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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.

No. 12-2-21829-3 SEA

**OPPOSITION TO PLAINTIFFS'  
MOTION TO CONTINUE TRIAL  
DATE AND AMEND CASE  
SCHEDULE**

**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.

COMES NOW Defendants **EDDIE JACKSON and TERESA GOLDEN-  
JACKSON, SCOTT ROCKENFIELD and MISTY ROCKENFIELD**, and **MICHAEL  
WILTON and KERRIE LYNN WILTON**, by and through their attorney of record,

1 Thomas T. Osinski, Jr., of Osinski Law Offices, PLLC, and submit the following  
2 Opposition to Plaintiffs' Motion to Continue Trial Date and Amend Case Schedule:

3 **INTRODUCTION**

4 Defendants are the founding members of the multi-platinum selling band  
5 Queensryche. In June of 2012, following a physical assault for which he showed no  
6 remorse and other escalating, bizarre behavior, Defendants lawfully replaced Geoff Tate  
7 as lead singer of the band and attempted to enter into good faith negotiations to buy out  
8 his interest in the Queensryche corporations. Mr. Tate responded by filing the suit at bar  
9 that same month. Subsequently, there were both preliminary injunction and partial  
10 summary judgment motions brought and defeated.

11 From October 2012 until April 2013 there was nearly no activity in the case. In  
12 April 2013 Plaintiffs propounded interrogatories and requests for production on  
13 Defendants. Responses were supplied in May. Not until July 31, 2013, did Plaintiffs raise  
14 any objections to the adequacy of the responses to that discovery, more than two  
15 months after said responses were served. Other than two related subpoenas for  
16 documents, Plaintiffs have engaged in *no other discovery*.

17 Now, as a result of Plaintiffs' complete lack of diligence in this matter, they  
18 claim to be unable to be prepared for trial. Any challenges they face are 100% the result  
19 of their failure to properly prosecute their case and as such should not be able to delay  
20 the resolution of this matter to Defendants' detriment or Plaintiffs' advantage.  
21 Therefore, Defendants oppose this motion and are confident both parties can be  
22 prepared to go forward at the original trial date.

23 **I. RELIEF REQUESTED**

24 Defendants request that the Court *deny* Plaintiffs' motion to continue the trial  
25 date and maintain the original case schedule. If the Court does see fit to grant some

1 continuance, Defendants ask that it be limited in time and scope, narrowly tailored to  
2 allow any relevant discovery to be had without any further delay. Defendants also ask  
3 that Mr. Tate’s unauthorized use of the Queensryche name be curtailed during any  
4 period of extension beyond the current trial date so as to eliminate further damage to  
5 the brand.

## 6 **II. STATEMENT OF FACTS**

### 7 **A. Pre-litigation Queensryche Background**

8 Geoff Tate is not a “founding member” of Queensryche. Chris DeGarmo,  
9 Eddie Jackson, Michael Wilton and Scott Rockenfield had been working together as a  
10 band prior to Geoff Tate’s involvement. See Declaration of Scott Rockenfield at 1-2. All  
11 music during the Queensryche era of 1981 until 1997 was written, performed and  
12 recorded by Chris DeGarmo, Eddie Jackson, Scott Rockenfield and Michael Wilton.  
13 Geoff Tate has only ever written lyrics, and not all of them. He has never written any  
14 music that was used for Queensryche. See id at 2.

15 After 1997, upon Chris DeGarmo’s departure and as the years moved on,  
16 Geoff Tate became much less interested in working on music with Eddie Jackson,  
17 Michael Wilton and Scott Rockenfield, instead hiring outside writers and musicians.  
18 This did not result in the Queensryche sound the band was known for. See id 2-3

19 More recently, a significant amount of the profit generated from Queensryche  
20 merchandising while under the control of Geoff Tate and his family members was going  
21 directly into the Tates’ pockets through high salaries paid to Susan and Miranda Tate.  
22 See id at 3. It was only after some very thorough investigation that the Defendants  
23 discovered this and moved on to a more professional merchandising company. See  
24 Declaration of Scott Rockenfield at 3-4.

1           The idea of Susan Tate’s commission as manager being cheaper is also  
2 incorrect as she took her percentage off the unadjusted gross with no concern for band  
3 expenses and net profits and had the Queensryche corporations liberally cover all of her  
4 business such as food, travel, lodging, entertainment and the like. See id at 5. The new  
5 management pays its own expenses and bills off an adjusted gross that considers band  
6 costs, thus resulting in less money paid overall. New management is also amongst the  
7 top in the world, hailing from Live Nation/Frontline, resulting in greater opportunities  
8 overall. See id.

9           Defendant bandmates Jackson, Rockenfield and Wilton have always followed  
10 all the guidelines and articles/bylaws of the corporations and the state of Washington to  
11 schedule meetings. Geoff Tate was notified each and every time, but he consistently  
12 refused to participate, and even hired an attorney to speak through and make legal  
13 rebuttals to the meetings being scheduled. See id at 4. Because Geoff Tate continuously  
14 refused to participate, Defendants were forced to have meetings without him, such as  
15 the meeting prior to the Sao Paulo assault where they shut down the in-house  
16 merchandising and terminated Susan Tate’s management. That led to another  
17 “emergency meeting” called by Geoff Tate in Brazil prior to the Sao Paulo assault. At  
18 this meeting everything from the meeting Geoff Tate did not participate in was  
19 discussed and ratified again. See id. Scott Rockenfield is also vehement he never said  
20 anything to Geoff Tate prior to the Sao Paulo assault regarding “I’m firing you next” or  
21 the like. See id.

22           Following the Sao Paulo assault, which included not only punching his  
23 bandmates, but spitting on Defendant Scott Rockenfield throughout the performance as  
24 seen later in several videos posted on YouTube, and Geoff Tate’s escalating erratic  
25 behavior, Defendants did vote to replace Geoff Tate as lead singer as a corporate

1 decision that would then allow the band to continue Queensryche for a healthy and  
2 positive future. See id at 5. Geoff Tate filed the suit at bar in response in June 2012.

3 **B. Post Filing Queensryche Facts**

4 Since the filing of the suit, Geoff Tate continues to harm the Queensryche  
5 brand. The newest self-titled Queensryche CD release by the Defendant bandmates  
6 entered the U.S. charts at #23 and continues to get 9 out of 10 star reviews and is still  
7 selling very well on a weekly basis around the globe. See id at 6. In comparison, Geoff  
8 Tate released his own Queensryche CD in April of this year titled *Frequency Unknown*  
9 and depicted as *F.U.* on the cover, which entered the charts at #82, received very bad  
10 reviews around the world, and has slowed to almost no more weekly sales. See id at 6.  
11 Defendant bandmates' new CD even outperformed the last two CDs of them with Geoff  
12 Tate, selling more in a month than the *Dedicated to Chaos* CD has since its release in 2010,  
13 and charting much better than both that album and the previous one, *American Soldier*.  
14 Thus, the return to the classic sound the Defendant bandmates have made with the new  
15 CD and live shows has been met with overwhelming success. See id.

16 Geoff Tate also chose very poorly in hiring live musicians that have shown  
17 that they are not capable of representing the correct performances of the Queensryche  
18 music legacy, and he was constantly replacing them. See id. He has been offering his  
19 low quality version of Queensryche to the promoters at a much reduced rate, as low as  
20 \$10,000 per night, when, in fact, the Defendant bandmates have done their best to keep  
21 the authorized Queensryche at an average of well over \$20,000 per show this entire  
22 year. See id. However, this becomes harder and harder with Geoff Tate's sub-par band  
23 and cut-rate pricing that continues to be damaging to the Queensryche brand and  
24 legacy no matter who ultimately wins control after trial. See id.

1 At no point have Defendant bandmates authorized Geoff Tate to use the  
2 Queensryche name or trademarks, let alone run his own rival band. The Queensryche  
3 corporations own the band name and logos, and the Defendant bandmates are 75%  
4 owners and constitute 3 of 4 directors, giving them control thereof. See Declaration of  
5 Scott Rockenfield at 6.

6 **C. Prosecution of the Case at Bar**

7 This suit was filed in June of 2012. Plaintiffs engaged in no discovery until  
8 April 2013, a full 10 months later. Defendants provided responses to that discovery in  
9 May 2013. See Declaration of Counsel at 2. Although the responses were not Bates  
10 stamped, they were labeled by request for production number or self-evident  
11 description (e.g., Emails with "NAME") and the vast majority was supplied in PDF  
12 format allowing for quick indexing and searching. See id. No issues with the sufficiency  
13 of those answers was raised by Plaintiffs until July 31, 2013, more than two months after  
14 the answers were supplied. See id. Regardless of any legitimate reason to object,  
15 Defendants have been endeavoring diligently to supply any missing responsive  
16 discovery documents, even going as far as offering stipulations/accommodations on  
17 confidentiality designations to speed up the process. See id at 2, Exhibit 1. Those  
18 accommodations were rejected or ignored. See id at 2, Exhibit 1. Nonetheless, within  
19 three weeks of the issues first being raised and by the hearing of this motion, all  
20 additional documents have also been supplied. See id at 2.

21 **III. ISSUES PRESENTED**

22 Should the Court grant a continuance in the trial date and amendment to the  
23 case schedule? No.

24 Were the Plaintiffs diligent in prosecuting their case? No.

25 Is Plaintiffs' motion brought in good faith? No.

1 As a result, is any harm or prejudice they face self-inflicted? Yes.

2 Will the Defendants, as well as all parties, be harmed by a continuance? Yes.

3 If the Court does grant a continuance, should it be for a more limited time  
4 and narrow purpose than proposed by Plaintiffs? Yes.

5 If the Court does grant a continuance, should Geoff Tate be prohibited from  
6 using the Queensryche name for touring and production of new albums during that  
7 period of continuance? Yes.

#### 8 **IV. EVIDENCE RELIED UPON**

9 The declarations of Thomas T Osinski, Jr. (Counsel) and Scott Rockenfield,  
10 and the pleadings and filings already submitted in the case.

#### 11 **V. LEGAL AUTHORITIES**

12 CR 40(e) Continuances states:

13 “A motion to continue a trial on the ground of the absence of evidence shall  
14 only be made upon affidavit showing the materiality of the evidence expected to be  
15 obtained, and that due diligence has been used to procure it, and also the name and  
16 address of the witness or witnesses. The court may also require the moving party to  
17 state upon affidavit the evidence which he expects to obtain; and if the adverse party  
18 admits that such evidence would be given, and that it be considered as actually given  
19 on the trial, or offered and overruled as improper, the trial shall not be continued. The  
20 court, upon its allowance of the motion, may impose terms or conditions upon the  
21 moving party.”

22 Moreover, the decision to “grant or deny a motion for a continuance rests  
23 within the sound discretion of the trial court.” State v. Downing, 151 Wn.2d 265, 272  
24 (2004). Trial courts may consider (1) the necessity of reasonably prompt disposition of  
25 litigation; (2) the needs of the moving party; (3) the possible prejudice to the adverse

1 party; (4) the prior history of the litigation, including prior continuances previously  
2 granted; (5) any conditions imposed in the continuances previously granted; and (6) any  
3 other matters that have a material bearing on the court's exercise of discretion. See  
4 Balandzich v. Demeroto, 10 Wn.App. 718, 720 (1974).

5 Likewise, the Supreme Court recognized that a party who moves for a  
6 continuance must have exercised good faith and diligence to prevent the need for delay.  
7 See Chamberlin v. Chamberlin, 44 Wn.2d 689, 704 (1954). And in Odom v. Williams, the  
8 Washington Supreme Court again emphasized that a party moving for continuance  
9 must exercise due diligence and good faith. See Odom v. Williams, 74 Wn.2d 714, 717-  
10 18, (1968).

11 Here it is the total lack of due diligence and good faith that demands for this  
12 motion for continuance be denied. This matter was filed in June 2012. Plaintiffs did not  
13 engage in ANY discovery *until ten months later!* This point cannot be emphasized  
14 enough. They ask for at least six months more now when faced with a discovery  
15 deadline of September 30, 2013, when they squandered 10 months early this year and  
16 last. But the lack of diligence does not end there. Once they received the discovery  
17 responses from Defendants, they waited for over two more months to raise any issues—  
18 and on the eve of the deadlines—to change the trial date. So, we now have a total of 12  
19 months, one entire year, squandered.

20 Moreover, the issues with the Defendants' responses have been diligently  
21 dealt with. Defendants plan to have already supplied the outstanding documents by the  
22 hearing of this motion, simply to move the process along to its end. In fact, Defendants  
23 attempted to make further accommodations to supply them even sooner, but those  
24 offers were rejected or ignored as set forth in the emails between lead counsel. See  
25 Declaration of Counsel, Exhibit 1. Thus, it appears that the "problems" with

1 Defendants' response is nothing more than an attempt to shift balance away from  
2 Plaintiffs' near year's worth of inaction. It is that shifting that leads to the second factor  
3 of lack of good faith.

4 Good faith is even more lacking, though, in Plaintiffs' representations about  
5 settlement and mediation. In Plaintiffs' motion, they complain how no offer was  
6 brought forth by Defendants until July 2013, and how Defendants have declined to  
7 mediate. See Plaintiffs' Motion to Continue at 10. This recitation of the facts, though  
8 technically true, is a massive distortion through omission. As such, Defendants have no  
9 choice but to inform the Court of the whole picture, namely that the parties engaged in  
10 mediation for a full day in September 2012 to no avail.<sup>1</sup> We have already mediated, and  
11 at significant expense, but the parties were so far apart it failed. To infer the Defendants'  
12 not bringing forth yet another offer until July 2013, and failure to agree to mediate *again*  
13 was an excuse for their lack of diligence in the discovery process is textbook bad faith.  
14 Plaintiffs themselves could have made an offer at any time, but chose not to. Also of  
15 note, as of the filing of this objection to continuance there has been no response to the  
16 offer.

17 Beyond the total lack of diligence and good faith, there is the ongoing harm to  
18 not only the Defendants, but the very Queensryche brand and corporations both parties  
19 are fighting for. Right now, due to Judge Shapira's unwillingness to block either party  
20 from using the name, there are two competing Queensryche's causing confusion in the  
21 marketplace. This is harmful to whomever eventually prevails in this matter, Plaintiffs

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22  
23 <sup>1</sup> Defendants readily admit a "mediation agreement" was in place concerning this confidential nature of this  
24 September 2012 mediation, but are convinced that given how Plaintiffs presented the facts surrounding settlement  
25 and mediation, their duties of honesty to the Court trumped the requirements of that agreement.



1 As such, the Motion for Continuance should be denied. If the Court does see  
2 fit to grant a continuance, it should be short in nature and have restrictions on Mr. Tate's  
3 use of the Queensryche name so as to mitigate the harm caused by continuing the trial  
4 due to Plaintiffs' delay.

5 DATED this 16<sup>th</sup> day of August, 2013, at Tacoma, Washington, Pierce County.

6  
7 OSINSKI LAW OFFICES, PLLC

8 By s/ Thomas T. Osinski, Jr.  
9 Thomas T. Osinski, Jr., Esq., WSBA #34154  
10 Attorney for Defendants  
11 Jackson, Rockenfield and Wilton  
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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 method indicated:

Joshua C. Allen  
Benjamin J. Stone  
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- Overnight Delivery via Fed Ex  
 First Class Mail via USPS  
 Hand-delivered via ABC Legal Messenger  
 Facsimile  
 Email

DATED this 16<sup>th</sup> day of August, 2013, at Tacoma, Washington.

OSINSKI LAW OFFICES, PLLC

By s/ Thomas T. Osinski, Jr.  
Thomas T. Osinski, Jr., Esq., WSBA #34154  
Attorney for Defendants  
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