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Without oral argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

GEOFF TATE and SUSAN TATE, a married couple,

Plaintiffs,

v.

EDDIE JACKSON and TERESA GOLDEN-JACKSON, a married couple; SCOTT ROCKENFIELD and MISTY ROCKENFIELD, a married couple; MICHAEL WILTON and KERRIE LYNN WILTON, a married couple; TRI-RYCHE CORPORATION, a Washington corporation; QUEENSRYCHE MERCHANDISING, INC., a Washington corporation; and, MELODISC LTD., a Washington corporation,

Defendants.

NO. 12-2-21829-3 SEA

PLAINTIFFS' MOTION TO CONTINUE TRIAL DATE AND AMEND CASE SCHEDULE

I. RELIEF REQUESTED

Plaintiffs Geoff and Susan Tate (the "Tates") respectfully request the Court continue the November 18, 2013 trial date by at least 180 days, with all remaining pre-trial dates in the Order Setting Civil Case Schedule reset accordingly. The Tates request a minimum 180-day

1 continuance to provide sufficient time for the parties to continue active settlement
2 negotiations without incurring substantial trial preparation costs and, if such efforts fail, to
3 provide sufficient time to complete discovery and properly prepare for what will be a very
4 lengthy trial. A proposed amended case schedule is attached as **Exhibit A** to the Declaration
5 of Joshua Brower in Support of Plaintiffs’ Motion to Continue Trial Date and Amend Case
6 Schedule (“Brower Decl.”).
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8 **II. STATEMENT OF FACTS**

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10 Geoff Tate (“Mr. Tate”), along with the drummer, bassist, and guitarist, defendants
11 Scott Rockenfield, Eddie Jackson, and Michael Wilton (“Defendants”), and Chris DeGarmo,
12 (“Mr. DeGarmo”) founded the heavy metal band Queensryche more than 30 years ago.
13 Declaration of Geoff Tate in Support of Plaintiffs’ Motion to Continue Trial Date and Amend
14 Case Schedule (“Tate Decl.”), ¶¶ 2-4. Through it all, Mr. Tate was the voice and face of
15 Queensryche. *Id.* ¶¶ 6-11. He was the lead singer and the band’s most prolific songwriter.
16 *Id.* ¶¶ 2-6. Of the 145 songs released by Queensryche, Mr. Tate wrote 117; or 81 percent of
17 them. *Id.* ¶ 6. And he was always out promoting the band, its records, and its concerts. *Id.* ¶
18 11. Due to Mr. Tate’s leadership, Queensryche was a very successful band; it toured the
19 world and released over 12 albums that have sold between 25 and 30 million copies. *Id.* ¶ 6.
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22 Over time, the band formed three companies to conduct various aspects of its business,
23 Tri-Ryche Corporation, Melodisc Ltd., and Queensryche Merchandising, Inc. (collectively,
24 the “Queensryche Companies”). *Id.* ¶ 7. After Mr. DeGarmo left the band in 1998, the
25 remaining four original members of Queensryche owned 25 percent of each of the
26 Queensryche Companies. *Id.* ¶ 8. Mr. DeGarmo’s departure also marked a turning point for
27 the Defendants’ involvement in the business of Queensryche. *Id.* ¶¶ 9-11. They became less
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1 and less involved in writing music, performing on albums, and in the day-to-day operations
2 and management of Queensryche and the Queensryche Companies. *Id.* ¶¶ 9-11. While Mr.
3 Tate had always been the voice and face of Queensryche, he began to take on an ever-
4 increasing role in media relations, interviews, and press appearances. *Id.* ¶ 11. This lack of
5 interest by the Defendants culminated in no-shows during the recording of several of the
6 band's last albums, which forced the band to hire studio musicians. *Id.* ¶ 10.

8 Over the years, the Defendants grew increasingly resentful of Mr. Tate's de facto
9 leadership role in the band and the royalty income he derived from his contributions to
10 Queensryche's albums. *Id.* ¶ 11. After years of apathy and acquiescence to Mr. Tate's
11 stewardship of Queensryche, the Defendants entered into 2012 with the intent to take control
12 of the Band and the Queensryche Companies. Defendants' Answer and Counterclaim,
13 Docket # 91, p. 9, ¶ 5. The Defendants' first move was an attempt to replace the existing in-
14 house merchandising operations with what proved to be an expensive outside vendor. Tate
15 Decl. ¶ 14. After Mr. Tate, and the Band's accountant and attorney, Neil Sussman, pointed
16 out this was a bad deal, the Defendants held a meeting of the shareholders and directors of the
17 Queensryche Companies without giving proper notice to Mr. Tate, who has always been an
18 officer and director of the Queensryche Companies. *Id.* ¶¶ 14-15. At that meeting, the
19 Defendants decided to fire the in-house merchandising director, Mr. Tate's daughter, Miranda
20 Tate, and also terminated the band's long time manager, plaintiff Susan Tate. *Id.* ¶ 15. The
21 Defendants knew these moves would be not be well received by Mr. Tate, in part due to the
22 firing of his family members, but also because the replacements for each position would cost
23 the band more money. *Id.* For instance, Mrs. Tate, as manager, earned five percent of gross
24 income while any new manager would command the industry standard of 15 percent. *Id.*

1 On April 14, 2012, before a concert, the band held an emergency shareholders and
2 directors meeting in Sao Paulo, Brazil. *Id.* During the meeting, the Defendants informed Mr.
3 Tate that they had fired his wife and his daughter at the improperly noticed shareholders and
4 directors meeting. *Id.* When the Band took the stage to prepare for the show, Mr.
5 Rockenfield told Mr. Tate that, “I fired your wife, I fired your daughter and your son-in law,
6 and you’re next.” *Id.* ¶ 16. Mr. Tate responded angrily to the provocation and got physical
7 with Mr. Rockenfield and Mr. Wilton. *Id.* The band went on to the play the concert and
8 another two before the Defendants informed Mr. Tate that they voted to kick him out of the
9 Band and the Queensryche Companies. *Id.* ¶¶ 16-17.

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12 Mr. Tate filed the Complaint that started this suit on June 22, 2012 asserting various
13 causes of action related to the conduct of the Defendants. *See* Docket # 1. Shortly thereafter,
14 the Tates filed a Motion for a Preliminary Injunction arguing, in part, the Defendants’ touring
15 as Queensryche would devalue the name and brand. *See* Docket # 18. The Court denied the
16 motion for an injunction, stating both camps could use the brand and name during the
17 pendency of this matter. *See* Docket # 75; Brower Decl. ¶ 3. In October, 2012, Defendants
18 filed a “motion for summary judgment” that was, for intents and purposes, a back-door
19 attempt to obtain an injunction barring Mr. Tate from touring under the name Queensryche.
20 *See* Docket # 95. The Court denied that motion, again asserting both camps could use the
21 brand and name during the pendency of this matter. *See* Docket # 115; Brower Decl. ¶ 3.

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24 Following the summary judgment hearing, Defendants’ counsel told Plaintiffs’
25 counsel that they would make a settlement offer to resolve this matter. Brower Decl. ¶ 4. No
26 such offer was made until late July, 2013, nearly nine months later. *Id.* Despite this, the
27 parties are presently engaged in settlement negotiations, with the Tates currently formulating
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1 a response to Defendants' offer. *Id.* The Tates also have suggested mediation in September.
2 *Id.* The Defendants have not yet indicated a willingness to participate in the mediation. *Id.*

3 The Tates sent the Defendants a first set of discovery requests on April 3, 2013. *Id.* ¶
4 5. Defendants were late in propounding their initial Answers and Responses, which were not
5 received until May 23, 2013. *Id.* At that time, Defendants produced hundreds and hundreds
6 of hard copies of documents along with electronic copies of hundreds and hundreds of emails,
7 most of which was not organized by response to Plaintiffs' Requests for Production and were
8 not Bates stamped. *Id.* In other words, Defendants produced a mountain of unorganized
9 paper and electronic files. *Id.*

10 On June 13, 2013, Defendants sent their first set of discovery requests to the Tates. *Id.*
11 ¶ 6. The Tates timely delivered their objections to the Defendants' first set of discovery
12 request on July 15 and, due to the large number of interrogatories and requests for production,
13 requested additional time to gather the responsive documents and draft the Answers and
14 Responses. *Id.* The Tates needed extra time because they had to obtain documents from third
15 parties; needed time to review and organize the documents; and needed time to Bates stamp
16 the documents. *Id.* The Tates told Defendants they would receive the documents and
17 responses by mid-August. *Id.*

18 After digging through the voluminous documents produced by Defendants, the Tates
19 discovered them to be woefully incomplete, in violation of CR 33 and 37. *Id.* ¶ 7, ex. C. For
20 example, Defendants failed to provide a *single* copy of any attachments included in the
21 hundreds of emails produced. *Id.* ¶ 7. Defendants also claimed that they had no duty to
22 obtain documents from third-parties under their control and supervision, including documents
23 from the Defendants' accountants, manager(s), and press and booking agents, to name a few.
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1 *Id.* The Tates need this information because one of the central issues in this case involves a
2 comparison of the earnings potential of the pre-split Queensryche versus the Defendants’
3 version of Queensryche. *Id.* A metric for this comparison is the number of shows each band
4 books, the type of venue, and the amount of money each version received. *Id.* The Tates also
5 need this because, as a 25 percent owner of the Queensryche companies, Geoff Tate is entitled
6 to a share of the revenue earned by the Defendants touring as Queensryche. *Id.* The Tates
7 asked for all of this information in their first Interrogatories and Requests for Production of
8 Documents to Defendants. *Id.* To date, Defendants have failed to provide the requested
9 information. *Id.*

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12 When pushed to provide this information, Defendants told the Tates that there were no
13 “attachments” other than simple “signature graphics” to any of the emails, and that they had
14 no duty to obtain documents from third-parties, claiming they went “*above and beyond the*
15 *requirements of the discovery rules, which only require them to indicate what documents are*
16 *in their care, custody and control.*” *Id.*, ex. D (emphasis added).

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18 The Tates responded, explaining that they could tell the difference between a
19 “signature graphic” and the Word, Excel, .pdf and .jpg documents that were clearly attached
20 to emails, even listing examples of emails that had substantive attachments. *Id.*, ex E. The
21 Tates also explained the discovery rules require Defendants to obtain documents from *third*
22 *parties under their control*—not just identify documents within *their custody or control.* *Id.*
23 Again, Defendants responded saying they would now go look for any attachments and
24 provide them if they find any. *Id.*, ex. F. And again Defendants claimed they do not have
25 “control” over their accountants, managers, and booking agents. *Id.*

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28 In order to save time and obtain documents that the Defendants were not producing,

1 the Tates sent *subpoenas duces tecum* to Defendants' accountants and their new company. *Id.*
2 ¶ 9. Defendants are claiming the subpoenas are "improper" and that any documents from such
3 third parties must come through their counsel.¹ *Id.*, ex. F. Defendants' actions continue to
4 delay and frustrate the discovery process.

5 The Tates raise all of this because the discovery cutoff deadline is currently set for
6 September 30, 2013. *Id.*, ex. G. As of August 9, 2013, neither side had taken a single
7 deposition. *Id.* ¶ 11. While Defendants say the Tates can do so soon, the Tates need to review
8 the complete discovery Answers and Responses, including responsive documents, from the
9 Defendants before they can effectively prepare to take depositions. *Id.*

10 Not only do the Tates need the missing documents before they can take depositions,
11 but taking depositions will be extremely time consuming. Together, the parties have
12 identified 80 potential witnesses for trial. *Id.* The Tates expect that the parties will need to
13 collectively take 20 to 40 depositions. Further complicating the scheduling of depositions,
14 Defendants' counsel, in an email dated July 17, indicated that the Defendants will be traveling
15 for most of September, so they will be unavailable for depositions.

16 There simply is not enough time to properly prepare for trial. The trial date is rapidly
17 approaching on November 18, 2013. *Id.*, ex G. Discovery is incomplete. Even if the parties
18 only depose a fraction of the witnesses identified, doing so will take 20 to 30 days. Many of
19 these witnesses are located out of state. The facts that underlie this dispute span nearly 30
20 years. Trial could take three to four weeks with 20 to 40 witnesses.

21 The deadline for setting a motion to a change in trial date is August 12, 2013. *Id.*, Ex.

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28 ¹ The Tates inadvertently did not provide Defendants' counsel with a copy of the *subpoena duces tecum* to
Defendants' accountant prior to service. The Tates corrected this within the time frame allowed under the rules.

1 G. To date, neither side has requested a trial continuance. *Id.* ¶ 12.

2 **III. STATEMENT OF ISSUES**

3 1. Should the Tate’s request for a minimum 180-day continuance be granted when
4 the parties are actively discussing settlement, the trial is nearly three months away, neither
5 party has fully propounded the discovery requested of it, the actions of one of the parties may
6 create the need for filing a discovery motion, neither party is ready to take depositions despite
7 a looming deadline, and where one of the parties will be unavailable for much of the last
8 month before the discovery cutoff?
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11 **IV. EVIDENCE RELIED ON**

12 The Tates rely upon the declarations of Geoff Tate and Joshua Brower, the exhibits
13 attached to those declarations, and the documents on file with the Court in this matter.
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15 **V. AUTHORITIES**

16 King County Local Rule 40(e)(2) allows the Court to grant a motion to extend the trial
17 date subject “to such conditions as justice requires.” The Court may then amend the case
18 schedule or may direct that the parties confer and propose a new schedule. KCLR 40(e)(3).
19 Extraordinary circumstances are not necessary to warrant a change in trial date unless the
20 motion is filed late. KCLR 40(e)(2).
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22 The trial court may change a trial date because it has the authority to manage its own
23 calendar, *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 168-69 (1998), and whether to
24 grant or deny a motion for continuance is within the discretion of this Court. *Balandzich v.*
25 *Demeroto*, 10 Wn. App. 718, 720 (1974). Washington courts have long recognized that
26 justice should be the “primary consideration in the trial court’s decision on the motion for a
27 continuance.” *Butler v. Joy*, 116 Wn. App. 291, 299 (2003) (quoting *Coggle v. Snow*, 56 Wn.
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1 App. 499, 508 (1990)). When deciding whether to grant a continuance, the Court may
2 properly consider: (1) the necessity of a reasonably prompt disposition of the litigation; (2)
3 the needs of the moving party; (3) the possible prejudice to the adverse party; (4) the prior
4 history of the litigation, including prior continuances granted the moving party; (5) any
5 conditions imposed in the continuances previously granted; and (6) any other matters that
6 have a material bearing upon the exercise of the case. *See Balandzich*, 10 Wn. App. at 720.
7 All factors support granting the Tates' motion.
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9 Plaintiffs filed this motion prior to the deadline for setting a Motion for a Change in
10 Trial Date, so the Court may grant the motion subject "to such conditions as justice requires."
11 Here, justice warrants granting the motion for a minimum 180-day continuance.
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13 First, more time is needed for both sides to properly prepare for trial. Trial is
14 approximately three months away (November 18) and the discovery cutoff deadline is
15 September 30. As explained above, the parties have not yet completed discovery and, to date,
16 Defendants have not provided complete Answers and Responses to Interrogatories and
17 Requests for Production of Documents propounded in May. The Tates expect Defendants to
18 claim they are responsible for the discovery delays. This is untrue. The Tates propounded
19 discovery in May, yet have still to receive complete Answers and Responses because of the
20 Defendants' fundamental misconception of their duty to respond. If the parties cannot reach
21 agreement on this issue, the Tates expect to file a discovery motion.
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23 Even assuming Defendants timely provide complete Answers and Responses,
24 scheduling and taking depositions will take one or two months. Together, the parties have
25 identified 80 possible witnesses. Assuming only half are deposed, that is still nearly 40
26 depositions. Many witnesses, including the Defendants, will be traveling in September or are
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1 located out of state. Because of this, scheduling and completing the depositions will take at
2 least two months, if not longer.

3 Also, this will be a lengthy and complex trial. Even assuming only a portion of the 80
4 witnesses are called at trial, trial could still take three to four weeks. There simply is not
5 enough time between now and the discovery cutoff deadline (September 30) and the current
6 trial date (November 18) to properly prepare for trial. Justice warrants a continuance.
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8 Second, a continuance provides additional time for the parties to attempt settlement.
9 The Defendants delivered a settlement offer to the Tates in late July. The Tates are working
10 to provide a response and counteroffer within the next week. Also, the Tates have asked the
11 Defendants to go to mediation in September. So far the Defendants have declined. More
12 time is needed to work the settlement process.
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14 Third, neither party will be materially prejudiced by a continuance. The Tates expect
15 Defendants to claim they will be prejudiced by their assertion that Geoff Tate is “running the
16 brand into the ground” and this is why this matter needs to be resolved soon. The same
17 argument applies equally to Defendants since both sides have been touring under the brand
18 Queensryche since the Court’s order last October. To the extent Geoff Tate is creating
19 confusion in the market place, so are Defendants. Defendants’ claim of prejudice is further
20 belied by the fact that they will be touring in August and October, thereby showing they
21 continue booking shows and performing. While both sides want a prompt resolution of this
22 matter to protect the name and brand of Queensryche, proceeding to trial without additional
23 time to prepare for it will be far more prejudicial to each side’s interests.
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26 And last, neither party has previously requested a continuance.
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28 VI. Conclusion

1 For the reasons outlined above, the Tates respectfully request the Court continue the
2 trial in this matter for a minimum of 180 days from the current trial date of November 18,
3 2013, with all remaining pre-trial dates in the Order Setting Civil Case Schedule rescheduled
4 accordingly.

5 DATED this 9th day of August, 2013.

6 VERIS LAW GROUP PLLC

7 By /s/ Joshua C. Allen Brower

8 Joshua C. Allen Brower, WSBA No. 25092

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10 Denver R. Gant, WSBA No. 38552

11 Attorneys for Geoff and Susan Tate

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document to be served on the following persons via the methods indicated:

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Dated at Seattle, Washington, this 9th day of August, 2013.

s/ Alison Sepavich
Alison Sepavich, Paralegal

4840-9483-3172, v. 1