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KING COUNTY
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SUPERIOR COURT CLERK

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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

No: 12-2-21829-3 SEA

Plaintiffs,

RESPONSE TO PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL FROM REPRESENTING THE CORPORATE DEFENDANTS

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

RESPONSE TO PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL FROM REPRESENTING THE CORPORATE DEFENDANTS - 1 of 9

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1 Osinski Law Offices P.L.L.C., and submit the following response and objection to the
2 disqualification of current Defense Counsel.

3 4 **INTRODUCTION**

5 Plaintiff Geoff Tate, along with his wife, have brought suit against his former
6 bandmates, Eddie Jackson, Scott Rockenfield and Michael Wilton, and the corporations they
7 do business as, claiming that he is being oppressed. He now comes before this Court asking
8 that Defendant's counsel not be allowed to represent both the individual Defendants and the
9 Corporations due to conflict. This is not well taken and should be denied outright. In the
10 alternative Defendants' counsel's removal should be conditional, and deemed invalid if the
11 Defendant Corporations become anything less than "Nominal" Defendants taking no active
12 role in the litigation, and preserving the individual Defendants standing to challenge the
13 withholding and usurping of corporate trademarks.

14 15 **I. RELIEF REQUESTED**

16 Defendants request that Plaintiff's motion to disqualify counsel from representing the
17 corporate defendants be denied. In the alternative Defendants' counsel's removal should be
18 conditional, and deemed invalid if the Defendant Corporations become anything less than
19 "Nominal" Defendants taking no active role in the litigation, and preserving the individual
20 Defendants standing to challenge the withholding and usurping of corporate trademarks.

21 22 **II. STATEMENT OF FACTS**

23 Individual Defendants Eddie Jackson, Scott Rockenfield and Michael Wilton hired
24 current Defense Counsel to advise and represent them of their legal rights visa vis
25 Queensryche and its entities. See Declaration of Counsel Thomas T. Osinski. They constitute

1 three of four directors and 75% of the shareholders of the Queensryche corporations. See id.
2 Plaintiff Geoff Tate is one of four directors and 25% of the shareholders in said entities. See
3 id. As all sides admit that the Tri-Ryche Shareholders Agreement has expired, the
4 corporations are governed by majority rule, with all operational authority vested in the
5 directors. See id. Upon the acceleration of the current conflict, Eddie Jackson, Scott
6 Rockenfield and Michael Wilton formed an executive committee to carry out business
7 operations quickly and flexibly without having to call formal meetings with three days lead
8 time. See id. This is allowed by the articles and bylaws. See id.

9 When negotiations for a separation from Geoff Tate failed and this suit commenced,
10 Plaintiffs named all Queensryche entities along with the three individual Defendants. See
11 Complaint. Defense Counsel entered an appearance on behalf of all Defendants, both
12 individual and corporate, in order to avoid any claim of default against any party. See
13 Declaration of Counsel, Thomas T. Osinski. Plaintiffs also sought a preliminary injunction
14 against the individual Defendants over the use of the Queensryche name that was not well
15 taken. See id.

16 Since the defeat of the preliminary injunction, Plaintiff Geoff Tate has continued to
17 interfere with Defendants' forward progress to tour under the Queensryche name. See id.
18 This includes refusal to relinquish control of Queensryche.com and other Internet and social
19 media accounts, challenging the Defendants from taking control from the registering entity of
20 Queensryche.com, and announcing to the national press through a surrogate of Mr. Tate's
21 "encouragement by the judge" to tour as his own Queensryche. See id. Mr. Tate has also
22 announced on his website his apparent intention to release an album this fall under the
23 moniker "Voice of Queensryche" and utilizing a stylized version of the Queensryche entity-
24 owned Tri-Ryche symbol. See id. There is no authority in the articles or bylaws of Tri-Ryche
25 Corporation allowing a minority shareholder to use these corporate assets without

1 authorization from the directors. See id. All parties expressly agree as stated in prior pleadings
2 and submissions that the name Queensryche and associated marks belong to the Tri-Ryche
3 Corporation. See id. The relevance of these activities goes to corporate representation as
4 discussed below.

6 **III. ISSUES PRESENTED**

7 A. Should Defense Counsel not be allowed to represent the Corporations?

8 1. Is there a conflict between the Corporations and the individual Defendants?

9 No.

10 2. Are the Corporations and the individual Defendants' interests aligned? Yes.

11 3. Could any possible conflict be waived through informed consent? Yes.

12 B. Should any removal of current Defense Counsel be conditional? Yes.

13 1. Should any removal of current Defense Counsel be nullified if the Defendant
14 Corporations act in a capacity that is anything more than "Nominal?" Yes.

15 2. As a condition of removal of current Defense Counsel, should any claims of
16 lack of standing or other challenge of right of the individual Defendants to bring claims to
17 protect and control corporate assets such as the name "Queensryche," the Queensryche
18 Internet and social media accounts, and otherwise challenge Plaintiffs' interference, be
19 waived? Yes.

21 **IV. EVIDENCE RELIED UPON**

22 This response relies on the sworn Declaration of Counsel Thomas T. Osinski, and true
23 and correct copies of documents attached.

1 **V. LEGAL AUTHORITIES**

2 **Standard for Conflict**

3 RPC 1.7 States:

4 (a) Except as provided in paragraph (b), a lawyer shall not represent a
5 client if the representation involves a concurrent conflict of interest. A
6 concurrent conflict of interest exists if:

7 (1) the representation of one client will be directly adverse to another
8 client; or

9 (2) there is a significant risk that the representation of one or more
10 clients will be materially limited by the lawyer's responsibilities to another client,
11 a former client or a third person or by a personal interest of the lawyer.

12 (b) Notwithstanding the existence of a concurrent conflict of interest under
13 paragraph (a), a lawyer may represent a client if:

14 (1) the lawyer reasonably believes that the lawyer will be able to
15 provide competent and diligent representation to each affected client;

16 (2) the representation is not prohibited by law;

17 (3) the representation does not involve the assertion of a claim by one
18 client against another client represented by the lawyer in the same litigation or
19 other proceeding before a tribunal; and

20 (4) each affected client gives informed consent, confirmed in writing
21 (following authorization from the other client to make any required disclosures).

22 Thus the inquiry for this motion is twofold: first, if there is any possible conflict, and,
23 second, if any such possible conflict can be waived.

1 **There is no Conflict**

2 Defendants argue there is no conflict. As a closely held corporation wherein three-
3 quarters of the directors/shareholders are in litigation with one quarter of the
4 directors/shareholders, this truly is a fight amongst them and not the corporations. Washington
5 courts have stated that there is no clear authority in the area of conflicts of interest for counsel
6 in just this sort of derivative action with a closely held corporation. See Hicks v. Edwards, 75
7 Wn2d. 156, 164 (WA Div 2, 1994). The Court considered without expressly adopting that “the
8 corporation is the ultimate beneficiary in a derivative action, in that any money recovered is
9 returned to the corporation for the benefit of all shareholders.” See *id.* The Court then
10 continued that:

11 “Although the corporation appears as a party on both sides of the lawsuit, its
12 true interest lies with the Plaintiff shareholder; it is only nominally a defendant.

13 Therefore [the law firm] represents only the interests of the individual directors who
14 have allegedly harmed the corporation, and the plaintiff’s counsel actually represents
15 the interests of the corporation, to which any recovery will be returned. [The law firm] is
16 not representing adverse interests because the corporation has no interest as a
17 defendant; it is merely required to be named as one.” See *id.*

18 Here we have exactly the same situation. By Plaintiffs’ own admission, the
19 corporations are merely “nominal” defendants. As such, there is no conflict here as considered
20 by the Washington Court of Appeals above.¹ Thus Plaintiff’s motion should be dismissed.

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23 ¹ Defendants readily admit that this is not the holding of the Hicks case, which concerned itself with a Rule 11
24 analysis; however, they do urge the Court to adopt the logic discussed as it is the only Washington authority on the
25 matter found.

1 **Can Any Appearance of Possible Conflict Be Eliminated Short of Removal?**

2 If the Court is still concerned about any appearance of conflict, it can be remedied. As
3 stated in RPC 1.7 above, any conflict can be waived through informed consent in writing by
4 the clients. RPC 1.13 states in pertinent part that:

5 (g) A lawyer representing an organization may also represent any of its
6 directors, officers, employees, members, shareholders or other constituents,
7 subject to the provisions of Rule 1.7. If the organization’s consent to the dual
8 representation is required by Rule 1.7, the consent shall be given by an
9 appropriate official of the organization other than the individual who is to be
10 represented, *or by the shareholders.*” (Emphasis added.)

11 As such, if the Court does find there is a risk of possible conflict, it can be waived by
12 the individual Defendants as well, as they are a majority of the shareholders. Upon being
13 informed of such need, a shareholders meeting could be commissioned.²

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15 **If Removal is Deemed Warranted it should be Conditional**

16 Finally, the Court could also require a conditional withdrawal of counsel, and
17 appointment of Mr. Sussman as counsel for the “nominal” Corporate Defendants; however,
18 Defendants point out that Mr. Sussman, or any attorney, would appear to be subject to the
19 same possible conflicts as current Defense Counsel due to his need to represent the interests
20 of all four shareholders.

21 Moreover, any removal of current Defense Counsel must be viewed through the prism
22 of upcoming activity in the litigation. Here, Plaintiffs have shown through their actions and

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24 ² Up to this point, Defense Counsel has been retained under the individual Defendants’ more flexible authority as a
25 duly appointed executive committee of the directors of the corporations.

1 current stated intentions to continue to thwart Defendants' use of the Queensryche name
2 through touring and recording to benefit the corporation. Plaintiffs have refused to turn over
3 access and otherwise challenge Defendants' use of the Queensryche Internet and social
4 media assets. Additionally, Mr. Tate has undertaken to usurp corporate assets in the form of
5 the name Queensryche and the Tri-Ryche symbol, with no grant of authority from the
6 corporations that he himself concedes controls them. If this situation is not resolved promptly,
7 the Defendants most likely will have to turn to the Court for relief and guidance before the end
8 of this litigation. If current Defense Counsel is removed, Defendants will be open to attacks of
9 lack of standing and other challenges to bring such claims for preliminary relief.

10 Therefore, any removal of current Defense Counsel should either not occur, or
11 expressly find that lack of standing, or other challenges based on non-representation of the
12 Queensryche corporations, are not available to Plaintiffs in order to maintain fairness. In the
13 alternative, the removal could be invalidated by such attacks, allowing Defense Counsel to
14 effectively challenge any attempts by Plaintiffs to thwart the Corporation from carrying out its
15 rightful business of touring, recording, and promoting the band, Queensryche during the
16 pendency of this litigation.

17 18 **CONCLUSION**

19 Current Defense Counsel should not be removed because there is no conflict. The
20 Queensryche Corporations are "nominal" defendants only, and the corporate and individual
21 defendants interests are fully aligned.

22 If the Court still has reservations about any possible appearance of conflict,
23 Defendants can hold a shareholders meeting and fully waive any possible conflict through
24 informed consent as allowed by the rules.

1 If the Court still finds that Defense Counsel should be removed, then any removal and
2 appointment of Mr. Sussman or other counsel should be conditional on the Queensryche
3 entities remaining "nominal" defendants only. Also, if current Defense Counsel is removed, it
4 should be done with the understanding that any challenge to use or access to the corporate
5 assets of the name "Queensryche," the Tri-Ryche symbol, and its Internet and social media
6 assets cannot be attacked for standing or similar reasons based on non-representation of the
7 Queensryche Corporations.

8 SIGNED this 25th day of July, 2012.

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10 OSINSKI LAW OFFICES P.L.L.C.

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13 Thomas T. Osinski, Jr., Esq.
14 Attorney for Defendants
15 WSBA #34154
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