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9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 UNITED STATES OF AMERICA

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

14 Plaintiff,

15 vs.

16 FREDRICK RIZZOLO aka RICK RIZZOLO

17 Defendant.
18

19 **DEFENDANT FREDRICK RIZZOLO'S OPPOSITION TO**
20 **KIRK AND AMY HENRY'S MEMORANDUM REGARDING THEIR**
21 **RIGHT TO BE REASONABLY HEARD AT DEFENDANT RICK**
RIZZOLO'S REVOCATION PROCEEDINGS

22 COMES NOW the Defendant, Fredrick Rizzolo, by and through counsel, Dominic P.
23 Gentile, Esq., Paola M. Armeni, Esq., and Margaret W. Lambrose, Esq., of the law firm of
24 Gordon Silver, and hereby opposes Kirk and Amy Henry's Memorandum Regarding Their Right
25 ...
26 ...
27 ...
28 ...

1 to Be Reasonably Heard at Defendant Rick Rizzolo's Revocation Proceedings.

2 Dated this 13th day of June, 2011.

3 GORDON SILVER

4 

5 DOMINIC P. GENTILE

6 Nevada Bar No. 1923

7 PAOLA M. ARMENI

8 Nevada Bar No. 8357

9 MARGARET W. LAMBROSE

10 Nevada Bar No. 11626

11 3960 Howard Hughes Pkwy., 9th Floor

12 Las Vegas, Nevada 89169

13 (702) 796-5555

14 Attorneys for FREDRICK RIZZOLO aka RICK
15 RIZZOLO

16 **I**

17 **INTRODUCTION**

18 The Henrys' Memorandum is entirely based on the incorrect proposition that they are
19 "crime victims" as the term is defined in the Crime Victim's Rights Act ("CVRA") (codified at
20 18 U.S.C § 3771). As will be detailed below, in order to be a crime victim for purposes of the
21 CVRA, the victim must have been directly and proximately harmed as a result of the federal
22 offense to which the defendant pled guilty. The Henrys were not directly and proximately
23 harmed by Mr. Rizzolo's conviction of conspiracy to defraud the United States; thus, they are
24 not crime victims as the term is defined by the CVRA. Therefore, the Henrys do not have
25 standing to argue at Mr. Rizzolo's revocation hearing.

26 However, despite the fact that the Henrys do not have standing to argue at the revocation
27 hearing, it should be noted that the Henrys do not request this Court to revoke Mr. Rizzolo's
28 supervised release, presumably because even the Henrys recognize that nothing productive will
be achieved if Mr. Rizzolo's supervised release is revoked. In sum, they are clearly aware that if
Mr. Rizzolo is remanded, the Henrys may not receive any restitution payments in the near future
as Mr. Rizzolo will be unable to work.

Additionally, it must be noted that the Henrys make a point of the fact that, to date, they

1 have received approximately \$4,000 in restitution from Mr. Rizzolo. What the Henrys fail to
 2 mention is that the \$4,000.00 they have received is in fact \$4,000.00 more than is currently due
 3 and owing to them pursuant to a binding settlement agreement that the parties entered into in
 4 August 2006. See Binding Settlement Agreement attached hereto as "Exhibit 1." Under the terms
 5 of the agreement, the Henrys received \$1 million dollars in exchange for dismissing all state tort
 6 claims against Mr. Rizzolo in a civil case styled as Henry v. The Power Company et. al., Clark
 7 County District Court, Nevada, Case No. A440740. The settlement agreement specifically
 8 states:

9 For the total sum of TEN-MILLION DOLLARS (\$10,000,000.00),
 10 ONE-MILLION DOLLARS (\$1,000,000.00) of which will be
 11 deposited forthwith into the Henry Qualified Settlement Fund, with
 12 the agreement between the parties that an additional NINE-
 13 MILLION DOLLARS (\$9,000,000.00) will be paid to the Henry
 Qualified Settlement Fund, *due and owing upon the closing of the*
sale of THE POWER COMPANY, INC., dba CRAZY HORSE
 TOO GENTLEMEN'S CLUB. (emphasis added).

14 After the Henrys received their \$1 million dollars pursuant to the settlement agreement,
 15 they filed a motion requesting that the settlement be reduced to a judgment. See minutes from
 16 June 29, 2007 hearing on the Henrys' Motion to Reduce Settlement to Judgment attached hereto
 17 as "Exhibit 2." The state court denied the Henrys request. Specifically, it found that as the Club
 18 had not yet sold, Mr. Rizzolo was not in breach of the settlement agreement; thus, the court did
 19 not have jurisdiction to enter a judgment against Mr. Rizzolo. Id. Despite the state court's
 20 holding, the Henrys continue to attempt to collect the \$9 million prior to the sale of the Crazy
 21 Horse Too; however, now they do so in this Court as their attempt failed in state court.

22 It is important to mention this because, throughout the history of this case, it has been
 23 the practice of the Henrys to paint Mr. Rizzolo in the worst possible light by conveniently
 24 omitting material information when coming before this Court. As Mr. Rizzolo's liberty is at
 25 stake, he can longer afford to sit by and passively accept these disingenuous attacks.

26 ...

27 ...

28

II

STATEMENT OF RELEVANT FACTS

Six years before Mr. Rizzolo was sentenced in this case, Mr. Henry was injured while visiting The Crazy Horse Too in the early morning hours of September 20, 2001. Mr. Rizzolo was never charged with any crime stemming from Mr. Henry's injury. On January 26, 2007, Mr. Rizzolo was sentenced in this case pursuant to a binding plea agreement wherein Mr. Rizzolo pled guilty to one count of conspiracy to defraud the United States in violation of Title 18, United States Code, Section 371, as it was charged in count two of the Information. See Binding Plea Agreement attached hereto as "Exhibit 3" (#8). The five essential elements of conspiracy to defraud the United States are: (1) that the defendant entered into an agreement; (2) to obstruct a lawful function of the government; (3) by deceitful or dishonest means; and, (4) thereafter performed at least one overt act in furtherance of the conspiracy. Id.

To demonstrate that it could prove the essential elements of conspiracy to defraud the United States, the Government set forth the factual basis for the charge in the plea agreement. Specifically, the conviction was based on the assertion that The Crazy Horse Too paid some of its employees on a cash basis and as a result, those receiving cash salary payments generally under-reported amounts received to the Crazy Horse Too's bookkeeping staff. Notably, Mr. Rizzolo's plea agreement is completely devoid of any reference that violence was used in furtherance of the conspiracy. Id.

It is imperative to set out the factual basis of the crime for which Mr. Rizzolo was convicted because the Hernys are not mentioned a single time. The reason the Henrys are not mentioned is because the injury that Mr. Henry sustained while visiting the Crazy Horse Too during the early morning hours of September 20, 2011, is in no way connected to the federal crime for which Mr. Rizzolo pled guilty. In fact, Mr. Rizzolo was never arrested, much less convicted, of any crime related to the injury Mr. Henry sustained while at the Crazy Horse Too.

III.

ARGUMENT

The CVRA affords crime victims a panoply of substantive and procedural rights

1 including the right “to be reasonably heard at any public proceeding in district court involving
 2 release, plea, sentencing, or any parole proceeding,” and “to confer with the attorney for the
 3 Government in the case.” 18 U.S.C. § 3771(a)(4)-(6). As will be shown below, the Henrys are
 4 not crime victims under the CVRA because the injury Mr. Henry sustained was not the direct
 5 and proximate result of conspiring to defraud the United States, which is the crime of conviction
 6 here. Therefore, the Henrys do not have standing to argue at Mr. Rizzolo’s revocation hearing
 7 and must be prohibited from conferring with the attorney for the Government in this case.

8 **The Henrys are not Crime Victims Pursuant to the CVRA as They are not**
 9 **Persons who were Directly and Proximately Harmed by the Federal Crime**
 10 **Committed by Mr. Rizzolo.**

11 The CVRA defines a “crime victim” as “a person directly and proximately harmed as a
 12 result of the commission of a Federal offense or an offense in the District of Columbia.” 18
 13 U.S.C. § 3771(e). See also U.S. v. Buckholder, 390 F.3d 1071, (9th Cir. 2010) (“The CVRA
 14 defines a crime victim as a person directly or proximately harmed by the commission of a
 15 Federal offense”). Therefore, in order to be considered a crime victim, not only must there be
 16 some federal crime involved, but the crime must also be the proximate cause of a plaintiff’s
 17 harm. See In re Rendon Galvis, 564 F.3d 170, 175 (2d Cir. 2009) (“The requirement that the
 18 victim be ‘directly and proximately harmed’ encompasses the traditional ‘but for’ and proximate
 19 cause analyses.”). Proximate cause requires “some direct relation between the injury asserted
 20 and the injurious conduct alleged, and excludes only those link[s] that are too remote, purely
 21 contingent, or indirect. ” Staub v. Proctor Hosp., 131 S.Ct. 1186, 1192 (2011)(internal quotes
 22 admitted).

23 “The CVRA only permits a victim to ‘be heard’ at a...proceeding *if* the victim is ‘directly
 24 and proximately harmed’ by the defendant’s federal criminal act.” United States v. Sharp, 463
 25 F.Supp. 2d 556, 568 (E.D. Va. 2006)(emphasis in original). In Sharp, the defendant pled guilty
 26 to conspiracy to possess with intent to distribute marijuana. Sharp, 463 F.Supp.2d at 558. A
 27 woman, who formally dated one of the defendant’s customers, requested the court to allow her to
 28 speak at the defendant’s sentencing pursuant to the CVRA. Id. The woman asserted that she was

1 a crime victim of the defendant because he sold her boyfriend marijuana and, when her boyfriend
2 was under the influence of marijuana, he would physically assault the woman. Id. at 559.

3 The Sharp court determined that the woman was not a crime victim as defined by the
4 CVRA as the woman's harm was too attenuated from the conspiracy to satisfy the CVRA. Id. at
5 566. Specifically, the court found "[The victim] has been unable to demonstrate that her injuries
6 would not have occurred but for the defendant's drug conspiracy...Nor is there evidence tending
7 to suggest that the defendant's conspiracy was a substantial factor in causing [the victim's]
8 alleged harm. [The victim] must show more than a mere possibility that the (defendant's federal
9 crime) caused her boyfriend to physically and emotionally abuse her." Id. at 567.

10 In order to determine that a person is a crime victim as defined by the CVRA, there must
11 be a "sufficient evidence of a nexus" between the crime committed by the defendant and the
12 harm caused to the victim. US v. Murillo-Bejerano, 564 F.3d 170, 174 (2nd Cir. 2009). In
13 Murillo-Bejerano, the defendant, an admitted leader of a terrorist group that organized an attack
14 in Columbia which resulted in the death of the victim, was extradited to the United States where
15 he pled guilty to one count of conspiracy to import cocaine into the United States. Murillo-
16 Bejerano, 564 F.3d at 172.

17 At the time of sentencing the victim's mother requested to be classified as a "crime
18 victim," on behalf of her son, so as to be provided the rights afforded by the CVRA. Id. at 172-
19 3. Using the rationale set forth in Sharp, the court determined that the mother was not a crime
20 victim as the term is defined by the CVRA. Id. at 173-4. The court reached this conclusion
21 finding, "the [victim's mother] did not establish direct and proximate harm either to herself or
22 her son resulting from [the defendant's] participation in the drug conspiracy with which he has
23 been charged and to which he has pled guilty." Id. at 175-6. The court stated that "[w]hile the
24 evidence may suggest some linkages between the victim's death and the drug conspiracy," the
25 mother failed to show the requisite causal connection between her son's death and the drug
26 conspiracy. Id. at 175. In sum the court determined, "there are too many questions left
27 unanswered concerning the link between the defendant's federal offense and [the petitioner's
28 harm]." Id.

1 Here, using the analysis provided by Sharp and Murillo-Bejerano, it is clear that the
 2 Henrys are not "crime victims" as the term is defined by the CVRA. Mr. Henry was injured
 3 while a customer at the Crazy Horse Too in 2001. Mr. Rizzolo was never charged with any crime
 4 as a result of Mr. Henry's injury. Six years after Mr. Henry was injured, in 2007, Mr. Rizzolo
 5 was convicted of conspiracy to defraud the United States. The plea agreement contains
 6 absolutely no allegation that violence was used in furtherance of the conspiracy and the plea
 7 agreement is completely bereft of any assertion that the harm Mr. Henry suffered was in any way
 8 connected to Mr. Rizzolo's conspiracy conviction. Mr. Henry is not mention for one simple
 9 reason- there is no causal link between Mr. Henry's injury and Mr. Rizzolo's federal conviction.

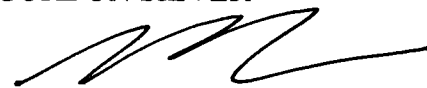
10 IV

11 CONCLUSION

12 For these reasons, it is respectfully requested that the Henrys are not permitted to argue at
 13 Mr. Rizzolo's revocation hearing as they do not have standing to do so under the CVRA.
 14 Additionally, as the Henrys are not "crime victims" as defined by the CVRA, it is further
 15 requested that they be prohibited from conferring with the attorney for the Government in this
 16 case.

17 Dated this 13th day of June, 2011.

18 GORDON SILVER

19 

20 DOMINIC P. GENTILE

21 Nevada Bar No. 1923

22 PAOLA M. ARMENI

23 Nevada Bar No. 8357

24 MARGARET W. LAMBROSE

25 Nevada Bar No. 11626

26 3960 Howard Hughes Pkwy., 9th Floor

27 Las Vegas, Nevada 89169

28 (702) 796-5555

Attorneys for FREDRICK RIZZOLO aka RICK
RIZZOLO

EXHIBIT “1”

RELEASE OF ALL CLAIMS AND AGREEMENT TO INDEMNIFY

FOR AND IN CONSIDERATION OF THE ISSUANCE OF A DRAFT

For the total sum of TEN-MILLION DOLLARS (\$10,000,000.00), ONE-MILLION DOLLAR (\$1,000,000.00) of which will be deposited forthwith into the Henry Qualified Settlement Fund and, with the agreement between the parties that an additional NINE-MILLION DOLLARS (\$9,000,000.00) will be paid to the Henry Qualified Settlement Fund, due and owing upon the closing of the sale of THE POWER COMPANY, INC., dba CRAZY HORSE TOO GENTLEMEN'S CLUB, consistent with the terms of those certain guilty plea agreements made between THE POWER COMPANY, INC, FREDERICK RIZZOLO, and THE UNITED STATES OF AMERICA; Although it is anticipated that the NINE-MILLION DOLLARS (\$9,000,000.00) will be paid from the proceeds of the sale, the obligation to make said payment upon the closing is not contingent upon the realization of net proceeds from the sale sufficient to make the NINE-MILLION DOLLARS (\$9,000,000.00) payment.

KIRK & AMY HENRY, upon payment of the aggregate amount of TEN MILLION DOLLARS (\$10,000,000) to the Henry Qualified Settlement Fund, do hereby forever fully release, acquit and discharge THE POWER COMPANY, INC. dba CRAZY HORSE TOO GENTLEMEN'S CLUB, FREDERICK RIZZOLO and their reinsurers, subsidiaries, agents, employees, attorneys, assigns, and all other persons, firms, associations and corporations interested and concerned, of and from all known and unknown claims, actions, causes of action and suits for damages, at law and in equity, filed or otherwise, including without limitation personal injury; uninsured/underinsured claims; loss of compensation, profits, interest, use, consortium, services, society, contribution and support; loss or diminishment of ability, capacity, function, earning potential or capacity, or estate, and associated costs and expenses which they now have or may hereafter acquire by reason of any loss of or damage to any property, property right, injury to their person, or the death of their person as a result of that certain accident, casualty, incident or event that occurred on or about the 20th day of September, 2001, in Clark County, Nevada, which was the basis of Case No. A440740 in District Court, Clark County, Nevada.

IT IS UNDERSTOOD AND AGREED, AND MADE A PART HEREOF:

That the issuance of said draft is not, nor is it to be construed as, an admission of liability on the part of any releasee, but is in compromise, settlement, accord and satisfaction, and discharge of loss, damages, claims, actions, causes of action, suits and liability which are each and all uncertain, doubtful and disputed;

That this Release extends, applies to, coheres and includes all unknown, unforeseen, anticipated and unsuspected injuries, damages, loss and liability, and the consequences hereof, as well as those now alleged, disclosed and known to exist;

That the "Henry Qualified Settlement Fund" shall mean the Qualified Settlement Fund to be established by the Court and Trustee for the purpose of receiving and distributing the funds to be paid by Defendants The Power Company, Inc. and Frederick "Rick" Rizzolo as provided by

his Agreement. Defendants shall have no financial obligation to the Settlement Fund other than to make payment as explicitly set forth above;

That the Trustee of the Settlement Fund shall take all necessary steps to ensure that the Settlement Fund that is to receive the payments to be made by Defendants is established and maintained as a Qualified Settlement Fund in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. The Qualified Settlement Fund will provide claimants with lump sum settlements and/or periodic payment settlements. If periodic payment settlements are provided then the obligation to make the periodic payments shall be assigned to a qualified assignee in accordance with Sections 104(a)(2) and 130(c) of the Internal Revenue Code of 1986, as amended. The proceeds of any periodic payments shall represent damages on account of personal injuries or sickness within the meaning of the above referenced provisions of the Internal Revenue Code of 1986, as amended;

That this Release, in conjunction with those certain guilty plea agreements made between The Power Company, Frederick Rizzolo, and the United States, is the entire, complete, sole and only understanding and agreement of, by, and between or among the undersigned and releasees pertaining to and concerning the subject matter and things expressed herein. Other than Defendants' obligation to pay the remaining settlement balance of NINE MILLION DOLLARS (\$9,000,000), there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made; and, further, no promise, inducement or consideration other than the issuance of said draft has been made or agreed upon by or on behalf of releasees, or any of them; and

That each releasee shall be held harmless of and from and indemnified for and against all losses, damages, costs and expenses, including reasonable attorney's fees, and all other sums which each releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim or suit by or on behalf of KIRK AND AMY HENRY, for any loss of or damage to any property or property right, injury to or the death of any person as provided in this Release, or for any contest or attempt to modify, change, reform, break, set aside, nullify, cancel or negate this Release, or any part or provision of this Release, for any reason whatsoever. The indemnification provisions of this paragraph shall not apply to (i) any efforts by Kirk and Amy Henry to enforce the terms of this Agreement should it become necessary to do so.

That KIRK AND AMY HENRY, hereby accept responsibility for and agree to pay, compromise or discharge by court order, from the consideration for this Release, any lien or subrogation right which may be enforceable under the laws of the State of Nevada, or any other State, or any federal law. KIRK AND AMY HENRY further agree to accept responsibility for and agree to pay, compromise or discharge by court order, from the consideration of this Release, any trustee or counsel compensation for administration of the Qualified Settlement Fund, and any outstanding expense for past or future medical or hospitalization costs which arises as a result of treatment rendered arising from the acts complained of in this case and further, any common law lien or subrogation right, including any assignment of such right whatsoever related to the incident described above.

BY SIGNING THIS RELEASE KIRK AND AMY HENRY DO HEREBY ACKNOWLEDGE AND

WARRANT:

That this Release was read carefully in its entirety by them, with the assistance of their counsel, and was and is understood and known to be a full and final compromise, settlement, release, accord and satisfaction, and discharge of all claims, actions and causes of action, suits and liability, as above stated; That neither Frederick Rizzolo, nor The Power Company Inc. nor their counsel have warranted, advised, or counseled Kirk & Amy Henry on the use of a Qualified Settlement Fund, and have made no representations or warranties regarding said vehicle, or the appropriateness of its use herein. That Kirk & Amy Henry have relied solely upon their legal counsel and advisers in deciding to utilize a Qualified Settlement Fund, and should said vehicle fail to achieve the expected or anticipated goals of Kirk & Amy Henry, there shall be no further obligation of the releasees pursuant to this agreement, and each releasee shall be held harmless of and from and indemnified for and against all losses, damages, costs and expenses, including reasonable attorney's fees, and all other sums which each releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim or suit by or on behalf of the Trustee KIRK AND AMY HENRY or their respective advisers and representatives.

That this Release was signed and executed voluntarily and without reliance upon any statement or representation of or by any releasee, or any representative, agent, or adviser of same, concerning the nature, degree and extent of said damages, loss, or legal liability therefor;

That this Release, in conjunction with those certain guilty plea agreements made between The Power Company, Frederick Rizzolo, and the United States, contains the entire agreement of and between or among all of the parties mentioned herein;

That all of the terms and provisions of this Release are contractual, not a mere recital; and

That KIRK AND AMY HENRY are of legal age and capacity, and are competent to sign and execute this Release, and accepts full responsibility therefor.

READ AND SIGNED THIS 26 day of July, 2006 at Arnold's Park, Iowa.

Kirk Henry

KIRK HENRY

Amy Henry

AMY HENRY

STATE OF IOWA)

) ss:

COUNTY OF DICKINSON)

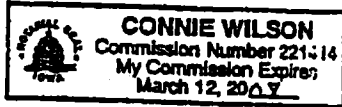
On this 26th day of July, 2006 before me appeared KIRK HENRY, who personally known and who acknowledged the execution of the foregoing instrument as his free act and deed, to

the consideration set forth therein.

Connie Wilson

NOTARY PUBLIC

STATE OF IOWA)



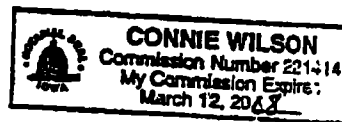
) ss:

COUNTY OF DICKINSON)

On this 26th day of , 2006 before me appeared AMY HENRY, who personally knowr and who acknowledged the execution of the foregoing instrument as her free act and deed, t the consideration set forth therein.

Connie Wilson

NOTARY PUBLIC



APPROVED AS TO FORM AND CONTENT this 28th day of July, 2006.

CAMPBELL & WILLIAMS

By 

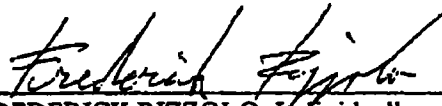
Donald J. Campbell, Esq., #1216
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kirk Henry

HUNTERTON & ASSOCIATES

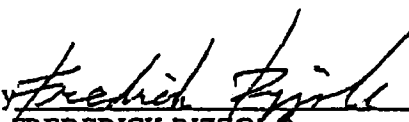
By 

C. Stanley Hunterton, Esq. #1891
333 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Amy Henry

READ AND SIGNED this ____ day of August, 2006.

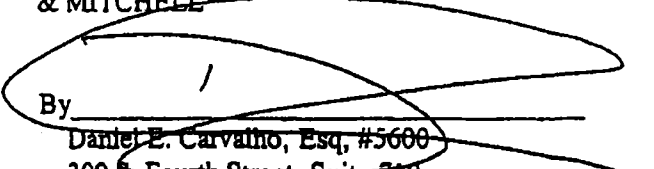

FREDERICK RIZZOLO, Individually

THE POWER COMPANY, INC. dba
CRAZY HORSE TOO GENTLEMEN'S CLUB

By 
FREDERICK RIZZOLO

APPROVED AS TO FORM AND CONTENT this 9 day of August, 2006.

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

By 
Daniel E. Carvalho, Esq., #5600
300 S. Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendants

PATTI & SGRO

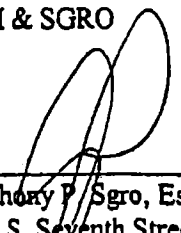
By 
Anthony P. Sgro, Esq., #3811
720 S. Seventh Street, Suite 300
Las Vegas, Nevada 89101
Attorney for Defendants

EXHIBIT “2”

Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE No. 01A440740

Kirk Henry, Plaintiff(s) vs. Power Co Inc, Defendant(s)

§
§
§
§
§
§Case Type: **Intentional Misconduct**Date Filed: **10/02/2001**Location: **Department 16**Conversion Case Number: **A440740**

PARTY INFORMATION

		Lead Attorneys
Defendant	Power Co Inc	Dominic P. Gentile <i>Retained</i> 7023860066(W)
Defendant	Rizzolo, Rick	Kenneth G. Frizzell <i>Retained</i> 702-366-1230(W)
Doing Business As	Crazy Horse Too Gentlemen's Club	Stephen K. Lewis <i>Retained</i> 702-385-9595(W)
Other	Faraci, Vincent	David Zeltner Chesnoff <i>Retained</i> 7023845563(W)
Plaintiff	Henry, Amy	C. Stanley Hunteerton <i>Retained</i> 7023880098(W)
Plaintiff	Henry, Kirk	Donald Jude Campbell <i>Retained</i> 7023825222(W)

EVENTS & ORDERS OF THE COURT

06/29/2007 **Motion** (11:30 AM) (Judicial Officer Glass, Jackie)

PLTFS' MTN TO REDUCE SETTLEMTN TO JUDGM/42 Relief Clerk: Carole D'Aloia Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass

Minutes

06/29/2007 11:30 AM

- Mr. Hafer appeared for Mr. Lewis. Statements by Court regarding the history of the case. Mr. Campbell stated Defendant owes \$76,825 interest. Following arguments by counsel, Court advised Mr. Campbell that she would love to see the Plaintiffs get their money, but pursuant to the agreement entered into, she has no jurisdiction as there is no breach of contract. COURT ORDERED, motion DENIED, Mr. Carvalho to prepare and submit appropriate order, running it by Mr. Campbell prior to submission to Court.

Parties PresentReturn to Register of Actions

EXHIBIT “3”

MAY-16-2006 (TUE) 17:32 Case 2:06-cr-00186-PMP-PAL Document 8 Filed 06/02/11 Page 18 of 35
 05/16/2006 18:23 FAX 7023886418

P. 003/017

US ATTORNEYS OFFICE

013

1 DANIEL G. BOGDEN
 United States Attorney
 2 ERIC JOHNSON
 Chief, Organized Crime Strike Force
 3 TIMOTHY VASQUEZ
 Assistant United States Attorney
 District of Nevada
 4 Lloyd D. George United States Courthouse
 333 Las Vegas Boulevard South
 Suite 5037
 5 Las Vegas, Nevada 89101
 (702) 388-6336/Fax: (702) 388-6418
 6
 7

FILED

JUN - 1 2006

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

FREDERICK RIZZOLO,)

Defendant.)

2:06-cr-188-PMP-PAL

2:05-cr-17-KJD-LRL

PLEA MEMORANDUM

17 The United States, by and through DANIEL G. BOGDEN, United States Attorney, and Eric
 18 Johnson, Chief, Organized Crime Strike Force, and Timothy Vasquez, Assistant United States
 19 Attorney, District of Nevada, the defendant, FREDERICK RIZZOLO, and the defendant's attorney,
 20 Anthony Sgro, Esq., submit this plea memorandum.

I.

PLEA AGREEMENT

23 This agreement is contingent on the fact that co-defendants POWER COMPANY INC.,
 24 ROBERT D'APICE, VINCENT FARACI, JOSEPH MELFI, ALBERT RAPUANO, JOHN DRACE,
 25 STEVE ALBERTS, DARREN BRUY, STEVE CRESPI, ROCCO LOMBARDO, MICHAEL
 26 LOMONACO, MICHAEL MUSCATO, RALPH POPE, SCOTT SPERONI, JAMES STRESING,

1 ROBERT UBRIACO, and PAULA McBRIDE successfully enter their guilty pleas together with
2 defendant FREDERICK RIZZOLO, and that all pleas are accepted by the Court.¹

3 The United States and the defendant have reached the following plea agreement, under which
4 the sentencing guideline calculations are binding on the court pursuant to Rule 11(c)(1) (C) of the
5 Federal Rules of Criminal Procedure:

6 A. The Plea

7 The defendant will plead guilty to Count Two of the Information charging conspiracy
8 to defraud the United States in violation of Title 18, United States Code, Section 371.

9
10
11 ¹ The Court of Appeals for the Ninth Circuit has cautioned that if a plea agreement is part
12 of a package, the trial court must take special care to ensure that the plea is voluntary:

13 Though package deal plea agreements are not per se
14 impermissible, they pose an additional risk of coercion not
15 present when the defendant is dealing with the government
16 alone. See *United States v. Wheat*, 813 F.2d 1399, 1405
17 (9th Cir.1987), *aff'd*, 486 U.S. 153, 108 S. Ct. 1692, 100 L.
18 Ed.2d 140 (1988); *United States v. Castello*, 724 F.2d 813,
19 814-15 (9th Cir.), cert. denied, 467 U.S. 1254, 104 S. Ct.
20 3540, 82 L. Ed.2d 844 (1984). Quite possibly, one
21 defendant will be happier with the package deal than his
22 codefendant(s); looking out for his own best interests, the
23 lucky one may try to force his codefendant(s) into going
24 along with the deal. The Supreme Court has therefore
25 observed that tying defendants' plea decisions together
26 "might pose a greater danger of inducing a false guilty plea
by skewing the assessment of the risks a defendant must
consider." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 n.
8, 98 S. Ct. 663, 668 n. 8, 54 L. Ed.2d 604 (1978)
(dictum). We, in turn, have recognized that "the trial court
should make a more careful examination of the
voluntariness of a plea when [it might have been] induced
by ... threats or promises" from a third party. *Castello*, 724
F.2d at 815. We make it clear today that, in describing a
plea agreement under Rule 11(c)(2), the prosecutor must
alert the district court to the fact that codefendants are
entering a package deal.

United States v. Caro, 997 F.2d 657, 659-660 (9th Cir.1992).

1 **B. Agreement not to Bring Additional Charges**

2 The United States Attorney's Office for the District of Nevada ("United States") agrees not
3 to bring any additional charge or charges against the defendant arising out of the investigation in the
4 District of Nevada which culminated in this Plea Memorandum. However, this agreement does not
5 foreclose prosecution for an act of murder or any conspiracy to commit any such act.

6 **C. Sentencing Guideline Calculations**

7 The parties agree to the following calculations of the Sentencing Guidelines:

- 8 1. The Base Offense Level is 18. (§ 2T1.1(a)(1) and 2T4.1).
- 9 2. The following adjustments for Specific Offense Characteristics and other
10 related factors apply:
- 11 (a) A four offense level enhancement for organizer or leader of five or
12 more participants.
- 13 (b) a two level downward adjustment from the defendant's base offense level for
14 defendant's preindictment plea pursuant to Title 18, United States Code,
15 Section 3553(b).
- 16 (c) a five level downward adjustment from the defendant's base offense level for
17 defendant's and co-defendants group plea pursuant to Title 18, United States
18 Code, Section 3553(b).
- 19 3. The defendant's Criminal History Category will be determined by the court.
- 20 4. The United States will make a motion to the sentencing court recommending that the
21 defendant receive a three-level adjustment for acceptance of responsibility unless the
22 defendant: (a) does not make a complete factual basis for the guilty plea at the time it
23 is entered; (b) is untruthful with the Court or probation officers; (c) denies
24 involvement in the offense or provides conflicting statements regarding the defendant's
25 involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;
- 26

1 or (f) fails to appear in Court; (g) violates the conditions of the defendant's pretrial
2 release conditions.

3 **D. Sentencing Recommendation and Information to the Court**

4 The United States agrees to stand silent as to a recommended sentence within the guideline
5 range determined by the binding offense level calculations and the defendant's criminal history.
6 Defendant does not waive the binding nature of this plea agreement if defendant seeks a sentence
7 outside the stipulated guideline range. If defendant seeks a sentence outside the guideline range, the
8 United States reserves the right to oppose any such requested sentence.

9 Nothing in this Agreement shall preclude the government in any way from presenting any
10 accurate information regarding any matter, including but not limited to any sentencing matter or
11 consideration, to the sentencing court or the United States Department of Probation. And, nothing in
12 this Agreement restricts the Court's or Probation Department's access to information and records in
13 the possession of the government. Nothing in this Agreement shall limit in any way the government's
14 comments in, and responses to, any post-sentencing matter.

15 **E. Fines and Special Assessment**

16 1. The Government and defendant agree that the court should impose a \$250,000 fine
17 upon defendant at the time of defendant's sentencing for his conviction on Count Two of the
18 information.

19 2. The defendant agrees that the court may impose a fine due and payable immediately
20 upon sentencing.

21 3. The defendant will pay the special assessment of \$100 per count of conviction at the
22 time of sentencing.

23 **F. Restitution**

24 2. Defendant Corporation agrees to make restitution in an amount of \$1,734,000 to the
25 Internal Revenue Service (IRS). All matters related to Defendant Corporation's \$1,734,000 restitution
26 to the IRS shall be governed by the Closing Agreement between the Defendant Corporation and the

1 IRS. This Plea Agreement is contingent on Defendant Corporation and the IRS entering a Closing
2 Agreement. Upon entry of the said Closing Agreement, the agreement shall be attached hereto this
3 Plea Agreement and incorporated herein by reference. This restitution amount is a restatement of
4 the same restitution amount for which THE POWER COMPANY, INC., is obligated to pay to the
5 Internal Revenue Service pursuant to its separate plea agreement. Defendant agrees that he is jointly
6 and severally liable for this restitution. Defendant understands that any restitution imposed by the
7 Court may not be discharged in whole or in part in any present or future bankruptcy proceeding.

8 **G. Forfeiture**

9 1. Defendant voluntarily agrees to assert no claim and file no pleading in any
10 administrative, civil or criminal judicial proceeding concerning the \$4,250,000.00 agreed to be
11 forfeited pursuant to number 2 below (Section I.G.2. of this plea agreement) and by the Power
12 Company, Inc., in its Plea Memorandum. Defendant further waives any and all requirements
13 concerning notice of such proceedings, including service of process. Defendant voluntarily agrees to
14 withdraw any claim or pleading in any administrative, civil or criminal judicial proceeding concerning
15 the \$4,250,000.00 agreed to be forfeited.

16 2. Defendant voluntarily and immediately agrees to the administrative forfeiture, civil
17 forfeiture, or criminal forfeiture of all of his rights to, title in, and interest in the \$4,250,000.00 to the
18 United States of America under Title 18, United States Code, Section 1963(a)(1), (2), and (3).
19 Defendant agrees the \$4,250,000.00: (1) is property defendant acquired or maintained in violation of
20 Title 18, United States Code, Section 1962; (2) is an interest in, security of, claim against, or property
21 or contractual right of any kind affording a source of influence over an enterprise which the defendant
22 established, operated, controlled, conducted, or participated in violation of Title 18, United States
23 Code, Section 1962; and (3) is property constituting, or derived from, any proceeds which the
24 defendant obtained, directly or indirectly, from racketeering activity or unlawful debt collection in
25 violation of Title 18, United States Code, Section 1962.

1 3. Defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture
2 of the \$4,250,000.00. Defendant knowingly and voluntarily waives all constitutional, legal, and
3 equitable defenses to the forfeiture of the \$4,250,000.00 in any administrative, criminal, or civil
4 proceedings. Defendant knowingly and voluntarily waives the statute of limitations and the CAFRA
5 requirements in any administrative, criminal, or civil proceedings regarding the \$4,250,000.00.
6 Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional
7 or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United
8 States Constitution, including any claim of excessive fine, to the forfeiture of the \$4,250,000.00.

9 4. The \$4,250,000.00 agreed to be forfeited to the United States by the defendant is the
10 same \$4,250,000.00 agreed to be forfeited by the Power Company, Inc. in its Plea Memorandum and
11 does not represent an additional amount to be forfeited, i.e. only a total amount of \$4,250,000.00 shall
12 be forfeited jointly by the defendant and the Power Company, Inc.

13 5. Defendant agrees that forfeiture of the \$4,250,000.00 as set forth in this agreement shall
14 not be deemed or treated as satisfaction of any fine, restitution, cost of imprisonment, or any other
15 penalty this Court may impose upon the defendant in addition to forfeiture.

16 **H. Waiver of Appeal**

17 In exchange for the concessions made by the United States in this plea agreement, the
18 defendant knowingly and expressly waives the right to appeal any sentence that is imposed within or
19 below the applicable Sentencing Guideline range as determined by the Court, further waives the right
20 to appeal the manner in which that sentence was determined on the grounds set forth in Title 18,
21 United States Code, Section 3742, and further waives the right to appeal any other aspect of the
22 conviction or sentence, including any order of restitution. Defendant reserves only the right to appeal
23 any portion of the sentence that is higher than the sentencing guideline range determined by the Court.
24 The defendant also agrees to waive any right to bring any collateral attack against his conviction or
25 sentence, except for a claim of ineffective assistance of counsel. This agreement does not affect the
26

1 rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b);
2 and therefore the government retains all its appeal rights.

3 **I. Additional Promises, Agreements, and Conditions**

4 1. As part of the global pleas being taken in this case, THE POWER COMPANY, INC. is
5 pleading guilty to a violation of Title 18, United States Code, Section 1962(d) and agreeing to
6 make restitution to Kirk and Amy Henry in the aggregate amount of Ten Million Dollars
7 (\$10,000,000) upon the sale of THE CRAZY HORSE TOO. Defendant Rizzolo, as principle
8 owner of THE POWER COMPANY, INC, shall take all actions necessary to ensure that THE
9 POWER COMPANY, INC. meets its obligation to make restitution to Kirk and Amy Henry in the
10 aggregate amount of Ten Million Dollars (\$10,000,000) upon the sale of THE CRAZY HORSE
11 TOO, depositing said funds with the Clerk of the Court in an interest bearing account. Thereafter,
12 the Clerk of the Court, upon receipt of proper notice from Kirk and Amy Henry, will transfer said
13 funds to a designated Title 26, United States Code, Section 468B Qualified Settlement Trust Fund
14 to permit the funding of structured annuities established for the benefit of Kirk and Amy Henry. In
15 conjunction thereto, defendant agrees to execute any and all written instruments necessary to
16 effectuate the intent and purpose of the transfer of funds pursuant to this section.
17
18
19

20 2. Defendant Rizzolo agrees that, upon the sale of THE CRAZY HORSE TOO, he will not
21 thereafter continue to operate or establish, open, or facilitate the establishment, opening, or
22 operation of any business, trade, or commercial activity, similar to THE CRAZY HORSE TOO or
23 involving the production and/or sale of pornographic (including but not limited to the
24 representation of the human body or human sexual behavior with the objective of sexual arousal)
25 or erotic (including but not limited to portrayals of human sensuality and sexuality) media
26

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P. 010/017

US ATTORNEYS OFFICE

008

1 (including but not limited to television, film, video, digital media, and print media), or in any
2 manner become interested, directly or indirectly, either as an employee, owner, partner, agent,
3 stockholder, director, officer, LLC member, or otherwise, in any such business, trade, or
4 commercial enterprise within the geographical boundaries of the United States of America and its
5 territories and commonwealths for the duration of his natural life. To the extent defendant
6 Rizzolo currently owns, operates or has any involvement in any such establishments described in
7 this paragraph, other than THE CRAZY HORSE TOO, he shall have 12 months from the entry of
8 his plea to dispose of such interests or involvements.
9

10
11 3. If at the time of defendant's sentencing, defendant is sentenced to a period of
12 incarceration and, THE POWER COMPANY, INC., pursuant to its plea agreement, has not yet
13 signed a contract for the sale of THE CRAZY HORSE TOO to an unrelated buyer, the
14 Government will not oppose a request by defendant to the court to continue the start date of
15 defendant's sentence until 14 days after THE POWER COMPANY, INC.'s entering into a
16 contract for the sale of THE CRAZY HORSE TOO or twelve months from the date of defendant's
17 entry of his plea, whichever is earlier.
18

19 4. In exchange for the United States entering into this agreement, the defendant agrees
20 that (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against the
21 defendant under Fed. R. Evidence 801(d)(2)(A) in the following circumstances: (1) for any
22 purpose at sentencing; and (2) in any subsequent proceeding, including a trial in the event the
23 defendant does not plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any
24 evidence, argument or representation offered by or on the defendant's behalf; and (b) the defendant
25
26

1 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with
2 regard to the facts set forth in Section IV of the Plea Agreement to the extent set forth above.

3
4 5. The parties agree that no promises, agreements, and conditions have been entered
5 into other than those set forth in this plea memorandum, and not will be entered into unless in
6 writing and signed by all parties.

7 **I. Limitations**

8
9 This Plea Agreement is limited to the United States Attorney's Office for the District of
10 Nevada and cannot bind any other federal, state or local prosecuting, administrative, or regulatory
11 authority. However, this Plea Memorandum does not prohibit the United States through any
12 agency thereof, the United States Attorney's office for the District of Nevada, or any third party
13 from initiating or prosecuting any civil proceeding directly or indirectly involving the defendant,
14 including but not limited to, proceedings under the False Claims Act relating to potential civil
15 monetary liability or by the Internal Revenue Service relating to potential tax liability.

16
17 **II.**

18
19 **PENALTY**

20 1. The maximum penalty for violating Title 18, United States Code, Section 371 is not
21 more than 5 years imprisonment, a fine of not more than \$250,000, or both.

22 2. The defendant is subject to supervised release for a term of at least two years but
23 not more than three years.

24
25 3. The defendant must pay a special assessment of \$100 for his count of conviction.

1 beyond a reasonable doubt that the defendant is guilty of the offense charged in Count Two of the
2 Information.

3
4 3. The defendant specifically admits and declares under penalty of perjury that all of
5 the facts set forth below are true and correct:

6 4. THE CRAZY HORSE TOO and the defendant and employees conspired to defraud
7 the United States.

8
9 5. THE CRAZY HORSE TOO in Las Vegas, Nevada, was typically known as a
10 "gentlemen's club," or "strip club." The terms "gentlemen's club" and "strip club" generally refer
11 to business establishments in which women dance semi-nude as entertainment for the
12 establishments' patrons. THE CRAZY HORSE TOO provided entertainment to large numbers of
13 tourists traveling from outside the State of Nevada into the State of Nevada
14

15 6. Dancers performing at THE CRAZY HORSE TOO are treated as independent
16 contractors and are not paid by the club for their services. Rather, THE CRAZY HORSE TOO
17 patrons commonly pay individual dancers for their services. The dancers at THE CRAZY HORSE
18 TOO are generally required to pay the management or owners of THE CRAZY HORSE TOO a fee
19 for the opportunity to ply their craft within the club. Rather than charging dancers a flat fee, the
20 shift management of THE CRAZY HORSE TOO generally required that dancers pay a percentage
21 of their earnings. More specifically, THE CRAZY HORSE TOO generally required that dancers
22 pay fifteen percent (15%) of their earnings to the business for the privilege of dancing for patrons
23 at THE CRAZY HORSE TOO. The shift-managers of THE CRAZY HORSE TOO generally
24 collected fifteen percent (15%) of the individual dancers' earnings at the end of each shift.
25
26

1 7. As part of the conspiracy, the management of THE CRAZY HORSE TOO did not
2 report or maintain records of the money received from the dancers. The management of THE
3 CRAZY HORSE TOO used this unreported cash income from the business to supplement the
4 wages of certain employees. More particularly, at the end of each shift, the shift managers of THE
5 CRAZY HORSE TOO divided the aggregate sum collected from the dancers into portions or
6 shares that were then distributed among certain of THE CRAZY HORSE TOO's male employees.
7 The club's floormen, bouncers, bartenders, and the shift managers themselves all received a share
8 of the currency collected from the dancers. As a result of the procedures of THE CRAZY HORSE
9 TOO persons receiving the cash salary payments generally under-reported amounts received to
10 THE CRAZY HORSE TOO's bookkeeping staff. By failing to report or record the cash payments
11 to the club's employees, the owners of THE CRAZY HORSE TOO and certain of the participating
12 employees were able to avoid Federal Insurance Contributions Act (FICA) taxes owed to the
13 United States on the unreported compensation.
14
15

16 8. As part of the conspiracy the defendant and management of THE CRAZY HORSE
17 TOO delivered to the accountant and tax preparer for THE CRAZY HORSE TOO records which
18 failed to reflect the monies described in number 7 above (Section IV.7 of this plea agreement).
19 The defendant and management of THE CRAZY HORSE TOO knew that the accountant would
20 rely on these inaccurate summary sheets to prepare quarterly financial reports and tax returns for
21 the years 2000 through 2002.
22
23

24 9. The management knowingly caused the preparation and delivery of numerous
25 inaccurate Internal Revenue Service W-2 Forms to certain employees of THE CRAZY HORSE
26 TOO, as well as to the Internal Revenue Service. The figures reported on the W-2 Forms did not

1 reflect the true amount of the income paid by the business to its management and employees. The
2 management and employees of THE CRAZY HORSE TOO then knowingly used these inaccurate
3 W-2 Forms to cause false individual income tax returns to be filed with the Internal Revenue
4 Service.

5
6 10. Defendant and others filed or caused to be filed quarterly federal employment tax
7 returns under-reporting the true amount of earnings the conspirators and others received in
8 furtherance of the conspiracy's goals to conceal the fraud. From the period of 2000 through 2002,
9 the conspiracy allowed THE CRAZY HORSE TOO to underpay approximately \$400,000 in
10 Federal Insurance Contributions Act (FICA) taxes and Medicare taxes.
11

12 V.

13 ACKNOWLEDGMENT

14
15 1. The defendant, acknowledges by the defendant's signature below that the defendant
16 has read this Memorandum of Plea Agreement, that the defendant understands the terms and
17 conditions, and the factual basis set forth herein, that the defendant has discussed these matters with
18 the defendant's attorney, and that the matters set forth in this memorandum, including the facts set
19 forth in Part IV above are true and correct.
20

21 2. The defendant acknowledges that the defendant has been advised, and understands, that
22 by entering a plea of guilty the defendant is waiving, that is, giving up, certain rights guaranteed to the
23 defendant by law and by the Constitution of the United States. Specifically, the defendant is giving
24 up:
25
26

1 a. The right to proceed to trial by jury on the original charges, or to a trial by a
2 judge if the defendant and the United States both agree;

3 b. The right to confront the witnesses against the defendant at such a trial, and to
4 cross-examine them;

5 c. The right to remain silent at such trial, with such silence not to be used against
6 the defendant in any way;

7 d. The right, should the defendant so choose, to testify in the defendant's own
8 behalf at such a trial;

9 e. The right to compel witnesses to appear at such a trial, and to testify in the
10 defendant's behalf; and,

11 f. The right to have the assistance of an attorney at all stages of such proceedings.

12 3. The defendant, the defendant's attorney, and the attorney for the United States
13 acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by
14

15 ...

16 ...

17 ...

18 ...

19 ...

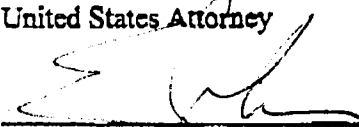
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21 ...


1 and between the parties, and that no other promise has been made or implied by either the defendant,
2 the defendant's attorney, or the attorney for the United States.

3
4 DANIEL G. BOGDEN
United States Attorney

5
6 5-1-06
7 DATED


ERIC JOHNSON, Chief, Organized Crime Strike Force

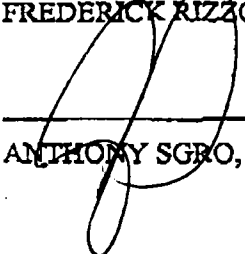
8 6/1/06
9 DATED


TIMOTHY VASQUEZ, Assistant U.S. Attorney

10
11 5-16-06
12 DATED


FREDERICK RIZZOLO, Defendant

13 5/16/06
14 DATED


ANTHONY SGRO, Counsel for Defendant

Form 906

Department of the Treasury -- Internal Revenue Service

Closing Agreement On Final Determination Covering Specific Matters

Under section 7121 of the Internal Revenue Code, Power Company, Inc. (EIN: 88-0115792), of 2476 Industrial Road, Las Vegas, Nevada 89102, and Rick J. Rizzolo, (SSN: 548-25-3498), of 8632 Canyon View Drive, Las Vegas, Nevada, 89117 and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS, Power Company, Inc. is a Nevada corporation recognized as a Small Business Corporation under Subchapter S, Section 1361 of the Internal Revenue Code; and

WHEREAS, Rick J. Rizzolo is the president and 90% shareholder of Power Company, Inc.; and

WHEREAS, a dispute has arisen as to whether Power Company, Inc. and/or Rick J. Rizzolo may be liable, under Section 6672 of the Internal Revenue Code, for failure to collect, account for, and pay over F.I.C.A. and Federal Income Tax withholding on tips earned by employees of Power Company, Inc. for the period beginning January 1, 2000, and ending December 31, 2002; and

WHEREAS, a dispute has arisen as to whether Power Company, Inc. and/or Rick J. Rizzolo may be liable, under Section 3121(q) of the Internal Revenue Code, for the employer's share of F.I.C.A. taxes on tips earned by employees of Power Company, Inc. for the period beginning January 1, 2000 and ending December 31, 2002; and

WHEREAS, the parties also wish to determine with finality, the prospective tax treatment of a court issued restitution order that obligates Power Company, Inc. to pay to Mr. Kirk Henry the amount of \$10,000,000.; and

WHEREAS, the parties have reached a resolution of these disputes and wish to determine with finality any and all tax consequences and liabilities of Power Company, Inc. and Rick J. Rizzolo for all tax periods ending on or before December 31, 2005, inclusive.

Closing Agreement on Final Determination Covering Specific Matters with
Power Company, Inc. (EIN: 88-0115792) and Rick J. Rizzolo (SSN: 548-25-3498)

NOW IT IS HEREBY DETERMINED AND AGREED as follows:

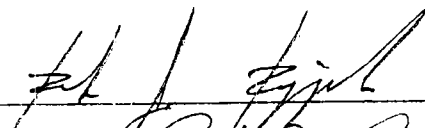
1. Power Company, Inc. and Rick J. Rizzolo are jointly and severally liable, under Section 6672 of the Internal Revenue Code, for failure to collect, account for, and pay over F.I.C.A withholding and Federal Income Tax withholding on tips earned by employees of Power Company, Inc. The total aggregate liability under Section 6672 of the Internal Revenue Code, for the taxable periods beginning January 1, 2000, and ending December 31, 2002, is \$1,320,000. The parties agree that the aggregate liability of \$1,320,000 shall be assessed against Power Company, Inc. and Rick J. Rizzolo, as responsible parties, for the taxable quarter ended December 31, 2002, notwithstanding any statute of limitations that may otherwise apply. Power Company, Inc. and Rick J. Rizzolo agree to pay the \$1,320,000 promptly upon proper notice and demand. It is further determined that the \$1,320,000 shall not produce an allowable deduction for Federal Income Tax purposes in any tax year for Power Company, Inc. or Rick J. Rizzolo.
2. Power Company, Inc. and Rick J. Rizzolo are jointly and severally liable, under Section 3121(q) of the Internal Revenue Code, for the employer's F.I.C.A tax liability on tips earned by employees of Power Company, Inc. in the aggregate amount of \$414,000. for the taxable periods beginning January 1, 2000, and ending December 31, 2002. The \$414,000 represents the total liability under Section 3121(q) of the Internal Revenue Code and the parties agree that the aggregate liability of \$414,000. shall be assessed against Power Company, Inc. for the taxable quarter ended December 31, 2002, notwithstanding any statute of limitations that may otherwise apply. Power Company, Inc. and Rick J. Rizzolo agree to pay the \$414,000 promptly upon proper notice and demand. It is further determined that the \$414,000 shall be allowed as deduction by Power Company, Inc. for Federal Income Tax purposes, under Section 162 of the Internal Revenue Code, in the tax year such liability is actually paid.
3. Power Company, Inc. shall be allowed a Federal Income Tax deduction, under Section 162 of the Internal Revenue Code, for the \$10,000,000 payable to Kirk Henry pursuant to the court issued restitution order obligating Power Company, Inc. to make such payment(s). Such deduction(s) shall be allowed in the taxable year such payment(s) are actually made, subject to all applicable statutes in effect for the year of payment.
4. The Internal Revenue Service hereby agrees that, except for the specific liabilities enumerated above, it will not assert or assess any additional Federal income tax liabilities or employment tax liabilities, including any civil penalties, of any kind against Power Company, Inc. and / or Rick J. Rizzolo, in any capacity, for any taxable period ending on or before December 31, 2005.
5. This agreement shall not limit the authority of Power Company, Inc. and / or Rick J. Rizzolo to file amended returns for any tax period to carryback any net operating losses or tax credits arising from any tax years beginning on or after January 1, 2006.

Closing Agreement on Final Determination Covering Specific Matters with
Power Company, Inc. (EIN: 88-0115792) and Rick J. Rizzolo (SSN: 548-25-3498)

This agreement is final and conclusive except:

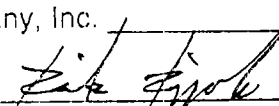
1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
2. it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exceptions for Code section 7122) notwithstanding any other law or rule of law to the contrary; and
3. if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the date of this agreement, that applies to that tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Rick J. Rizzolo  Date: 6-1-06

Taxpayer's Representative  Date: 6/1/06

Power Company, Inc. _____ Date: _____

By:  Date: _____

Title: President

Commissioner of Internal Revenue

By: _____ Date: _____

Title: _____