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THE HONORABLE CAROL SCHAPIRA  
KING COUNTY  
HEARING DATE: October 19, 2012, at 11:00 a.m.  
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CASE NUMBER: 12-2-21829-3 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GEOFF TATE and SUSAN TATE, a married couple,

Plaintiffs,

vs.

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

DEFENDANTS' REPLY ON MOTION FOR PARTIAL SUMMARY JUDGMENT

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## INTRODUCTION

The Defendant band members Jackson, Rockenfield and Wilton brought a simple and direct 10-page Motion for Partial Summary Judgment to dismiss the bulk of Plaintiffs’ claims and enjoin Geoff Tate’s wrongful use of the Queensryche name and marks. That Motion is based on three undisputed points: 1) Geoff Tate still owns his 25% of the Queensryche entities; 2) Geoff Tate assaulted his fellow band members; and 3) Geoff Tate does not control the Queensryche Name, the TriRyche Corporation does. In response, Plaintiffs have filed 24 pages of speculation and allegation in an attempt to create issues of fact to defeat summary judgment. However, nothing Plaintiffs say in those 24 pages changes these three undisputed facts at the base of this Motion. These three undisputed facts are sufficient grounds for the Court to grant Summary Judgment on the bulk of Plaintiffs’ claims, and to enjoin Mr. Tate from his unauthorized use of the Queensryche name and marks.

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### I. GEOFF TATE STILL OWNS HIS 25% STAKE IN THE QUEENSRYCHE CORPORATIONS MAKING ANY CLAIM TO RECOVER THAT STAKE MOOT

In their response, Plaintiffs claim that they are still entitled to declaratory judgment, as well as any other of their claims that rest on Mr. Tate being denied his 25% ownership stake in the Queensryche corporations. In part, they rely on resolution language discussing automatic buyout of his shares. However, Defendants long ago abandoned any such claim in pleadings and briefing.

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Plaintiffs also repeat claims that Mr. Tate has been removed as a director of the Queensryche corporations. This is absolutely untrue and Mr. Tate, along with his Bandmates, were re-elected this past August for another one-year term. See Declaration of Counsel, Exhibit 4 (*Plaintiffs’ Reply Brief for Preliminary Injunction*).

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Plaintiffs also raise an issue surrounding e-mails from Mr. Sussman. Aside from being merely speculative and not sufficient for summary judgment purposes on their face, at the time of those e-mails only one Queensryche performance had occurred since the

1 Preliminary Injunction and issues were still being worked out with new management, etc.  
2 See Reply Declaration of Scott Rockenfield. As of today, Mr. Sussman is back in the loop with  
3 the new management team and all monies are being properly handled and accounted for. See  
4 id.

5 Defendants have agreed repeatedly that Mr. Tate still has his 25% stake in the three  
6 Queensryche corporations. Thus, any claim to have the Court to award or declare that ownership  
7 is moot and should be dismissed.

## 8 **II. GEOFF TATE ASSAULTED HIS FELLOW BANDMATES JUSTIFYING HIS** 9 **REPLACEMENT AS LEAD SINGER UNDER CORPORATE LAW**

10 It is undisputed that on April 14, 2012, Plaintiff Geoff Tate assaulted Defendants Scott  
11 Rockenfield and Michael Wilton backstage just before a performance at Sao Paulo, Brazil. In their  
12 response in opposition to this Motion, Plaintiffs are now trying to create an issue of fact around  
13 this assault. This contention is untenable, however, as Plaintiffs already conceded the opposite in  
14 their own briefing when discussing the Brazil incident: “But Geoff admitted at the outset that he  
15 hit Rockenfield and Wilton...” Declaration of Counsel, Exhibit 5 (*Plaintiffs Reply Memorandum in*  
16 *Support of Preliminary Injunction*, p. 4).

17 Although the fact of the assault is undisputed, it is true that the intensity of that  
18 assault has been more fully admitted by Mr. Tate as these proceedings have progressed,  
19 starting with “attempts to hit” and “shoves” and eventually progressing to “hitting” and  
20 “slapping”<sup>1</sup>. However, Mr. Tate deciding to be more truthful as time has gone on does not  
21 create a dispute of fact precluding Summary Judgment.

22 Furthermore, the fact of the assault was documented by several members of the  
23 Queensryche crew, as originally submitted in Defendants’ response to the Motion for

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24 <sup>1</sup> See Declaration of Counsel, Exhibit 7 (*Plaintiffs’ Reply to Counterclaim* at ¶ 14); Declaration of Counsel, Exhibits 2  
25 and 3 (*Declarations of Geoff Tate in Support of Motion for Preliminary Injunction* at p. 9, ¶ 31 (Ex. 2) and p. 5, ¶ 15 (Ex. 3)).

1 Preliminary Injunction. See Declaration of Counsel, Exhibit 5 (*Declarations of Queensryche Crew*  
2 *for Preliminary Injunction.*) The fact that Mr. Tate assaulted two of his fellow  
3 shareholder/director Bandmates on stage, right before a performance, is beyond dispute.

4 Plaintiffs also equivocate on Mr. Tate’s vicious and recent workplace assault on  
5 Defendants with an incident involving Eddie Jackson from 24 years ago.<sup>2</sup> Not only is the  
6 comparison of a 24-year old incident to one of a few months ago preposterous on its face, but  
7 Mr. Tate states in his own declaration that Mr. Jackson took responsibility, apologized the  
8 next day, and Mr. Tate accepted. See Declaration of Geoff Tate in Response to Summary  
9 Judgment at 2. With this incident Plaintiffs make the illogical argument that since Mr. Tate  
10 was assaulted two dozen years ago, he then had free reign to commit an assault of his own  
11 with no fear of being replaced. Simply because the rest of the band did not replace Eddie  
12 Jackson 24 years ago, they are not precluded from replacing Geoff Tate now.

13 Finally, Plaintiffs ask the Court to deny the motion at bar because, according to  
14 Plaintiffs, the fight is not enough to justify the Defendants’ actions. But, to not grant Summary  
15 Judgment on that basis requires the Court to find that assaulting your fellow  
16 shareholders/directors in the workplace is not sufficient reason for them to replace you. This  
17 would compel members of closely held corporations to experience workplace violence and  
18 continue to work with the perpetrator indefinitely. Such a rule defies all principals of logic  
19 and equity, and Plaintiffs have produced no law to the contrary.<sup>3</sup>

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23 <sup>2</sup> Plaintiffs’ response continuously refers to this event as being “14 years ago,” but upon reading of the declaration  
submitted in support of Plaintiffs response everyone states the incident occurred in 1988, not 1998.

24 <sup>3</sup> Plaintiffs also mention that the Defendant band members played two more shows with Geoff Tate after the assault.  
25 However, the precautions taken to facilitate those shows were extreme and unsustainable. See Declaration of  
Orlando Scott “Fozzy” O’Hare (Queensryche Tour Manager).

1 **III. TRIRYCHE CORPORATION OWNS AND CONTROLS THE QUEENSRYCHE NAME**  
2 **AND MARKS, NOT GEOFF TATE**

3 All parties agree the Queensryche name, marks and associated media belong to the  
4 TriRyche Corporation. All parties also agree the 1994 Shareholders Agreement has expired.  
5 Therefore, it is the articles and bylaws that control TriRyche Corporation.<sup>4</sup> Under the bylaws  
6 of TriRyche, only a majority of directors is needed for a quorum, and a majority of those  
7 present voting in the affirmative is enough to conduct all business. Therefore, all control of  
8 TriRyche is vested in the majority and not the minority.

9 Geoff Tate has no grant of authority from the TriRyche Corporation to use the  
10 Queensryche name, marks, or associated media assets. However, Mr. Tate has formed his  
11 own version of Queensryche and will begin playing shows with it next year. See Declaration  
12 of Counsel, Exhibit 1 (*Announcement of 'Geoff Tate's Queensryche' on Queensryche.com*). In fact,  
13 this very announcement was made from the Queensryche.com website which Mr. Tate still  
14 controls and refuses to turn over to the control of to the Corporation and his former  
15 Bandmates. See id. He also still controls the Queensryche Facebook page and made the same  
16 announcement there. See id., Exhibit 2 (*Announcement of Queensryche on Queensryche Facebook*  
17 *Page*). He also continues to market himself as "Geoff Tate: The Voice of Queensryche" in his  
18 solo efforts. See id., Exhibit. 3 (*Home Page of GeoffTate.com*). All of these actions are done with  
19 no grant of authority from TriRyche Corporation which controls the Queensryche name and  
20 marks. Therefore, Defendants are entitled to an injunction barring Geoff Tate from using the  
21 Queensryche name or marks.

22 Geoff Tate's actions in creating a competing version of Queensryche show that  
23 Defendants have a clear legal right (the name Queensryche and its associated marks); an  
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25 <sup>4</sup> Plaintiffs appear to argue in their response that because the Shareholder Agreement is expired, somehow TriRyche may not control the Queensryche name and marks. However, this is exactly the opposite of what they argued in the

1 invasion of that right (the competing unauthorized version of Queensryche); and injury (the  
2 direct competition for fans and performances with the authorized Queensryche), meeting all  
3 the requirements for an injunction. See Tyler Pipe Indus., Inc. v. Dep't of Revenue, 96 Wash.2d  
4 785, 792 (1982). Therefore, the Court should enter a Permanent Injunction enjoining Mr. Tate  
5 from his unauthorized use of the Queensryche name and marks<sup>5</sup>.

6 And, as this is a Motion for Summary Judgment, such an injunction is based on a  
7 final order and not preliminary in nature. Thus, no bond is required. See CR 65 (c). To treat  
8 the injunction sought as preliminary would be to say that the simple act of filing the suit at  
9 bar gave Mr. Tate a grant to use the Queensryche marks to form his own competing entity,  
10 and the Bandmates need *temporary* relief from this imaginary right during the pendency of the  
11 litigation. This is not the case. The burden is on Plaintiffs to dissolve the corporations and be  
12 awarded the name, and unless and until they meet that burden, the Queensryche corporations  
13 have a right to not have their intellectual property usurped by a minority owner with no grant  
14 of authority to do so.

### 15 CONCLUSION

16 Geoff Tate still owns his 25% stake in the Queensryche Corporations. Geoff Tate  
17 assaulted his Bandmates on stage, just before a performance. Geoff Tate does not control the  
18 Queensryche name. These three facts are undisputed. These three facts are controlling. These  
19 three facts justify Mr. Tate's replacement, and destroy or render moot all but Plaintiffs'  
20 Defamation claim, and thus Plaintiffs' claims except Defamation should be dismissed, and  
21 dictate that Mr. Tate's alternative version of Queensryche should be enjoined.

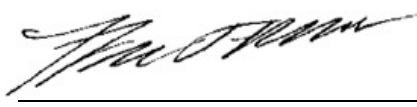
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23 preliminary injunction motion, and the doctrine of judicial estoppel precludes them from taking such a diametrically  
24 opposing view.

25 <sup>5</sup> Plaintiffs claim that since an action for injunction was not pled, Defendants cannot seek this remedy. However,  
only notice pleading is required of a "short, plain statement of the facts upon which relief can be granted."  
Defendants offer that since control of the name and Queensryche corporation is clearly at issue in this action,  
Plaintiffs had ample notice that Mr. Tate's misuse of the name could result in an action for injunction.

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SIGNED this 12<sup>th</sup> day of October, 2012.

OSINSKI LAW OFFICES P.L.L.C.



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