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 CLERK OF THE COURT

DISTRICT COURT
 CLARK COUNTY NEVADA

9 FREDRICK RIZZOLO a/k/a RICK RIZZOLO)
 10)
 11 Plaintiff,)
 12 vs.)
 13 KIRK HENRY, an individual, AMY HENRY, an)
 14 individual, DOE individuals I through XX,)
 15 ROE CORPORATIONS I through XX,)
 Defendants.)

Case No.: A-12-671462-C
 Dept No.: XIV

**AMENDED
COMPLAINT**

**EXEMPT FROM
ARBITRATION**

16
 17 COMES NOW, Plaintiff, FREDRICK RIZZOLO a/k/a RICK RIZZOLO, by and through
 18 his attorney of record, SIGAL CHATTAH, ESQ., of the LAW OFFICES OF SIGAL
 19 CHATTAH, who hereby complains of Defendants and each of them and allege as follows:

PARTIES

20
 21 1. Plaintiff, FREDRICK RIZZOLO a/k/a RICK RIZZOLO (hereinafter "Mr.
 22 RIZZOLO") is and at all times herein mentioned, a resident of County of Clark, the state of
 23 Nevada.

24 2. At all times mentioned herein, Defendant, KIRK HENRY, is and at all times
 25 herein mentioned, a resident of Kansas City, Missouri.

1 3. At all times mentioned herein, Defendant, AMY HENRY, is and at all times
2 herein mentioned, a resident of Kansas City, Missouri.

3 4. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of Defendants DOES I through V, and ROE CORPORATIONS I through V,
5 inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.
6 Plaintiff is informed and believes and thereon alleges that each of the Defendants designated
7 herein as a DOE or ROE CORPORATION is responsible in some manner for the events and
8 happenings herein referred to and damages caused proximately thereby to Plaintiff as herein
9 alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true
10 names and capacities of said Defendants DOES I through V and/or ROE CORPORATIONS I
11 through V, when same have been ascertained by Plaintiff, together with appropriate charging
12 allegations, and to join such Defendants in this action.

13 5. All of the acts or failures to act herein were duly performed by and attributable to
14 all Defendants, each acting as agent, employee, or under the direction and/or control of the
15 others. Said acts or failures to act were within the scope of said agency and/or employment and
16 each Defendant and ratified the acts and omissions by the other Defendants. Whenever and
17 wherever reference is made in this Amended Complaint to any acts by Defendants, such
18 allegations and references shall also be deemed to mean the acts of each Defendant acting
19 individually, jointly or severally.
20

21 **II.**
 INTRODUCTION

22 6. On October 2, 2001, Kirk and Amy Henry filed a lawsuit arising out of injuries
23 sustained during a September 20, 2001 incident, titled *Kirk and Amy Henry v. The Power*
24 *Company, Inc. et al.*, Clark County District Court for the State of Nevada, Case No.: A440740.
25 Rick Rizzolo was individually named as a Defendant in said lawsuit on June 26, 2002.

1 7. On August 8, 2006, The Power Company, Inc. and Rick Rizzolo entered into the
2 Settlement Agreement with Kirk and Amy Henry in *Case No.: A440740*. In the Settlement
3 Agreement, The Power Company, Inc. and Rick Rizzolo agreed to pay \$10,000,000.00 USD to
4 Kirk and Amy Henry with \$1,000,000.00 USD due immediately and the remainder to be paid
5 from the proceeds of the sale of the Crazy Horse Too at the time of the closing, consistent with
6 the terms of the foregoing guilty plea agreements.

7 8. The Settlement Agreement further provided that “[a]lthough it is anticipated that
8 the NINE-MILLION DOLLARS (\$9,000,000) will be paid from the proceeds of the sale, the
9 obligation to make said payment upon the closing is not contingent upon the realization of net
10 proceeds from the sale sufficient to make the NINE-MILLION DOLLARS (\$9,000,000)
11 payment.” *Id.*

12 9. The Settlement Agreement also provided that “the issuance of said draft is not,
13 nor is it to be construed as an admission of liability on the part of any release but is a
14 compromise, settlement, accord and satisfaction, and discharge of loss, damages, claims,
15 actions, causes of action, suits, and liability which are each and all uncertain, doubtful and
16 disputed. *Id.*

17 10. Two months prior to the entry of the Settlement Agreement on Case No.:
18 A440740, on June 2, 2006, The Power Company, Inc., entered into a guilty plea agreement with
19 the United States government for the crime of Conspiracy to Participate in an Enterprise
20 Engaged in Racketeering Activity in violation of Title 18, United States Code, Section 1962(d).
21 *United States v. The Power Company, Inc., USDC Case No. 2:06:-cr-00186.*

22 11. As part of its guilty plea, The Power Company, Inc. agreed to make restitution in
23 the amount of \$10,000,000.00 USD to Kirk and Amy Henry with \$1,000,000.00 USD due
24
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1 immediately upon the entry of the Power Company's guilty plea and the remainder due and to
2 be paid from the proceeds of the sale of the Crazy Horse Too at the time of the closing. *Id.*

3 12. On June 2, 2006, Rick Rizzolo entered into a guilty plea agreement with the
4 United States government for the crime of conspiracy to defraud the United States of taxes in
5 violation of Title 18, United States Code, Section 371. *United States v. Frederick Rizzolo,*
6 *USDC Case No. 2:06:-cr-00186.*

7 13. The Plea Agreements had specific contingencies therein; specifically as follows:
8

9 "Defendant Corporation, THE POWER COMPANY, INC., within 12 months from the
10 entry of its plea shall sell THE CRAZY HORSE TOO. If upon the expiration of the 12-
11 month period for selling THE CRAZY HORSE TOO, Defendant Corporation has signed
12 in good faith a sales contrast for THE CRAZY HORSE TOO, Defendant Corporation
13 may have up to sixty days grace period to close the sale of THE CRAZY HORSE
14 TOO."
15 ...

16 *If at the end of the 12-month period for selling of THE CRAZY HORSE TOO,*
17 *Defendant Corporation has not sold THE CRAZY HORSE TOO or does not have a*
18 *pending sale of THE CRAZY HORSE TOO, the Government and defendant, through*
19 *their counsel, will confer in a good faith effort to determine and agree on a third party*
20 *manager/seller of the Crazy Horse Too.* If the parties are unable to reach an agreement
21 as to an appropriate manager/seller, then either or both parties may apply to the Court for
22 a determination of the manager/seller. *The third party manager/seller shall be a*
23 *licensed, nationally recognized management/commercial sales firm. The*
24 *manager/seller will be responsible to: 1) lawfully operate the Crazy Horse Too during*
25 *the time the business is being sold in such manner the manager/seller deems*
appropriate to best maintain or enhance the value of the Crazy Horse Too and the
profitability of its ongoing operations; and 2) to sell the club in as reasonable time as
possible and in a manner the manager/seller believes is best designed to maximize or to
obtain the fair market value of the the Crazy Horse Too at the time it is sold. If either
party believes that the manager/seller is not properly operating the Crazy Horse Too or
the terms of the sale of the Crazy Horse Too are not reasonable or the sale price is not
reasonably within the parameters of fair market value at the time of sale, the party can
ask the Court to disapprove the sale.

[*Emphasis added*]

14. On August 8, 2006, The Power Company, Inc. and Rick Rizzolo entered into the
Settlement Agreement with Kirk and Amy Henry in the state court action.

1 15. Based on the abovementioned guilty plea agreements and the Settlement
2 Agreement, District Court Judge Philip M. Pro entered the Judgment and Commitment Order
3 against Rick Rizzolo on January 26, 2007. *USDC Case No. 2:06:-cr-00186*.

4 15. Rick Rizzolo's Judgment and Commitment Order ordered that he pay restitution
5 to Kirk Henry in the amount of \$10,000,000.0. The Judgment and Commitment Order further
6 provides that "[t]he restitution amount is payment jointly and severally with the Co-Defendant
7 Power Co. Inc." *Id.*

8 16. On May 22, 2007 Mr. Rizzolo began serving his sentence at Metropolitan
9 Detention Center in Los Angeles, California wherein at said time the Crazy Horse Too was
10 appraised at \$53 Million US Dollars.¹

11 17. On August 21, 2007, the Court in *USDC Case No. 2:06:-cr-00186* entered into
12 an Order granting the US Government's Motion to Substitute the Assets, forfeiture and sell the
13 substituted assets and distribute the sale's proceeds in accordance with the restitution schedules.

14 18. One month later, September 7, 2007, Leonard Briskman provided the US
15 Marshalls an appraisal of the Crazy Horse Too of \$31,000,000.00 USD.

16 19. In order for all Parties' claims to have been resolved in accordance with the US
17 Governments Motion to Substitute the Assets, forfeiture etc., the Henrys, as intended
18 beneficiaries of the Plea Agreements, had to authorize the US Governments action and acquiesce
19 to same.
20

21 20. On September 7, 2007, the Henrys entered into a Petition and Settlement
22 Agreement, Stipulation for Entry of Order of Forfeiture and Order. Said Settlement Agreement
23 would have placed the Henrys at the top of the "pay-out" list had there been a sale of the asset in
24

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¹ Stewart Caldwell, A third party had made an offer to purchase the Crazy Horse Too at \$46 Million US Dollars. The business and the Real Estate was appraised at \$53 Million USD.

1 accordance with the Parties contemplated intent and the \$30 million US Dollar price tag.

2 21. In short, Kirk and Amy Henry agreed to abandon their interest in the sale of the
3 Crazy Horse Too to the United States Government, allowing the United States Government to
4 forfeit the property, in consideration that Kirk and Amy Henry would be the first to receive any
5 proceeds of the sale.

6 22. On May 7, 2008, the United States government filed and distributed in the
7 criminal case a proposed First Amended Order of Forfeiture, reducing Kirk and Amy Henry
8 from first position to fifth position.

9 23. Kirk and Amy Henry objected to the First Amended Order of Forfeiture. On June
10 24, 2008, the proposed First Amended Order of Forfeiture was entered in the criminal case, as an
11 order acknowledging the Henrys' abandonment of their interest in the Crazy Horse Too.
12

13 24. In June, 2008, after endless opportunity to avoid the expiration of the Exotic
14 Dance Use Permit and Tavern License for the Crazy Horse Too; The Honorable Judge Pro
15 denied the US Government's Motion to Stay the Expiration of the Exotic Dance Use Permit and
16 Tavern License for the Crazy Horse Too.

17 25. The Result of said denial caused the extreme devaluation of the asset substituted;
18 *i.e.*, the Crazy Horse Too.

19 26. On October 15, 2008, a Second Amended Order of Forfeiture was entered in the
20 criminal case acknowledging the abandonment of the Henrys' interest in the Crazy Horse Too
21 and their fifth position as payment from the proceeds of the sale of the Crazy Horse Too.
22

23 27. Furthermore, due to the fact that the Federal Marshals refused to make the
24 mortgage payments on the seized property (the building wherein The Crazy Horse Too was
25 located), on February 28, 2011, District Court Judge Philip M. Pro ordered that Canico Capital

1 Group, LLC conduct a non-judicial foreclosure sale of the Crazy Horse Too.

2 28. On July 1, 2011, the Crazy Horse Too was sold to Canico Capital Group, LLC at
3 the non-judicial foreclosure sale for approximately, \$3,000,000.00 USD. Kirk and Amy Henry
4 did not receive any proceeds from the sale of the Crazy Horse Too.

5 29. On September 1, 2011, District Court Judge Timothy Williams in the case of *Kirk*
6 *and Amy Henry v. The Power Company, Inc. et al.*, Clark County District Court for the State of
7 Nevada, *CCDC Case No. A440740*, entered a Judgment on behalf of Kirk and Amy Henry
8 against Rick Rizzolo and The Power Company, Inc. in the amount of \$9,000,000 USD.

9 30. The judgment in *Case No. A440740* provided the following:

11 "On July 26, 2006, Plaintiffs entered into a Settlement Agreement with Defendant Rick
12 Rizzolo in the amount of \$10 million. Defendant Rick Rizzolo paid \$1 million upon
13 execution of the Settlement Agreement. Defendant Rick Rizzolo was obligated to pay
14 the remaining \$9 million upon the closing of the sale of the Crazy Horse Too. The Crazy
15 Horse Too was sold by foreclosure sale on July 1, 2011, and did not net the proceeds
16 required to satisfy the \$9,000,000 judgment against Defendants. As such, Defendant
17 Rick Rizzolo is obligated to make the remaining payment of the settlement to Plaintiffs.
18 Since the initial \$1 million payment referenced above, Defendant Rick Rizzolo has failed
19 to make any further payments to Plaintiffs under the Settlement Agreement. In light of
20 the foregoing, Defendant Rick Rizzolo is now in breach of the Settlement Agreement and
21 Plaintiffs are entitled to a judgment in their favor for all remaining amounts due under the
22 Settlement Agreement." *Id.*

23 31. A Notice of Appeal on the Judgment Judge Williams granted has been filed in
24 Clark County District Court for the State of Nevada, *CCDC Case No. A440740*.

25
III.
FIRST CLAIM FOR RELIEF
(Negligent Interference With Prospective Business Advantage)
All Defendants

26 32. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for
27 Relief and incorporates the same by reference as if fully set forth herein.

1 33. It is undisputed that the Plea Agreements entered into by both Mr. Rizzolo and the
2 Power Company Inc., were for all intents and purposes contractual in nature.

3 34. By virtue of the Plea Agreements being contractual in nature, Mr. Rizzolo was an
4 intended beneficiary of the terms of the Plea Agreements.

5 35. In accordance with said rights under the Plea Agreements, Mr. Rizzolo had an
6 economic interest in the maximization of profit upon the sale of the Crazy Horse Too.
7

8 36. An economic relationship existed between Mr. Rizzolo and the US Government
9 whereby, upon the sale of the Crazy Horse Too, after Defendants restitution was to be paid, Mr.
10 Rizzolo would receive any residual amounts left over.

11 37. Mr. Rizzolo had a reasonably probable future economic benefit and advantage of
12 both paying the remaining settlement amount to Defendants, the restitution owed to the US
13 Government and receiving residual monies after the settlement of all claims.
14

15 38. Defendants knew of the existence of the terms of the plea bargain and their
16 settlement and restitution were incorporated therein.
17

18 39. Defendants further knew that if they did not act with due care regarding their
19 actions, a negligent assignment of their rights to the US Government would interfere with this
20 relationship and cause Mr. Rizzolo to lose in whole or in part the probable future economic
21 benefit or advantage of the Plea Agreement;
22

23 40. Defendants were negligent in assigning their rights to the US Government and
24 abandoning their ability for any recourse against the US Government.
25

1 41. Said negligence caused damage to Mr. Rizzolo in that the relationship was
2 actually interfered with.

3 42. Due to said negligence, Mr. Rizzolo lost any economic benefits or advantage
4 reasonably expected from the Plea Agreement.
5

6 43. That as a direct and proximate result of Defendants' behavior, Plaintiffs have
7 been damaged in an amount in excess of \$10,000.00, the exact amount of which will be
8 determined at trial.

9 44. That it has been necessary for Plaintiff to retain counsel to prosecute this action
10 by reason of which they are entitled to reasonable attorney's fees.
11

12 **III.**
13 **SECOND CLAIM FOR RELIEF**
14 **(Declaratory Relief Rescission- Force Majeure/Impossibility)**
15 **All Defendants**

16 45. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for
17 Relief and incorporates the same by reference as if fully set forth herein.

18 46. A genuine justiciable controversy exists relevant to the rights and obligations
19 herein regarding Defendants' obligations under the Agreement and Defendants recovery of all
20 monies due and owing under same.

21 47. As a result of the Order entered on August 21, 2007, by the Court in *USDC Case*
22 *No. 2:06:-cr-00186* granting the US Government's Motion to Substitute the Assets, forfeiture
23 and sell the substituted assets and distribute the sale's proceeds in accordance with the restitution
24 schedules; Mr. Rizzolo's ability to comply with the Settlement Agreement has been rendered
25 impossible by virtue of force majeure and impossibility.

48. Pursuant to the Plea Agreement, Mr. Rizzolo had until June 6, 2007, to

1 independently sell the CRAZY HORSE TOO; and if he was unable to perform said sale, the Plea
2 Agreement provides the following: “the Government and defendant [Rizzolo], through their
3 counsel, will confer in a good faith effort to determine and agree on a third party manager/seller
4 of the Crazy Horse Too” *Id. supra*

5 49. Mr. Rizzolo was never given the opportunity to agree on a third-party manager of
6 the Crazy Horse Too, since the US Government breached the terms of the Plea Agreement and
7 on August 21, 2007, Judge Pro granted the US Governments Motion to substitute Mr. Rizzolo’s
8 assets, forfeiture and sell the substituted assets and distribute the sale’s proceeds.

9 50. Judge Pro’s action of substituting the assets directly and intentionally rendered the
10 Plea Agreement and Settlement Agreement impossible to execute, rendering both of them
11 subject to rescission.

12 51. Furthermore, on September 7, 2007 when, the Henrys entered into a Petition and
13 Settlement Agreement, Stipulation for Entry of Order of Forfeiture and Order, they acquiesced to
14 the impossibility of Mr. Rizzolo’s performance of the Settlement Agreement.

15 52. Mr. Rizzolo seeks an order from this Court declaring that Defendants, knowingly
16 and voluntarily forfeited their rights to recovery under the Settlement Agreement, rescinding said
17 Agreement.

18 53. Mr. Rizzolo further seeks an Order from this Court declaring that the substitution
19 of assets and the breach by the US Government of the Plea Agreement regarding the third party
20 operator, rendered Mr. Rizzolo’s ability to comply with the Settlement Agreement impossible
21 and subject to rescission.

22 54. That as a result of the Defendants’ actions, the US Governments actions, and
23 Judge Pro’s Orders in the Federal cases, it has been impossible and will be perpetually
24
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1 impossible for Mr. Rizzolo to ever comply with the terms of the Settlement Agreement
2 mandating a rescission of same.

3 55. That it has been necessary for Plaintiff to retain the services of legal counsel for
4 which Plaintiff is entitled to recover such costs and expenses from Defendants.

5 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

6 1. For consequential damages in an amount in excess of \$10,000, the exact amount
7 of which will be proven at trial;

8 2. For all out of pocket costs incurred by the Plaintiff since the commencement of
9 the underlying litigation.

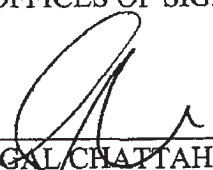
10 3. For declaratory relief rescinding the 2006 Settlement Agreement between the
11 Parties herein.

12 4. For attorney's fees and costs of suit;

13 5. For such other and further relief as this Honorable Court deems just and
14 reasonable under the circumstances.

15 Dated this 9th day of November, 2012.

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17 LAW OFFICES OF SIGAL CHATTAH

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