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9
 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 BRUCE CRISPIN LEYSER,
 13 Plaintiff,

14 vs.

15 JAMIE MILES GOLD,
 16 Defendant.

Case No. 2:06-cv-01072-RJH-LRL

**DEFENDANT'S MOTION TO
 DISSOLVE PRELIMINARY
 INJUNCTION;
 AND REQUEST FOR IMMEDIATE
 HEARING**

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 19 Pursuant to Fed. R. Civ. P. 65, Defendant Jamie Miles Gold ("Gold"), through his
 20 respective counsel, the law firm of Snell & Wilmer LLP, respectfully submits this Motion to
 21 Dissolve Preliminary Injunction; and Request for Immediate Hearing.

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Snell & Wilmer

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1 This Motion is based upon the attached Memorandum of Points and Authorities, the
2 papers and pleadings on file, and any oral argument this Court may entertain at the time of
3 hearing.

4 Dated: November __, 2006.

5
6 SNELL & WILMER, L.L.P.

7
8 By: 

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Sponsored by Bodog.net, Defendant Jamie Gold won the 2006 World Series of Poker ("WSOP") Tournament. Competing with 8,773 participants, Gold claimed the \$12 million first place winning share after almost two weeks of play. Plaintiff alleges that Gold promised to share the winnings. While Gold admits he made the promise, it was not supported by bargained-for consideration. It was nothing more than a promise to make a gift. With no legal obligation to do so, Gold still intended to honor his promise and share the winnings. Plaintiff, however, acted unreasonably and refused to recognize necessary expenses or provide protection to Gold for legitimate tax issues. Instead of continuing good faith negotiations, Plaintiff filed this litigation and drew media attention to it. Now that Plaintiff has shown his true colors by unnecessarily filing suit and attempting to discredit Gold's reputation in the media, Gold no longer intends to share his winnings.

Plaintiff secured an *ex parte* TRO freezing \$6 million of the WSOP winnings with the Rio. Gold later stipulated to a preliminary injunction conditioned on the ability to challenge later

1 the injunction. The \$6 million remains with the Rio where it earns no interest or return. Gold
2 now files this Motion seeking dissolution of the injunction.

3 It is settled that a preliminary injunction may *not* be granted unless the moving party can
4 show both (1) irreparable harm and (2) a likelihood of success on the merits. Plaintiff can show
5 neither. There is no irreparable harm because Plaintiff has an adequate remedy at law -- money
6 damages, which is the only relief he seeks in his Complaint. Similarly, Plaintiff cannot show a
7 likelihood of success on the merits. The oral promise was nothing more than an unenforceable
8 offer to make a gift. The injunction should be dissolved, and the funds distributed to Gold.

9 **II. PROCEDURAL HISTORY**

10 On August 21, 2006, Plaintiff filed an *Ex Parte* Application for Temporary Restraining
11 Order and/or Preliminary Injunction in state court seeking to freeze \$6 million of Mr. Gold's \$12
12 million prize. A TRO was entered the same day. On August 30, 2006, Defendant removed the
13 case to this Court. On September 5, 2006, the Court held a hearing on the entry of a Preliminary
14 Injunction. Defendant's counsel posed no objection to an entry of the Preliminary Injunction
15 provided Defendant could later challenge the entry after counsel had the opportunity to discuss
16 the matter with the client and review the documentation. This Court granted the Preliminary
17 Injunction adopting the language of the state court's TRO. This Court further ordered that
18 Defendant would have until September 15, 2006, to "provide notification to Plaintiff and to the
19 court of any challenge." On September, 15, 2006, Defendant filed a Notice of Intent to
20 Challenge. Defendant now files this Motion to support its challenge.

21 **III. STATEMENT OF FACTS**

22 **A. The Gold-Bodog Contract**

23 Defendant Jamie Miles Gold ("Gold" or "Defendant") is a television producer and
24 professional poker player. Bodog.net is an online poker educational site. On July 13, 2006, Gold
25 entered into an exclusive client services agreement with Riptown.com on behalf of Bodog. *See*
26 Bodog Contract attached as Ex. 1. Bodog contracted with Gold because of his poker skills and
27 prior tournament wins. *See* Bodog Website attached as Ex. 2. The contract required Gold to wear
28 its clothing and participate in several media events in exchange for receiving a \$10,000 buy-in to

1 the World Series of Poker ("WSOP"). *See* Bodog Contract at "Services" P.1. In other words,
2 Bodog bought Gold a "seat" at the tournament. Despite allegations in Plaintiff's Complaint to the
3 contrary, the contract has no "requirement" that Gold secure celebrities to wear Bodog clothing
4 during the World Series of Poker. The contract contains an integration clause that makes this
5 point clear: it precludes any other "agreements, proposals or representations, written or oral."
6 The contract merely required Gold to participate in the tournament while wearing Bodog apparel.
7 The hope was that Gold would advance deep into the tournament and create exposure for his
8 sponsor. He did.

9 **B. The Gold-Leyser Relationship**

10 Gold and Plaintiff Bruce Crispin Leyser ("Leyser" or "Plaintiff"), met in July 2006. *See*
11 Gold Decl. at ¶ 6 attached as Ex. A. Specifically, they met through Leyser's wife, Jules. She met
12 Gold at a poker tournament and discovered that Gold was a principal in a TV production
13 company. Leyser, a British citizen, was looking to pitch certain reality TV show concepts. Gold
14 agreed to meet with Leyser.

15 In their initial meeting, Leyser discussed his various TV concepts. Plaintiff also discussed
16 possible employment with Gold's television production company. Apparently, Leyser had
17 serious financial problems. *See* Gold Decl. at ¶6. In fact, Leyser was unemployed and playing
18 poker online in an attempt to pay his rental obligations in California. *See* NPR interview attached
19 as Exhibit 3. Subsequently, Leyser forwarded his resume to Gold detailing his production
20 experience. *See* Leyser resume attached as Exhibit 4. Leyser also forwarded his reality TV
21 concepts by e-mail. *See* Leyser e-mails attached as Exhibit 5.

22 In a later meeting, Gold and Leyser discovered that they both shared a love for poker.
23 Leyser expressed a desire to play in the WSOP, but he did not have money to pay the \$10,000
24 entry fee. Gold informed Leyser about his relationship with Bodog. Gold informed Leyser that
25 Bodog was looking to secure celebrities to sponsor for the WSOP to wear the Bodog apparel.
26 Leyser stated that he could procure celebrities and asked whether Bodog would consider
27 sponsoring him in return. *See* Gold Decl. at ¶ 9. Specifically, Leyser stated that he had
28 relationships with "A-list" celebrities Matthew McConaughey and Matthew Perry, both of whom

1 would "likely" be interested in a WSOP sponsorship. *See Id.* Gold informed Plaintiff that Bodog
2 might agree if he could secure such celebrities, but he was not certain.

3 Gold believed that the Plaintiff's purpose for suggesting he could secure celebrities was
4 two-fold. First, he wanted to impress Gold in order to market his production ideas to Gold's
5 production company and potentially secure employment. *See Gold Decl.* at ¶10. Second, he
6 hoped to secure his own seat through Bodog. *See Id.* Gold made no promises or assurances that
7 Bodog would provide him a seat because he was unaware of what Bodog could or would agree to.
8 More importantly, Gold did not discuss sharing the proceeds from Gold's participation in the
9 WSOP -- let alone agree to do so in exchange for Plaintiff securing celebrities.

10 Plaintiff did not secure the stated celebrities. *See Gold Decl.* at ¶ 11. Instead, just prior to
11 the start of the WSOP, Leyser told Gold he could only secure two lesser-known celebrities,
12 Matthew Lillard and Dax Shepard. *See Id.* Plaintiff asked Gold whether he believed Bodog
13 would accept these celebrities and secure a seat for Plaintiff. Gold told Plaintiff that he knew,
14 based on the celebrity status of the two individuals, that Bodog would not sponsor him. Gold did,
15 however, offer to secure sponsorships for Lillard and Shepard, which he did. Plaintiff thereafter
16 expressed great disappointment in not being able to participate in the WSOP. Gold, feeling sorry
17 for Plaintiff, promised to share his winnings. It was only *after* Plaintiff secured Lillard and
18 Shepard -- and not in exchange for this alleged service -- that Gold expressed a desire to assist
19 Plaintiff by sharing a portion of any winnings. *See Gold Decl.* at ¶¶ 11-15. Gold's offer was
20 nothing more than a promise to make a gift, which he initially intended to honor.

21 **C. The WSOP Event and Plaintiff's Harassing Behavior**

22 At the WSOP, Gold started strong. He amassed a commanding chip lead starting on the
23 third day when he ended with \$3.7 million in chips. He went on to maintain his lead and ended
24 each subsequent day as the chip leader. Gold's performance was drawing media attention. It was
25 also drawing Plaintiff's attention. As Gold advanced, Plaintiff started to increase his attempted
26 contacts/communications with him. Gold wanted to focus on the business at hand -- playing the
27 best poker possible and advancing. Plaintiff, however, was more concerned with securing a daily
28 affirmation from Gold that he would fulfill his promise. Leyser or his wife called or text

1 messaged Gold every hour he played, while tracking his status online. *See* Gold Decl. at ¶ 17. To
2 confirm his interest, and after it appeared Gold would win money, Leyser and his wife traveled to
3 the WSOP and began to spread the word that Gold “owed” Leyser half of any winnings. *See*
4 Gold Decl. at ¶ 19. The speculation and innuendo swirled around the tournament. *See* Gold
5 Decl. at ¶ 20.

6 Plaintiff's harassing contacts hit a crescendo on the last day of the tournament. Gold stood
7 with a commanding \$8.88 million lead on his nearest competitor. He was assured to win no less
8 than \$1.2 million. Gold wanted to be left alone to rest and focus on the day's work. Plaintiff was
9 not satisfied and continued to hound Gold with calls. Finally, after incessant badgering and
10 continuous phone calls from Plaintiff, Gold left Plaintiff a voicemail message confirming his
11 intention to take care of Plaintiff and, in the process, hoping to remove Leyser as a distraction. At
12 the time of the call, Gold's main focus was concentrating on playing poker, limiting all outside
13 distractions, and winning the tournament. *See* Gold Decl. at ¶ 23. The message confirmed this
14 intent:

15
16 So please just be with me. I can't imagine you're going to have a
17 problem with it. I just don't want any stress about any money or
18 any of that shit going on today, or even after the end of the day. I'm
19 sure you're going to be fine; you're going to be very well taken care
20 of, absolutely fairly. We're just trying to handle this properly and
21 after now I don't even want to talk [the money] about it or think
22 about it.

23 *See* Plaintiff's Emergency Motion for Hearing on Motion for Preliminary Injunction at P. 7:11-
24 14.

25 Gold thereafter capitalized on his chip lead. The play at the final table lasted 14 hours, and
26 Gold eliminated the final eight opponents, earning the first place prize of \$12 million.

27 Immediately following Gold's win, Plaintiff continued to harass him. *See* Gold Decl. at ¶
28 24. This included a multitude of calls from Plaintiff, Plaintiff's attorneys, and other professionals.
See Id. Gold retained Sam Israel, a California tax attorney, to analyze the tax issues related to
disbursement of the prize money. *See* Israel Decl. attached as Exhibit B at ¶ 3. Almost

1 immediately, Israel was contacted by Mark Seif, a lawyer and professional poker player
2 representing Leyser, explaining how the Rio could distribute the funds directly to Leyser. *Id.* at ¶
3 9. Israel became concerned. Israel believed there were many issues related to a direct
4 distribution to Leyser including potential IRS audit risks and the inability of Gold to deduct
5 business expenses. *See Id.* Seif, however, was not concerned. Seif allegedly found an obscure
6 loophole that allowed Leyser to avoid taxes if he returned to the British Isles. *See* Israel Decl. at
7 ¶ 10, 11. In other words, once Leyser received any distribution of funds he intended to leave the
8 country without paying taxes. Seif continued demanding release of \$6 million to Leyser. When
9 Israel requested an indemnity agreement with Leyser or an escrow account to hold back funds for
10 taxes, in case Leyser left the country, it was rejected. *Id.* at ¶ 12.

11 Israel was contacted by another attorney and a tax accountant representing Leyser, who
12 also suggested that the Rio could transfer funds directly to Leyser. *See* Israel Decl. at ¶ 8, 13.
13 Again, neither of Leyser's professionals would agree to any indemnity agreement or hold back of
14 funds for purposes of tax liability, nor would they agree to provide a legal opinion that Gold
15 would not be taxed on any amounts paid to Leyser. *Id.* at ¶ 8. Instead, while attempting to
16 resolve the tax issue, Leyser filed the instant complaint.

17 In the end, Plaintiff refused anything other than \$6 million. *See* Gold Decl. at ¶ 26. In
18 other words, Plaintiff refused to accept that his gift should be reduced for any of the taxes or
19 expenses incurred by Gold in winning the \$12 million prize. *See Id.* In fact, Plaintiff did not
20 even want the customary tip the winner provides to the dealers at the final table to come out of his
21 "gift." *See* Gold Decl. at ¶ 27. The parties did not agree on a solution but continued to negotiate.
22 Much to Gold's surprise and disappointment -- and while Gold believed negotiations were
23 continuing in good faith -- Leyser rushed and filed this lawsuit with no prior notice to Gold. This,
24 while the entire \$12 million remained with the Rio so Gold could evaluate the tax implications.
25 The Preliminary Injunction that is now in place was ordered on September 13, 2006. Gold
26 collected \$6 million of his winnings; the remaining \$6 million is still in the custody of the Rio
27 Hotel & Casino. *See* Gold Decl. at ¶ 29. The money is accumulating no interest or other return.
28

1 Because Plaintiff is not entitled to any of the monies from Defendant whatsoever, the preliminary
2 injunction should be dissolved.

3 **IV. ANALYSIS**

4 To determine whether preliminary injunctive relief is appropriate, the Ninth Circuit Court
5 of Appeals follows a four-part test condensed into two alternative formulations of proof:

6 The traditional equitable criteria for granting preliminary injunctive
7 relief are (1) a strong likelihood of success on the merits, (2) the
8 possibility of irreparable injury to plaintiff if the preliminary relief
9 is not granted; (3) a balance of hardships favoring the plaintiff, and
10 (4) advancement of public interest (in certain cases). In this circuit,
11 the moving party may meet its burden by demonstrating either (1) a
combination of probable success on the merits and the possibility of
irreparable injury or (2) that serious questions are raised and the
balance of hardships tips sharply in its favor.

12 *Los Angeles Memorial Coliseum Comm'n. v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th
13 Cir. 1980) (citations omitted); *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291,
14 1298 (9th Cir. 2003); *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990); *Int'l Jensen v.*
15 *Metrosound U.S.A.*, 4 F.3d 819, 822 (9th Cir. 1993); *Cassim v. Bowen*, 824 F.2d 791, 795 (9th
16 Cir. 1987). "These two formulations represent two points on a sliding scale in which the required
17 degree of irreparable harm increases as the probability of success decreases." *Diamontiney*, 918
18 F.2d at 795. Under these formulations, the balance of harm is the most important factor.
19 *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc).

20 Here, Plaintiff is not entitled to injunctive relief for the following two reasons. First, there
21 is no threat of irreparable harm. Plaintiff seeks money, not the prevention or continuance of an
22 event necessary to maintain the status quo or prevent a further injury. Second, Plaintiff does not
23 enjoy a reasonable probability of success on the merits because, as shown below, Plaintiff has not
24 met its burden of showing the existence of the necessary elements for an enforceable contract.

25 **A. The Alleged Harm Is Not Irreparable**

26 Plaintiff must show that the alleged harm would be irreparable. *Dollar Rent-A-Car of*
27 *Washington, Inc. v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir. 1985); 11A CHARLES
28

1 ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE, § 2948 (2d ed. 1995).
2 If the alleged harm will not impair the court's ability to grant relief, then it is not irreparable and
3 injunction is not appropriate. WRIGHT, *supra* at § 2948.1. Generally, if there is an adequate
4 remedy at law, the court has the ability to grant relief without injunction. *Id.* at § 2944. If the
5 remedy at law seeks monetary damages, then there are adequate post-judgment measures, such as
6 attachment, that make injunctive relief unnecessary. *Rosen v. Cascade Int'l, Inc.*, 21 F.3d 1520,
7 1527 (11th Cir. 1994).

8 Most importantly, the United States Supreme Court has held that the temporary loss of
9 income, ultimately to be recovered through litigation, is not irreparable injury. *Sampson v.*
10 *Murray*, 415 U.S. 61, 90, 94 S.Ct. 937, 952 (1974).

11 The key word in this consideration is irreparable. Mere injuries,
12 however substantial, in terms of money, time and energy
13 necessarily expended are not enough. The possibility that adequate
14 compensatory or other corrective relief will be available at a later
15 date, in the ordinary course of litigation, weighs heavily against a
16 claim of irreparable harm.

17 *Id.* (quoting *Virginia Petroleum Jobbers Assoc. v. Fed. Power Comm'n*, 104 U.S.App.D.C. 106,
18 110, 259 F.2d 921, 925 (D.C.Cir. 1958)). The Ninth Circuit has formally applied this rule in
19 denying injunctive relief when monetary damages were the only damages. *Colorado River*
20 *Indian Tribes v. Town of Parker*, 776 F.2d 846, 851 (9th Cir. 1985) ("economic injury alone is
21 not considered irreparable."); *Cotter v. Desert Palace, Inc.*, 880 F.2d 1142, 1145 (9th Cir. 1989)
22 ("[i]njuries compensable in monetary damages are 'not normally considered irreparable.'")
23 (internal citations omitted). In fact, the Ninth Circuit has unequivocally held that "[m]ere
24 financial injury will not constitute irreparable harm if adequate compensatory relief will be
25 available in the course of litigation." *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l*
26 *Planning Agency*, 766 F.2d 1316, 1319 (9th Cir.1985); *Goldie's Bookstore, Inc. v. Superior*
27 *Court of the State of California*, 739 F.2d 466, 471 (9th Cir. 1984). Thus, if the moving party
28 alleges claims at law and seeks only monetary damages, injunction is not proper.

Plaintiff's Complaint seeks one form of relief -- money damages. As a result, and as

1 detailed above, Plaintiff cannot show irreparable harm. Instead, Plaintiff alleges that “Defendant
2 is a gambler and there is the possibility that he will dispose of the funds.” See Verified Complaint
3 at ¶ 30. This is not sufficient to demonstrate any irreparable harm.

4 Finally, as a practical matter, if all a party had to do was allege a fear that the money being
5 fought over might not be there at the end of the dispute, then plaintiffs in every lawsuit would be
6 entitled to a preliminary injunction while the case proceeds. That is not the purpose of
7 preliminary injunctions.

8 **B. Plaintiff Has Not Met His Burden of Showing His Likely Success on the Merits**

9 As shown above, Plaintiff cannot show a threat of irreparable harm. Therefore, he must
10 show a very high likelihood of success on the merits. *Diamontiney*, 918 F.2d at 795. Contrary to
11 Plaintiff’s blanket assertions, a discussion of “success on the merits” requires an examination of
12 the underlying substantive claim.¹ Here, there is no enforceable contract for two reasons: (1)
13 there was no bargained-for consideration supporting the promise; and (2) even if there were, the
14 oral agreement has missing or indefinite terms. Gold did nothing more than promise to make a
15 gift. Because the gift was never delivered by Gold to Plaintiff, there is no enforceable promise.
16 See Gold Decl. at ¶ 28. Therefore, there is no probability of success on the merits.

17 **1. Plaintiff’s Story Is Contradicted by the Plain Terms of the Bodog Contract**

18 Before addressing the legal deficiencies of Plaintiff’s claim, the Court should first consider
19 an undisputed factual deficiency that brings the legitimacy of Plaintiff’s claim into serious
20 question. According to Plaintiff, Gold sought Plaintiff’s assistance to fulfill his obligations under
21 the Bodog contract. Plaintiff specifically alleges:

22
23 *Defendant informed Plaintiff that he had a contract with "Bodog"*
24 *a gambling company whereby Bodog was offering Defendant a*
25 *seat in the 2006 World Series of Poker main event provided that*
26 *Defendant secured some celebrities to wear their clothing during*
the World Series of Poker man event. Defendant, aware that
27 Plaintiff had friendship with some entertainment celebrities, entered

28 ¹ Plaintiff’s Complaint alleges Breach of Contract, Misrepresentation, Fraud, Intentional Infliction of Emotional Distress, and Unjust Enrichment. This motion, however, addresses only the Breach of Contract claim as it is the basis for all of the others. Once it fails, the rest do as well.

1 into an agreement with Plaintiff whereby Plaintiff would secure
2 some celebrity figures for Bodog and Plaintiff and Defendant would
3 "share" the seat in the World Series of Poker main event.

4 See Plaintiff's Emergency Motion for Hearing on Motion for Preliminary Injunction at P.5:16-23.

5 Despite Plaintiff's allegations to the contrary, Gold's contract with Bodog did not
6 condition Gold's seat at the WSOP "provided that Gold secured some celebrities to wear" Bodog
7 clothing. The contract, in fact, makes no mention of securing celebrities. Rather, it merely
8 requires Gold to wear the Bodog apparel during the WSOP.

9 The Bodog contract explicitly states what Gold, described in the agreement as "Client,"
10 must do in return for his buy-in to the tournament:

11 Client agrees to appear at and wear pre-approved Bodog branded
12 clothing, jewelry and/or a Bodog hat during the World Series of
13 Poker beginning July 28, 2006, in Las Vegas, NV ("Event") and in
14 any pre-approved interviews associated with the Event which will
15 take place during the same time. Client shall pre-approve all
16 clothing and/or hats that Client wears. Client agrees to wear said
17 items for as long as Client remains playing in the tournament.

18 Additionally Client agrees to take part in the following media
19 activities at the Event:

20 Attend and do Red Carpet Media at the Bodog Party at Tao at the
21 Venetian on July 25, 2006
22 Do interview with Extra at Event.

23 Have photograph taken with Bodog CEO Calvin Ayre.

24 Do video interview with Bodog CEO Calvin Ayre.

25 Bodog Contract attached as Ex. 1. In return for Gold's performing the above task, "Client will
26 receive a \$10,000 buy-in to the World Series of Poker." *Id.* The contract does *not* require Gold
27 to provide celebrities. In fact, the integration clause precludes any other "agreements, proposals
28 or representations, written or oral" including securing celebrities. Simply put, Plaintiff has no
support for his claims.

Similarly, Gold did not seek or otherwise bargain-for the celebrities with whom Plaintiff
promised Bodog sponsorships. Rather, Plaintiff solicited those celebrities in an unsuccessful

1 attempt to secure his own seat through Bodog. Moreover, Gold did not agree to share his seat in
2 return for Plaintiff's efforts to secure celebrities. In fact, Gold did not even discuss sharing his
3 winnings until after Bodog agreed to provide the celebrities a sponsorship. In other words, Gold's
4 promise was not part of a binding contract. It was intended as a gift because he felt sorry that
5 Plaintiff could not participate in the tournament. While Gold previously intended to honor that
6 gift by sharing the winnings, Plaintiff's behavior, including his apparent intent to avoid any tax
7 liability and premature filing of this suit, has now caused Gold to change his intentions.

8 **2. There is No Enforceable Contract**

9 For a contract to be enforceable, Plaintiff must show "an offer and acceptance, meeting of
10 the minds, and consideration." *May v. Anderson*, 121 Nev. Adv. Rep. 67, 119 P.3d 1254, 1257
11 (Nev. 2005) (citing *Keddie v. Beneficial Ins., Inc.*, 94 Nev. 418, 421, 580 P.2d 955, 956 (1978)
12 (Batjer, C.J., concurring)). In *Matter of the Estate of Kern*, 107 Nev. 988, 991, 823 P.2d 275, 277
13 (1991), the Nevada Supreme Court held that negotiations do not constitute a binding contract
14 unless there is something sufficient to "indicate the terms of the contract or provide necessary
15 details." *Id.* If material terms are "lacking or are insufficiently certain and definite," then there is
16 no contract. *Id.*

17 Here, there is neither consideration nor sufficiently certain and definite terms to enforce
18 the contract.

19 **a. There is no consideration to support the contract.**

20 To constitute consideration, a performance or return promise must be bargained for. *Pink*
21 *v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984). A performance or return promise is
22 bargained for if "it is sought by the promisor in exchange for his promise and is given by the
23 promisee in exchange for that promise." *Id.*; *see also Berge v. Fredericks*, 95 Nev. 183, 187, 591
24 P.2d 246, 247 (1979) (adopting test in context of a contract for marriage); *see also* RESTATEMENT
25 (SECOND) OF CONTRACTS § 71(1), (2) (1981). Importantly, past performance cannot be
26 consideration as the promises must bear a "reciprocal relation of motive or inducement: the
27 consideration induces the making of the promise and the promise induces the furnishing of the
28 consideration." RESTATEMENT (SECOND) OF CONTRACTS § 71, cmt b; *see also McMullen v.*

1 *Meijer, Inc.*, 355 F.3d 485, 490 (6th Cir. 2004) (“past consideration cannot serve as legal
2 consideration for a subsequent promise”); *Lantec, Inc. v. Novell, Inc.*, 306 F.3d 1003, 1012 (10th
3 Cir. 2002) (“Generally, past services cannot serve as consideration for a subsequent promise”).

4 Here, Plaintiff’s actions in securing the celebrities to wear Bodog clothing do not form
5 valid consideration. Gold did not seek a promise from Plaintiff to secure the celebrities.
6 Similarly, Gold did not offer to share his seat in exchange for such a promise. In other words,
7 there was no "reciprocal relation of motive or inducement." Plaintiff secured the celebrities in an
8 effort to secure his own seat from Bodog.

9 Even assuming that Plaintiff’s procurement to Bodog of Lillard and Shepherd somehow
10 constitutes a benefit to Gold, it is not enough to create an enforceable contract. Gold did not
11 agree to share any of his winnings with Plaintiff until *after* Bodog bought Gold a seat at the
12 tournament, *after* Plaintiff produced Lillard and Shepherd to Bodog, and *after* Bodog refused to
13 buy Plaintiff a seat at the tournament. Therefore, anything Gold may have said could not possibly
14 have induced Plaintiff to do anything. It was already done, so there was only past action. As
15 explained above, past action does not constitute the consideration necessary to create an
16 enforceable contract. RESTATEMENT (SECOND) OF CONTRACTS § 71, cmt b.

17 **b. The terms of the alleged oral agreement are not definite enough to**
18 **form a valid contract**

19 A valid contract cannot exist when material terms are lacking or are insufficiently certain
20 or definite. *May v. Anderson*, 121 Nev. Adv. Rep. 67, 119 P.3d 1254, 1257 (Nev. 2005). To
21 determine if a contract or its terms are definite, the court must consider whether it can discern the
22 “putative contract’s exact meaning and fix the legal liability of the parties.” *Chung v. Atwell*, 103
23 Nev. 482, 484, 745 P.2d 370, 371 (1987).

24 Here, the Court cannot ascertain the exact meaning and legal liabilities of the parties with
25 Gold's voicemail. Because this is the only evidence presented of an alleged agreement, Plaintiff
26 has failed to show a substantial likelihood of success.² First, the voicemail merely confirms
27

28 ² To date, Plaintiff has not provided Gold with an audio copy of the alleged voicemail message cited by
Plaintiff as his sole evidence of a contract. While Gold believes that he left Plaintiff a voicemail message

1 Gold's intent to make a gift. It makes no mention of Plaintiff's purported consideration. Second,
2 Plaintiff alleges the parties agreed to "share" a seat and winnings in return for his securing of
3 celebrities. See Verified Complaint at ¶ 13. It is unclear whether the "share" Plaintiff believes he
4 is entitled to is before taxes, expenses, and tips. While Plaintiff now interprets the promise as
5 such, Gold strongly disagrees. Gold intended to deduct all expenses associated with the
6 tournament, including associated expenses, tips, reimbursement to Bodog for the stake fee (as his
7 contract required), and taxes. Gold's voice message even confirms his intent regarding taxes --
8 "after taxes." See Plaintiff's Emergency Motion for Hearing on Motion for Preliminary
9 Injunction at P.7:11.

10 **3. Gold's Statements Were an Offer of a Gift That Ultimately Went**
11 **Undelivered**

12 In Nevada, a gift is defined as "the voluntary transfer of money or property by one to
13 another, without any consideration or compensation therefore." *Simpson v. Harris*, 21 Nev. 353,
14 31 P. 1009, 1011 (1893); see *Olk v. United States*, 536 F.2d 876, 877 (9th Cir. 1976) (recognizing
15 Nevada's common law definition of a gift as "a voluntary executed transfer of his property by one
16 to another, without any consideration or compensation therefore"). To make a gift valid, "the
17 transfer must be executed." *Simpson*, 31 P. at 1011; see also *Stockgrowers' & Ranchers' Bank of*
18 *Reno v. Milisich*, 52 Nev. 178, 283 P. 913, 915 (1930) (delivery is "an essential element of a gift
19 inter vivos"); *Edmonds v. Perry*, 62 Nev. 41, 61, 140 P.2d 566, 575 (1943) (there is no gift until
20 the donor transfers the gift to the "donee's exclusive dominion and control, an essential element
21 of a gift inter vivos.")

22 Here, Gold did not deliver any money to Plaintiff. See Gold Decl. at ¶ 28. Instead, Gold
23 revoked the gift. In other words, there was no obligation to pay Plaintiff any money. Simply put,
24 Plaintiff cannot enforce the promise to make an undelivered gift.

25 Therefore, Plaintiff cannot show a high likelihood of success on the merits because the
26 merits are that the Plaintiff seeks to enforce an undelivered gift. The law is clear that a gift is not

27
28 on or about the time alleged in the Verified Complaint, Gold does not remember the exact language used,
and reserves his right to challenge Plaintiff's transcription after hearing the message.

1 enforceable unless delivered. Plaintiff attempts to categorize it as a contract to avoid that
2 problem. However, the lack of consideration and the lack of certain terms defeat the contract
3 claim as well. Thus, if there is any probability of success, it is slight and not enough to justify
4 maintaining the preliminary injunction.

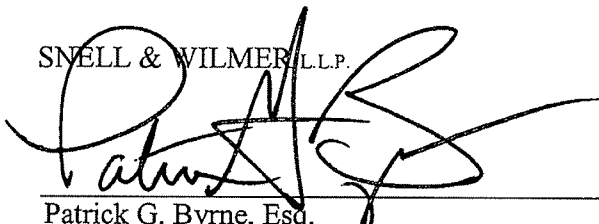
5 **CONCLUSION**

6 Because the Plaintiff will not suffer irreparable harm and has a very low likelihood of
7 success on the merits, this Court should dissolve the preliminary injunction.

8 Dated: November 1st, 2006.

9
10 SNELL & WILMER LLP.

11
12 By:


13 Patrick G. Byrne, Esq.
14 Nevada Bar No. 7636
15 Corey M. Eschweiler, Esq.
16 Nevada Bar No. 6635
17 Alex L. Fugazzi, Esq.
18 Nevada Bar No. 9022
19 3800 Howard Hughes Parkway, Suite 1000
20 Las Vegas, Nevada 89169
21 Attorneys for Defendant Jamie Miles Gold
22
23
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Snell & Wilmer

LLP
LAW OFFICES
3800 HOWARD HUGHES PARKWAY, SUITE 1000
LAS VEGAS, NEVADA 89169
(702)784-5200


CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT'S MOTION TO DISSOLVE
PRELIMINARY INJUNCTION; AND REQUEST FOR IMMEDIATE HEARING**

was filed on the 1st day of November, 2006, and the following persons received copies via
United States District Court Electronic Filing:

David Z. Chesnoff, Esq.
Richard A. Schonfeld, Esq.
CHESNOFF & SCHONFELD
520 South Fourth Street
Las Vegas, NV 89101

Walt Cannon, Esq.
RAWLINGS, OLSON, CANNON,
GORMLEY, DESRUISSEAU
9950 W. Cheyenne Ave.
Las Vegas, NV 89129


An Employee of Snell & Wilmer L.L.P.

Snell & Wilmer

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Exhibit A

**DECLARATION OF JAMIE GOLD IN SUPPORT OF
MOTION TO DISSOLVE PRELIMINARY INJUNCTION**

I, JAMIE GOLD, declare as follows:

1. I am the named Defendant in this case.
2. I have personal knowledge of the facts referred to in this affidavit, except for those stated upon information and belief. As to those facts, I believe them to be true. I am competent to testify to these facts if called upon to do so in a court of law.
3. On July 13, 2006, I entered into an exclusive client services agreement with Riptown.com ("Bodog"). Bodog wanted me to play in the World Series of Poker because of my poker skill and prior tournament wins.
4. Bodog required me to wear its clothing and participate in several media events in exchange for receiving a \$10,000 buy-in to the World Series of Poker. In other words, Bodog paid for my "seat" at the tournament.
5. I was not required to secure celebrities as part of the contract.
6. In early July 2006, I met Plaintiff, Bruce Crispin Leyser. We were introduced through his wife, who I met at a poker tournament. We talked about some of Leyser's reality TV concepts. During the course of this conversation, it became apparent that Leyser was interested in securing employment with my company. Repeatedly, Leyser stated that he had no source of income to pay rent on his California home and was about to lose his home in Britain. He then asked to be a part of my production team. I asked him to forward a resume with his production experience. He did.
7. After finding out that we had some things in common, *i.e.* show business and a love of poker, I told Leyser of my relationship with Bodog.

8. There was no discussion of sharing my seat at the World Series of Poker or sharing any winnings.

9. Leyser suggested he could procure celebrities to wear Bodog gear during the tournament. Specifically, Leyser said that he could secure Matthew McConaughey and Matthew Perry to participate in the World Series of Poker. I told Leyser I believed that, if he could secure McConaughey and Perry, that Bodog might pay for Leyser's seat in the World Series.

10. I believe that the Plaintiff was trying to impress me in order to market his ideas or secure employment with my production company and that he hoped he could secure his own seat through Bodog.

11. Leyser did not secure the stated celebrities. Instead, he secured Matthew Lillard and Dax Shepard.

12. I told Leyser that producing Lillard and Shepard would not get Leyser a Bodog purchased seat to the tournament.

13. Leyser could not afford his own seat and was very disappointed. I also felt bad that Leyser could not participate.

14. I then expressed a desire to take care of Leyser by sharing a portion of my winnings. I did not mean that he would receive fifty percent of the winnings or that he was "sharing" my seat.

15. I simply intended to make a gift to Leyser if I were to win any money because I felt bad for Leyser.

16. Over the course of the tournament, Leyser demonstrated his true colors.

17. Leyser harassed me through demanding and distracting phone calls and text messages. These calls/messages were almost hourly and happened while I was at the poker tables.

18. During the tournament, Leyser asked me to document an agreement to pay half of my winnings. I refused because no such agreement existed.

19. Then, after it appeared I would win a substantial sum of money, Leyser and his wife traveled to the World Series of Poker and began to spread rumors that I owed him half of my winnings.

20. The speculation and innuendo swirled until the time of the final table.

21. Finally, after continued phone calls, I left Leyser a message that he would get “half after taxes.”

22. This was not a confirmation of any agreement but a confirmation of my intention to take care of him.

23. At the time of the call, I just wanted to focus on playing poker and winning the tournament. I did.

24. Immediately following my win, Leyser increased his harassment. This included a multitude of calls from Leyser and his attorneys and other professionals.

25. After my win, I did not collect any of the prize money even though I had the opportunity to collect the \$12 million immediately after my win. Instead, I wanted to evaluate the tax issues and expenses before receipt or distribution of the funds.

26. In the end, Leyser refused anything other than \$6 million, effectively refusing to accept that his gift should be reduced for any of the taxes or expenses incurred.

27. Leyser did not even want the customary tip the winner provides to the dealers at the final table to come out of his “gift.”

28. I have turned no money over to Leyser. While we were attempting to analyze the tax issues and while the Rio still retained all of the prize money, he sued me.

29. I have collected \$6 million of my \$12 million in winnings from the Rio Hotel & Casino. The remaining \$6 million is still in the Rio's custody.

EXECUTED THIS 30th day of October, 2006 at Los Angeles, California.



JAMIE MILES GOLD

//

Exhibit 1

09/12/2006 15:07 FAX 18887432289

AGREEMENT

This Professional Services Agreement (the "Agreement") dated July 13 is between Riptown.com Media S.A. ("Riptown") at Ejecutivo La Sabana, Edificio 7, 5 Piso San Jose, Costa Rica and *(insert name of agent here)* _____ for services of JAMIE GOLD ("Client").

Services

Client agrees to appear at and wear pre-approved Bodog branded clothing, jewelry and/or a Bodog hat during the World Series of Poker beginning July 28, 2006, in Las Vegas, NV ("Event") and in any pre-approved interviews associated with the Event which will take place during the same time. Client shall pre-approve all clothing and/or any hats that Client wears. Client agrees to wear said items for as long as Client remains playing in the tournament.

Additionally Client agrees to take part in the following media activities at the Event:

Attend and do Red Carpet Media at the Bodog Party at Tao at the Venetian on July 25, 2006

Do interview with Extra at Event.

Have photograph taken with Bodog CEO Calvin Ayre.

Do video interview with Bodog CEO Calvin Ayre.

In consideration of the opportunity afforded the Client to participate, perform or appear in, to appear in an interview for and/or to provide materials for the Event, Client hereby irrevocably grants to Riptown, its successors, assignees and licensees, the following rights throughout the world in perpetuity (the "Rights"):

(i) the unlimited right to portray Client, and to use Client performance, appearance, interview, name, words, voice, likeness and any musical, instrumental and/or sound effects produced by Client (the "Appearance") and to use any information, material and/or records in any form (including photographs, films, tapes, recordings, notes and documents, etc.) owned or furnished by Client (the "Material") in the Production or any film, television, video disk, CD-ROM (whether or not interactive) or any other form of audio-visual production (the "Picture"), including any versions or translations thereof; (ii) the unfettered right to photograph, film, record and reproduce the Appearance and/or the Material, in whole or in part, by any means now known or hereafter devised, including the right to edit, modify, add to, juxtapose and combine the Appearance and/or the Material in any combination or sequence with or without other material prepared by others and the right to delete any part of the Appearance and/or the Material for use in the Picture; (iii) the right to sell, exhibit, transmit, manufacture, telecast, broadcast, distribute and otherwise commercially-exploit all or any part of the Appearance, the Material and/or the Picture in any and all manner, media, formats, and markets now known or hereafter devised, including but not limited to the following, all forms of television, home video, videodisc, digital video disc (DVD), and all forms of multimedia, interactive or otherwise and to license others to do any of the foregoing for a period of two years from the date of my signature on this Consent/Release; (iv) the right to sell, exhibit, transmit, manufacture, telecast, broadcast, distribute and otherwise commercially-exploit all or any part of the Appearance, the Material and/or the Picture on the Internet and the Producer's

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websites in perpetuity and (v) the right to use the Appearance and/or the Material, in whole or in part, in connection with advertising or publicizing the Picture.

Compensation

For providing the services noted above, Client will receive a \$10,000 buy-in to the World Series of Poker in Las Vegas, NV, round trip airfare from a US origin city to Las Vegas, accommodations at the Wynn Hotel, and ground transportation to and from the airport, as well as to and from World Series of Poker and events and the Bodog party on July 25, 2006. Accommodations will be provided beginning on July 25, 2006, provided Client attends the Bodog party on that date. Accommodations are provided for as long as Client remains playing in tournament. If the Client should win at the tournament event, Client shall keep all winnings above \$10,000, the first \$10,000 of winnings shall be returned to Bodog.

If the Event is cancelled or Client is not able to fulfill their obligations at the Event, any payments will be forfeited.

Materials Provided

Riptown shall provide the Client with Bodog branded clothing, jewelry and/or a hat to be visibly worn during the Event and any pre-approved interview associated with the Event. Clothing shall be worn at the Event only, and Client shall be entitled to retain all clothing provided. It is acknowledged that wearing a Bodog hat is deemed satisfactory compliance with the terms hereof.

Taxes

Client is responsible for reporting all earnings resulting from this agreement and for paying any taxes due on these earnings.

Confidentiality

Except as legally required, and except for Client's representatives, Client agrees not to disclose any details about the business terms or compensation received for the services provided under this Agreement.

Relationship Between Parties

Riptown and the Client are independent parties; nothing in this Agreement shall be construed to create a partnership, joint venture, employee or agency relationship between the parties.

Authority to Enter into Agreement

Each party to this Agreement has the authority to enter into and form this Agreement. Each party acknowledges that they have read this Agreement and will abide by it.

Force Majeure

Neither party will be considered to be in default of this agreement as a result of events beyond their control. For purposes of this Agreement, such acts shall include, but are not limited to, acts of God, catastrophe, or other "force majeure" events beyond the parties' reasonable control. Riptown shall defend indemnify and hold harmless Client from and against any and all claims and/or liabilities arising out of the Client's performance hereunder.

Assignment of contract

Client may not assign his responsibilities for performance under this Agreement. Riptown may not assign this Agreement without Client's prior written consent.

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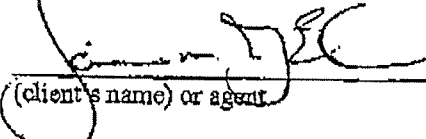
Governing Law

The governing law for this Agreement shall be those of the province of British Columbia. All claims, demands, or disputes of any kind between the Parties arising under or related to this Agreement shall first be submitted to mediation before a single mediator selected by the Parties. If, after Thirty (30) days after such mediation has been initiated, the dispute has not been resolved to the satisfaction of both Parties, the Parties shall then submit the dispute to binding arbitration conducted in the English Language in a mutually agreed-upon location under the rules of the International Arbitration Centre. Each Party shall select an arbitrator, after which the arbitrators selected by each Party shall select a third arbitrator. Any award from the panel of arbitrators shall be conformable in any court of competent jurisdiction and shall be entered as a judgment enforceable by the prevailing Party. Any award from the panel of arbitrators shall include an award of reasonable attorney's fees and costs to the prevailing Party.

Entire Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.

AGREED and ACCEPTED: JAMIE GOLD



(client's name) or agent

7/13/06

Date

Riptown Media S.A.

Date

Exhibit 2

bodog.com

TEAM BODOG ARTICLES

JAMIE GOLD MAKES WSOP HISTORY BY JAKE GOSSELIN

Jake Gosselin is a Contributing Writer for Bodog Nation

Jamie Gold did what was thought of as the impossible. He maintained a chip lead at the World Series of Poker Main Event from Day 4 all the way to the bracelet - a week long stretch that crowned him champion.

If someone had done this back in 1992 it would've been amazing, but now, with a record field of 8,773, it is truly an accomplishment for the ages.

Gold, a television producer from Malibu, Calif., amassed a commanding chip lead starting on the third day when he ended with \$3.7 million in chips. He went on to maintain his lead and ended each subsequent day as the chip leader. An amateur sponsored by Bodog.com, Gold sat down at the final table with a whopping lead of \$8.88 million on his nearest competitor.

Gold capitalized on his chip lead in every sense. The final table lasted 14 hours and he eliminated seven of his eight opponents, including top poker pro Allen Cunningham.

On becoming the 2006 WSOP Champion Gold stated, "I won because of the blueberries." Gold was alluding to the fact that he had been seen with a bowl of blueberries on everyday he played. He had eaten blueberries before his first day of play and didn't want to jinx himself by changing anything. So superstition told him blueberries it was, all the way to the championship.

If someone had done this back in 1992 it would've been amazing, but now, with a record field of 8,773, it is truly an accomplishment for the ages.

In an effort to stir the pot, Gold suggested in an interview with Bodog Nation that he might consider throwing the final table in order to escape the burden of fame.

After his victory early Friday morning at the Rio Casino & Resort,

comments.

"No," Gold asserted. "No way. I wanted to win really bad. That's why I went after everybody the way that I did." He added: "At one point it just hit me. I realized, the accomplishment meant a lot to me and from that point on, I knew I had to win it."

The big moment came after a \$1.7 million pre-flop raise by Paul Wasicka was called by Gold. The flop came Q/8/5 and Wasicka bet \$1.5 million. Gold moved all in and Wasicka, after much contemplation, called. Wasicka turned over pocket 10s to which Gold answered with Q/9, giving the Team Bodog player top pair. The turn was an Ace, the river was a 4, and the bracelet was Gold's.

I wanted to win really bad. That's why I went after everybody the way that I did.

Gold's buy-in to the Main Event was picked up on a hunch by Team Bodog, which saw his skills and knew of his recent success.

"Jamie came to us through our Hollywood connections," said Calvin Ayre, Founder of Bodog.com. "We knew he was a good player with some impressive tourney results and that he was coached by Johnny Chan. We thought he'd be a strong competitor but an amazing run like this one we really can't call, we did see his potential though."

More than 500 players qualified to the various WSOP tournaments by playing poker online at Bodog.com. Gold was among the 400 Team Bodog players participating in the Main Event. Originally from Paramus, N.J., the 36-year-old former agent quit six months ago and is now the head of production at Buzznation, a branded entertainment media and production company based in Los Angeles. Gold is currently in development on a branded reality television series.

An avid poker player, Gold is the son of a poker playing mother, and the grandson of a gin champion. Gold plays close to 40 hours a week in Los Angeles-area card rooms and in the 15 months prior to the WSOP had earned just under \$100,000 in tournament winnings. Gold has also had the opportunity to learn from one of the game's biggest legends - 10-time WSOP bracelet-holder Johnny Chan. The two men met while working together on a poker television concept. In exchange for Gold's assistance, Chan promised to help him refine his game.

Gold had all the support he needed to win with both his mother and Chan at the WSOP cheering him on throughout the entire final table,. "He believed in me," Gold said. "He told me I could win this."

But even with his poker pedigree and legendary mentor nearby, the person who was the source for Gold's strength and motivation

**More Articles from
Team Bodog**

[Jamie Gold speaks](#)

[Team Bodog
welcomes the force](#)

Jamie Gold makes
WSOP history

[Team Bodog stands
tall at the WSOP](#)

[WSOP: Team
Bodog makes some
noise](#)

throughout the two-week tournament could not be in Las Vegas to watch him make history.

Gold's father, Dr. Robert Gold, has ALS, better known as Lou Gehrig's Disease, which makes him immobile. According to Gold, the money he has won at the Main Event will go toward making his father as comfortable as possible.

"He's not well and unable to travel," said Gold of his 76-year-old father, "This is all for him."

-Jake Gosselin

Exhibit 3

Copyright 2005 National Public Radio (R)
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National Public Radio (NPR)

SHOW: Day to Day 4:00 AM EST NPR

May 3, 2005 Tuesday

LENGTH: 1416 words

HEADLINE: Los Angeles couple plays online poker to pay the rent

ANCHORS: ALEX CHADWICK

REPORTERS: KEVIN ARNOVITZ

BODY:

ALEX CHADWICK, host:

You have met a couple here that you've turned into a story on how people get involved with this and what happens to them. Tell us about these people.

KEVIN ARNOVITZ reporting:

I host a casual Wednesday night poker game and this couple are frequent attendees, and I found out they were playing a lot of poker online, and I went to their house to watch them in action.

Mr. **CRISPIN LEYSER**: I've got nothing. I'm down to nothing. That ace-king against ace-two absolutely killed me, and...

Mrs. **JULES LEYSER**: How much was it for him to call that?

Mr. **LEYSER**: He went all in.

ARNOVITZ: It's Thursday morning. In a house perched over Laurel Canyon, **Crispin** and **Jules Leysler** are hard at work on their matching titanium laptops. But even though this is Los Angeles, the casually elegant husband and wife team aren't pecking away on their latest screenplay. They're playing poker online.

(Soundbite of computer bell)

Mr. **LEYSER**: I'm playing a single table tournament and I've actually bought in for \$100. So there's 10 players here. Each of them have staked \$100. The first place will win \$500, second place will win \$300 and third place will win \$200.

ARNOVITZ: Jules is a writer and actress and **Crispin** a creative executive. But the film production company **Crispin** worked for lost its funding last summer, and Jules experienced her first brief dry spell in recent years. Faced with a hefty monthly rental atop the Hollywood Hills and irregular work in the entertainment industry, the couple began playing poker as their primary income.

Mr. **LEYSER**: I think it's about 3 1/2 thousand dollars a month.

Mrs. **LEYSER**: I mean, obviously, it's not the same amount every month, because it's poker and it's a game and it's not something you can control. But, you know, our rent is \$2,500 a month and we've covered that by poker since last August.

ARNOVITZ: The Leysers aren't professional poker players. They picked up the game a few years ago in London and have sharpened their craft by reading game theory and by playing in competitive home

10/14/2006

Mrs. LEYSER: Now I've guaranteed myself a payout.

ARNOVITZ: Along with the relaxed dress code that allows you to work in pajamas, another benefit to playing online is that you can still pursue your day job, so to speak.

Mr. LEYSER: He's folded. I'm only going to put a minimum bet out there. There's the phone. And of course this is what happens in the middle of the game, you get a work call.

(Soundbite of phone conversation)

Mr. LEYSER: Hi, this is **Crispin**. Yeah. That's right. Yeah. Sure. Yeah. That's not a problem. Yeah.

ARNOVITZ: Even as **Crispin** cradles the telephone receiver as he sets up a meeting for a prospective project, he's still able to multitask, keeping his eyes squarely on the monitor and raking in a big pot.

Mr. LEYSER: I took two people out and I'm now guaranteed money.

ARNOVITZ: All right! So we have two people in the money.

Before they can finish breakfast, Jules and **Crispin** both manage to make money for a first- and third-place finish, respectively.

Mr. LEYSER: Not a bad wage.

Mrs. LEYSER: Well, it's not terrible.

Mr. LEYSER: We didn't even have to leave the house or anything.

CHADWICK: And we're back in the studio with Kevin Arnovitz.

So, Kevin, how much did **Crispin** and Jules make on that morning that you spent with them?

ARNOVITZ: Well, just that morning they made 180 bucks. And I just checked in with them and over the past two weeks they're up \$4,500. Their winnings, Alex, have actually gotten them some attention. The World Poker Tour, apart from their poker show on the Travel Channel, and their tournament of top players, also has licensed a boot camp, and the WPT, as they're called, has hired the Leysers to speak to novices about playing online during their seminar series. So they're teaching things similar to what you just heard on the piece, like luring opponents into making big bets.

CHADWICK: So who's actually behind these online games? Is this casinos who are doing this?

ARNOVITZ: No, the online poker world is a little bit shady. Most of these companies are run offshore in places like South Africa or Gibraltar. But the casinos have tapped in in another way. They frequently give seats to their big poker tournaments to online winners. And the same goes for the World Poker Tour, which reserves seats for online winners as well.

CHADWICK: And as for **Crispin** and Jules, they're looking to cross over into non-virtual tournament play, as you say. They're doing the seminars on how to play?

ARNOVITZ: The WPT has hired them to do some of the weekend seminars, but aside from playing in

neighborhood games, they've made it clear to me they're still pursuing their careers in Hollywood. But for now, it's nice to be able to make ends meet through a hobby that they thoroughly enjoy and one they're awfully good at.

CHADWICK: It's a hobby, but it would just scare the daylights out of me to be thinking I'm betting the rent money here on what is still a game of chance.

ARNOVITZ: There's an adage that says that it is a hard way to make an easy living, but Jules and **Crispin** are what we call high-percentage players. They don't take silly risks. They maximize their potential in each hand. They don't chase, which is a term for sort of...

CHADWICK: Throwing good money after bad.

ARNOVITZ: Precisely. And as a result, over time, percentages say they will make a reasonable amount of money if they stick around long enough. And that's proven true over the last year.

CHADWICK: So you're a poker player. You like the game. Seeing them in action, does this persuade you, 'Hey, online, I can get in there, I can make a lot of money, and why not?'

ARNOVITZ: Well, the evening after I recorded the story, I went home and registered for a poker site. And for the two weeks following, I made a moderate amount of money. But I found that it ate so much into my social life and professional life that I had to uninstall the software, and I no longer allow myself to even link to an online poker site.

CHADWICK: Kevin Arnovitz, a writer and player here in Los Angeles.

Kevin, thank you.

ARNOVITZ: Thank you.

CHADWICK: I'm Alex Chadwick. DAY TO DAY continues.

Exhibit 4

-----Original Message-----

From: Crispin Leyser <crispinleyser@yahoo.co.uk>
To: jmgmalibu@aol.com
Sent: Sat, 8 Jul 2006 01:38:20 -0700
Subject: Hi

Hi Jamie,

Great to meet you today and really looking forward to dinner tomorrow night. I'll call you in the morning (but not early) to

10/14/2006

check that you received this, so that you can e-mail me the info.

FYI, I enclose my resume. Hope the poker gods have been treating you well.

Best

Crispin
crispin@crispinleyser.com
323 377 9205

Check out AOL.com today. Breaking news, video search, pictures, email and IM. All on demand.
Always Free.

CRISPIN LEYSER

2350 Hermits Glen, Los Angeles, CA 90046

T: (323) 656 8384 C: (323) 377 9205

crispin@crispinleyser.com

Agent: Ra Kumar – KSGB Agency, 323 653 4483

2006- **Freelance Development Executive**

Devising, writing, pitching & Producing original alternative programming, including...

Mongols MC – Reality Docu-drama, optioned by Reveille

Snoop Dogg, Lord of The Manor- Reality Sitcom optioned by 20th Century Fox

Bluff or Bust – Quiz show with a poker format optioned by SVP

ALSO **V/O Producer and Poker Consultant for Bravo's Celebrity Poker Showdown 2006** I am writing a novel entitled, "Pot, Poker & Porn" which has been optioned by Venture Lit. Agency in NYC.

I'm an instructor for **World Poker Tour Boot Camp** and regular columnist for **Bluff Magazine**. My wife and I run a private poker tuition business in Los Angeles, www.PokersPairOfAces.com

2003- **Executive VP Development, Formats & Entertainment,**

2005 **US/UK, September Films**

Responsible for all US & UK creative affairs for this International Television Production and Distribution Company.

Executive Producer **Britain's Wildest** (8 x 60 SKY ONE), & **Men In Frocks** (6 x 60 SKY ONE)

Created, wrote & Executive Produced **Instant Weddings** for Lifetime, and **America's Trashiest Weddings** for Fox.

Managed the Development Team in the US and liaised with September International re: overseas sales.

2002 **Series Producer, Endemol UK**

Responsible for all aspects of production on a new £5 million 150-episode Channel 4 quiz series 'Beat The Nation'...

Including format, casting, set design, music and interactive elements.

2002 **Commissioning Editor, Channel 4**

Working for this major UK Broadcaster, I oversaw the creation of their first new quiz shows in over 10 years.

Wrote development objectives, briefed companies and invited pitches

Commissioned 3 new pilots, working closely with the companies on formats and casting, interactive ideas etc in order to meet objectives. Two of the three projects **Grand Slam & Beat The Nation** went to series.

Shared editorial, legal and compliance viewing for **Richard & Judy** (live show), **A Place In The Sun** and **15-1** as well as working with the department team on other new commissions.

2001 **Head of Comedy & Entertainment, Ronin Entertainment**
Senior Development Executive for a new European Independent Production Company

Managing Production teams in NYC & London, I developed and produced **The People of New York Vs Jerry Sadowitz**.

Series Produced **The Jerry Atrick Show** - short-listed for the Montreux TV Festival Comedy Award.

Devised many formats that went to air, including **Beat The Bishop**, a panel game sold to European Markets & **We'll Meet Again** for the BBC.

Discovered and developed many new writer/performers who went on to secure Network Series.

1998- **Producer, Granada Television**
2000 *SHOW RUNNER of many network series for this leading UK production entity*

Devised and scripted **Mission Improbable**, an improvised filmmaking comedy show for Channel 5.

Oversaw production of **Ex-Rated**, a gameshow for ex-couples on Channel 5.

Managed an 8-city roadshow production of hit series, **The People Vs Jerry Sadowitz** for Channel 5. Short-listed for Montreux Festival..

Produced "**We're On Our Way To Wembley**, FA Cup final celebrity quiz for ITV.

1995- **Development Prod. LWT & Paramount Comedy Channel**
1997 *Responsible for show development and discovering new talent.*

Co-Produced **Asylum**, a cult series mixing sitcom, stand-up & music, bringing together Simon Pegg & Edgar Wright who went on to star and direct the cult hit movie **Shaun of the Dead**.

Produced and script edited **Saturday Live** for ITV.

Produced **The Big Snog**, World AIDS Day Special for Channel 4.

Developed and Produced projects for major talent including **Bill Hicks, Steven Wright, Eddie Izzard, Steve Coogan and Graham Norton and Richard Curtis**.

EDUCATION BSc Social Psychology, London School Of Economics, 1989

REFERENCES Janey Walker (Managing Editor, Channel 4 TV)
Alan Winters (Lions Gate TV)

Exhibit 5

-----Original Message-----

From: Crispin Leyser [mailto:crispinleyser@yahoo.co.uk]
Sent: Monday, July 10, 2006 5:19 PM
To: jmgmalibu@jamiengold.com
Cc: mark@buzzmarketing.com; Jeff Greenfield
Subject: TV Proposal

Hi Guys,

Please find enclosed 4 ideas for the current TV brief.
They are all no more than a page and a half at this point but naturally can be developed into a full treatment upon request or adapted further to suit your needs.

The 4 ideas are -

ONE WEEK TO...
MRS ROBINSON
STEALING YOUTH

all of which I discussed with Jamie. I also include one other, MANEATERS, which may fit

the bill.

Talk to you soon.

Best

Crispin

One Week To....

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One-Liner

'One Week To...' is a new reality show in which we help everyday Americans through personal crises and big life occasions – in just one week.

How it Works

Open auditions are held in Dallas, Miami, Chicago, Toronto, New York and Los Angeles for members of the public to come and plead for help from our panel of judges.

The auditions will be filmed (a la early rounds of American Idol) and we will show a mix of the worthy and decidedly unworthy requests for help.

The common theme of the requests is that whatever they are asking for is going to have a one-week time frame. The kinds of things we will select are people who have one week to...

- Plan a surprise party for someone they love
- Lose 10lbs for their wedding
- Find a date for a school reunion
- Raise \$50,000 to save the local school
- Find a new job
- Save my relationship

It'll be aspirational goals that women can relate to, involving life-changing events usually with an aspect of personal physical, mental or emotional transformations.

The Judges/Panel

There's a few options on who the judges are and who the people who carry out the 'One Week' makeover are.

