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KING COUNTY
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CASE NUMBER: 12-2-21829-3 SEA

THE HONORABLE CAROL SCHAPIRA
NOTED FOR ORAL ARGUMENT: JULY 10, 2012 AT 3:30 PM

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..

Case No. 12-2-21829-3 SEA

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION TO STRIKE

1 **I. Relief Requested**

2 Plaintiffs Geoff and Susan Tate respectfully request that this Court strike all papers filed
3 by defendants Scott Rockenfield, Michael Wilton, and Eddie Jackson in opposition to the Tates'
4 motion for a preliminary injunction. The opposition papers were filed and served on a Sunday
5 afternoon, when courts and law firm offices are closed. The filing was also two days after the
6 deadline, in violation of the Civil Rules and King County Local Rules. The late filing is
7 inexcusable and has prejudiced the Tates, who cannot possibly prepare a reply by the deadline of
8 noon, Monday, July 9.

9 **II. Statement of Facts**

10 The relevant facts leading up to this point are stated in the Tates' motion for a
11 preliminary injunction.

12 For the past 30 years, Geoff Tate has been the face and voice of the band, Queensryche,
13 serving as lead singer and songwriter for the band. In early June 2012, Rockenfield, Jackson,
14 and Wilton, the band's drummer, bassist and guitarist, inexplicably and unjustifiably kicked
15 Geoff out of the band. They also demanded that he sell back to them, at grossly unfair prices,
16 shares of stock Geoff owned in companies that operated the various aspects of Queensryche's
17 business. On June 20, 2012, Rockenfield, Jackson, and Wilton issued a press release stating that
18 they were canceling all Queensryche shows that had been booked with Geoff as the lead singer
19 and would book new shows with their new lead singer.

20 A few days later, Geoff commenced this lawsuit seeking, among other things, dissolution
21 of the Queensryche companies due to the oppressive conduct of Rockenfield, Jackson, and
22 Wilton in summarily kicking him out of the band and demanding that he sell his shares in the
23 Queensryche companies back to him at grossly unfair price. The relief sought by Geoff includes
24 ownership of the name Queensryche since he, far more than Rockenfield, Jackson, and Wilton,
25 was responsible for building and maintaining the band's name. Concerned that Rockenfield,
26 Jackson, and Wilton's efforts to tour as Queensryche without him while the litigation was

1 pending would cause irreparable damage to the band name, on June 26, 2012, counsel for the
2 Tates spoke with the Court to schedule a hearing for a motion for preliminary injunction.
3 Declaration of Benjamin Stone in Support of Motions to Strike and Shorten Time, para. 2. They
4 were told that the Court's first available date was Tuesday, July 10 at 3:30 p.m. and the Tates
5 scheduled oral argument for that date and time. Id. On Friday, June 29, 2012, the Tates filed
6 their papers in support of their motion for a preliminary injunction.

7 On Sunday, July 8, 2012, at approximately 12:05 p.m., Rockenfield, Jackson, and Wilton
8 filed their opposition to the motion for a preliminary injunction. The documents included a
9 nineteen-page memorandum of law,¹ ten declarations that totaled around 100 pages from Wilton,
10 Jackson, Rockenfield, Paul Geary, Orlando O'Hare, Eugene Bishop, Anthony Bender, Parker
11 Lundgren, Alan Miller, and Misty Rockenfield, and ten of their twelve stated exhibits that totaled
12 tens of additional pages.

13 III. Statement of Issues

14 Should this Court strike the opposition to the motion for a preliminary injunction because
15 Rockenfield, Jackson, and Wilton inexcusably filed the papers late, and on a Sunday, in violation
16 of the Civil Rules and King County Local Court Rules, prejudicing the Tates by depriving them
17 of the opportunity to file a reply by the deadline?

18 IV. Evidence Relied Upon

19 The Declaration of Benjamin Stone in Support of Motions to Strike and Shorten Time
20 and the papers filed with the Court in support of the Tates' motion for preliminary injunction.

21 V. Authority

22 **Striking the Opposition to the Motion for a Preliminary Injunction Is Warranted.**

23 King County Local Rule 7(b)(4) states that a litigant shall serve and file motion papers
24 six days before the hearing date for the motion. KCLR 7(b)(4)(A). Papers in opposition to the

25 ¹ In filing a nineteen-page memorandum, Rockenfield, Jackson, and Wilton violated another
26 provision of the local rules, King County Local Rule 7(b)(5)(B)(vi), which limits briefs to twelve
pages.

1 motion must be filed and served “no later than 12:00 noon two court days before the date the
2 motion is to be considered.” KCLR 7(b)(4)(D). Papers in reply to the opposition must be served
3 and filed “no later than 12:00 on the court day before the hearing.” Material offered after the
4 deadline “will not be considered by the court over the objection of counsel except upon the
5 imposition of appropriate terms, unless the court orders otherwise.” KCLR 7(b)(4)(G).

6 Civil Rule 6 governs the computation of deadlines. When the deadline is less than seven
7 days, weekends and holidays are not included. Upon “cause shown,” a deadline may be enlarged
8 but, if the litigant seeks to enlarge a deadline after it has passed, it must file a motion and make a
9 showing of “excusable neglect.” CR 6(c).

10 In this case, the Tates filed the motion for a preliminary injunction on June 29, 2012. As
11 required by King County Local Rule 7(b)(4)(A), this was six court days before the July 10
12 hearing date. In calculating the six days, under Civil Rule 6, the weekend of June 30 and July 1
13 and the holiday of July 4 were not counted.

14 Under King County Local Rule 7 and Civil Rule 6, the deadline for Rockenfield,
15 Jackson, and Wilton to file and serve their opposition to the motion was noon, Friday, July 6,
16 2012. This was two “court days” before the hearing date of July 10, 2012. The timing of the
17 filing of the motion gave Rockenfield, Jackson, and Wilton a total of seven days to prepare their
18 opposition. Saturday, June 30, Sunday, July 1, and Wednesday, July 4, fell within this frame
19 they had to prepare their opposition but pursuant to Civil Rule 6, the three days were not counted
20 in computing the deadline since the motion was technically a six-day motion. In other words,
21 Rockenfield, Jackson, and Wilton benefited significantly by the timing of the filing of the motion
22 for a preliminary injunction.

23 But Rockenfield, Jackson, and Wilton did not file their opposition by noon on July 6 as
24 required by the rules. And they did not contact the Tates or the Court at any time to state they
25 would be filing their opposition late. Instead, they waited until after noon on Sunday, July 8 and
26 then filed all of their papers. This violates the King County Local Rules since the deadline was

1 Friday, June 6, and because Sunday is not a “court day,” which is the only day a litigant can file
2 papers.

3 The untimely Sunday filing has substantially prejudiced the Tates. Rockenfield, Jackson,
4 and Wilton have filed a nineteen-page memorandum of law, ten declarations that total around
5 100 pages and ten of their twelve stated exhibits that total tens of more pages of documents.
6 Much of what is said is irrelevant, the memorandum exceeds the permissible page limit, and
7 evidence is missing or submitted in inadmissible form. This would take a substantial amount of
8 time to respond to, and the Tates cannot possibly be expected to begin working on it on a Sunday
9 afternoon, when offices are closed and witnesses and lawyers are unavailable.

10 Striking the opposition papers is an appropriate remedy. The failure to timely file the
11 opposition papers is inexcusable. The King County Local Rules requiring the filing of opposition
12 papers two “court days” before the hearing date could not be clearer. Rockenfield, Jackson, and
13 Wilton had the evidence they needed to file by July 6. All but two non-party witnesses signed
14 their declarations before the July 6 deadline and the other two – Anthony Bender and Parker
15 Lundgren – signed theirs on July 6. The only witnesses to sign their declarations after the
16 deadline are Wilton, Jackson, and their attorney. Clearly, as the litigants and their attorney, they
17 could have signed their declarations sooner. They simply chose not to do so. And if they truly
18 required more time, the rules are clear on how they are to request it, by filing an application to
19 the Court pursuant to Civil Rule 6, providing the Court with cause why the deadline should be
20 extended. Rockenfield, Jackson, and Wilton did not do this. The only conclusion to reach is that
21 Rockenfield, Jackson, and Wilton intentionally chose to file their opposition papers on a Sunday
22 afternoon, knowing that it would hamstring the Tates’ ability to file their reply papers by the
23 Monday noon deadline. That, together with the prejudice suffered by the Tates, warrants an
24 order striking the opposition papers.

1 **VI. Conclusion**

2 Rockenfield, Jackson, and Wilton have shown a clear disregard for this Court’s rules by
3 filing their opposition papers to the Tates’ motion for a preliminary injunction two days late and
4 on a Sunday afternoon. The Tates are prejudiced by the late, Sunday filing since they now do
5 not have the opportunity to prepare a reply by the deadline of Monday, July 9, at noon. They
6 respectfully request therefore that all documents filed in opposition to the motion or a
7 preliminary injunction be stricken.

8 Dated this 9th day of July 2012.

9 Respectfully submitted,

10 VERIS LAW GROUP PLLC

11 /s/ Benjamin J. Stone

12
13 Benjamin J. Stone, WSBA No. 33436
14 Joshua C. Brower, WSBA No. 25092
15 Denver R. Gant, WSBA No. 38552
16 Attorneys for Plaintiffs
17 Geoff Tate and Susan Tate

18 4818-7966-9776, v. 1

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4 THE HONORABLE CAROL SCHAPIRA
5 MOTION NOTED FOR ORAL ARGUMENT ON JULY 10, 2012 AT 3:30 P.M.
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18 ROCKENFIELD and MISTY
19 ROCKENFIELD, a married couple;
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21 WILTON, a married couple; TRI-RYCHE,
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23 QUEENSRYCHE MERCHANDISING, INC.,
a Washington corporation; and MELODISC
LTD., a Washington corporation,

24 Defendants.

Case No. 12-2-21829-3 SEA

(PROPOSED)

ORDER GRANTING PLAINTIFFS'
MOTION TO STRIKE

24 Plaintiffs, having filed a motion to strike the papers untimely filed by Scott Rockenfield,
25 Eddie Jackson, and Michael Wilton in opposition to the Plaintiffs' motion for a preliminary
26 injunction;

ORDER GRANTING PLAINTIFFS' MOTION
TO STRIKE

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The Court, having considered the Plaintiffs' Memorandum in Support of the Motion to Strike, the accompanying Declaration of Benjamin Stone, and having held oral argument on July 10 at 3:30 p.m., the Court hereby rules as follows:

IT IS HEREBY ADJUDGED, DECREED, AND ORDERED, that the motion to strike is GRANTED. The papers untimely filed by defendants Rockenfield, Jackson, and Wilton on Sunday, July 8 in opposition to the motion for a preliminary injunction are hereby stricken from the court record.

DONE IN OPEN COURT this ____ day of _____, 2012.

The Honorable Carol A. Schapira
Superior Court Judge

Presented by:
VERIS LAW GROUP PLLC

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Benjamin J. Stone, WSBA No. 25092
Denver R. Gant, WSBA No. 38552
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Geoff Tate and Susan Tate

4823-3619-3552, v. 1