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12 JUL 09 AM 9:00

THE HONORABLE CAROL A. SCHAPIRA  
KING COUNTY

HEARING DATE: July 10, 2012 at 3:30 p.m.  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 12-2-21829-3 SEA

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

**GEOFF TATE** and **SUSAN TATE**, a married couple

No: 12-2-21829-3 SEA

Plaintiffs,

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

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.

TO: CLERK OF THE ABOVE COURT

AND TO: PLAINTIFFS AND THEIR COUNSEL OF RECORD

COMES NOW Defendants **EDDIE JACKSON** and **TERESA GOLDEN-JACKSON**, **SCOTT ROCKENFIELD** and **MISTY ROCKENFIELD**, **MICHAEL WILTON** and **KERRIE LYNN WILTON**, **TRI-RYCHE, CORPORATION**, **QUEENSRYCHE MERCHANDISING, INC.**, and **MELODISC LTD.**, by and through their attorney of record, Thomas T. Osinski Jr. of

1 Osinski Law Offices P.L.L.C., and submit the following response and objection to the issuance  
2 of a preliminary injunction.

### 3 **INTRODUCTION**

4 Plaintiff Geoff Tate, along with his wife, have brought suit against his former  
5 bandmates, Eddie Jackson, Scott Rockenfield and Michael Wilton, and the corporations they  
6 do business against, claiming that he is being oppressed. He now comes before this Court  
7 asking for a preliminary injunction stopping a majority of the band and shareholders from  
8 operating as the band they have been known as for 30 years. Not only is there no oppression,  
9 and all decisions were done for legitimate business reasons, but the facts will show that the  
10 only person engaging in oppression is Mr. Tate.

11 Plaintiff Geoff Tate has systematically, in concert with his wife whom he installed as  
12 manager, taken more power unto himself within the band and its companies, shutting out the  
13 majority with a policy of ultimatums and brinksmanship, while engaging in naked self dealing.  
14 When his bandmates, Eddie Jackson, Scott Rockenfield and Michael Wilton finally said  
15 enough is enough and tried to move on to outside management, Mr. Tate reacted with a  
16 violent physical assault, leaving them no choice but to obtain a new singer. Mr. Tate has now  
17 followed with a combined legal and public relations assault in breach of his duties to the very  
18 corporations he claims his bandmates are harming. As such, the only oppressor here is Mr.  
19 Tate, and his ultimate claims, along with this motion for preliminary relief, fail.

### 20 **I. RELIEF REQUESTED**

21 Defendants request that Plaintiff's motion for preliminary injunction be denied.

### 22 **II. STATEMENT OF FACTS**

23 Original bandmembers Chris DeGarmo, Eddie Jackson, Scott Rockenfield and Michael  
24 Wilton were in various bands together until settling on "The Mob" in 1981. See Declarations of  
25 Eddie Jackson, p. 2; Scott Rockenfield, p.2; and Michael Wilton, p. 2-3. They needed a singer

1 and had Geoff Tate perform with them in a contest and later on an EP paid for by all members  
2 but Geoff Tate. See id. Geoff Tate continued on with his band, “Myth,” until the EP gained  
3 critical acclaim and major label interest, at which time he joined the “The Mob.” which was  
4 renamed “Queensryche”. See id.

5 Queensryche went on to sell millions of albums and tour all over the world, peaking  
6 with the 1991 album, Empire. See Declaration of Michael Wilton, p. 3-4. Following the success  
7 of Empire, the dynamics of the band began to change, with conflicts over the creative direction  
8 of the band, and surrounding songwriting credits and the revenue that created. See id. Up to  
9 that point, all music was written collaboratively amongst all bandmates but Tate, who only  
10 wrote lyrics, and not all lyrics. See id.; Declaration of Counsel Thomas T. Osinski, Exhibit 2.  
11 Chris DeGarmo left the band two albums later in 1997 over these differences and the tensions  
12 they created between himself and Geoff Tate, who, amongst other things, resisted Chris  
13 DeGarmo’s writing of complete songs with lyrics. See Declaration of Michael Wilton, p. 4-5.  
14 This was ironic as Queensryche’s largest hit of all time, Silent Lucidity, which reached No. 2  
15 on the Billboard chart, was written entirely by Chris DeGarmo. See Declarations of Michael  
16 Wilton, p. 4, and Eddie Jackson, p. 4.

17 Following the departure of Chris DeGarmo, the band collectively decided to move on  
18 with a succession of replacement guitarists. See Declarations of Eddie Jackson, p. 5-7, and  
19 Michael Wilton, p. 5-6. Eddie Jackson, Scott Rockenfield and Michael Wilton continued to  
20 write music and submit it to Geoff Tate for the addition of lyrics. See id. Chris DeGarmo  
21 returned for the creative process on the 2002 release, Tribe, but did not fully rejoin the band,  
22 nor did he tour with them, leaving after the album was recorded. See id.

23 During this period of the late 1990s into the early 2000s, Susan Tate, Geoff Tate’s  
24 wife, began her ascent to the ultimate management of the band. See Declaration of Misty  
25 Rockenfield. Susan Tate first began running the fan club and merchandising portions of the

1 Queensryche operation. See id. She then was instrumental in the firing of then current  
2 manager, Ray Daniels, and having him replaced with Lars Sorenson, to whom she then  
3 served as assistant. See id. Then, in 2005, she took over management duties completely and  
4 Lars Sorenson was let go. See id.; Declaration of Michael Wilton, p. 6-7. This is quite an  
5 accomplishment since Susan Tate's only prior management experience was managing her  
6 previous husband's unsigned local band. See Declaration of Misty Rockenfield.

7         Once Susan Tate was installed as manager, the Tates proceeded to take full control of  
8 the band. See Declarations of Eddie Jackson, p. 7-13, Scott Rockenfield, p. 3-4, and Michael  
9 Wilton, p. 6-12. Geoff Tate began working with outside writers and regularly rejecting music  
10 offered by the band. See id. Geoff and Susan Tate asserted full control over the budgeting  
11 and production process, not only cutting Eddie Jackson, Scott Rockenfield and Michael Wilton  
12 out of the creative process, but eliminating songwriting royalties and manipulating all  
13 advances so as to coerce their cooperation. See id. This was combined with constant threats  
14 from Geoff Tate to leave the band if his bandmates did not go along with his dictates. See id.  
15 In an attempt to maintain what was left of the original membership and get what advance and  
16 other monies were available, Eddie Jackson, Scott Rockenfield and Michael Wilton went along  
17 with Geoff and Susan Tate's creative and business control of Queensryche. See id. This is  
18 ironic as Geoff Tate has stated publicly on several occasions about his bandmates' integral  
19 role in the sound and overall make up of Queensryche. See Declaration of Counsel Thomas  
20 T. Osinski, Exhibits 7, 8.

21         The results of the Tates' stewardship of Queensryche have been disastrous. Under  
22 Tate leadership, Queensryche has produced three albums to wildly declining sales.  
23 Operation: Mindcrime II has sold only 150,000 copies to date, compared to 500,000 for the  
24 original Operation: Mindcrime in the first year alone, moving on to over a million a few years  
25 later. See Declaration of Eddie Jackson, p. 8. It also received only mediocre reviews. See id.

1 The next album, American Soldier, sold only 60,000 copies, less than half again. See id., p. 9.

2 And last year's Dedicated to Chaos, sold an abysmal 20,000 copies. See id., p. 10-11.

3 In addition, Geoff Tate has shown an almost messianic dedication to these ill-received  
4 songs and musical direction. See Declaration of Eddie Jackson, p.11-13, and Scott

5 Rockenfield, p. 5. He openly loathes the metal sound that made the band famous, even  
6 saying so to the press. See Declaration of Counsel Thomas T. Osinski, Exhibit 6. Geoff Tate  
7 even refuses to perform the bulk of the songs from the first five, and most popular, albums,  
8 considering them "stupid," his refusal coming in the face of overwhelming fan demand. See  
9 Declarations of Eddie Jackson, p. 11-13, Scott Rockenfield, p. 5, and Michael Wilton, p. 9.

10 Although Queensryche has continued as a viable entity, the decline of recent years is evident  
11 in album sales and overall revenue. See Declarations of Eddie Jackson, p. 7-13, and Michael  
12 Wilton, p. 6-15. See also Declaration of Alan Miller. As a result, Eddie Jackson, Scott  
13 Rockenfield and Michael Wilton, who own 75% of the stock in the Queensryche entities and  
14 are three of four directors, decided in 2012 to take a more active role in the direction of the  
15 band entities. See Declarations of Eddie Jackson, p. 11-14, Scott Rockenfield, p. 6, and  
16 Michael Wilton, p. 12-15.

17 First, they looked into using outside professionals to run the fan club and merchandise  
18 as opposed to an in-house operation run by Susan Tate and Geoff's stepdaughter Miranda  
19 Tate. See Declarations of Scott Rockenfield, p. 6, and Michael Wilton, p. 12-15. This was met  
20 with fierce resistance and even abuse of the outside firm being considered by Geoff and  
21 Susan Tate. See id.

22 Next the issue of outside professional management was suggested by Michael Wilton.  
23 See Declaration of Michael Wilton, p. 12-15. This was met with even stronger resistance, with  
24 Geoff Tate dismissing the idea out of hand. See id.

1           During this time, the other bandmembers learned through Scott Rockenfield that Geoff  
2 Tate had negotiated a development deal for a movie based on Queensryche's popular  
3 concept album, Operation: Mindcrime. See Declarations of Scott Rockenfield, p. 7-9 and  
4 Michael Wilton, p. 14. Scott Rockenfield received an e-mail from a mutual acquaintance who  
5 was part of the deal who explained how Geoff Tate was about to engage in a lucrative  
6 agreement. See Declaration of Scott Rockenfield, p. 7-9, Exhibit 1. When Scott Rockenfield  
7 informed Eddie Jackson and Michael Wilton of this, they investigated with the Queensryche  
8 corporate attorney and confirmed that a six figure advance was indeed being held by him until  
9 execution of documents by Geoff Tate, at which time the money would be paid to Geoff Tate  
10 alone. See Declaration of Scott Rockenfield, p. 9, This is despite ownership of Operation:  
11 Mindcrime and associated intellectual property by the Queensryche entities and former  
12 member Chris DeGarmo. See Declaration of Michael Wilton, p. 14.

13           Due to this litigation, the other bandmates (Eddie Jackson, Scott Rockenfield and  
14 Michael Wilton) have now come into possession of the agreement executed by Geoff Tate for  
15 this movie option. See Declaration of Counsel Thomas T. Osinski, Exhibit 12. Amazingly, and  
16 with no grant of authority from the band, Geoff Tate claimed full ownership in the Operation:  
17 Mindcrime "story," procuring for himself a \$150,000 fee, 20% of all royalties, and \$10,000  
18 upfront for an option, all payable to him alone, and with 20% for soundtrack and merchandise  
19 revenue to be split amongst him and the band.

20           Eddie Jackson, Scott Rockenfield and Michael Wilton were not to be deterred and set  
21 a directors meeting to discuss changes. See Declaration of Michael Wilton, p. 14. Not only did  
22 Geoff Tate refuse to attend, he responded through legal counsel, demanding that Susan Tate  
23 and his attorney be present, that the meeting be rescheduled, and claiming that meeting  
24 notice via e-mail was inadequate. See id. This was surprising to the other bandmates as all  
25

1 meetings had been set by e-mail or text for years, and even more shocking that Geoff Tate  
2 was speaking through an attorney about a meeting of their band of 30+ years. See id.

3 Eddie Jackson, Scott Rockenfield and Michael Wilton had their properly-called meeting  
4 anyway, and being a quorum and a majority, voted to remove Susan Tate as manager, move  
5 on to a professional outside merchandise company, and other related business. See id.

6 Declaration of Counsel Thomas T. Osinski, Exhibit 9.

7 The next day, all band members flew to Sao Paulo, Brazil, for a previously scheduled  
8 performance. See id. Several hours before the concert, Geoff Tate called for a meeting  
9 wherein he asked for confirmation of actions taken at the April 12, 2012 meeting. See id.

10 Geoff Tate also raised the issue of the Operation: Mindcrime movie project advance,  
11 complaining bitterly that the other band members were holding up “his money.” See id.

12 Following the meeting, the other bandmembers did not see Geoff Tate until on stage just  
13 before the beginning of their performance. See Declarations of Eddie Jackson, p. 13-15, Scott  
14 Rockenfield, p. 9, and Michael Wilton, p. 15. Geoff Tate then viciously engaged in an  
15 unprovoked attack on Scott Rockenfield and Michael Wilton, and was only kept from Eddie  
16 Jackson due to the intervention of crew and security. See Declarations of Eddie Jackson, p.  
17 13-15, Scott Rockenfield, p. 9-11, and Michael Wilton, p. 15-18; Parker Lundgren, Edward  
18 Eugene “Geno” Bishop, Orlando Scott “Fozzy” O’Hare, and Anthony Bender. These attacks  
19 were totally unprovoked and unjustified. See id. This delayed the start of the performance over  
20 20 minutes, and Geoff Tate continued to spit at, curse, and taunt his bandmates throughout  
21 the performance. See id. The other bandmembers left immediately after the performance,  
22 avoiding Geoff Tate, who was flown home on a hastily booked separate flight. See id.

23 Following the Sao Paulo incident, Eddie Jackson, Scott Rockenfield and Michael  
24 Wilton knew of two contracted performances. See Declaration of Michael Wilton, p. 18-19.

25 The decision was made to attempt to be professional and carry out these obligations, and see

1 if it was still possible for them to work with Geoff Tate. See id. Unfortunately, Geoff Tate never  
2 apologized for his actions, continued to make threats, and engaged in erratic and bizarre  
3 behavior, even telling the audience they “sucked” at the last performance. See id.

4 As a result Eddie Jackson, Scott Rockenfield and Michael Wilton decided they had no  
5 choice but to move on. See id. Although as a clear majority and quorum they had the ability to  
6 make this difficult decision for the good of the band on their own, they attempted to reach out  
7 and negotiate a settlement. See id. This was flatly rejected by Geoff Tate. See id. Thus, in a  
8 duly noticed meeting on June 2, 2012, Eddie Jackson, Scott Rockenfield and Michael Wilton  
9 voted to replace Geoff Tate with a new lead singer, and to expel and/or otherwise negotiate  
10 just compensation for his ownership interest. See id.; Declaration of Counsel Thomas T.  
11 Osinski, Exhibit 10. Negotiations failed, leading to the suit at bar.

12 Following Geoff Tate’s removal as lead singer, Queensryche performed under the  
13 moniker “Rising West” for two sold-out shows and rave critical and fan reviews. See  
14 Declaration of Michael Wilton, p. 21 and Declaration of Counsel Thomas T. Osinski, Exhibit 5.  
15 On the strength of those shows, the new Queensryche has been signed by Frontline/AGPS  
16 Management, the largest and most powerful music management company in the world and a  
17 subsidiary of Live Nation. See Declaration of Paul Geary. Within the first week, the new  
18 management was able to obtain three bookings at equal or better compensation than the old  
19 Queensryche. See id. With the new Queensryche’s dedication to the original five gold and  
20 platinum selling albums, and new material in the same vein, the demand has been  
21 tremendous. See id. and attached Letter of Sullivan Bigg. Conservatively, the new  
22 Queensryche could book over \$4 million in gross tour revenue alone between now and the  
23 trial date in this matter, with commensurate surges in merchandise and back catalog sales.  
24 See id.

1 Geoff Tate on the other hand has taken to the press to denigrate his bandmates and  
2 their abilities, as well as tar them with labels of ineptitude and greed. See Declaration of  
3 Counsel Thomas T. Osinski, Exhibit 2, Rollingstone.com. Further, although Eddie Jackson,  
4 Scott Rockenfield, and Michael Wilton are the rightful current controllers of the Queensryche  
5 entities and their assets, Geoff, Susan and Miranda Tate have locked them out of the official  
6 Queensryche Facebook account and band website, causing harm not only to the reputation of  
7 the band, but blocking revenue through sales on the Queenryche website. See Declaration of  
8 Michael Wilton, p. 24-26.

### 9 **III. ISSUES PRESENTED**

10 A. Should a preliminary injunction issue?

11 1. Does the seeker of the injunction have a clear right? No.

12 a. Is the seeker of the injunction likely to prevail on the merits? No.

13 2. Is there an immediate threatened invasion of that right? No.

14 3. Is the seeker of the injunction being damaged? No.

15 B. To be likely to prevail on the merits the minority shareholder must prove they  
16 are being oppressed.

17 1. Is he being oppressed by having his reasonable expectations concerning  
18 participation in the corporation ignored? No.

19 a. Are those expectations reasonable? No.

20 2. Are the actions of the majority justified by legitimate business concerns?

21 Yes.

### 22 **IV. EVIDENCE RELIED UPON**

23 This response relies on the sworn declarations and true and correct copies of  
24 documents attached of the following persons: Michael Wilton, Scott Rockenfield, Eddie  
25

1 Jackson, Paul Geary, Orlando Scott “Fozzy” O’Hare, Eugene “Geno” Bishop, Parker  
2 Lundrger, Alan Miller, Misty Rockenfield and Anthony Bender.

3 **V. LEGAL AUTHORITIES**

4 **STANDARD FOR A PRELIMINARY INJUNCTION**

5 A party seeking relief through a temporary injunction must show a clear legal or  
6 equitable right, that there is a well-grounded fear of immediate invasion of that right, and that  
7 the acts complained of have or will result in actual and substantial injury. Rabon v. City of  
8 Seattle, 135 Wn.2d 278 (1998) 284. Also, since injunctions are within the equitable powers of  
9 the court, these criteria must be examined in light of equity, including the balancing of the  
10 relative interests of the parties and the interests of the public, if appropriate. See id.

11 In deciding whether a party has a clear legal or equitable right, the court examines the  
12 likelihood that the moving party will prevail on the merits. See id. at 285. An injunction will not  
13 be issued in a doubtful case. See id. Washington courts have also frequently noted that a  
14 court is not to adjudicate the ultimate rights in the case when addressing the propriety of a  
15 preliminary injunction. See id.

16 **GEOFF TATE IS NOT LIKELY TO SUCCEED ON THE MERITS**

17 Geoff Tate’s Motion for Preliminary Injunction is based on the presumption that he will  
18 ultimately be awarded the name “Queensryche.” The only way this can occur is if the court  
19 grants a judicial dissolution of the Queensryche companies. Judicial dissolution is at the trial  
20 court's discretion. Scott v. Trans-Sys., Inc., 148 Wash.2d 701, 707(2003). Under RCW  
21 23B.14.300(2)(b), the Superior Courts may dissolve a corporation in a proceeding by a  
22 shareholder if it is established that “[t]he directors or those in control of the corporation have  
23 acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.”

1 "[T]he remedy of liquidation is so drastic that it must be invoked with extreme caution."  
2 See id at 708-09. ("The appointment of a receiver is a harsh and extraordinary remedy and  
3 will be resorted to by the courts only in extreme cases."). See id at 709.

4 For the reasons discussed below, Geoff Tate cannot reach this high and extraordinary  
5 burden. Not only were Eddie Jackson's, Scott Rockenfield's and Michael Wilton's actions non-  
6 oppressive, justified, and legitimate business actions, but the extreme remedy of dissolution is  
7 not warranted. The only purpose of dissolution would be to make the name "Queensryche"  
8 able to be awarded to Geoff Tate, effectively giving a minority member and only 25% owner  
9 full and total control of the corporation's most valuable asset, with no precedent for such an  
10 action.

11 **THESE IS NO OPPRESSION**

12 Once overreaching conduct has been demonstrated, the burden shifts to the majority  
13 shareholders to show there were legitimate business justifications for the conduct. See id.  
14 Under the business judgment rule, corporate management is immunized from liability in a  
15 corporate transaction where (1) the decision to undertake the transaction is within the power  
16 of the corporation and the authority of management, and (2) there is a reasonable basis to  
17 indicate that the transaction was made in good faith. See id. A court must consider a plaintiff's  
18 claims for judicial dissolution "against the backdrop of established deference to corporate  
19 governance." See id.

20 RCW 23B.14.300 does not define the term "oppressive," nor does the MBCA.  
21 Washington courts have adopted two tests for oppressive conduct. Scott, 148 Wash.2d at  
22 711. The "reasonable expectations" test, defines oppression as a violation by the majority of  
23 the reasonable expectations of the minority. See id. "Reasonable expectations are those  
24 spoken and unspoken understandings on which the founders of a venture rely when  
25 commencing the venture." See id. Under the reasonable expectations test, the complaining

1 shareholder has the burden of proof, by a preponderance of the evidence, to establish the  
2 requisite jurisdictional facts and the equitable grounds for dissolution. See id.

3 Geoff Tate claims he had a reasonable expectation to remain in Queensryche forever,  
4 and, thus, is being oppressed by his bandmates' actions.<sup>1</sup> See Plaintiff's Motion for  
5 Preliminary Injunction. However, such a belief is belied by the entity documents themselves.  
6 First, there is the Partnership Agreement, which is the only document that contemplates band  
7 membership and predates the creation of all the Queensryche entities. See Declaration of  
8 Counsel Thomas T. Osinski, Exhibit 1. Far from this document being designed around an idea  
9 of permanent membership, it expressly has an expulsion clause allowing 75% of the partners  
10 to expel a member, and buyout procedures following such an expulsion. See id. Even if this  
11 partnership agreement were deemed to have no legal effect, it still is illustrative of the  
12 reasonable expectations the members of the band had.<sup>2</sup>

13 Next is the 1994 Shareholders Agreement submitted by the Plaintiff. See Declaration  
14 of Geoff Tate, Exhibit B. Although both sides concede this agreement is expired, it also is  
15 illustrative of the band members' expectations, namely, any claim to remain in Queensryche  
16 forever. This is because the shareholders agreement has an automatic buyout and transfer  
17

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18  
19 <sup>1</sup> He also relies in part on the May 31, 2012, letter of Thomas T. Osinski Jr. to Joshua Brower. This letter was clearly  
20 intended as a settlement communication, and is thus improperly introduced in violation of ER 408, regardless of  
21 whether it was marked as such.

22 <sup>2</sup> Defendants readily admit they do not have an executed copy of the partnership agreement in their possession at this  
23 time, but hope to obtain one as discovery progresses. Regardless, even an unsigned document is evidence of the  
24 mechanisms intended over 20 years ago and the intent of Eddie Jackson, Scott Rockenfield and Michael Wilton  
25 when removing Geoff Tate.

1 clause that creates a mechanism to liquidate a member's shares if he leaves the band for "any  
2 reason."

3         Additionally, the clause which discusses the use of the Queensryche name covers how  
4 a former member can only claim to be "formerly of Queensryche" for a year, and take no  
5 share in tour revenue for performances he did not participate in, but shall be paid for any  
6 pending monies from those he did. And even its language about consent of 80% of  
7 shareholders are required for use of the Queensryche name, since the agreement was written  
8 when five members controlled 20% of the corporation each, sets up a mechanism wherein a  
9 single member cannot block the will of the majority.

10         Thus, for all the reasons above Geoff Tate could not reasonably expect to stay in  
11 Queensryche "forever," and, thus, his removal from the band is not oppressive. Moreover, all  
12 the other bandmates have done is replace a performing member, just as several guitarists  
13 have come and gone since Chris DeGarmo's departure, decisions which were made in the  
14 normal course of corporate business.

15         In fact, Eddie Jackson, Scott Rockenfield and Michael Wilton readily admit that Geoff  
16 Tate has shares in the Queensryche entities and is entitled to compensation. They even admit  
17 that if that amount of compensation cannot be negotiated, it may be for the Court to decide the  
18 proper amount. Thus any "oppression" claimed by Geoff Tate results not from the disposition  
19 of his shares (since he is also asking the Court to establish a value for the shares so everyone  
20 is fairly compensated), it only comes from his removal as lead singer, which is in effect a  
21 termination of employment, an activity squarely within the authority of the directors to control.

22         **LEGITIMATE BUSINESS CONCERNS OVERCOME ANY CLAIM OF OPPRESSION**

23         In Robblee, the minority shareholder tried to show that the majority shareholder acted  
24 oppressively with evidence that the majority shareholder fired the minority shareholder, tried to  
25 have him removed as an officer and director, and changed the organization of the corporation

1 in order to take over the minority shareholder's functions. See Robblee, 68 Wash. App. at  
2 75.(As affirmed by Scott) The court found that there was no oppression because there were  
3 legitimate and reasonable explanations for the conduct the minority shareholder characterized  
4 as oppressive. See id. at 75-77.

5 Here, as in Robblee, there are an abundance of legitimate reasons for the decision to  
6 replace Geoff Tate. The musical direction he has taken the band has led to a precipitous drop  
7 in album sales. Geoff Tate refuses to perform the bulk of the songs which made the band  
8 popular, nor produce music in that style. He surreptitiously attempted to obtain vast monies for  
9 an Operation: Mindcrime movie for himself alone in an act of self dealing. Geoff Tate refused  
10 to take on new and professional management and operation of the merchandise and fan club,  
11 preferring his family serve in those roles and draw the salary from it. And, most important of  
12 all, when Eddie Jackson, Scott Rockenfield and Michael Wilton tried to assert control and  
13 begin to reverse some of these bad business decisions, Geoff Tate engaged in a vicious,  
14 unprovoked physical assault for which he has shown no remorse until this proceeding. Geoff  
15 Tate then engaged in increasingly erratic behavior, threatening his bandmates and even  
16 lashing out at the audience. Not only was his removal a result of legitimate business concerns,  
17 but of outright business necessity!

18 Court deference to such legitimate concerns is the rule. It is fundamental in the law of  
19 corporations that the majority of its stockholders shall control the policy of the corporation, and  
20 regulate and govern the lawful exercise of its business and courts of equity will not undertake  
21 to control the policy or business methods of a corporation, although it may be seen that a  
22 wiser policy might be adopted and the business more successful if other methods were  
23 pursued. See Scott, 148 Wn.2d at 709 ("Courts are reluctant to interfere with the internal  
24 management of corporations and generally refuse to substitute their judgment for that of the  
25 directors."). See id.

1 **GEOFF TATE SHOULD NOT BE AWARDED THE NAME**

2 As discussed above, the only way Geoff Tate can be awarded the name Queensryche  
3 is through the harsh and extreme remedy of judicial dissolution of the Queensryche entities.  
4 Employment of such a drastic remedy is not only unwarranted due to the lack of oppression  
5 and legitimate business considerations discussed above, but it would not be fair and  
6 equitable, as such a remedy lies in equity.

7 Geoff Tate's central claim for why he should get the name Queensryche is that it is the  
8 only "equitable outcome" because "he is the band." As set forth in the declarations from Eddie  
9 Jackson, Scott Rockenfield and Michael Wilton, Queensryche has always been a collaborative  
10 effort amongst its members, especially during its extremely successful first period. This has  
11 only changed during the last few unsuccessful albums, and due only to Geoff Tate's  
12 authoritarian ways.

13 Moreover, Geoff Tate's odd reliance on songwriting royalties fails to recognize several  
14 other considerations. In fact, under Geoff Tate's logic, George Harrison and Ringo Starr were  
15 not really Beatles, as the vast majority of the songs were written by John Lennon and Paul  
16 McCartney. Geoff Tate is not even a founding member of the band, having come in after all  
17 the EP material that launched Queensryche was written. He has only ever written lyrics and  
18 no music, and not even all the lyrics at that.<sup>3</sup> In addition, over the last three albums, Geoff  
19 Tate, in concert with wife and manager Susan, has conspired to lock out Eddie Jackson, Scott  
20 Rockenfield and Michael Wilton from the creative process. Thus, any recent uptick in  
21 songwriting credits has been a result of the last three albums, which were marked by rapidly  
22 declining sales and fan response. And, the bulk of the band entities' revenue has come from  
23 touring and the ancillary merchandise and back catalog sales in recent years.

24 \_\_\_\_\_  
25 <sup>3</sup> U.S. Copyright Act defines a "song" as consisting of the two co-equal parts of "music" and "lyrics."



1 new Queensryche line up, which would also harm the promoters and other third parties and  
2 bring liability on the corporations. The seven employees of the Queensryche companies that  
3 support touring and performances would also be harmed since they are paid per performance.  
4 Moreover, as set forth by Paul Geary at Frontline/AGPS, he is confident of his ability to secure  
5 them at least \$4 million in touring revenue alone, with commensurate surges in back catalog  
6 and merchandise sales. An injunction would eliminate all of this, as well as simply take  
7 Queensryche out of the public for over a year during the pendency of this case. In fact, one of  
8 Geoff Tate's main arguments is that removing him keeps Queensryche from recording and  
9 touring, and that constitutes waste and harm to the corporations and brand. To grant him the  
10 injunctions he seeks would do just that harm.

11 If no injunction is issued, the fans will show for themselves if they embrace or reject a  
12 Queensryche without Geoff Tate. If an injunction is issued, they will be denied that chance,  
13 eliminating millions in potential revenue and harming the brand through lack of promotion.  
14 That is not an equitable or balanced outcome.

15 **GEOFF TATE HAS AN ADEQUATE REMEDY AT LAW**

16 In order to obtain a remedy at equity, Geoff Tate must show he has no adequate  
17 remedy at law. Here, any harm he articulates can be corrected with monetary damages. Any  
18 diminution to his stock, company assets, or tort based damage he could obtain can be  
19 remedied with monetary damages and thus he has an adequate remedy at law.

20 **THE BOND MUST BE IN THE MILLIONS**

21 If the court were to issue an injunction, the bond for it must be in the millions, not a  
22 mere \$5,000. An injunction will stop Queensryche from touring, which is its primary economic  
23 engine the last few years, and harm merchandise and back catalog sales. The Queensryche  
24 entities have generated between \$2.5 and \$3 million a year in gross revenues in 2007 – 2011.  
25 Additionally, Paul Geary, in his role as an industry expert and part of the world's largest music

1 management company, estimates that he can secure over \$4 million in touring revenue alone  
2 between now and the trial date. And this does not count merchandise and back catalog  
3 revenue increases. Any bond must be adequate to cover all this loss and the potential loss  
4 from Queensryche having to start up again after a long hiatus. As such, Defendants ask for a  
5 bond of no less than \$10 million to adequately secure this risk.

### 6 CONCLUSION

7 No preliminary injunction should be issued. Geoff Tate is not likely to succeed on the  
8 merits. He has not been oppressed, because his expectation to remain as Queensryche's  
9 lead singer forever is not reasonable. Geoff Tate's removal as lead singer was due to  
10 legitimate business considerations, including his takeover of the creative process to bad  
11 results, rejection of the popular parts of the music catalog, and his physical assault of his  
12 bandmates and subsequent erratic behavior. Judicial dissolution is an extreme remedy only  
13 undertaken in rare circumstances, and without judicial dissolution, Geoff Tate cannot be  
14 awarded the name Queensryche. And award of the name must be done through equity, and  
15 doing so would be the opposite. An injunction would not properly balance the harms among  
16 the band members, third parties, or the public. And, the bond for any injunction must be in the  
17 millions to adequately protect the potential loss.

18 Geoff Tate needs to be compensated for his shares in the Queensryche entities, no  
19 one denies this. He also has a right to ask the Court to determine a fair amount if that cannot  
20 be done through negotiation. But, he does not have a right to take Queensryche's name for  
21 himself, nor to harm the brand, band and corporations for months by denying its use while this  
22 case is fully adjudicated on the merits. Therefore, Plaintiff's motion should be DENIED.

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24 SIGNED this 7th day of July, 2012.

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