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Attorney for Defendants  
5 FREDRICK J. RIZZOLO  
RICK AND LISA RIZZOLO FAMILY TRUST  
6 RICK J. RIZZOLO SEPARATE PROPERTY TRUST  
and RJR TRUST  
7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 \* \* \*

11 KIRK and AMY HENRY,  
12 Plaintiffs,

13 vs.

14 FREDRICK RIZZOLO aka RICK RIZZOLO,  
an individual; LISA RIZZOLO, individually  
15 and as trustee of The Lisa M. Rizzolo  
Separate Property Trust and as successor  
16 trustee of The Rick J. Rizzolo Separate  
Property Trust; THE RICK AND LISA  
17 RIZZOLO FAMILY TRUST; THE RICK J.  
RIZZOLO SEPARATE PROPERTY TRUST;  
18 THE LISA M. RIZZOLO SEPARATE  
PROPERTY TRUST; THE RLR TRUST; and  
19 THE LMR TRUST,

20 Defendants.

Case No.: 2:08-CV-635-PMP-GWF

OPPOSITION TO PLAINTIFFS'  
RENEWED MOTION TO COMPEL  
DEFENDANT RICK RIZZOLO TO  
ANSWER AND RESPOND TO KIRK  
HENRY'S FIRST SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION AND FOR  
APPROPRIATE F.R.C.P. 37 SANCTIONS

21 COMES NOW, Defendant FREDRICK RIZZOLO a/k/a RICK RIZZOLO, et al., by and  
22 through counsel of record KENNETH G. FRIZZELL, III, of the LAW OFFICES OF KENNETH  
23 G. FRIZZELL, III, and respectfully submits this response and opposition to the Plaintiffs'  
24 Renewed Motion to Compel Answers to Interrogatories and Requests for Production, and  
25 for Appropriate F.R.C.P. 37 Sanctions

26 This Response and Opposition is made and based the *Memorandum of Points and*  
27 *Authorities* attached hereto and made a part hereof by reference, the documents, papers  
28

1 and pleadings on file herein with the Clerk of the Court, and the arguments of counsel as  
2 may be adduced at hearing on the matter.

3 DATED: February 16, 2010.

4 LAW OFFICES OF KENNETH G. FRIZZELL, III

5  
6 By 

7 KENNETH G. FRIZZELL, III, ESO.  
8 Nevada Bar #006303  
9 509 South Sixth Street  
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16 RJR TRUST

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18 STATEMENT OF RELEVANT FACTS

19 Plaintiffs seek unspecified relief by use of a "renewed" motion to compel (#279).  
20 The Plaintiffs' first motion to compel was filed on November 17, 2008 (#29), and it was not  
21 directed toward Mr. Rizzolo, but toward his then attorneys, Patti and Sgro. The next motion  
22 to compel (#42) was filed on December 9, 2008, and denied on February 3, 2009 (#73).  
23 Plaintiffs objected (#82), not on the grounds of discovery, but on grounds that the order  
24 denying (#73) the motion to compel constituted a defacto summary judgment. The Court  
25 sustained the objections (#117), denied sanctions, and did not include specified relief.  
26 Plaintiffs did not seek clarification. Mr. Rizzolo's counsel withdrew.

27 It is important to note that all discovery pertaining to anything from October 2,  
28 2001 through 2006, has already been provided ad nauseum in the course and conduct  
of the original State court case. Anything pertaining to discovery and information from  
2006 to 2008 was seized and is held by the Government, with some copies possessed by  
former attorneys, and is outside the control of Mr. Rizzolo. Additionally, these attorneys  
have already provided extensive discovery that would simply be duplicated if Defendant  
Rizzolo had possession of, and produced the information.

1 To the extent possible, anything which has been asked for pertaining to 2008 to the  
2 present has been provided. Further, Defendant and Counsel are currently in the process  
3 of supplementing as well, and will be provide same to Plaintiffs in the near future.  
4 Defendant Rizzolo will also provide a blanket release to allow Plaintiffs to obtain any  
5 additional documents through collateral sources.

6 Plaintiffs' Counsel is again seeking F.R.C.P. 37 sanctions for a violation of a "previous"  
7 order to compel. However, the order (#117) overruling the Magistrate Judge was not  
8 specific as to relief or what was being compelled, is old; and therefore, F.R.C.P. 37 sanctions  
9 are not yet appropriate absent a finding of willfulness. Fashioning the least intrusive  
10 method of compelling compliance, the blanket release accomplishes that goal.

11 It is important to note that the undersigned came into the case only in October  
12 2009. Thus, the operative period of time for which the Court should consider the Plaintiffs'  
13 motion (#279) extends only from October 2009 to the present date. A time frame of only  
14 four (4) months, as opposed to the nine (9) year history of the case and the parties.  
15 Which, by any stretch of the imagination, constitutes an unduly burdensome and  
16 oppressive course of action involving discovery which should cease.

17 Since the undersigned has taken over as Counsel to Defendant, supplements to  
18 interrogatories and supplemental responses to request to produce have been provided.  
19 Yet, the fact remains that the Government's seizure of all business and personal documents  
20 continues to severely limit Defendant Rizzolo's ability to provide Plaintiffs with additional  
21 documentation.

22 The forfeiture and seizure by the Government of Mr. Rizzolo's personal and business  
23 records, to which the Plaintiffs agreed, have denied Mr. Rizzolo possession of any further  
24 access to these documents. Mr. Rizzolo served a prison sentence on that criminal case,  
25 which ended in 2008, when his supervised release began. Contrary to Plaintiffs' beliefs,  
26 since being released from prison, Mr. Rizzolo is no longer a man of substantial means.

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1 Plaintiffs' Counsel, has now chosen to cast stones at the undersigned. After  
2 agreeing to requests from Defendant's Counsel, those requests are now being portrayed  
3 as unreasonable in their moving papers. Additional time was requested and granted. This  
4 request was necessary due to the death of Counsel's mother-in-law, who resided in Ohio,  
5 which took him out of town for a total of approximately two (2) weeks handling family  
6 matters. If the death of a family member is considered unreasonable, what would the  
7 Plaintiffs consider reasonable?

8 Counsel and Mr. Rizzolo are not attempting to "thwart" the Plaintiffs' efforts at  
9 discovery, and in fact are continuing in their attempts to supplement his answers and  
10 provide additional documentation to Plaintiffs where possible. However, when Plaintiffs  
11 request documentation concerning Mr. Rizzolo's son's allowance, it makes it difficult to take  
12 such a request seriously. Mr. Rizzolo has informed Counsel and Plaintiffs, on numerous  
13 occasions, that he has no such documents, and that is unlikely to change anytime soon.  
14 Similarly, Mr. Rizzolo resides with a friend who is graciously not charging him monthly rent.  
15 As such, there are no documents of any rental payments which Mr. Rizzolo could provide.

16 The Government seized all documents situated at Mr. Rizzolo's business, which  
17 included personal and business records. Accordingly, Mr. Rizzolo no longer has possession  
18 of, or access to those documents, and cannot possibly hope to provide same to Plaintiffs.

19 POINTS AND AUTHORITIES

20 Plaintiffs in this action are without a civil judgment for money, have been involved  
21 in the discovery process against Mr. Rizzolo for over nine (9) years, and are searching for  
22 money that no longer exists. The settlement agreement Plaintiffs entered into does not  
23 permit them to obtain a civil judgment or undertake a judgment debtor exam at this time.  
24 Plaintiffs' rights are conditioned on the sale of The Crazy Horse Too, a formerly lucrative  
25 business that was devalued by the actions of the United States Government in the related  
26 criminal case.

27 Plaintiffs' invented allegations in the instant case came about only after being  
28 betrayed by the Government with which they made their deal. Plaintiffs' claim that the

1 Defendants' divorce in 2005, involved fraudulent transfers of community property  
2 between husband and wife. The divorce was final prior to Plaintiff and Defendant Rizzolo  
3 having any settlement agreement in place. Since their substantive claims are made and  
4 based on state law which provides that a debtor may pay one creditor and not another  
5 and such action is not fraudulent, they must fail. *Matusik v. Large*, 85 Nev. 202, 452 P. 2d  
6 457 (1969). Nevada community property law provides that both spouses are entitled to  
7 fifty percent (50%) of the community property at the time of their divorce. The Rizzolos  
8 were married shortly after they graduated high school, had three children and built a  
9 community estate that was divided in a divorce. No challenges were made by Plaintiffs to  
10 interplead or intervene in any way, in Defendant's divorce. Further, Plaintiffs have all  
11 documents concerning the divorce and community property division. Defendant Rizzolo  
12 cannot provide any supplements, as there have been no changes to that division of  
13 property.

14 Plaintiffs base their invented allegations on the impossible beliefs that Defendant  
15 Rizzolo, "knew" in 2005, that the Government would not uphold their end of the bargain  
16 with Plaintiffs, in 2007 and 2008. Plaintiffs continue to believe that they can prove  
17 Defendant had prior knowledge of events which occurred two (2) and three (3) years after  
18 his divorce, and prior to any settlement agreement between the parties.

19 It was the Government and Plaintiffs by their agreement with the Government, not  
20 Defendants, who allowed The Crazy Horse Too to become devalued, breaching its  
21 agreement to keep it open and operating. The Government's breach did not occur until  
22 two (2) years subsequent to the Defendants' divorce in 2005.

23 The Defendant entered into a plea agreement in his criminal case, over one (1) year  
24 after the divorce was final, to sell The Crazy Horse Too, and pay the Plaintiffs. It is clear by  
25 Plaintiffs' actions that they believe Defendants are clairvoyant, and made and based their  
26 divorce on future events which had not yet occurred or been contemplated. It is the  
27 Defendants' clairvoyance which the Plaintiffs must convince a reasonable trier of fact  
28 occurred. Yet, it was the Plaintiffs who entered into a settlement agreement with the

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Government. It was same Government which then devalued their claim, and removed them from first party beneficiary status.

After being incarcerated for approximately one ( 1 ) year, Mr. Rizzolo provided what little documentation he had, or was able to obtain. Mr. Rizzolo previously produced and Plaintiffs have in their possession copies of signed contracts to purchase The Crazy Horse Too by third parties for amounts ranging from \$29,000,000 to \$36,000,000. Plaintiffs were previously provided appraisals on the business and the property, escrow files and correspondence demonstrating that he received more value in community property than his former spouse, Lisa Rizzolo. Plaintiffs are obviously choosing to ignore all previously provided documents, as they contradict Plaintiffs' allegations that the divorce was a fraudulent transaction.

CONCLUSION

Mr. Rizzolo did not fraud the Plaintiffs. Lisa Rizzolo was never a named defendant in the State court action of the related federal criminal case. Defendants Rick and Lisa Rizzolo got divorced, and divided their community property equitably, then went their separate ways. Over one year after the divorce, Mr. Rizzolo entered into a plea agreement in his criminal case to sell his business and pay the Plaintiffs. To claim now, that he knew the Government would not uphold its agreement with Plaintiffs is pure conjecture.

As stated previously, discovery is ongoing, and Counsel and Mr. Rizzolo are resolute in their attempts to provide Plaintiffs with what is reasonable and possible. Mr. Rizzolo has not waived any objections to discovery, and provided supplements on January 6, 2010. Counsel forwarded a proper request for tax information to the Internal Revenue Service, and just received notice that no documents would be forthcoming. If documents cannot be obtained from the Internal Revenue Service, they cannot be provided by Defendant Rizzolo.

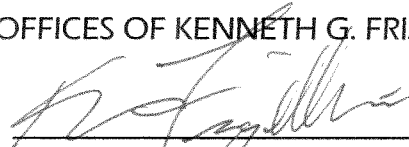
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1 That being said, Defendant Rizzolo will provide Plaintiffs with a blanket release  
2 which will enable them to obtain any records they feel pertinent to their claims from  
3 collateral sources. In doing so, any evasiveness will no longer be attributed to Defendant  
4 or Counsel. Accordingly, Plaintiffs' Renewed Motion to Compel and for Sanctions should  
5 be denied.

6 DATED: February 16, 2010

7 LAW OFFICES OF KENNETH G. FRIZZELL, III

8 By



9 KENNETH G. FRIZZELL, III, ESQ.  
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CERTIFICATE OF SERVICE

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I am a resident of and employed in Clark county, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 509 South 6<sup>th</sup> Street, Las Vegas, Nevada, 89101.

On February 16, 2010 I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicate next to the name of the served individual or entity by a checked box:

**VIA U.S. MAIL:** by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

**VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

**BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

**BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party how has filed a written consent for such manner of service.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
Employee of KENNETH G. FRIZZELL, III, ESO.



SERVICE LIST

ATTORNEYS OF RECORD	METHOD OF SERVICE
George P. Kelesis, Esq. Mark B. Bailus, Esq. Marc P. Cook, Esq. Bailus, Cook & Kelesis, Ltd. 400 South 4 <sup>th</sup> Street, #300 Las Vegas, NV 89101	<input type="checkbox"/> Personal Service <input type="checkbox"/> Email Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> CM/ECF Service
C. Stanley Hunterton, Esq. Hunterton & Associates 333 South 6 <sup>th</sup> Street Las Vegas, NV 89101	<input type="checkbox"/> Personal Service <input type="checkbox"/> Email Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> CM/ECF Service
J. Colby Williams, Esq. Wade W. Rabenhorst, Esq. Donald J. Campbell, Esq. Jack F. DeGree, Esq. Campbell and Williams 700 South 7 <sup>th</sup> Street Las Vegas, NV 89101	<input type="checkbox"/> Personal Service <input type="checkbox"/> Email Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> CM/ECF Service
Paul Hejmanowski, Esq. Lionel, Sawyer & Collins 300 South 4 <sup>th</sup> Street, #1700 Las Vegas, NV 89101	<input type="checkbox"/> Personal Service <input type="checkbox"/> Email Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> CM/ECF Service