

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city,	)	No. C07-1620MJP
	)	
Plaintiff,	)	DEFENDANT’S MOTION TO (i)
	)	ELIMINATE ATTORNEY’S EYES ONLY
v.	)	“AEO”) DESIGNATIONS AND
	)	ELIMINATE IMPROPER PRIVILEGE
THE PROFESSIONAL BASKETBALL CLUB,	)	REDACTIONS; (ii) SEAL DOCUMENTS
LLC, an Oklahoma limited liability company,	)	PENDING RULING ON AEO STATUS,
	)	and (iii) ELIMINATE TEN-DAY WAITING
Defendant.	)	PERIOD
	)	NOTE ON MOTION CALENDAR:
	)	April 25, 2008
	)	<b>[CORRECTED REDACTED VERSION</b>
	)	<b>OF MOTION FILED UNDER SEAL]</b>

**I. INTRODUCTION**

The City of Seattle admits that the Sonics’ lease at KeyArena long ago became “economically dysfunctional.” Mayor Nickels testified that it has been “economically dysfunctional” for years because the revenue split and KeyArena’s shortcomings do not produce enough revenue for the team to operate profitably.<sup>1</sup> More generally, not only are the financial aspects of the lease dysfunctional, but Deputy Mayor Ceis admits that the overall relationship

<sup>1</sup> Ex. 1, Apr. 2, 2008, Deposition of Mayor Nickels at 44:5-47:8. All exhibits referenced herein are attached to the Declaration of Steven C. Minson filed herewith.

DEFENDANT’S MOTION TO (i) ELIMINATE ATTORNEY’S EYES ONLY DESIGNATIONS AND ELIMINATE IMPROPER PRIVILEGE REDACTIONS; (ii) SEAL DOCUMENTS PENDING RULING ON AEO STATUS, and (iii) ELIMINATE TEN-DAY WAITING PERIOD [CORRECTED REDACTED](7-1620MJP) - 1

BYRNES & KELLER LLP  
38TH FLOOR  
1000 SECOND AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 622-2000

1 between the City and the Sonics' current and prior owners was dysfunctional well before this  
2 litigation began.

3 So why is the City seeking to specifically enforce the last two years of this admittedly  
4 dysfunctional lease arrangement? Documents just obtained show that the answer has nothing to  
5 do with the last two years of the lease. Instead, the City is trying to exploit its landlord status to  
6 **force the PBC to sell the team.** This litigation and the recent media frenzy the City helped  
7 ignite are part of an agreed-upon strategy between the City and a potential purchaser of the  
8 Sonics. That strategy expressly views this litigation as a way to drive up costs for the PBC – to  
9 increase the financial bleeding – to try to force PBC to sell. Indeed, one PowerPoint graphically  
10 details [ **REDACTED** ]<sup>2</sup> A second prong of  
11 the strategy is intended to alienate and separate the NBA from PBC, again increasing the  
12 pressure to sell the Sonics.  
13  
14

15 After weeks of foot dragging and excuses, PBC just obtained documents responsive to a  
16 subpoena served on Matt Griffin (the “Subject Documents”), the public spokesperson for a group  
17 that recently stepped forward with the City and a supposed plan to renovate KeyArena and  
18 purchase the team. Desperate to keep the Subject Documents from public scrutiny because they  
19 detail the City’s complicity and its coordinated effort to use this litigation to make “the  
20 Oklahomans” bleed cash in a hostile media environment, almost all of the Subject Documents  
21 were designated attorney’s eyes only (“AEO”) under this Court’s March 13, 2008, Protective  
22 Order. And the documents reveal a plan:  
23

24 **REDACTED** ]<sup>3</sup>  
25

26 <sup>2</sup> Ex. 2 at Griff 00000199. Bracketed material indicates language that is redacted from the public version filed with the Court.

<sup>3</sup> Id. at Griff\_00000189.

1 The documents also reveal significant duplicity. Thus, Mayor Nickels' March press  
 2 conference introduced Griffin's group and announced a plan to renovate KeyArena. Both the  
 3 public and Olympia were promised that KeyArena could be renovated for \$300 million including  
 4 the amount needed to retire the remaining \$25 million debt.<sup>4</sup> The Subject Documents show the  
 5 City's promises about the cost were absolutely [redacted]. They show that Deputy Mayor Ceis was  
 6 very much aware that the likely cost of the proposed renovation, combined with the remaining  
 7 debt, would [redacted].<sup>5</sup> But because the City was desperate to derail the Sonics' pending  
 8 relocation application, the City pretended the renovation and debt retirement would cost only  
 9 \$300 million – and all it needed was \$75 million from Olympia – when it knew the total cost  
 10 would exceed [redacted].  
 11

12 Griffin's designation of almost all of the documents as AEO is meritless. Aside from  
 13 confidential Sonics' financial information he wrongfully obtained and disseminated, perhaps  
 14 only a single line in one document warrants any restriction. And many of the documents have  
 15 redactions for "privilege" where the context makes clear that the redacted portion could not  
 16 possibly be privileged. By this motion, PBC seeks an order (i) lifting any claimed AEO  
 17 designation from all of the Subject Documents submitted herewith (save one); (ii) compelling  
 18 Griffin to produce the documents without redactions; and (iii) relieving PBC from the Protective  
 19 Order's 10-day waiting period for bringing Griffin's improper AEO designations to the Court's  
 20 attention.<sup>6</sup>  
 21

22 The City's plan to make PBC play home games in Seattle for the last two years of the  
 23 lease to force a sale raises serious questions about the propriety of enlisting the court's equitable  
 24  
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26 <sup>4</sup> Ex. 3, KeyArena Proposal News Conference Ex. Potential Questions and Suggested Responses.

<sup>5</sup> Ex. 2 at Griff 00001057 [redacted]

<sup>6</sup> Protective Order ¶11 (Dkt. No. 17).

1 powers to effectuate such a scheme. Those are questions for another day, however. What must  
 2 be resolved by this motion is whether the City's duplicitous dealings, and its transparent  
 3 scheming, can be shielded from PBC's view by improper AEO designations and inexplicable  
 4 redactions.

## 6 **II. BACKGROUND**

7 On March 13, 2008, this Court entered its Protective Order Regarding Handling of  
 8 Confidential and Attorney's Eyes Only Material.<sup>7</sup> On March 27, Griffin responded to the PBC's  
 9 March 12 subpoena, asserting various objections and requesting entry of a protective order.<sup>8</sup>  
 10 Claiming the Protective Order entered by this Court was inadequate, counsel for Griffin held up  
 11 production with various requests for amendments to the Protective Order, and an eventual  
 12 additional agreement regarding conditions under which the documents would be produced.<sup>9</sup> This  
 13 delayed production until April 11, 2008, when Griffin provided a half-box of documents, all of  
 14 which are designated "Attorney's Eyes Only" or "Confidential Material." Griffin also redacted  
 15 numerous documents as privileged. PBC challenged the propriety of the AEO designations and  
 16 redactions on April 12, and the matter reached an impasse on April 15.<sup>10</sup>

## 18 **III. ARGUMENT**

### 19 **A. The Documents Are Not Entitled to AEO Treatment**

20 Rule 45(c)(3)(B)(i) authorizes the Court to condition compliance with a subpoena to  
 21 protect the person affected by it from unduly harmful disclosures of "a trade secret or other  
 22 confidential research, development, and commercial information." None of Griffin's documents  
 23

24 <sup>7</sup> Dkt. No. 17.

25 <sup>8</sup> Ex. 4.

26 <sup>9</sup> Ex. 5.

<sup>10</sup> Minson Decl. ¶ 7.

1 submitted herewith so qualify, and the Court can quickly determine that the designations were  
2 done in bad faith. Here are some particularly egregious examples. The documents include  
3 [ **REDACTED** ] Somehow Griffin  
4 obtained, and then disseminated, these documents.<sup>11</sup> Having improperly obtained the Sonics'  
5 own [ **REDACTED** ], Griffin claims that they are somehow subject to attorney's eyes only  
6 treatment. In other words, he wrongfully obtained documents from the Sonics, and now claims  
7 that they cannot see what he took.

9 Document 00000736 recounts a meeting among [ **REDACTED**  
10 **REDACTED** ]. It is hard to understand how [ **REDACTED**  
11 **REDACTED** ] could somehow warrant attorney's eyes only treatment.

12 The real answer is that page 00000737 discloses that [ **REDACTED**  
13 **REDACTED** ]. Other examples include publicly-  
14 available documents and are similarly frivolous:

- 17 • [ **REDACTED** ]
- 18
- 19 • [ **REDACTED** ]
- 20
- 21 • [ **REDACTED** ]
- 22 **REDACTED**

23 Countless other examples appear in the documents and are not submitted here. Given the  
24 number and breadth of the designations, it is clear that they were not the product of accident.

25  
26 <sup>11</sup> It appears that the documents were improperly given to the Griffin Group by the individual who was the General Manager of the Sonics under the prior owner. Griff\_00001036.

1 The real reason for the AEO designation is that the documents detail a Machiavellian  
2 plan which attempts to involve the Court in an effort to force the PBC to sell the team. For  
3 example:

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5  
6 **REDACTED**

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8  
9 **REDACTED**

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12 Of course, the plan was not only to bleed “the Oklahomans” but to separate them from  
13 the NBA by inflicting difficulties on each.<sup>14</sup> And the strategy apparently was mapped out with a  
14 significant amount of involvement by the City. One of Griffin’s excel spreadsheets established

15  
16 **REDACTED**

17  
18 ]<sup>15</sup> Notably, the only motion pending during  
19 the second week of April in this matter was in New York – the City’s motion to compel  
20 regarding NBA.<sup>16</sup> The City’s motion, which seeks vast quantities of sensitive and irrelevant  
21 documents, claims that the City needs to analyze the “profitability of each NBA franchise” to see  
22

23  
24  
25 <sup>12</sup> Ex. 2 at Griff 00000199.

26 <sup>13</sup> Id. at Griff 00000192.

<sup>14</sup> Id. at Griff 00000190.

<sup>15</sup> Id. at Griff 00001018.

<sup>16</sup> Ex. 6, Motion to Compel filed in the Southern District of New York.

1 whether the PBC's "alleged financial losses" are really tied to KeyArena.<sup>17</sup> That filing ignited  
2 the recent media frenzy which was the subject of the Court's recent conference.

3  
4 **B. Griffin Should Be Ordered To Produce Unredacted Documents**

5 Beyond the improper AEO designations, Griffin has redacted documents based on  
6 attorney-client privilege when it is obvious there is no such privilege. For example,  
7 Griff\_00001057 assesses |

8 **REDACTED**

9 )] have been redacted as privileged. Other examples abound. See,  
10 e.g., Griff\_00001065, 00001081. Accordingly, Griffin should be ordered to produce unredacted  
11 documents to PBC.

12 **C. The Documents Should Be Temporarily Sealed**

13 Pursuant to Paragraph 13 of the Protective Order, a party filing AEO materials must  
14 move to seal the filing. None of the materials submitted here qualify for AEO treatment,  
15 however. Nevertheless, because they have been so marked, the PBC is required to move to seal  
16 them. It simultaneously moves to unseal them for the reasons stated above.

17 **D. The 10-day Waiting Period Should Be Lifted**

18 Under the Protective Order's paragraph 23, the PBC also requests relief from the  
19 requirement under ¶ 11 that this motion not be filed until ten days after the producing party is  
20 provided with written notice of the objections. There are many depositions scheduled in the next  
21 few weeks. Delay in resolving the issue will considerably complicate the depositions and make  
22 it more difficult to elicit the requisite facts.

23 **III. CONCLUSION**

24 Griffin and the City hope to use this Court's equity jurisdiction to force a sale by locking  
25 the Oklahomans into a lease the City knows is dysfunctional in an arena it knows is inadequate.  
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<sup>17</sup> Ex. 6 at 22.

1 Griffin's AEO designations are designed to conceal the scheme. All of the documents submitted  
2 herewith should be "de-designated" perhaps with the exception of the single email suggesting a  
3 price for which PBC, after having been separated from the NBA and bled a while, might sell.<sup>18</sup>  
4 Similarly, because his redactions for attorney-client privilege are transparently meritless, he  
5 should be ordered to produce an unredacted set to PBC.  
6

7 DATED this 16th day of April, 2008.

8 BYRNES & KELLER LLP

9  
10 By: /s/ Bradley S. Keller, WSBA #10665

11 Bradley S. Keller, WSBA #10665

12 Paul R. Taylor, WSBA #14851

13 Steven C. Minson, WSBA #30974

14 Byrnes & Keller LLP

15 1000 Second Avenue, 38th Floor

16 Seattle, WA 98104

17 Telephone: (206) 622-2000

18 Facsimile: (206) 622-2522

19 Email: [bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)

20 [ptaylor@byrneskeller.com](mailto:ptaylor@byrneskeller.com)  
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<sup>18</sup> Ex. 2 at Griff\_00000740.



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of April, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas A. Carr ([thomas.carr@seattle.gov](mailto:thomas.carr@seattle.gov))  
Gregory C. Narver ([gregory.narver@seattle.gov](mailto:gregory.narver@seattle.gov))  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769

Slade Gorton ([slade.gorton@klgates.com](mailto:slade.gorton@klgates.com))  
Paul J. Lawrence ([paul.lawrence@klgates.com](mailto:paul.lawrence@klgates.com))  
Jeffrey C. Johnson ([jeff.johnson@klgates.com](mailto:jeff.johnson@klgates.com))  
Michelle Jensen ([michelle.jensen@klgates.com](mailto:michelle.jensen@klgates.com))  
K&L Gates  
925 4th Avenue, Suite 2900  
Seattle, WA 98104

and I hereby certify that I served this document by email to the following counsel on the date above:

J. J. Leary, Jr.  
Mike Fandel  
Graham & Dunn PC  
Pier 70  
2801 Alaskan Way ~ Suite 300  
Seattle, WA 98121-1128

/s/ Bradley S. Keller  
Bradley S. Keller, WSBA #10665  
Byrnes & Keller LLP  
1000 Second Avenue, 38th Floor  
Seattle, WA 98104  
Telephone: (206) 622-2000  
Facsimile: (206) 622-2522  
[bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)