY PENDING APPEAL OF  
 REVOCATION OF SUPERVISED  
 RELEASE**

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 18 COMES NOW Defendant, Fredrick Rizzolo aka Rick Rizzolo, by and through his  
 19 attorneys of record, Dominic P. Gentile, Esq., Paola M. Armeni, Esq., and Margaret W.  
 20 Lambrose, Esq., of the law firm of Gordon Silver, and pursuant to 18 U.S.C. Section 3143(b)  
 21 hereby respectfully requests that this Honorable Court stay Defendant's surrender to the  
 22 correctional facility to which he is designated pending appeal of this Court's Judgment for  
 23 Revocation of Supervised Release, entered in this matter on July 21, 2011.

24 This Motion is made and based upon all pleadings and papers on file herein and the  
 25 attached Memorandum of Points and Authorities; and in support of this Motion, Mr. Rizzolo  
 26 respectfully assigns the following:

- 27 1. That he is not likely to flee or pose a danger to the safety of any other person or the  
 28 community;

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- 2. That his appeal is not for the purpose of delay and raises several substantial issues of law and fact likely to result in reversal; and
- 3. That he has not been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of 18 U.S.C. Section 3142.

Dated this 2<sup>nd</sup> day of September, 2011.

GORDON SILVER

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 Attorneys for FREDRICK RIZZOLO aka RICK RIZZOLO

**MEMORANDUM OF POINTS AND AUTHORITIES**

**1. BACKGROUND**

On March 29, 2011 and from May 9 through May 11, 2011, this Court conducted an evidentiary hearing on the government’s petition to revoke Fredrick Rizzolo’s supervised release on July 21, 2011, the Court entered a Judgment for Revocation of Supervised Release; finding that the Mr. Rizzolo had violated the following conditions:

- 1. That he submit truthful and complete written reports to his probation officer each month;
- 2. That he not incur new credit charges, open additional lines of credit or negotiate or consummate any financial contracts without the approval of his probation officer; and
- 3. That he cooperate and arrange with the Internal Revenue Service to pay all past and present taxes, interest and penalties owed, file timely returns and show proof thereof to his probation officer. (USee “Judgment for Revocation of Supervised Release, a true and correct copy attach as Exhibit “A”).

1 The Court ordered that the Defendant be committed to the custody of the Bureau of  
2 Prisons to be imprisoned for a total term of 9 months, (*id* at page 2); ordering him to surrender  
3 for service of sentence at the institution designated by the bureau before 2 p.m. on September 14,  
4 2011 as notified by the United States Marshal. *Id.* The Court further ordered Mr. Rizzolo placed  
5 on supervised release for a term of 24 months upon release from imprisonment. *Id.* at page 3.

6 On July 28, 2011, Mr. Rizzolo filed a timely Notice of Appeal to the United States Court  
7 of Appeals for the Ninth Circuit. (See "Notice of Appeal" a true and correct copy attached hereto  
8 as Exhibit "B").

9 **2. ARGUMENT**

10 18 U.S.C. Section 3143 provides, in pertinent part, as follows:

11 **"(b) Release or detention pending appeal by the defendant.--(1)**

12 Except as provided in paragraph (2), the judicial officer shall order  
13 that a person who has been found guilty of an offense and  
14 sentenced to a term of imprisonment, and who has filed an appeal  
15 or a petition for a writ of certiorari, be detained, unless the judicial  
16 officer finds--

17 **(A)** by clear and convincing evidence that the person is not likely  
18 to flee or pose a danger to the safety of any other person or the  
19 community if released under section 3142(b) or (c) of this title; and

20 **(B)** that the appeal is not for the purpose of delay and raises a  
21 substantial question of law or fact likely to result in--

22 **(i)** reversal,

23 **(ii)** an order for a new trial,

24 **(iii)** a sentence that does not include a term of imprisonment, or

25 **(iv)** a reduced sentence to a term of imprisonment less than the  
26 total of the time already served plus the expected duration of the  
27 appeal process.

28 If the judicial officer makes such findings, such judicial officer  
***shall*** order the release of the person in accordance with section  
3142(b) or (c) of this title, except that in the circumstance  
described in subparagraph (B)(iv) of this paragraph, the judicial

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officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.”

Thus, Section 3143 *requires* that the Court permit the release of a defendant where the appropriate circumstances apply. Mr. Rizzolo respectfully submits that such circumstances are applicable in the instant case.

Indeed, Mr. Rizzolo has not been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of 18 U.S.C. Section 3142. He is not likely to flee or pose a danger to the safety of any other person or the community. Additionally, his appeal to the Ninth Circuit is not for the purpose of delay, but rather, raises substantial issues of law and fact likely to result in reversal, including the following:

1. Whether the evidence adduced at the evidentiary hearing was sufficient to establish the violations of supervised release found by the Court by a preponderance of the evidence as required by 18 U.S.C. Section 3583(e)(3)?
2. Whether the government is estopped from seeking the revocation of Mr. Rizzolo’s supervised release on the basis of:
  - (a.) Mr. Rizzolo having been given affirmative erroneous advise and instruction by his probation officer with respect to the violations found by the Court?
  - (b.) the fact that Mr. Rizzolo’s failure to pay tax arrearages was due to financial inability on his part attributable to the willful or reckless failure of the government to preserve and sell the Crazy Horse 2 gentlemen’s club as required by the plea agreement in this case? and
  - (c.) the fact that Mr. Rizzolo’s failure to pay tax arrearages was attributable to the failure of the Internal Revenue Service to provide Mr. Rizzolo with proper notice and demand for payment? and

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3. Whether the Court erred to Mr. Rizzolo's prejudice in permitting counsel for third party non-victims to address the Court in support of the government's petition for revocation?

Furthermore, it is highly likely that Mr. Rizzolo will have served the entire nine (9) month term of imprisonment before the Court of Appeals renders a decision on his appeal, which will therefore be rendered moot as to that portion of the Court's Judgment, unless a stay of surrender is granted.

**3. CONCLUSION**

**THEREFORE**, for all the foregoing reasons, Mr. Rizzolo respectfully requests that the Court grant a stay of surrender to the designated correctional institution pending his appeal from the Judgment for Revocation of Supervised Release, together with such further and other relief as the Court deems fair and just in the premises.

Dated this 2<sup>nd</sup> day of September, 2011.

GORDON SILVER

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# EXHIBIT “A”

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

Judgment in a Criminal Case

(For Revocation of Probation or Supervised Release)

FREDERICK JOHN RIZZOLO

Case No. 2:06-CR-186-PMP-PAL

USM No. 41390-048

Dominic Gentile

Defendant's Attorney

THE DEFENDANT:

admitted guilt to violation of condition(s) of the term of supervision.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
#1 (Special Cond. #3)	Shall submit truthful and complete written reports each month	12/1/2008
#2 (Special Cond. #4)	Shall not incur new credit charges, open additional lines of credit or negotiate or consummate any financial contracts without approval	4/24/2008
#3 (Special Cond. #6)	Shall cooperate and arrange with Internal Revenue Service to pay all past, present taxes, interest and penalties owed, file timely returns and show proof of same to probation officer	7/20/2011

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

DEFENDANT: FREDERICK JOHN RIZZOLO  
CASE NUMBER: 2:06-CR-186-PMP-PAL

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **NINE (9) MONTHS**

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on September 14, 2011

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: FREDERICK JOHN RIZZOLO  
CASE NUMBER: 2:06-CR-186-PMP-PAL

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
**TWENTY-FOUR (24) MONTHS**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court, not to exceed 104 tests annually. Revocation is mandatory for refusal to comply .

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT:       FREDERICK JOHN RIZZOLO  
CASE NUMBER:     2:06-CR-186-PMP-PAL

**SPECIAL CONDITIONS OF SUPERVISION**

1. You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
2. You shall submit to the search of your person, property, residence or automobile under your control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release.
3. You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
4. You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
5. You shall be restricted from engaging in employment, consulting, promoting or any association with any sales, mergers, consulting, opening, facilitating any business, trade or commercial activity involving the production and sale of pornographic material, erotic media, or erotic establishments for a period of three years.
6. You shall cooperate and arrange with the Internal Revenue Service to pay all past and present taxes, interest, and penalties owed. You shall file timely, accurate and lawful income tax returns and show proof of same to the probation officer.
7. You shall not enter, frequent, or be involved with any legal or illegal gambling establishment or activity, except for the purpose of employment, as approved and directed by the probation officer.
8. You shall find employment and remain at that employment unless granted permission to quit by the probation officer or are otherwise terminated by the employer.
9. You shall move to the United States the location and management of all Trust Accounts in which you hold an interest directly or indirectly as a beneficiary.
10. You shall sign all waivers necessary for the Probation Office, Internal Revenue Service and Amy and Kirk Henry allowing any foreign trust in which you have or had an interest to provide records and any other information to the Probation Office, Internal Revenue Service and Amy and Kirk Henry.
11. You shall keep a monthly record of all expenditures and income, gifts or loans, received or made, and shall provide the same to your supervising probation officer on a monthly basis.

DEFENDANT: FREDERICK JOHN RIZZOLO  
CASE NUMBER: 2:06-CR-186-PMP-PAL

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 0	\$ 306,693.82	\$ 14,371,506.35

- The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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<b>TOTALS</b>	\$ _____ 0	\$ _____ 0
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- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution or a fine more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1999

# EXHIBIT “B”

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Attorneys for FREDRICK RIZZOLO aka RICK RIZZOLO

1 Circuit from the Judgment in a Criminal Case for Revocation of Probation or Supervised Release  
2 (Dkt 460) entered in this action on July 21, 2011.

3 Dated this 28<sup>th</sup> day of July, 2011.

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