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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KIRK and AMY HENRY,)
)
Plaintiffs,)
)
vs.)
)
FREDRICK RIZZOLO aka)
RICK RIZZOLO, an individual;)
LISA RIZZOLO, an individual;)
THE RICK AND LISA RIZZOLO)
FAMILY TRUST,)
)
Defendants.)
)

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

**PLAINTIFF KIRK HENRY'S
RENEWED MOTION TO COMPEL
DEFENDANT LISA RIZZOLO
AND FOR APPROPRIATE SANCTIONS**

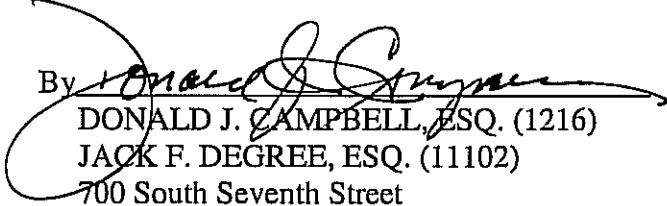
COMES NOW Plaintiff KIRK HENRY, by and through his attorneys of record,
DONALD J. CAMPBELL, ESQ. and JACK F. DEGREE, ESQ., of the law firm CAMPBELL &
WILLIAMS, and hereby files the following Renewed Motion to Compel Defendant Lisa Rizzolo
and for Appropriate Sanctions including, but not limited to, attorney's fees.

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This motion is made and based upon all the pleadings and papers on file herein, together with the affidavits and exhibits attached hereto, and any and all oral arguments.

DATED this 5th day of June, 2009.

CAMPBELL & WILLIAMS

By 

DONALD J. CAMPBELL, ESQ. (1216)
JACK F. DEGREE, ESQ. (11102)
700 South Seventh Street
Las Vegas, NV 89101
Attorneys for Plaintiff Kirk Henry

**AFFIDAVIT OF DONALD J. CAMPBELL IN SUPPORT OF
PLAINTIFFS RENEWED MOTION TO COMPEL DEFENDANT LISA RIZZOLO**

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

DONALD J. CAMPBELL, being first duly sworn, deposes and says:

1. I am a resident of Clark County, Nevada. I am over the age of eighteen (18) years and I am in all respects, competent to make this Affidavit. This Affidavit is based upon my personal knowledge, and if called upon to testify, I would testify as set forth in this Affidavit.

2. I am a licensed attorney in the State of Nevada Bar Number 1216. I am a partner in the law firm CAMPBELL & WILLIAMS.

3. I am one of the attorneys representing Plaintiffs Kirk and Amy Henry in the above-captioned action.

4. On January 22, 2009, this Court heard oral argument on Plaintiffs' Motion to Compel Answers and Responses to Plaintiff Kirk Henry's First Set of Interrogatories and Requests for Production to Defendant Lisa Rizzolo and for Appropriate Sanctions (#43). Plaintiffs' counsel began the hearing by reviewing the inadequacies of Mrs. Rizzolo's discovery responses. The Court quickly recognized Plaintiffs' concerns in that the answers and responses might be incomplete based on information Plaintiffs' counsel had obtained. The Court determined that the most efficient way to resolve the matter would be to proceed with Defendant Lisa Rizzolo's deposition. If, during the deposition other documents or information which had not been produced in this action were exposed, Plaintiffs would be permitted to seek supplementation at that time. Moreover, the Court specifically ruled Plaintiffs would not be restricted from deposing Lisa Rizzolo a second time assuming such documents had not been properly produced in this action. The parties agreed. See January 22, 2009 Transcript of

1 Hearing on Plaintiffs' Motion to Compel Defendant Lisa Rizzolo, excerpts of which are attached
2 hereto as Exhibit "1."
3

4 5. Plaintiffs noticed Lisa Rizzolo's deposition for February 18, 2009. In the interim,
5 however, an order was entered which prevented Plaintiffs from pursuing discovery relevant to
6 their cause of action brought pursuant to Nevada's version of the Uniform Fraudulent Transfer
7 Act ("UFTA") (#73). Ms. Rizzolo's deposition was vacated as a result in order to allow the
8 Court an opportunity to rule on Plaintiffs' Objections to this order (#82).
9

10 6. On March 23, 2009, Plaintiffs' objections were sustained in a written order by the
11 Honorable Philip M. Pro (#117). *See* March 23, 2009 Order, attached hereto as Exhibit "2." This
12 had the effect of re-opening discovery relevant to the Defendants' financial condition. Ms.
13 Rizzolo's deposition was thereafter re-noticed for May 12, 2009. The Court was apprised of the
14 upcoming deposition in the Joint Status Report (#123), filed in response to the Court's request
15 concerning the status of Plaintiffs' original motion to compel Lisa Rizzolo (#121).
16

17 7. On May 12, 2009, the Plaintiffs conducted Lisa's deposition. *See* Transcript of
18 Videotaped Deposition of Lisa Rizzolo, attached hereto as Exhibit "3." During that deposition,
19 Ms. Rizzolo admitted that she had transferred millions of dollars to offshore accounts. She
20 further admitted that hundreds of thousands of dollars had thereafter been loaned to her ex-
21 husband, Rick. The details of these transactions are further discussed in the body of this motion.
22

23 8. Ms. Rizzolo's testimony also revealed that an extensive catalog of documents had
24 not been produced in this litigation. The documents withheld included documents relevant to
25 bank accounts, loans, gifts, insurance policies, trusts, personal property, and dispositions of real
26 and personal property.
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2 9. Upon concluding Ms. Rizzolo's deposition, the undersigned attempted to conduct
3 a meet and confer regarding the inadequacies of her discovery responses which were exposed
4 throughout her deposition. Mr. Bailus declined to proceed and insisted on Mr. Kelesis' presence.
5 He also demanded Plaintiffs furnish him with a list of documents that should be produced and
6 followed with the improper suggestion that there are other places Plaintiff could be going in
7 order to obtain the documents requested. Mr. Bailus and his client then left.

8
9 10. On May 13, 2009, Plaintiffs caused a subpoena to be served on the Custodian of
10 Records of Lionel Sawyer & Collins ("LS&C") seeking production of:

11 "Copies of checks, records of payment, billing invoices, engagement letters,
12 statements of account, fax transmittal sheets, wire transfer records, loan
13 agreements, and promissory notes, relating to any financial transaction
14 executed on behalf of Frederick aka "Rick" Rizzolo, Lisa Rizzolo, The Rick
and Lisa Rizzolo Family Trust, The Rick Rizzolo Irrevocable Trust, The
Rick J. Rizzolo Separate Property Trust, The RLR Trust, and/or The Lisa M.
Rizzolo Separate Property Trust."

15 *See* Subpoena, attached hereto as Exhibit "4."

16
17 11. This is not the first time Plaintiffs have attempted to obtain documents from a
18 non-party law firm in possession of information relevant to this lawsuit. On September 30, 2008,
19 Plaintiffs served a subpoena on the law firm which jointly represented the Rizzolos in this
20 collusive divorce, Patti, Sgro & Lewis ("PS&L"). The subpoena requested documents similar to
21 those requested from LS&C. The custodian of records at PS&L, however, did not produce
22 records prior to July 2006 after which this Court made the following observation:

23 It is not clear...whether the custodian conducted a thorough search of the law
24 firm's records for documents responsive to the subpoena. [The Rizzolos'
25 attorney's] statement that Patti, Sgro & Lewis does not have financial records
26 relating to its representation of the Rizzolos...prior to July 2006 appears
27 inconsistent with its obligations under Rule 1.15 of the Nevada Rules of
28 Professional Conduct which requires that certain client financial records be
preserved by the attorney for a period of seven years after the termination of the
representation. [The Rizzolos' attorney's] explained the absence of such records

1 by stating that Patti, Sgro & Lewis moved its office within the past few years,
2 during which records may have been discarded or misplaced, and that some
3 client records were damaged during a flood and were apparently discarded. The
4 circumstances regarding Patti, Sgro & Lewis's inability to produce records for
5 the period prior to July 2006 may, however, be an appropriate subject for further
6 discovery by the Plaintiffs.

7 *See* December 29, 2008 Order (#52), attached hereto as Exhibit "5" at p. 8.

8 12. On May 14, 2009, two days after Lisa Rizzolo's deposition, Campbell &
9 Williams associate, Jack DeGree, provided Mr. Bailus with a detailed list of documents which
10 must be produced and reminded him of his client's obligation to produce documents in discovery
11 which are in the "possession, custody, or control" of the client. Plaintiffs requested
12 communication from Mr. Bailus to confirm that he would follow through with his these
13 discovery obligations. *See* 5/14/09 Letter, attached hereto as Exhibit "6." Mr. Bailus has not
14 responded.

15 13. On May 21, 2009, LS&C objected to the subpoena duces tecum on the basis of
16 attorney-client privilege. LS&C did, however, agree to produce the documents provided: (a) the
17 client gives written authorization, or (b) or pursuant to a court order declaring the privilege
18 inapplicable and ordering production. *See* 5/21/09 Letter, attached hereto as Exhibit "7."

19 14. Plaintiffs' original discovery requests were served more than seven months ago
20 on October 1, 2008. This court has already extended the deadlines in the discovery scheduling
21 order (#120) and recognized Plaintiffs' diligent attempts to obtain discovery in this action (#73).
22 Plaintiffs remain persistent in their efforts to expedite this case to its conclusion. Plaintiffs have
23 served subpoenas on the law firm that jointly represented the Rizzolos in their divorce (Patti
24 Sgro & Lewis); the law firm that administers the Rizzolos' trust agreements (Lionel Sawyer &
25 Collins); the law firm that represented Mr. Rizzolo and his business entities in the criminal
26 proceedings before this Court (Jones Day); the prison which housed Mr. Rizzolo during the
27
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1 period of his incarceration (the Metropolitan Detention Center in Los Angeles, California); and
2 multiple casinos which Mr. Rizzolo frequented for gambling (MGM Mirage, Hard Rock Hotel &
3 Casino, and Palms Resort & Casino). The Plaintiffs are exercising their right to obtain discovery
4 from other sources and doing so in an expeditious manner.
5

6 15. Lisa Rizzolo, however, has yet to produce documents which were discussed in her
7 deposition and also detailed in the May 14, 2009 letter to Mr. Bailus – documents which were
8 first requested more than eight months ago on October 1, 2008.

9 16. I certify that all attached exhibits are true and correct copies.

10 17. I declare under penalty of perjury that the foregoing is true and correct.

11 18. Declarant further says naught.

12 DATED this 5th day of June, 2009.

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15 DONALD J. CAMPBELL
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1 I. INTRODUCTION

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3 Since the parties were last before the Court, the Plaintiffs have succeeded in uncovering
4 clear and convincing evidence that the Defendants Rick and Lisa Rizzolo are engaged in an on-
5 going effort to conceal, launder and covertly transfer millions of dollars in cash.

6 One central feature of this collusive scheme is the use of offshore accounts. Plaintiffs
7 have now established that Lisa Rizzolo has deposited millions of dollars “awarded” to her in the
8 divorce action into numerous trust accounts held in the Cook Islands. In yet another extremely
9 disturbing, but not surprising development, Plaintiffs have uncovered hundreds of thousands of
10 dollars which have been electronically transferred from those Cook Island accounts back to the
11 United States in the form of “loans.” These so-called loans have been made for the benefit of-
12 again, to no one’s surprise – Rick Rizzolo.

13
14 So that this Court is afforded a flavor for the brazen nature of this artifice, Plaintiffs offer
15 the following portions of Mrs. Rizzolo’s testimony:

16 Q. What is Southpac Trust International?

17 A. It is the bank that’s over there. I guess at the – I guess it’s the Cook
18 Islands. I wasn’t aware of what islands it was on.

19 See Ex. 3 at 60:10-13.

* * * *

20 Q. All right. Do you have any foreign bank account?

21 A. I do.

22 Q. Where?

A. At Southpac. But I wasn’t aware that it was the Cook Islands, sorry.

23 See Ex. 3 at 61:4-9.

* * * *

24 A. My account that’s an international account is held by me and my own
25 personal trust.

26 Q. All right. And when was the first time that you funded that account?

A. I don’t know the exact date, but its possible in either 2005 – I believe
27 2005.

28 Q. All right. And was that a short time after your divorce?

A. Yes.

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See Ex. 3 at 64:8-16.

- Q. And where is Southpac Bank located?
- A. According to the records I just looked at, I'm assuming the Cook Islands.
- Q. All right. Have you ever been to the Cook Islands?
- A. No.
- Q. Do you know where they are located?
- A. No. Far away.
- Q. Far away. Do you know what body of water they are located in?
- A. No.

See Ex. 3 at 93:7-18.

- Q. Do you get statements of, you know, asset retention, distribution, things of that nature, from Southpac Bank?
- A. I get a statement saying the holdings of the account.
- Q. All right. And where do you receive that statement at?
- A. At my home.
- Q. They send it directly to you from the Cook Islands?
- A. They do.
- Q. All right. And how frequently do you get such statements?
- A. I have to say at least quarterly. They are not as regular that I think – I think – you know, I thought that they should be monthly, but I don't know that they are. I can't promise you that they are monthly.
- Q. When is the last one you got, Ms. Rizzolo?
- A. Last month.
- Q. Okay. And what was the balance in the account?
- A. I don't know exactly.
- Q. Ballpark it.
- A. 6 million.

See Ex. 3 at 94:10-95:12.

- Q. Okay. What is the Capital Security Bank?
- A. I don't know. Oh, I do know. The –
- Q. Tell me what it is.
- A. It's the statement that comes for – with holdings in my international account. That's how the statement comes from them.

See Ex. 3 at 96:18-24.

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Q. Okay. And you've had that offshore bank account, when I say "offshore," foreign bank account, in 2005, 2006, 2007, 2008, and 2009?
A. I don't recall the date of its inception, so...

See Ex. 3 at 162:6-10.

Q. Okay. But we know it was opened sometime in 2005, as I understand.
A. We don't know that for sure.
Q. We know it was open sometime – we know it was open in 2006?
A. I believe.
Q. We know it was open in 2007?
A. Yes.
Q. ...This is your 2005 tax return.

See Ex. 3 at 162:17-163:2.

Q. Okay. It says that – it asks you a question: "At any time during 2005, did you have an interest in or signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? And you answered, "No." Correct?
A. I didn't fill out these forms, so...
Q. This is your tax return.
A. Exactly.

See Ex. 3 at 163:14-164:5.

Q. Let's go to the next question. It asked for the name of a foreign country. There is nothing listed there, right?
A. Right.
Q. Okay. No. 8: "During 2005, did you receive a distribution, or were you the grantor of, or transferor to, a foreign trust?" And you had "no," there right?
A. That's what marked.

See Ex. 3 at 165:7-16.

Q. Okay. And, again, the tax return [2006] that you filed with the Internal Revenue Service stated that you did not have any interest or signature or other authority over a financial account in a foreign country, right?
Q. Right?
A. That's what its marked, um-hum.
Q. And that it doesn't have the name of any foreign country there, correct?

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- A. That's correct.
- Q. And moreover, when asked if there was a distribution or whether you were a grantor of or transferor of a foreign trust, your tax return indicated once again in the negative, "no," right?
- A. That's what is says, "no."

See Ex. 3 at 166:9-167:6.

- Q. And calling your attention once again to LR00074 [2007 tax return] –
- A. Um-hum.
- Q. ...foreign accounts and trusts, correct?
- A. Right?
- Q. And again, under 7a, calling for the disclosure of any interest you had in a financial account in a foreign country, you said "no," right?
- Q. Correct?
- A. "No" is marked here.

See Ex. 3 at 169:21-170:8.

- Q. ...as to the identification or the name of any foreign country, there is nothing listed there, correct?
- A. Right.
- Q. And with respect to the question as to: "Did you receive a distribution or were you a grantor of a foreign trust?" You again said "no," correct?
- A. That's what is marked here.

See Ex. 3 at 170:11-171:1.

- Q. This production is of account statements from Capital Security Bank, Limited, Bate stamped LR00263 through and inclusive of 275. Agreed?
- A. Agreed.

See Ex. 3 at 177:20-23.

- Q. Okay. It says that on November 8, 2006 there was a distribution to the trust account of Lionel, Sawyer & Collins of \$200,000. Do you see that?
- A. I do.
- Q. What was that for?
- A. I believe that was – I believe this was a loan.
- Q. Okay. To who?
- A. To Rick.

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See Ex. 3 at 178:7-179:7.

- Q. Okay. There was a loan document created?
- A. I believe so.
- Q. Is there a reason you didn't turn that over to us?
- A. I don't have it in my possession.

See Ex. 3 at 180:9-13.

- Q. ...March 1st 2007, through the 31st of March 2007, correct?
- A. Right.
- Q. Okay. Has interested received of \$10, 692, correct?
- A. Yes.
- Q. And then you apparently directed Lionel, Sawyer & Collins to take out another \$400,000 from that account?
- A. Right.
- Q. For what purpose?
- A. I believe that was another loan to Rick.

See Ex. 3 at 185:21-186:7.

- Q. Ms. Rizzolo, with respect to this additional \$400,000 loan that you arranged on behalf of your former husband, Rick Rizzolo, was there a promissory note created for that?
- A. Yes, I believe so.

See Ex. 3 at 190:2-6.

- Q. Nor have you produced that note in this litigation?
- A. No.

See Ex. 3 at 191:7-9.

- Q. Calling your attention, again, to...the account statement dated March 31st, 2007. Could you please tell me whether or not any of that \$400,000 that you loaned to your husband was paid back?
- A. I believe so.
- Q. And how was it paid back?
- A. By check.
- Q. And how much was paid back?
- A. I believe 600,000. I'm not positive of that.

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- Q. And when was it paid back?
- A. I'm not sure of the date.
- Q. So this is all – the entire 400,000 was paid back?
- A. I believe so.
- Q. All right. And you don't know when it was paid back?
- A. I don't.
- Q. And it was – but it was paid by check to you?
- A. I believe so. I'm questioning my memory.
- Q. Well, where would the documents be reflecting that payment?
- A. I imagine in Rick's possession.

See Ex. 3 at 205:5-206:7.

In Plaintiffs' complaint, it is asserted that numerous transactions involving Mr. and Mrs. Rizzolo are fraudulent and violate The Uniform Fraudulent Transfer Act ("UFTA"). See Complaint, attached hereto as Exhibit "8." The UFTA was adopted in Nevada in 1987. See NRS 112.140 *et seq.* The Plaintiffs contend that Mr. and Mrs. Rizzolo engaged in a series of fraudulent transactions in violation of the UFTA. They include, in part:

- "the [Defendants]...formed a so-called "family trust" and thereafter transferred their assets into the same in an attempt to shield the assets available to compensate the Henrys for their catastrophic injuries." See Ex. 8 at ¶ 13.
- "the [Defendants] obtained a collusive divorce in which the Defendant Lisa Rizzolo was awarded nearly every listed community asset of the parties of any appreciable value except the real estate, furniture, fixtures and equipment associated with the Crazy Horse Too which both [Defendants] knew would be subject to forfeiture..." See Ex. 8 at ¶ 15.
- "Rick Rizzolo also 'agreed' to assume the burden of an additional 'debt' of Five Million Dollars which he would pay over to Lisa Rizzolo in the form of 'alimony.' In this regard, the Defendant Rick Rizzolo also obtained a Five Million Dollar loan which was secured by the underlying property from which the racketeering enterprise known as The Crazy Horse Too was conducted, knowing full well that he would default on the same and would further diminish the assets available for forfeiture and to pay damages to the Henrys." See Ex. 8 at ¶ 16-17.
- "...the Defendant Rick Rizzolo engaged in numerous cash transactions involving millions of dollars in the form of 'loans,' gambling 'debts,' and other third party transactions, all of which were designed to further

1 obscure and conceal the nature, extent and location of his assets.” See
2 Ex. 8 at ¶ 18.

3 Additional causes of action for common law fraud and conspiracy to defraud are also pled.

4 **II. ARGUMENT**

5 A defendant’s financial condition is the core subject of inquiry for discovery in cases
6 involving the fraudulent transfer of assets. As such, Defendant should be compelled to answer
7 and produce documents responsive to the Interrogatories and Requests for Production which are
8 set forth herein, *infra*. Plaintiffs’ initial discovery requests were served October 1, 2008. It is
9 nearly eight months later and a full production has yet to be forthcoming. It is little wonder Lisa
10 Rizzolo is implementing every possible pretext to delay discovery of her financial assets, given
11 that the assertions in Plaintiffs’ complaint are being fully supported by the evidence produced
12 thus far in discovery. Indeed, the Defendants’ furtive and deceitful acts since September 20,
13 2001, have even resulted in their hiding assets in offshore accounts in an effort to deprive the
14 Plaintiffs of their regretful entitlement to compensation.
15

16 **A. The First Hearing On Plaintiffs’ Motion To Compel Lisa Rizzolo (#43)**

17 The inadequacy of Lisa Rizzolo’s discovery responses was first brought before the Court
18 on January 22, 2009. At the hearing, the undersigned began setting forth each of Lisa Rizzolo’s
19 incomplete, nonresponsive answers and the improper objections asserted to each of these
20 requests. The Court devised a plan as an alternative to ruling on the motion at that time. His
21 Honor set forth the plan for resolving this discovery dispute as follows:
22

23 – strikes me here as I’m listening you go through this, and – I’m hesitating
24 because I want to frame it in the right way. It strikes me that in some of these
25 responses where you have certain information, you have your doubts as to
26 whether you have complete information. Now for instance, the reference to bank
27 accounts, but you have found some discovery of it, that there may be or there are
28 or may be other accounts, or there may be other assets that haven’t been listed.

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2 It would strike the Court – and I’m – number one, beginning with the
3 broad scope of the discovery requests that are made, there has been responses
4 provided. There are questions that the plaintiff has, perhaps, maybe probably
5 legitimate questions is this a complete and thorough response?
6

7 *It would seem to the Court that perhaps the way to go here would be to*
8 *at least to take the deposition of Ms. Rizzolo, go through these responses,*
9 *determine in that deposition under oath, ask the kind of questions you have*
10 *asked, and determine whether there is anything or basis for something else,*
11 *request supplementation at that point if it appears appropriate to do so. And*
12 *then if you don’t get it come back to court to compel, once you have explored*
13 *these matters...*

14 *See Ex. 1 at 13:8-14:6 (emphasis added).* The parties agreed to proceed in the Court’s
15 recommended fashion, taking Ms. Rizzolo’s deposition and inquiring into her answers and
16 responses. Information obtained by Plaintiffs’ counsel prior to the January 22, 2009 hearing
17 established Lisa Rizzolo was not disclosing or producing all of the available information to her,
18 nor was she making reasonable efforts to obtain the information. Nothing has changed.

19 Per the Court’s directive, Ms. Rizzolo’s deposition was noticed shortly after the January
20 22, 2009 hearing. It was then vacated as a result of the Court’s February 3, 2009 order on
21 Plaintiffs’ motion to compel brought against Rick Rizzolo (#73). This order prevented Plaintiffs
22 from inquiring into the Defendants’ financial condition as it relates to the Plaintiffs’ fraudulent
23 transfer cause of action. After review of Plaintiffs’ objections to the February 3, 2009 order, the
24 Court essentially ordered discovery re-opened shortly thereafter. The Plaintiffs re-noticed Ms.
25 Rizzolo’s deposition for May 12, 2009.

26 Lisa Rizzolo’s deposition went forward as scheduled. Lisa Rizzolo’s counsel took
27 extensive notes during the deposition and both counsel and client repeatedly acknowledged the
28 continuing duty to supplement various documents in this litigation. *See Ex. 3 at 103:13-104:10*
(bank account statements); 176:15-25 (insurance policies); 248:10-250:15 (applications for
loans); 97:24-100:19 (trust account statements).

1 After Lisa's testimony showcased her woefully inadequate discovery responses,
2 *Plaintiffs' counsel did exactly what the Court directed – "request supplementation at that*
3 *point if it appears appropriate to do so...[a]nd then if you don't get it come back to court to*
4 *compel."* See Ex. 1 at 14:3-5. After concluding Lisa's deposition, Plaintiffs' counsel requested
5 a meet and confer conference to ensure the substance of what would likely be a large
6 supplementation. Lisa's testimony was fresh in the minds of counsel; extensive notes had been
7 taken by counsel for both parties; and it was entirely appropriate to request supplementation just
8 as the Court had directed. Mr. Bailus refused to proceed. He insisted on the presence of Mr.
9 Kelesis even though Mr. Kelesis had departed halfway through the deposition. Mr. Bailus also
10 requested a list of requested documents be submitted to him and then lumped Plaintiffs' counsel
11 with the improper suggestion that the information could be obtained from other sources.
12 Nevertheless, two days later, Plaintiffs' counsel forwarded an extensive list of documents to be
13 produced and requested confirmation that Ms. Rizzolo's discovery obligations would be met.
14 This list was not intended to be all-inclusive in light of the fact that the transcript had not been
15 received by counsel yet. Nevertheless, no response from Ms. Rizzolo's counsel has been
16 forthcoming.
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20 The final step in the Court's recommended process set forth in the January 22, 2009
21 hearing is being implemented now – *the renewed motion to compel.*

22 **B. The Documents Sought Are Relevant To Showing Defendants' Intent To**
23 **"Hinder, Delay and Defraud" The Henrys' Collection**

24 There is now substantial indicia demonstrating the Defendants' divorce was a sham,
25 entered into for purpose of depriving the Henrys of the \$9 million dollars owed them pursuant to
26 the settlement agreement. That evidence includes the following:
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- On November 8, 2006, Lisa “loaned” Rick two hundred thousand dollars (\$200,000.00) from her offshore bank account in the Cook Islands. She did not charge interest. Ms. Rizzolo contends the debt owed by Rick is evidenced in a promissory note, and thinks it was repaid. No documentary evidence has been produced in this litigation to support either of these assertions. *See* Ex. 3 at 177:13-183:18; 205:5-206:7.
 - In March 2007, Lisa loaned Rick another four hundred thousand dollars (\$400,000.00) from the same offshore account. Again, Lisa has not produced any evidence of a promissory note or any repayment on this purported note. *See* Ex. 3 at 185:18-191:9; 205:5-206:7.
 - During his incarceration, Lisa paid at least fifty thousand dollars (\$50,000.00) for Rick’s legal expenses. *See* Ex. 3 at 208:11-208:21. She did not produce any documents to reflect this gift/loan.
 - Ms. Rizzolo made two separate rent payments of twenty-five thousand dollars (\$25,000.00) each on the Crazy Horse property. *See* Ex. 3 at 208:22-209:14. No documents were produced to reflect these gifts/loans.
 - Lisa remains the beneficiary of Rick’s life insurance policy. *See* Ex. 3 at 243:19-244:9. No further information was produced as to this policy, *i.e.* what company issued the policy, when it was issued, the amount on the policy is, and when she was named on the policy, and so forth.
 - Rick owes Lisa a total of five million dollars (\$5,000,000.00) to be paid over 60 monthly installments pursuant to a provision in the divorce decree concerning separation of property. This provision was originally structured to account for spousal support but the language was “modified” by subsequent agreement between Mr. and Mrs. Rizzolo to read as “separation of property” instead of “spousal support.” She states in the four years since this agreement was executed she has not received a single payment nor has she taken any action to attempt to enforce this divorce decree. *See* Ex. 3 at 143:23-147:24; 234:8-237:4.
 - Ms. Rizzolo repeatedly visited Rick while he was incarcerated at the Metropolitan Detention Center in Los Angeles, California. *See* Ex. 3 at 119:12-21.
 - Rick and Lisa Rizzolo continue to share signatory authority over a credit card held at Wells Fargo with a twenty-seven thousand dollar available line of credit (\$27,000.00). *See* Ex. 3 at 102:7-103:12. Only one monthly statement was produced showing account activity on this credit card.

- 1 • Lisa accepted delivery of Rick's 1958 Chevrolet Corvette at the Canyon Gate
2 marital home immediately upon his release from prison. *See Ex. 3 at 128:1-*
3 *129:10.* She never disclosed this information in response to multiple
4 discovery requests which would encompass this information.
- 5 • Rick remains on Lisa's guest list at the Canyon Gate home as a permanent
6 guest who is free to come and go as he pleases. *See Ex. 3 at 129:11-21.*
- 7 • Rick was actually served with the summons and complaint at the couple's
8 marital home, long after the divorce decree had been entered. *See Ex. 3 at*
9 *207:17-208:2.*
- Presently hanging in the stairwell of Lisa's Canyon Gate home is an original
Leroy Neiman painting of the divorced couple. *See Ex. 3 at 175:7-176:14.*

10 **C. The Documents Must Be Produced In An Expedient Manner**

11 Pursuant to LR 26-7(a), Plaintiff will set forth, in full, Plaintiff Kirk Henry's First Set of
12 Interrogatories and Requests for Production and Defendant Lisa Rizzolo's Answers, Responses
13 and Supplements thereto for purposes of this renewed motion to compel. This discovery was
14 similarly requested from Rick Rizzolo on the same date. Plaintiffs' contemporaneous motion to
15 compel Rick Rizzolo's compliance was ultimately granted without any reservations (#117). *See*
16 *Ex. 2.* In both the original motions to compel Rick and Lisa Rizzolo, Plaintiffs cited extensive
17 case law permitting the discovery of a Defendants' financial information in cases involving the
18 UFTA. The Court granted Plaintiffs' motion by making the following finding:
19
20

21 *Plaintiffs' claim is contingent but otherwise viable, and would potentially be*
22 *frustrated by allegedly wrongful asset transfers. Plaintiffs therefore must be*
23 *permitted to pursue the discovery at issue in support of their claims for*
conspiracy to defraud, common law fraud, and violation of the UFTA.

24 *See Ex. 2 at p. 3 (emphasis added).*

25 During her deposition, Ms. Rizzolo acknowledged the multitude of documents which had
26 already been requested in discovery but had not been produced. Moreover, after she was advised
27 of her duty to obtain the documents from sources over which she has "control" (*i.e.*, mortgage
28

1 companies, insurance companies, banks, and the law firms she jointly hired with her husband).
2 She agreed to obtain the requested documents. Despite that commitment, Ms. Rizzolo has failed
3 to supplement even a single interrogatory or request for production since her deposition. Her
4 counsel has likewise failed to respond to repeated requests by Plaintiffs' counsel seeking
5 supplementation. She must now be compelled pursuant to Fed. R. Civ. P. 37.
6

7 o *Bank Statements*

8 Interrogatory No. 8: List any and all financial institution accounts you currently maintain,
9 whether business or personal, checking or savings, or jointly owned, or to which you hold in
10 trust for anyone else.

11 Answer: Objection. Interrogatory No. 8 is overbroad and burdensome and seeks
12 information regarding assets which are subject to exemption under NRS § 21.090. Defendant
13 further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986), *E.E.O.C. v. Mahu*
14 *Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD 52 (W.D.Mo. 1969)
15 in determining that only present financial status is relevant for punitive damages purposes as well
16 as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998), which requires Plaintiff to
17 demonstrate a factual basis for a punitive damages claim prior to the discovery of financial
18 information. Without waiving the foregoing objections, Defendant responds as follows: Wells
19 Fargo, Sun West.

20 Interrogatory No. 9: List and give full details concerning any account not listed above, held in
21 any name other than your own, or over which you have dominion, possession, or control.

22 Answer: Objection. Interrogatory No. 9 is overbroad and burdensome and seeks
23 information regarding assets which are subject to exemption under NRS § 21.090. Defendant
24 further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986), *E.E.O.C. v. Mahu*
25 *Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD 52 (W.D.Mo. 1969)
26 in determining that only present financial status is relevant for punitive damages purposes as well
27 as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998), which requires Plaintiff to
28 demonstrate a factual basis for a punitive damages claim prior to the discovery of financial
information.

29 Request No. 23: Produce documents which record, reflect, refer or relate to defendant's domestic
and/or foreign bank accounts, regardless of whether the same be held in sole or joint names since
September 20, 2001, to the present date.

30 Response: Objection. Request No. 23 is overbroad and burdensome, vague and
ambiguous as it is phrased in a manner which could encompass any number of documents which
would have no relevant or potential for admissibility in the present action and which are not in
the custody or control of Defendant. It further seeks information regarding assets subject to

1 exemption under NRS § 21.090. Defendant further objects and relies on *Austell v. Smith*, 112
2 FRD 230 (WDNC 1986), *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008),
3 *Hughes v. Groves*, 47 FRD 52 (W.D.Mo. 1969) in determining that only present financial status
4 is relevant for punitive damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD
281 (C.D.Cal. 1998), which requires Plaintiff to demonstrate a factual basis for a punitive
damages claim prior to the discovery of financial information.

5
6 *Supplemental Response:* (same objection as above). Without waiving the
foregoing objections, Defendant responds as follows: See attached LR00244, LR00263-
7 LR00285.

8 All monthly statements for the relevant period (September 20, 2001 to the present) should
9 be produced without any intermittent omissions such as an entire year of missing statements
10 from her offshore account held at Capital Security Bank. This account, interestingly enough, is
11 the account housing over \$6 million dollars as of June 30, 2008 and is the same account Rick has
12 milked for hundreds of thousands of dollars over the last few years.

13
14 Responsive documents produced thus far are limited to one monthly statement from her
15 main Wells Fargo checking account; one monthly statement from two small checking accounts at
16 Wells Fargo; a monthly credit card statement from Wells Fargo on an account she holds with
17 Rick; a certificate of deposit receipt from Sun West Bank; and a series of statements from her
18 Capital Security Bank account held under her separate property trust.

19
20 ○ *Trust Information*

21 *Interrogatory No. 12:* List any property you hold or have held as trustee of a testamentary or
22 inter vivos trust since September 20, 2001, and identify any trust you have created or contributed
to for the benefit of others since September 20, 2001.

23 *Answer:* Objection. Interrogatory No. 12 seeks information that is irrelevant and not
24 calculated to lead to admissible evidence. It further seeks assets subject to exemption under NRS
25 § 21.090. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986),
26 *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD
52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
27 damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
discovery of financial information. Without waiving the foregoing objections, Defendant
28 responds as follows: To the best of Defendant's recollection, all real and personal property has

1 been transferred to her separate property trust, including: 8632 Canyon View Drive, Las Vegas,
2 Nevada 89117; 195 N. Harbor Drive, Unit 1301, Chicago, Illinois 76015; 1104 W. Ocean Front,
3 Newport Beach, California 92661; 34 Sablewood, Ladera Ranch, California; 2008 Range Rover;
4 her gun collection, household furniture and furnishings, and Oppenheimer Accounts #G85-
1304084 & G85-1800002.

5 Request No. 13: Produce all documents which reflect, refer, record or relate to any trust under
6 which defendant is or was settlor or beneficiary, at any time from September 20, 2001, to the
7 present date.

8 Response: Objection. Request No. 13 is overbroad and burdensome as it is phrased in a
9 manner which could encompass any number of documents which would have no relevant or
10 potential for admissibility in the present action and which are not in the custody or control of
11 Defendant. It further seeks information regarding assets subject to exemption under NRS §
12 21.090. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986),
13 *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD
14 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
15 damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
16 which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
17 discovery of financial information.

18 Supplemental Response: (same objection as above). Without waiving the
19 foregoing objections, Defendant responds as follows: See LR00007-LR00019. Further, the
20 following documentation is available for disclosure following entry of a stipulated order for
21 protection, LR00570-LR00801.

22 Inquiry of Ms. Rizzolo at her deposition revealed a vast number of important documents
23 relating to the trusts which have not been produced. Ms. Rizzolo represented that most
24 documents are in the possession of her attorneys at LS&C and includes copies of checks, records
25 of payment, wire transfer records, promissory notes, loan agreements, billing invoices, and
26 engagement letters – documents which were then subpoenaed by Plaintiffs from LS&C on May
27 13, 2009. *See Ex. 4.* LS&C objected to the subpoena duces tecum by asserting the attorney-
28 client privilege but agreed to produce the documents provided written authorization from the
client is given. *See Ex. 7.* Ms. Rizzolo expressed no qualms about placing a phone call and
requesting these documents from her attorneys. *See Ex. 3 at 251:14-252:9.*

1 This Court has previously ordered production of these types of documents in its
2 December 29, 2008 written order, which compelled the law firm PS&L to comply with the Rule
3 45 subpoena Plaintiff served on its custodian of records (#52). The opinion reads:
4

5 Checks, records of payment and attorney billing records generally do not fall
6 within the scope of the attorney-client privilege or the work-product doctrine.
7 Checks are negotiated through a bank and, therefore, are not confidential
8 communications. Nor are they likely to contain information protected by the
9 work-product doctrine. *Harris v. United States*, 413 F.2d 316, 320 (9th Cir.
10 1969). In *Clark v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 130 (9th Cir.
11 1992), the Ninth Circuit stated that the identity of the client, the amount of the
12 fee, the identification of payment by case file name and the general purpose of
13 the work performed are usually not protected from disclosure by the attorney-
14 client privilege. *Clark*, 974 F.2d at 129 (citations omitted).

11 * * * *

12 Courts have also held that attorney engagement letters or retainer agreements are
13 not protected by the attorney-client privilege or work-product doctrine. *United*
14 *States v. Blackman*, 72 F.3d 1418, 1424 (9th Cir. 1995); *In re Michaelson*, 882
15 F.2d 882, (9th Cir. 1975).

15 * * * *

16 Financial information contained in the records of Patti, Sgro & Lewis, such as
17 checks or billing records, or transmittal sheets relating to financial transactions
18 with or by the clients, may contain or lead to the discovery of admissible
19 evidence. Plaintiffs are entitled to conduct reasonable discovery to determine if
20 evidence exists that will support their causes of action.

21 *See Ex. 5 at pp. 6-8.*

22 The trust documents in and of themselves are simply not sufficient. There are foreign
23 bank accounts tied to these trusts and legal bills evidencing the movement of funds to and from
24 these offshore accounts.

25 Documents showing the creation of these trusts have been produced; the next step is to
26 provide documentation reflecting the administration and accounting for these trusts. Defendant
27 should be compelled to answer Interrogatory no. 12 and produce documentation responsive to
28 Request nos. 13 and 18 which asks for more than just the trust agreements.

1
2 o *Dispositions of Property*

3 Interrogatory No. 17: Identify if you have, at any time since September 20, 2001, entered into
4 any transaction with your former spouse or any other relative involving the transfer, conveyance,
5 assignment or other disposition of any of your real or personal property and describe the terms
6 thereof.

7 Answer: Objection. Interrogatory No. 17 is vague and ambiguous as drafted because the
8 use of the words "conveyed or disposed," and "any property," requires this answering Defendant
9 to ponder, guess and/or speculate in order to decide what is and what is not meant by use of the
10 identified terms and consequently, Plaintiff has failed to phrase this request with reasonable
11 particularity. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC
12 1986), *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47
13 FRD 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
14 damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
15 which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
16 discovery of financial information. Without waiving the foregoing objections, Defendant
17 responds as follows: Under the terms of the Divorce Decree, Defendant received certain
18 community property assets as a division of the marital estate.

19 Supplemental Answer: (same objection as above). Without waiving the foregoing
20 objections, Defendant responds as follows: Under the terms of the Divorce Decree, Defendant
21 received certain community property assets as a division of the marital estate. Defendant also
22 gave her daughter, Leslie Rizzolo, the 2005 Range Rover which was awarded to her pursuant to
23 the terms of the Divorce Decree.

24 Request No. 14: Produce all documents which reflect, refer, record or relate to any assignments
25 or transfers of real or personal property made by defendant to any other person at any time from
26 September 20, 2001, to the present date.

27 Response: Objection. Request No. 13 is overbroad and burdensome as it is phrased in a
28 manner which could encompass any number of documents which would have no relevant or
potential for admissibility in the present action and which are not in the custody or control of
Defendant. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC
1986), *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47
FRD 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
discovery of financial information. Without waiving objections, Defendant responds as follows:
With the exception of Defendant's trade in of her 2004 Range Rover and 2005 Range Rover to
purchase her current vehicle, Defendant has not made any transfers of real or personal property
to anyone from September 20, 2001 to the present. With respect to trade ins, Defendant has no
documentation within her possession.

Supplemental Response: (same objection as above). Without waiving the
foregoing objections, Defendant responds as follows: Defendant traded in her 2004 Range Rover

1 and 2002 Mercedes Benz to purchase her current vehicle and gave her 2005 Range Rover to her
2 daughter but has not documentation regarding those transfers within her possession. See also
3 LR00007-LR00019.

4 Focusing on intangible personal property, it is best to begin with a question – where is the
5 disclosure and/or production of documents which reflect the seven hundred thousand dollars
6 (\$700,000.00) in purported loans she has given Rick since the divorce? Ms. Rizzolo must be
7 compelled to produce all documentation she has reflecting any gifts of money made to Rick
8 Rizzolo, Bart Rizzolo, or any other person since September 20, 2001.

9
10 **o *Divorce Decree Information***

11 Request No. 26: Produce any and all documents which record, reflect, refer or relate to
12 defendant's divorce decree with Defendant Rick Rizzolo since September 20, 2001.

13 Response: Objection. Request No. 25 is overbroad and burdensome, vague and
14 ambiguous as it is phrased in a manner which could encompass any number of documents which
15 would have no relevant or potential for admissibility in the present action and which are not in
16 the custody or control of Defendant. It further seeks information regarding assets subject to
17 exemption under NRS § 21.090. Defendant further objects and relies on *Austell v. Smith*, 112
18 FRD 230 (WDNC 1986), *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008),
19 *Hughes v. Groves*, 47 FRD 52 (W.D.Mo. 1969) in determining that only present financial status
20 is relevant for punitive damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD
21 281 (C.D.Cal. 1998), which requires Plaintiff to demonstrate a factual basis for a punitive
22 damages claim prior to the discovery of financial information. Without waiving the foregoing
23 objections, Defendant responds as follows: See attached.

24 Supplemental Response: (same objection as above). Without waiving the
25 foregoing objections, Defendant responds as follows: See LR00020-LR00046.

26 Plaintiffs have exhausted all methods for which to obtain responsive documents to this
27 Request. Plaintiffs previously subpoenaed the law firm that jointly represented Rick and Lisa
28 Rizzolo in this collusive divorce (Patti Sgro). According to the Rizzolos' attorneys, the
documents were lost and/or destroyed in a "flood." The Request asked for any documents which
"record, reflect, refer or relate" to the Defendant's divorce decree. She produced the
pleadings...documents readily available as public records and already in possession Plaintiffs'

1 possession. Accordingly, Ms. Rizzolo must be compelled to produce further documentation,
2 including any documents which "record, reflect, refer or relate" to the divorce decree –
3 engagement letters, billing invoices, statements of account, records of payment, and copies of
4 checks.
5

6 o *Loan Applications*

7 Request No. 15: Produce all documents which constitute or embody all applications for loans,
8 credit and/or financial assistance made or submitted by defendant, either alone or jointly with
9 another person, at any time from September 20, 2001, to the present date whether personal or on
behalf of any entity in which defendant held an interest of any kind or type.

10 Response: Objection. Request No. 15 is overbroad and burdensome as it is phrased in a
11 manner which could encompass any number of documents which would have no relevant or
12 potential for admissibility in the present action and which are not in the custody or control of
13 Defendant. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC
14 1986), *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47
15 FRD 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
16 which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
discovery of financial information. Without waiving objections, Defendant responds as follows:
17 Defendant has no such documentation.

18 Supplemental Response: (same objection as above). Without waiving the
19 foregoing objections, Defendant responds as follows: See attached. Defendant has no such
20 documentation within her possession; she has gone through her files and cannot locate the actual
21 loan application for the property located at 34 Sablewood Circle, Ladera Ranch, California
22 92694. She did however, find her escrow documentation for the property which is attached as
23 LR00328-LR00451.

24 Ms. Rizzolo's actual loan application has not been produced nor has she taken the
25 necessary steps to obtain it. She did, however, agree at her deposition that she would produce
26 these documents but has failed to do so since. See Ex. 3 at 248:10-250:15. She must be
27 compelled to comply her discovery obligations and obtain this loan application.

28 o *Insurance Policies*

Request No. 11: Produce all insurance policies, including life, personal property, automobile,
homeowners, or business liability insurance policies, owned by defendant or under which

1 defendant is or was named as a beneficiary, at any time from September 20, 2001, to the present
2 date.

3 Response: Objection. Request No. 11 is overbroad and burdensome as it is phrased in a
4 manner which could encompass any number of documents which would have no relevant or
5 potential for admissibility in the present action and which are not in the custody or control of
6 Defendant. It further seeks information regarding assets subject to exemption under NRS §
7 21.090. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986),
8 *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD
9 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
10 damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
11 which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
12 discovery of financial information.

13 Supplemental Response: (same objection as above). Without waiving the
14 foregoing objections, Defendant responds as follows: See LR00246-LR00262. Defendant also
15 states that she may be a beneficiary under a policy owned by someone other than herself but does
16 not currently have a copy of the policy in her possession and would disclose the same only
17 following entry of a stipulated order of protection.

18 With the exception of the single automobile and two homeowner's policies referenced in
19 her supplemental response, she failed to produce all other policies. She provides various forms
20 of support for her children, grandchildren, and son-in-law including *health and automobile*
21 *insurance policies*. See Ex. 3 at 26:10-12; 29:16-23; 33:15-34:9. She agreed to produce these
22 documents but has failed to do so. See Ex. 3 at 34:15. She must be compelled.

23 ○ *General Financial Information*

24 Request No. 16: Produce all documents which reflect, record, refer or relate to, or contain
25 information concerning the financial condition and/or net worth of defendant at any time during
26 the period from September 20, 2001, to the present date.

27 Response: Objection. Request No. 16 is overbroad and burdensome as it is phrased in a
28 manner which could encompass any number of documents which would have no relevant or
potential for admissibility in the present action and which are not in the custody or control of
Defendant. It further seeks information regarding assets subject to exemption under NRS §
21.090. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986),
E.E.O.C. v. Mahu Prabhu, Inc., 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD
52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the

1 discovery of financial information. Without waiving objections, Defendant responds as follows:
2 See Responses to Request No. 1.

3 Supplemental Response: (same objection as above). Without waiving the
4 foregoing objections, Defendant responds as follows: See previously provided LR00001-
5 LR00078 and attached LR00079-LR00569. Moreover, the documentation LR00570-LR00801 is
6 available following entry of a stipulated order for protection.

7 Request No. 18: Produce all other books, records, receipts, contracts, agreements, invoices,
8 documents of title, ownership, or indebtedness, or documents otherwise pertaining to the assets
9 of the defendant.

10 Response: Objection. Request No. 18 is overbroad and burdensome as it is phrased in a
11 manner which could encompass any number of documents which would have no relevant or
12 potential for admissibility in the present action and which are not in the custody or control of
13 Defendant. It further seeks information regarding assets subject to exemption under NRS §
14 21.090. Defendant further objects and relies on *Austell v. Smith*, 112 FRD 230 (WDNC 1986),
15 *E.E.O.C. v. Mahu Prabhu, Inc.*, 2008 WL 2795558 (WDNC 2008), *Hughes v. Groves*, 47 FRD
16 52 (W.D.Mo. 1969) in determining that only present financial status is relevant for punitive
17 damages purposes as well as *Oakes v. Halvorsen Marine, Ltd.*, 179 FRD 281 (C.D.Cal. 1998),
18 which requires Plaintiff to demonstrate a factual basis for a punitive damages claim prior to the
19 discovery of financial information. Without waiving objections, Defendant responds as follows:
20 Defendant has no such additional information within her possession.

21 Supplemental Response: (same objection as above). Without waiving objections,
22 Defendant responds as follows: LR00001-LR00006 and attached LR00288, LR00292-LR00294,
23 LR00306-LR00309, LR00319-LR00327, LR00328-LR00377.

24 The Henrys' right to obtain discovery relevant to the Rizzolos' financial condition will
25 not be belabored here. It is financial information and it is clearly discoverable.

26 **D. Appropriate Sanctions Should Be Imposed On Lisa Rizzolo**

27 Actions intended to "stonewall" a plaintiff in a fraudulent transfer case have been scorned
28 and serious sanctions imposed. See *In re Heritage Bond Litigation*, 223 F.R.D. 527, 531 fn. 1
(C.D.Cal. 2004). When a defendant fails to timely disclose clearly relevant documents and waits
until discovery motions are filed, sanctions are proper and serve as a remedy to the wrong. *Id.*
Lisa Rizzolo repeatedly engages in the identical dilatory discovery practices condemned in
Heritage. She has "failed to timely disclose clearly relevant documents" and "wait[ed] until

1 discovery motions were filed” just like defendants in *Heritage*. *Id.* In *Heritage*, the court
2 precluded the defendants from defending against a claim of fraudulent transfer of the marital
3 residence and also awarded monetary sanctions in the amount of \$4,835.00. *Id.* at 533. Ms.
4 Rizzolo should be sanctioned similarly as a deterrent to her ongoing discovery abuse.
5

6 A party may move to compel discovery if the opposing party fails to answer
7 interrogatories or fails to respond to a request for the production of documents. Fed. R. Civ. P.
8 37(a)(3)(iii)-(iv). Further, “an evasive or incomplete disclosure, answer, or response must be
9 treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4). In the event the
10 Court requires discovery be answered or produced after the filing of this motion, Plaintiff is
11 entitled to “reasonable expenses incurred in making the motion, including attorney’s fees.” Fed.
12 R. Civ. P. 37(a)(5)(A). “[T]he language of the Rule itself is mandatory, dictating that the Court
13 must award expenses upon granting a motion to compel disclosure unless one of the specified
14 bases for refusing to make such an award is found to exist.” *DL v. District of Columbia*, 251
15 F.R.D. 38, 49 (D.D.C. 2008) quoting *Cobell v. Norton*, 226 F.R.D. 67, 90 (D.D.C. 2005).
16 Sanctions pursuant to FRCP 37(a)(5)(A) serve a “compensatory purpose” to remedy the
17 opponent’s wrong. See *GMAC Bank v. HTFC Corp.*, 248 F.R.D. 182, 193 (E.D.Pa. 2008) citing
18 *Hutto v. Finney*, 437 U.S. 678, 690 n. 14, 98 S.Ct. 2565 (1978) (“The award...makes the
19 prevailing party whole for expenses caused by his opponent’s obstinacy.”).
20
21

22 The factors to be considered for imposing sanctions under Rule 37 include: “(1) the
23 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
24 (3) the risk of prejudice to [the party seeking sanctions]; (4) the public policy favoring
25 disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Rio Props.*,
26
27
28

1 *Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002) (sanctions imposed and costs and
2 attorney's fees awarded for violation of discovery orders).
3

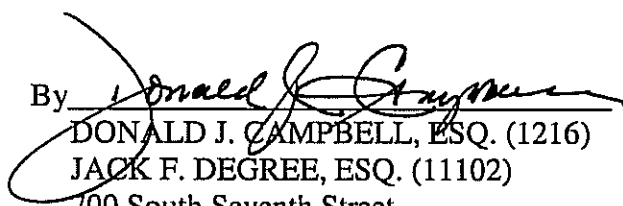
4 Ms. Rizzolo and her counsel have continuously sought to prolong this litigation by
5 obstructing Plaintiffs' access to discovery and failing to take reasonable steps necessary in order
6 to obtain responsive documents. Therefore, the Court's tandem interest in expeditiously
7 resolving the case and reinforcing adherence to the discovery plan would best be served by the
8 imposition of sanctions, including but not limited to, attorney's fees in bringing the instant
9 motion.
10

11 **III. CONCLUSION**

12 Accordingly, it is respectfully requested that Plaintiff Kirk Henry's Renewed Motion to
13 Compel Defendant Lisa Rizzolo and for Appropriate Sanctions be granted.

14 DATED this 5th day of June, 2009.

15 CAMPBELL & WILLIAMS

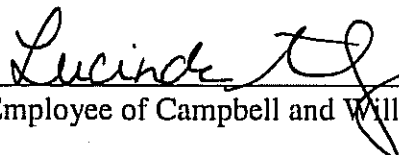
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17 By 
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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b), I certify that I am an employee of Campbell & Williams and on the 5th day of June, 2009, service of a true and correct copy of the foregoing Plaintiffs' Renewed Motion to Compel Defendant Lisa Rizzolo and for Appropriate Sanctions was made via CM/ECF and U.S. Mail to the following:

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