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 The Lisa M. Rizzolo Separate Property Trust
 6 and The LMR Trust, and Crossclaimant
 Lisa M. Rizzolo***

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

8 * * *

9 KIRK and AMY HENRY,
 Plaintiffs,

10 vs.

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

11 FREDERICK RIZZOLO aka RICK RIZZOLO,
 an individual; LISA RIZZOLO, individually
 and as trustee of The Lisa M. Rizzolo
 12 Separate Property Trust and as successor
 trustee of The Rick J. Rizzolo Separate
 13 Property Trust; THE RICK AND LISA
 RIZZOLO FAMILY TRUST; THE RICK
 14 J. RIZZOLO SEPARATE PROPERTY
 TRUST; and THE LISA M. RIZZOLO
 15 SEPARATE PROPERTY TRUST, THE
 RLR TRUST; and THE LMR TRUST,

16 Defendants.

17
 18 LISA RIZZOLO,
 Crossclaimant,

19 vs.

20 FREDERICK RIZZOLO aka RICK
 RIZZOLO, individually and as trustee of
 21 The Rick J. Rizzolo Separate Property Trust;
 RICK J. RIZZOLO SEPARATE PROPERTY
 22 TRUST and THE RLR TRUST

23 Crossdefendant

**OPPOSITION TO PLAINTIFFS'
 MOTION FOR INJUNCTIVE
 RELIEF AGAINST THE
 DISPOSITION OR TRANSFER OF
 ASSETS**

24
 25 COMES NOW Defendants, LISA RIZZOLO, THE LISA M. RIZZOLO SEPARATE
 26 PROPERTY TRUST, and THE LMR TRUST, by an through their attorneys of record, BAILUS
 27 COOK & KELESIS, LTD., and hereby submits their Opposition to Plaintiff's Motion for Injunctive
 28 Relief Against the Disposition or Transfer of Assets. This opposition is made and based upon all
 pleadings and papers on file herein, the attached Memorandum of Points and Authorities, and such

1 evidence as may be adduced at any hearing on this matter.

2 DATED this 23rd day of June, 2011.

3 BAILUS COOK & KELESIS, LTD.

4

5 By _____ /s/
6 MARK B. BAILUS, ESQ.
7 Nevada Bar No. 2284
8 400 South Fourth Street, Suite 300
9 Las Vegas, Nevada 89101
10 *Attorneys for Defendant*

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POINTS AND AUTHORITIES

12

I. INTRODUCTION

13

14 After reviewing Plaintiffs' preliminary injunction motion, it appears that the Plaintiffs are
15 confused. Apparently, the source of Plaintiffs' confusion is that they have lumped Rick
16 Rizzolo's obligation to pay restitution in his criminal case with his obligation under the
17 settlement agreement in the Plaintiffs' personal injury lawsuit against him in the Nevada state
18 courts.¹ As to the latter, the \$9 million balance of the settlement was to be paid from the
19 proceeds of the sale of the Crazy Horse Too. Such has not yet occurred. Accordingly, Rick
20 Rizzolo's obligation to pay the remaining \$9 million is not yet due and owing. For purposes of
21 the case *sub judice*, the amount of restitution that the Henrys have or have not been paid in the
22 Federal criminal case² regarding Rick Rizzolo and the Power Company is of no moment.
23 Further, Ms. Rizzolo is not a party in said case and it would be prejudicial for the Court to take
24 judicial notice of pleadings and papers in the Federal criminal case and, as such, Ms. Rizzolo
25 would request that the Court not take judicial notice of what has occurred in Rick Rizzolo's
26 criminal case, and as such, not consider the same in any determinations in this case.

27

¹*Kirk Henry and Amy Henry v. The Power Company, Inc. and Rick Rizzolo*, Case No. A440740

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²*United States of America v. Power Company, Inc., doing business as The Crazy Horse Too, and Frederick Rizzolo*, Case No. 2:06-CR-0186-PMP (PAL)

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II. FACTUAL AND PROCEDURAL BACKGROUND

On or about May 18, 2001, Rick Rizzolo engaged attorney John E. Dawson, Esq., for the purposes of estate planning and asset protection. To accomplish the same, Mr. Dawson created a variety of business entities and trusts including The Rick and Lisa Family Trust dated August 30, 2001. At the time of their creation, neither the Government nor the Henrys were creditors of Rick Rizzolo. Notwithstanding, the existence of The Rick and Lisa Rizzolo Family Trust was not concealed by Rick Rizzolo and his then wife, Lisa Rizzolo (“Ms. Rizzolo”).³

On or about October 2, 2001, Plaintiffs Kirk and Amy Henry (the “Henrys”) filed a personal injury suit against Rick Rizzolo and The Power Company, Inc. (“Power Company”) in Nevada district court in the case styled “*Kirk Henry and Amy Henry v. The Power Company, Inc. and Rick Rizzolo*,” Case No. A440740 (the “State Court Case”). In the State Court Case, Plaintiff Kirk Henry (“Mr. Henry”) alleged that he was assaulted and severely injured by agents of the Crazy Horse Too Gentlemen’s Club (“Crazy Horse Too”) on or about September 20, 2001. Crazy Horse Too was owned and operated by the Power Company which Plaintiffs alleged was Rick Rizzolo’s alter ego. Ms. Rizzolo was not a party to said lawsuit. As such, Ms. Rizzolo is not obligated to pay the Henrys in the State Court Case.

On or about May 24, 2005, Ms. Rizzolo and her former husband, Rick Rizzolo, filed a Joint Petition for Summary Decree of Divorce in Nevada district court (family division) in the case styled “*In the Matter of Marriage of Lisa Rizzolo and Frederick Rizzolo*,” Case No. 05-D-337616 (the “State Divorce Case”).⁴ On or about June 7, 2005, the Decree of Divorce was entered in the State Divorce Case.⁵ The Rizzolo's conducted their divorce in open court and in view of the public and did not request to seal the case as would have been allowed under NRS 125.110. Plaintiffs, prior to entering into the global settlement, were aware of the Rizzolo's

³ See Exhibit “A”, Assessor, Parcel Ownership History.

⁴ See Exhibit “B”, Joint Petition for Summary Decree of Divorce.

⁵ See Exhibit “C”, Decree of Divorce.

1 divorce and the division of assets provided for in said divorce.⁶ The divorce decree was in
2 accordance with considerations allowed by Nevada state law regarding the division of marital
3 property. As such, the decree of divorce determined the interest of the parties in the marital
4 assets and further, conclusively established it was for “reasonably equivalent value.”⁷

5 The Crazy Horse Too which was awarded to Rick Rizzolo pursuant to the decree of
6 divorce, had a value in excess of \$30 million at the time the decree of divorce was entered.⁸
7 Essentially, Ms. Rizzolo received the marital residence in Las Vegas, Nevada (appraised at
8 \$944,760.00), a house in Newport Beach, California (worth \$1.4 million) and a condo in
9 Chicago, Illinois (with a market value of \$192,638.00 in 2003)⁹, as well as the Oppenheimer
10 accounts in the amount of \$7.2 million.¹⁰ At the time of the divorce, the Crazy Horse Too was
11 worth substantially more than the property received by Ms. Rizzolo in the divorce.¹¹ In fact,
12 Rick Rizzolo testified in his deposition in the State Court Case that the Crazy Horse Too grosses
13 between \$800,000.00 and \$1 million a month. As such, awarding Rick Rizzolo the Crazy Horse
14 Too did not render him insolvent. Clearly, there was no fraud and/or fraudulent transfer at the
15 time of the divorce, as Rick Rizzolo was awarded assets far in excess of the \$9 million provided
16 for in the settlement agreement.

17 After her divorce, Ms. Rizzolo retained Mr. Dawson for the purposes of her own estate
18 planning and asset protection for the benefit of her children. Mr. Dawson then created a variety
19 of trusts including The Lisa M. Rizzolo Separate Property Trust, the existence of which was

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21 ⁶ See Exhibit “D”, Plaintiff Kirk Henry's Answers to Defendant Lisa Rizzolo's First Set of
22 Request for Admissions.

23 ⁷ Ms. Rizzolo asserts that the Crazy Horse Too business was worth substantially more than
24 the property received by her in the divorce and thus, any transfers were for reasonably equivalent
25 value.

26 ⁸ See Exhibit “E”, Deposition Testimony of Kirk Henry, pp. 31-33.

27 ⁹ See Exhibit “F”, Newspaper Article.

28 ¹⁰ See Exhibit “B”, Joint Petition for Summary Decree of Divorce, Section V.

¹¹ See Exhibit “G”, Deposition Testimony of Kirk Henry, pp. 42-46.

1 never concealed. (See Exhibit "A," Assessors, Parcel Ownership History.)

2 Further, the decree of divorce was a public document and Plaintiffs, prior to entering into
3 the settlement agreement, have admitted they were aware of the division of assets provided for in
4 said decree.¹² In fact, the settlement agreement (and related plea memorandums) are premised on
5 the fact that the Crazy Horse Too is the sole and separate property of Rick Rizzolo. Absent such,
6 the global settlement could not have been structured so that the \$9 million could be paid from the
7 proceeds of the sale of the Crazy Horse Too. It is of import to note that the obligation to pay was
8 solely Rick Rizzolo's, as Ms. Rizzolo was not a party to the State Court case. As such, it is
9 untenable for Plaintiffs to maintain that the divorce decree constituted a fraudulent transfer when
10 they were well aware of the decree of divorce and the division of the assets contained therein
11 when they subsequently entered into the settlement agreement.¹³

12 In addition, Rick Rizzolo was ordered to pay Ms. Rizzolo alimony of \$83,333.00 per
13 month for sixty (60) months commencing on January 5, 2006. Rick Rizzolo failed to pay any
14 portion of the alimony owed to Ms. Rizzolo. As such, Ms. Rizzolo sought to enforce the decree
15 for judgment on the alimony arrearages owed and for an award of attorneys fees and costs. After
16 extensive hearings, a judgment was entered in favor of Ms. Rizzolo and against Rick Rizzolo in
17 the amount of \$4,999,980.00 plus prejudgment interest thereon at the legal rate in the amount of
18 \$1,010,460.07 plus attorneys fees in the amount of \$2,500.00 for a total judgment of
19 \$6,012,940.07 together with interest thereon at the legal rate from the date of entry hereof until
20 paid.¹⁴

21
22 ¹² See Exhibit "D," a portion of Plaintiff Kirk Henry's Answers to Defendant Lisa Rizzolo's
23 First Set of Request for Admissions.

24 ¹³ Notably, the global settlement and the attendant assessments made by Plaintiffs regarding
25 the composition of the same precludes fraud and/or fraudulent transfers. In other words, it was
26 Plaintiffs who assessed the assets of Rick Rizzolo in structuring the global settlement and determined
27 which assets were essentially unencumbered. As such, Plaintiffs, *de facto*, cast as alienable, the
28 interest in the other marital assets save and accept the Crazy Horse Too. Accordingly, Plaintiffs
cannot now claim fraud and/or fraudulent transfer because the Plaintiffs evaluated the Crazy Horse
Too as a viable asset forming the essence of the settlement agreement.

¹⁴ See Exhibit "H", Order Entering Judgment.

1 On or about June 2, 2006, Rick Rizzolo and the Power Company executed Plea
2 Memorandums in the federal criminal case styled “*United States of America v. Power Company,*
3 *Inc., doing business as The Crazy Horse Too, and Frederick Rizzolo,*” Case No. 2:06-CR-0186-
4 PMP (PAL) (“the Federal Criminal Case”).¹⁵ The Plea Memorandums provided that only the
5 Power Company were to pay the Henrys \$10 million in restitution. At the sentencing hearing,
6 the Court ordered both Rick Rizzolo and the Power Company to pay the restitution, plus interest
7 on any unpaid portion of the restitution after the first year. Pursuant to the Plea Memorandums,
8 the Court ordered the defendants to sell the Crazy Horse Too and provided that the defendants
9 would have a year to accomplish the same. The Court further ordered, *inter alia*, the defendants
10 were to pay the restitution owed to the Henrys upon the sale of the Crazy Horse Too. Rick
11 Rizzolo failed to sell the Crazy Horse Too within the one-year period that was provided for in the
12 Plea Memorandums.

13 The Government then moved for substitute forfeiture of the Crazy Horse Too and then,
14 after the forfeiture, has attempted to sell the club to multiple purchasers. As of this date, the club
15 has yet to be sold. As the Court noted, property generally in Las Vegas has decreased
16 substantially in value and any sale of the Crazy Horse Too possibly would not cover all the
17 restitution obligations of the defendants. Because of such, the Court concluded that it was
18 appropriate to modify Rick Rizzolo’s conditions of supervised release to require monthly
19 payments from Rick Rizzolo to the Henrys toward the restitution owed. Apparently, Rick
20 Rizzolo was not ordered to begin making restitution payments until approximately September,
21 2010 and since that time, Mr. Rizzolo has done so.

22 On or about July 26, 2006, Plaintiffs entered into a Release of All Claims and Agreement
23 to Indemnify for and in Consideration of the Issuance of a Draft (the “Settlement Agreement”),¹⁶
24 with Rick Rizzolo and the Power Company pursuant to which the Henrys will release all claims
25 in exchange for the payment of \$10 million in the State Court Case. The Settlement Agreement
26

27 ¹⁵ See Exhibit “I”, Plea Memorandums.

28 ¹⁶ See Exhibit “J”, Settlement Agreement.

1 provided for an initial payment of \$1 million and that the \$9 million balance would be paid from
2 the sale of the Crazy Horse Too. Following execution of the settlement agreement, the initial \$1
3 million was paid to the Henrys. The Settlement Agreement does not contain any specific
4 provisions regarding when the closing of the sale of the Crazy Horse Too would occur. During
5 the course of the negotiations regarding the language of the Settlement Agreement, Rick
6 Rizzolo's counsel in the State Court Case advised Plaintiffs' counsel that Mr. Rizzolo did not
7 have sufficient funds to pay the \$9 million in the event the Crazy Horse Too did not sell.
8 *Plaintiffs' Objections (#89), Exhibit "9"*. Aware of the same, Plaintiffs still entered into the
9 settlement agreement with Rick Rizzolo and the Power Company in the State Court Case. It is of
10 import to note, the Henrys have never alleged that they were fraudulently induced into the
11 settlement agreement nor have they sought rescission of the same.

12 The City of Las Vegas subsequently revoked the liquor and/or business license of the
13 Crazy Horse Too. At the time of the revocation, an escrow had been opened for the sale of the
14 Crazy Horse Too in the amount of \$45 million.¹⁷ The planned sale of the Crazy Horse Too
15 reportedly failed because of the revocation of its liquor license which diminished its value.¹⁸ The
16 Federal Government has since seized the Crazy Horse Too.¹⁹ The proceeds from a forfeiture sale

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18 ¹⁷ See Exhibit "K", Reporter's Transcripts of Hearing in Re Motion for Preliminary Injunction
pp. 113-115 (testimony of Stuart Caldwell).

19 ¹⁸ See *Id.*

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21 ¹⁹ In the Federal Criminal Case, Plaintiffs have agreed to abandon their interest in the sale of
22 the Crazy Horse Too to the Government, allowing the Government to forfeit the property, in
23 consideration that the Plaintiffs would be the first to receive any proceeds of the sale. On September
24 7 2007, the Petition and Settlement Agreement, Stipulation for Entry of Order of Forfeiture, and
25 Order (#70) was entered in the Federal Criminal case. On May 7, 2008, the Government filed and
26 distributed in the Federal Criminal Case a proposed First Amended Order of Forfeiture (#180),
27 reducing the Plaintiffs from first position (#70) to fifth position, to which the Plaintiffs objected
28 (#185, #191), citing the transfer of assets in the State Divorce Case. On June 24, 2008, the proposed
First Amended Order of Forfeiture was entered in the Federal Criminal Case (#222), as an order
acknowledging the Henrys' abandonment of their interest in the Crazy Horse Too. On October 15,
2008, a Second Amended Order of Forfeiture (#242) was entered in the Federal Criminal Case
acknowledging the abandonment of the Henrys' interest in the Crazy Horse Too and their fifth
position as payment from the proceeds of the sale of the Crazy Horse Too.

1 of the Crazy Horse Too would have been sufficient to pay the Henrys settlement, but for the City
2 Council's unforeseen revocation of the Crazy Horse Too's liquor and/or business licenses.

3 **III. LEGAL ANALYSIS**

4 **1. Preliminary Injunction Standard**

5 A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
7 balance of equities tips in his favor, and that an injunction is in the public interest. *See Munaf v.*
8 *Geren*, 553 U.S. 674, 689-690 (2008); *Amoco Production Co. V. Gambell*, 480 U.S. 531, 542,
9 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-312 (1982). A preliminary injunction
10 is an extraordinary remedy never awarded as of right. *See Munaf*, 553 U.S., at 689-690. In each
11 case, courts "must balance the competing claims of injury and must consider the effect on each
12 party of the granting or withholding of the requested relief." *See Amoco Production Co.*, 480
13 U.S., at 542.

14 **2. Plaintiffs Are Not Likely To Succeed On The Merits Of The Case.**

15 **a. The Rizzolo's Divorce Was Not A "Sham."**

16 In the case *sub judice*, Ms. Rizzolo has steadfastly maintained that the divorce and the
17 attendant divorce decree was not collusive and was in accordance with considerations allowed by
18 Nevada state law regarding the division of marital property. As such, the decree of divorce
19 determined the interest of the parties in the property. Further, it is Ms. Rizzolo's position that
20 any award of marital property in a non-collusive, uncontested dissolution proceeding conducted
21 in accordance with state law, such as here, conclusively establishes reasonably equivalent value.
22 *See BFP v. Resolute Trust Corp., supra; In re Erlewine, supra; see also, In re Zerbo*, 397 B.R. 642, 655
23 (2008).

24 The underlying premise of many of Plaintiffs' argument in their preliminary injunction
25 motion is that the Rizzolo's divorce was a "sham." Simply put, Plaintiffs are wrong. The mere
26 fact that Ms. Rizzolo and her former husband, Rick Rizzolo, had been amicable and civil towards
27 each other after the divorce is to be commended rather than condemned. It is not unusual for
28 divorced couples to continue to have both a personal and financial relationship after their

1 divorce.

2 In *MWI Veterinary Supply Company v. Rhonda R. Rodgers (In re Rodgers)*, 315 B.R. 533
3 (2004), a creditor, MWI (“Creditor”), brought an adversary proceeding to except debt from
4 discharge and to deny the debtor, Rhonda Rodgers (“Debtor”), a Chapter 7 discharge based, *inter*
5 *alia*, on allegedly the fraudulent nature of her divorce. MWI had asserted that the divorce was a
6 “sham” to defraud MWI. Specifically, MWI asserted that the debtor and her former husband,
7 Jeffrey Rodgers, conspired to defraud MWI by divorcing and agreeing to distribute all of their
8 debtor to Jeffrey Rodgers and all of their equity to the debtor, and Jeffrey Rodgers would then
9 file bankruptcy and discharge the unsecured debt to MWI. In support of this assertion, MWI
10 cited specific examples of the debtor’s course of conduct, *i.e.*, acquiescing to a distribution in the
11 divorce of most of the assets and few of the debts, going to Las Vegas for a veterinary convention
12 with Jeffrey Rodgers days before their divorce was final, allowing Jeffrey Rodgers to continue
13 using assets that had been transferred to him in the divorce, working for Jeffrey Rodgers after the
14 divorce, staying in the same apartment as Jeffrey Rodgers after the divorce, and referring to
15 Jeffrey Rodgers as her husband after the divorce.

16 The Court is simply not convinced the divorce was a “sham.” Jeffrey
17 Rodgers explained that he considered the property distribution fair because
18 the business debts and assets were his not hers. He agreed to pay for private
19 school for their son because such was his desire not hers. The divorce decree
20 is undeniably bona fide, and the Court is less cynical than MWI about the
21 post-divorce relationship between the Debtor and Jeffrey Rodgers. The Court
22 does not find the Debtor’s references to her former spouse as her husband and
23 similar references by Jeffrey Rodgers to the Debtor as his wife indicative of
24 a fraudulent divorce. Instead, the Court deems the references more likely
25 indicative of inadvertence - given the recency of the divorce - and
26 convenience and deems their civility and cooperation commendable rather
27 than indicative of fraud. The dynamics of relationships between former
28 spouses are as varied as the reasons for the divorce, and the Court finds
neither their reasons for the divorce nor their subsequent amicability
unreasonable, much less intentionally fraudulent. The Debtor and Jeffrey
Rodgers provided ample explanation, and context, for their conduct.

In re Rodgers, 315 B.R. at 543.

The subsequent conduct referenced in Plaintiffs’ preliminary injunction motion is not
atypical and there are plausible, non-fraudulent explanations for the same. For example, the
loans to Rick Rizzolo were documented and repaid and were done in accordance with the

1 procedures of Ms. Rizzolo's separate property trust. The documents were prepared and done
2 under the supervision of Ms. Rizzolo's estate planning attorney, Mr. Dawson, who is also the
3 protector and/or trustee of the trusts. Further, Rick Rizzolo's repayment of the loans from the
4 proceeds of the sale of the Philadelphia club was not improper as his obligations to pay the
5 Henrys had not yet become due and owing under the terms of the Settlement Agreement. It is not
6 fraudulent for a debtor to prefer one creditor over another. Another example is Ms. Rizzolo's
7 payment of the life insurance premium even though Rick Rizzolo was required to do so under the
8 divorce decree. Ms. Rizzolo is the sole beneficiary of the life insurance policy and Rick Rizzolo
9 was unable to make the payment and because of such, Ms. Rizzolo made said payment in order
10 to avoid the life insurance policy from lapsing (which was to her benefit.) As for the rent
11 payment and legal fees, Ms. Rizzolo was requested by Rick Rizzolo's father, Bart Rizzolo, to
12 make the same in order to preserve the asset, *i.e.*, the Crazy Horse Too, so it could be sold and
13 the proceeds paid to the Plaintiffs as well as any criminal forfeiture, fines, taxes, etc. and to
14 insure that the attorneys handling the sale of the Crazy Horse Too, Patti & Sgro, would continue
15 to do so and not withdraw. At the time of the global settlement, all the parties involved,
16 including the Henrys, believed that the sale of the Crazy Horse Too would yield sufficient funds
17 to not only pay the Henrys the remaining \$9 million but also any criminal forfeiture, fines, taxes,
18 etc. This sentiment has been echoed by His Honor in the context of the criminal case wherein the
19 Court stated, "There's no question that at the time of the sentencing the parties contemplated, and
20 I've said this time and again, I think at that time in good conscience clearly contemplated that the
21 sale of the property would satisfy everybody and leave a residual."²⁰ As evident from the
22 foregoing, Ms. Rizzolo has provided ample explanation, and context, for her conduct which
23 demonstrates it was non-fraudulent and her divorce was *bona fide* and not a "sham."²¹

24
25 ²⁰ See Exhibit "L," a portion of the Reporter's Transcript re: Motion Hearing as to Frederick
26 John Rizzolo, p. 29.

27 ²¹As the better-reasoned cases explain, where the terminology "sham divorce" is used, the
28 validity of the underlying divorce (and property distribution therein) is not called into question.
Rather the question presented is whether a purported marriage, or divorce, was used by (usually) the
accused as part of a criminal violation of some other sort. *See, e.g., United States v. Nice*, 2004 WL

1 **b. The Absence Of “Badges of Fraud” Negate Any Inference Of Fraud**
 2 **And/Or Fraudulence.**

3 “Actual fraud” pursuant to Nevada’s Uniform Fraudulent Transfer Act (“UFTA”) occurs
 4 when a debtor transfers property with the intent to hinder, delay, or defraud his creditors. NRS
 5 112.180(1).²² Since direct evidence of intent to hinder, delay, or defraud is uncommon, the
 6 determination typically is made inferentially from circumstances consistent with the requisite
 7 intent. Conversely, specific evidence may negate an inference of fraud and/or fraudulence,
 8 notwithstanding the presence of a number of the “badges of fraud.” In considering the
 9 enumerated “badges of fraud,” the trier of fact is allowed to evaluate the totality of the
 10 circumstances involving a challenged transfer and take into account all indicia negating as well
 11 as those suggesting “actual fraud.” Notwithstanding, the UFTA expressly provides a defense to
 12 “actual fraud” in NRS 112.220(1) which provides that “[a] transfer or obligation is not voidable
 13 under paragraph (a) of subsection 1 of NRS 112.180 against a person who took in good faith and
 14 for reasonable equivalent value.”²³

15 Nevada’s UFTA lists eleven (11) non-exclusive factors which have been regarded as
 16 circumstantial “badges of fraud” which an inference of fraudulent intent may be drawn. NRS

17 3727184 (E.D. N.C. 2004) (question was not legitimacy of divorce, which would be beyond
 18 jurisdiction of court, but of whether a false claim for benefits had been made against the United
 19 States, discussing tax fraud and other cases); *Marblex v. Stevens*, 678 S.E.2d 276 (Va.Ct.App. 2009)
 20 (survivor benefits award affirmed where party had not been indicted or convicted of violating federal
 21 laws forbidding “green card marriage,” and “even if she had been, the statutes forbid entering into
 a marriage with the intention to evade the immigration laws; they do not purport to affect the validity
 of the marriage itself”).

22 ²² NRS 112.180(1)(a) provides, “A transfer made or obligation incurred by a debtor is
 23 fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made
 24 or the obligation was incurred, if the debtor made the transfer or incurred the obligation. . . [w]ith
 actual intent to hinder, delay or defraud any creditor of the debtor.”

25 ²³ Although the UFTA does not define “good faith,” the courts apply an objective standard.
 26 See *Terry v. June*, 432 F.Supp.2d 635, 641 (W.D.Va. 2006). Courts look to what the transferee
 27 objectively knew or should have known concerning the nature of the underlying circumstances
 28 involved with the transfer. *Id.* Advice of counsel can be a component of good faith. In the case *sub*
judice, Ms. Rizzolo relied on the advice of her counsel; namely, Dean Patti, Esq. regarding the
 divorce proceedings and Mr. Dawson, Esq. as to the trusts and the transfers related thereto.

1 112.180(2)(a)-(k). Plaintiffs reference certain “badges of fraud” in their preliminary injunction
 2 motion, *i.e.*, insider (NRS 112.180(2)(a)), control over transferred assets (NRS 112.180(2)(b)),
 3 existence of pending or threatened litigation (NRS 112.180(2)(d)), concealed transfers or assets
 4 (NRS 112.180(2)(c) and (g)), transfer of all assets in anticipation of a substantial debt and not
 5 “reasonably equivalent value” (NRS 112.180(2)(h) and (j)).

6 As a technical matter, Ms. Rizzolo and Rick Rizzolo are “insiders” insofar as they are
 7 former spouses. *See* NRS 112.150(7)(a)(1) & (11); *see also Matter of Holloway*, 955 F.2d 1008,
 8 1011 (5th Cir. 1992) (“spouse” probably includes “former spouse”).²⁴ Notwithstanding, the
 9 remaining “badges of fraud” set forth in the UFTA do not apply to Ms. Rizzolo. *See* NRS
 10 112.180(2)(b-k). Noteworthy, the absence of various “badges of fraud” can constitute a
 11 circumstance negating the inference of fraud or fraudulence.

12 Accordingly, to whatever extent the confirmation of a portion of the community estate to
 13 Ms. Rizzolo could be considered a “transfer,” it is clear that it was “in good faith and for a
 14 reasonably equivalent value”²⁵ and thus not voidable at the request of any third party creditor.²⁶
 15 Even in jurisdictions lacking specific statutes like that of Nevada designed to protect divorce
 16 decrees from collateral attack, the distributions or transfers of property - even where intended to
 17 avoid attachment of assets by a creditor - are given large amounts of latitude as “a valid
 18 preference among creditors” that is not considered “fraudulent.”

19 **i. Control Over Transferred Assets**

20 During her deposition, Plaintiffs’ counsel’s repeated questioning of Ms. Rizzolo about
 21 various subsequent transactions between the parties - apparently intended to lay the basis for an
 22

23 ²⁴*See Morris v. Nance*, 888 P.2d 571 (Or.Ct.App. 1994) (former spouse’s transfer of deed to
 24 house to former husband, to avoid creditor’s claim, approved because the parties had agreed to that
 25 distribution of assets and former husband contributed materials or services of equal value, despite
 status as “insider’s” and despite wife’s retention of life estate in the property).

26 ²⁵NRS 112.220(1).

27 ²⁶To whatever extent the value of the Crazy Horse Too has diminished, the question does not
 28 appear to be relevant because distribution of property at divorce is obviously “in the ordinary course
 of . . . financial affairs of the debtor and the insider.” *See* NRS 112.220(6)(b).

1 argument that Rick Rizzolo “retained possession or control of the property transferred after the
 2 transfer,”²⁷ revealed only that all loans were documented and repaid,²⁸ that Ms. Rizzolo had every
 3 intention of collecting the additional \$5 million owed her when Rick Rizzolo was able to pay it,²⁹
 4 and that the parties further swapped cash for assets and had discussions about equivalencies of
 5 value.³⁰

6 As explained above, Ms. Rizzolo has not had control of Rick Rizzolo’s assets such as
 7 legal bills, rent payment on the Crazy Horse Too, and life insurance premium. The conduct
 8 referenced by Plaintiffs were isolated incidences and do not demonstrate a course of conduct
 9 which would lead a person to conclude that Ms. Rizzolo had control over Rick Rizzolo’s assets.
 10 There is no question that Rick Rizzolo was in sole control of the transferred assets and any
 11 conduct by Ms. Rizzolo was merely incidental. Further, Ms. Rizzolo has sought to enforce and
 12 has obtained a judgment against Rick Rizzolo for the \$5 million in alimony he owes her.

13 **ii. Concealment Of Transfers and Assets**

14 As to the issue of concealment, Plaintiffs argue that “Lisa Rizzolo did not disclose the
 15 existence of her foreign trust to the Internal Revenue Service” *Motion for Injunctive Relief*
 16 *Against the Disposition or Transfer of Assets (#519)*, p. 14. Such is incorrect. Ms. Rizzolo’s
 17 separate property trusts are not “foreign” trusts. Because her estate planning attorney, Mr.
 18 Dawson, is the protector and/or trustee of her trusts, they qualify as domestic, and not foreign,
 19 trusts. As such, Ms. Rizzolo correctly filled out her tax returns wherein the section for the
 20 disclosure of a foreign trust was not checked was completely accurate.

21 Contrary to Plaintiffs’ unfounded accusations, Ms. Rizzolo has disclosed the existence of
 22

23
 24 ²⁷NRS 112.1801(2)(b).

25 ²⁸*Motion for Injunctive Relief Against the Disposition or Transfer of Assets (#519)*, Exhibit
 26 “7,” *Deposition of Lisa M. Rizzolo*, p. 205.

27 ²⁹*Id.*, p. 147.

28 ³⁰*Id.*, p. 212 (discussing the discussions as to whether the gun collection was adequate
 compensation for the \$50,000 rental advance).

1 the offshore trusts and the loans.³¹ Further, Ms. Rizzolo, has provided information regarding the
 2 Philadelphia transaction as well as her separate property trusts and the assets contained therein
 3 which she received after her divorce. Ms. Rizzolo has timely responded to Plaintiffs' discovery
 4 requests and has periodically supplemented the same. Any suggestion that Ms. Rizzolo has not
 5 participated in the discovery process in good faith is absolutely false.

6 **iii. Existence of Pending or Threatened Litigation**

7 As to the existence of pending or threatened litigation, Ms. Rizzolo was not a party to the
 8 Henrys' personal injury lawsuit against Rick Rizzolo and the Power Company in the Nevada
 9 state courts. As such, Ms. Rizzolo is not obligated to pay the Henrys as a result of the settlement
 10 in that case. *See Jahner v. Jacob*, 575 N.W. 2d 183 (N.D. 1994); *see also Hullett v. Cousin*, 63
 11 P.3d 1029, 1034 (Ariz. 2003). Further, Ms. Rizzolo's share of the community property awarded
 12 to her in the divorce is not liable for the separate debts of her former husband, Rick Rizzolo.

13 Contrary to Plaintiffs' assertion, Ms. Rizzolo did not know that Plaintiffs and the Internal
 14 Revenue Service ("IRS") were actively searching for available assets. As to the latter, Ms.
 15 Rizzolo was not a party to the Federal Criminal Case and is not privy to the activities that the IRS
 16 may be conducting regarding available assets for payment of restitution, fines, etc. related to Rick
 17 Rizzolo's obligation in said case. As to the Plaintiffs, their assertion that they were actively
 18 searching for assets contradicts their discovery responses wherein they stated that they had done
 19 no due diligence regarding Rick Rizzolo and/or the Power Company's assets prior to entering
 20 into the global settlement.³²

21 **iv. Transfer Of All Assets In Anticipation Of A Substantial Debt
 22 And For Less Than Reasonable Equivalent Value.**

23 There should be no quarrel that the value of the Crazy Horse Too must be determined at
 24 the time of the transfer. In the case *sub judice*, the transfer occurred on or about June 7, 2005,

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 26 ³¹See generally, *Motion for Injunctive Relief Against the Disposition or Transfer of Assets*
 27 (*#519*), *Exhibit "7," Deposition of Lisa M. Rizzolo*.

28 ³²See Exhibit "M," Plaintiffs' Response to Lisa Rizzolo's First Request for Production of Documents.

1 the date the decree of divorce was entered. The Crazy Horse Too had been unquestionably
2 valued in excess of \$30 million at the time the decree was entered. The assets awarded to Ms.
3 Rizzolo were valued at substantially less than those received by Rick Rizzolo.³³

4 “The test used to determine reasonably equivalent value in the context of a fraudulent
5 conveyance requires the court to determine the value of what was transferred and to compare it to
6 what was received.” *See Barber v. Golden Seed Co., Inc.*, 129 F.3d 382, 387 (7th Cir. 1997). “By
7 its terms and application, the concept of ‘reasonably equivalent value’ does not demand a precise
8 dollar-for-dollar exchange.” *See Advanced Telecommunication Network, Inc. v. Allen*, 490 F.3d
9 1325, 1336 (11th Cir. 2007). “[A] party receives reasonably equivalent value for what it gives up
10 if it gets ‘roughly the value it gave.’” *See VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 631 (3d
11 Cir. 2007). Thus, courts look to see if what the debtor received was “in the range of a reasonable
12 measure of the value” of what the debtor transferred. *See Erie Marine Enterprises, Inc. v.*
13 *Algoma Central Marine (In re Erie Marine Enterprises, Inc.)*, 213 B.R. 799, 803 (Bankr.D.Ariz.
14 1994).

15 As a result of their divorce, Ms. Rizzolo was awarded less than half of the value of the
16 assets awarded to her former husband, Rick Rizzolo. Rick Rizzolo received assets valued in
17 excess of \$30 million, but as to which there was some risk of both debts and future loss. Ms.
18 Rizzolo received a partial equalizing payment, set out as alimony in the amount of \$5 million. In
19 exchange for the hold harmless provision, Ms. Rizzolo released Rick Rizzolo from having to
20 make five years of alimony payments. *See In re Ottaviano*, 63 B.R. 338, 341 (1986) (debtors
21 release from payment of future payment of alimony constitutes reasonably equivalent value).

22
23 ³³The Crazy Horse Too which was awarded to Rick Rizzolo pursuant to the decree of divorce,
24 had a value in excess of \$30 million at the time the decree of divorce was entered. Essentially, Ms.
25 Rizzolo received the marital residence in Las Vegas, Nevada (appraised at \$944,760.00), a house in
26 Newport Beach, California (worth \$1.4 million) and a condo in Chicago, Illinois (with a market
27 value of \$192,638.00 in 2003), as well as the Oppenheimer accounts in the amount of \$7.2 million.
28 At the time of the divorce, the Crazy Horse Too was worth substantially more than the property
received by Ms. Rizzolo in the divorce. In fact, Rick Rizzolo testified in his deposition in the State
Court Case that the Crazy Horse Too grosses between \$800,000.00 and \$1 million a month. As
such, awarding Rick Rizzolo the Crazy Horse Too did not render him insolvent. *See NRS 112.180*
(2)(c).

1 Specifically, the divorce decree recites on its face that the value of the “community business”
2 awarded to the husband is speculative, and subject to “potential debts” from the *Henry* lawsuit,
3 and potential criminal fines and tax impositions. The lopsided property division is in Ms.
4 Rizzolo’s former husband’s favor (and truncated alimony term of only five years) is expressly
5 justified on the face of the decree, in part, by the hold harmless provision by which he
6 indemnifies Ms. Rizzolo from any future claims. As evident from the foregoing, the division of
7 marital assets in the decree of divorce was for “reasonably equivalent value.” *See* NRS
8 112.180(2)(h).

9 As a general matter, it is worth noting that in the field of domestic relations, it is
10 overwhelmingly common for the manager of the business to retain that business upon divorce,
11 often giving up all claims to houses, cars, retirement accounts, and other assets to try to balance
12 the business value. This is the general pattern of the great majority of divorces involving a
13 family-owned business.³⁴

14 The State Court Case was against the company business, *i.e.*, the Power Company, in
15 which only Rick Rizzolo actively participated in management of the Crazy Horse Too. Likewise,
16 the Plaintiffs entered into a Settlement Agreement with Rick Rizzolo and the Power Company -
17 over a year after Rick Rizzolo and Ms. Rizzolo divorced, in August, 2006 - for a release of all
18 claims in exchange for a promise by that then-single man and company for \$10 million. Ms.
19 Rizzolo was not party to the underlying lawsuit,³⁵ or its stipulated resolution.

20 There is no question that Ms. Rizzolo’s half of the community estate was, and is, her
21 property, during marriage and after divorce, and free from Rick Rizzolo’s separate contractual or
22 tort debt. She was not a party to either the lawsuit between the plaintiffs and Rick Rizzolo, or its
23 resolution. As such, a third party is not permitted under Nevada law to question either the
24 parties’ decision to divorce, or the distribution of property made therein. Even if such a third
25

26 ³⁴*See generally* Marshal Willick, “Divorce and the Family-Owned Business: Practical
27 Considerations for Community Property States” (Council of Community Property States & State Bar
28 of Wisconsin), Madison, Wisconsin, 2004, posted at http://www.willicklawgroup.com/published_works.

³⁵Clark County District Court Case No. A440740.

1 party such as the Henrys could assert such a challenge, Ms. Rizzolo obtained less than the half of
2 the property she was entitled to claim, and the time for challenges to that distribution have long
3 since passed. Under the UFTA, the burden of proving inadequacy of consideration is on the
4 creditor,³⁶ which burden is facially impossible of being met under the facts of this case.

5 Starting with definitions, “asset” under the UFTA specifically excludes “property to the
6 extent that it generally exempt under nonbankruptcy law”³⁷ or is “[a]n interest in property held in
7 tenancy by the entirety or as community property to the extent it is not subject to process by a
8 creditor holding a claim against only one tenant.” As noted above, the Plaintiffs’ claims were
9 solely against Rick Rizzolo, and Ms. Rizzolo’s half of the community property was exempt from
10 their claims during the marriage, and remains so after divorce.

11 At the time of the parties’ divorce in 2005, the Crazy Horse Too was valued in excess of
12 \$30 million. In exchange for Rick Rizzolo’s retention of that asset, Ms. Rizzolo got assets worth
13 less than half that much, plus Rick Rizzolo’s guarantee to hold her harmless against various
14 contingent liabilities. Accordingly, even if the division of the community estate constitutes a
15 “transfer” under the UFTA³⁸ - which is by no means certain since spouses already have “present,
16 existing and equal interests” in their community property³⁹ - it was a transfer for “present value”
17 because “substantially contemporaneous” transfer of valuable property was made from and to
18 each spouse.

19 Absent proof that on the day of divorce, Ms. Rizzolo knew that the City of Las Vegas
20 would revoke the liquor and/or business license of The Crazy Horse Too, that after the property
21 was forfeited to the Government, it would not reopen the club in order to preserve the liquor
22 license for the benefit of future purchasers, and ultimately sell for little or nothing, the Plaintiffs’
23

24 ³⁶See *Sportsco Enterprises v. Morris*, 112 Nev. 625, 917 P.2d 934 (1996).

25 ³⁷This could be seen as shorthand for the domestic relations law set out above in detail as to
26 a spouse’s undivided interest, etc.

27 ³⁸NRS 112.150(12).

28 ³⁹NRS 123.225(2).

1 fraud and/or fraudulent transfer claims are meritless.⁴⁰

2 Assuming *arguendo*, the forfeiture of the Crazy Horse Too was foreseeable as suggested
3 by Plaintiffs, it was *not* foreseeable that the City of Las Vegas would revoke the liquor license of
4 the Crazy Horse Too. At the time of the revocation, an escrow had been opened for the sale of
5 the Crazy Horse Too in the amount of \$45 million. The planned sale of the Crazy Horse Too
6 failed because of the unforeseen revocation of its liquor license by the City of Las Vegas which
7 diminished its value.

8 It is noteworthy that Mr. Henry's attorney, Donald J. Campbell, as well as Amy Henry and
9 her attorney, C. Stanley Hunterton, attended the City Council meeting and made arguments in
10 support of Rick Rizzolo retaining the liquor license in order to maintain the value of the Crazy
11 Horse Too, so upon the sale the Henrys would realize the \$9 Million as contemplated by the
12 settlement agreement.⁴¹ At the City Council meeting, Mrs. Henry stated that “[a]fter one year of
13 intensive and incredibly complex negotiations with the United States Attorney's Office, the FBI,
14 the Crazy Horse lawyers and our lawyers, Kirk [Henry] and I thought this matter was finally
15 resolved. *Never in our wildest dreams that the Las Vegas City Attorney would try to close the*
16 *club before we got our settlement.” Id.* The sentiments expressed by Mrs. Henry were reaffirmed
17 by both Mr. Campbell and Mr. Hunterton wherein they acknowledged that it was not foreseeable
18 to the parties during the extensive negotiations culminating in a global settlement that the City
19 Council would revoke the liquor license for the Crazy Horse Too. *Id.*

20 In fact, Rick Rizzolo has argued that nobody could foresee at the time the settlement
21 agreement was entered into that the City of Las Vegas would revoke the liquor license of the

22 _____
23 ⁴⁰The *Second Amended Complaint* plays the semantic game of terming the business “subject
24 to” forfeiture at the time of divorce, which, respectfully, means nothing. Apparently, plaintiffs have
25 asserted that Rick has been investigated and watched by the authorities for decades. That may or
26 may not be true, but it does not hold Lisa hostage to being unable to achieve a lawful divorce like
27 every other citizen of Nevada, and go on with her life with her share of the property divided in that
28 divorce. If “subject to” was the test, no one could ever be confident in the finality of the property
division from virtually any divorce. Public policy could not tolerate any such construction.

⁴¹ See Exhibit “N”, Transcripts from Las Vegas City Council meeting of September 6, 2006,
pp. 72-83.

1 Crazy Horse Too diminishing its value. Additionally, Rick Rizzolo has argued that it was not
2 foreseeable that the Government after seizing the Crazy Horse Too would not protect the asset by
3 reopening same in order to preserve its value. *Defendant, Rick Rizzolo's Motion to Dismiss*
4 *Complaint (#11)*.

5 It is incontrovertible that the revocation of the liquor and/or business license for the Crazy
6 Horse Too was not foreseeable by the parties. In addition, it was not foreseeable after the
7 Government seized the Crazy Horse Too would not reopen the same in order to preserve its
8 value.

9 **3. Plaintiffs Will Not Suffer Irreparable Harm If Injunctive Relief Is Not**
10 **Granted Restricting The Transfer Or Dissipation Of Any Assets Awarded To**
11 **Ms. Rizzolo In The Divorce.**

12 Since her divorce in 2005, Ms. Rizzolo has conserved the assets awarded to her in
13 separate property trusts for the benefit of her children. Now - some six (6) years later - Plaintiffs
14 make the outrageous accusation that the assets awarded to Ms. Rizzolo in the divorce are in
15 “significant danger” of being transferred or dissipated by her. This is complete and utter
16 nonsense. Ms. Rizzolo will continue to do what she has done in the past, pay for her living and
17 incidental expenses and maintain the remainder of the assets in her trust for the benefit for her
18 children. As such, an order from this Court restricting Ms. Rizzolo from utilizing her own
19 separate property assets would create an undue hardship on her. Such is especially true since the
20 spousal share of community property is not liable for the debts of the other spouse. Ms. Rizzolo
21 was not a party to the State Court Case or its stipulated resolution. As such, Ms. Rizzolo’s half
22 of the community estate was, and is, her property, during marriage and after divorce, and free
23 from Rick Rizzolo’s contractual or tort debts.

24 **4. The Public Interest Does Not Require That Ms. Rizzolo’s Award of Assets**
25 **And Her Divorce The Collaterally Attacked By Plaintiffs.**

26 Nevada is a no-fault, community property state. As such, the motivation of the parties in
27 desiring to be married or divorced are irrelevant to the legitimacy of the status chosen. It can be
28 personal, tax, insurance, economic, for asset protection, or for no reason whatsoever, and no
person has any basis for attempting to “look behind” the choices made. In Nevada, this public

1 policy has become a matter of statute. NRS 125.185 provides: “No divorce from the bonds of
2 matrimony heretofore or hereafter granted by a court of competent jurisdiction of the State of
3 Nevada, which divorce is valid and binding upon each of the parties thereto, may be contested or
4 attacked by third persons not parties thereto.” Case law addressing that provision establishes that
5 lawsuits in other states where third parties have sought to collaterally attack the validity of a
6 Nevada divorce have been thrown out because they would be prohibited in Nevada. *See*
7 *Gutowsky v. Gutowsky*, 38 Misc. 2d 827, 238 N.Y.S.2d 877 (S.Ct. 1963); *Madden v. Cosden*, 314
8 A.2d 128 (Md.Ct.App. 1974). Accordingly, it is Ms. Rizzolo’s position that to allow a third
9 party to collaterally attack a non-collusive, uncontested dissolution proceeding would violate
10 Nevada’s public policy. *See* NRS 125.185; *see also BFP v. Resolute Trust Corp., supra; In re*
11 *Erlewine, supra; In re Zerbo, supra.*

12 Notwithstanding, in their motion (at 20), Plaintiffs argue that “[f]or her part, Lisa Rizzolo
13 has never had to seek employment or even attempt to enforce the alimony provision in the
14 divorce decree.” As to the latter, Ms. Rizzolo has sought to enforce the alimony provision in the
15 decree of divorce and has obtained a judgment against her former husband, Rick Rizzolo, in an
16 amount of excess of \$6 million which includes not only the amount of the arrearages on the
17 alimony, but also, interest thereon in attorneys fees. Ms. Rizzolo had a lengthy marriage which
18 unfortunately culminated in divorce. Certainly, Ms. Rizzolo was entitled to what she received as
19 a result of the divorce and her separate property assets should not be held hostage because
20 Plaintiffs are having difficulty collecting under the Settlement Agreement in the State Court
21 Case.

22 Unfortunately, it has turned out that Plaintiffs made a bad deal in the State Court Case.
23 This is not Ms. Rizzolo’s fault. However, she has been dragged into this litigation because
24 Plaintiffs are looking for someone with “deep pockets” to collect against as it is obvious the sale
25 of the Crazy Horse Too will not yield sufficient funds to pay the remaining sums owed to
26 Plaintiffs. Such does not change the fact that the Plaintiffs’ lawsuit against Ms. Rizzolo is without
27 merit.
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Ms. Rizzolo would respectfully request that this Court deny
3 Plaintiffs' Motion for Injunctive Relief Against the Disposition or Transfer of Assets.

4 DATED this 23rd day of June, 2011.

5 BAILUS COOK & KELESIS, LTD.

6

7

By _____/s/

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