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12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF ARIZONA

14 In re:
15 DEWEY RANCH HOCKEY, LLC,
16 COYOTES HOLDINGS, LLC,
17 COYOTES HOCKEY, LLC and
18 ARENA MANAGEMENT GROUP, LLC,
19 Debtors.

Case No. 2:09-bk-09488-RTBP
(Jointly Administered)

Chapter 11

**APPLICATION FOR ISSUANCE OF
AN ORDER TO SHOW CAUSE
AGAINST MOYES AND THEIR
COUNSEL JENNINGS, STROUSS &
SALMON, PLC**

20 This filing applies to:
21 All Debtors
22 Specified Debtors

Hearing Date: TBD
Hearing Time: TBD
Hearing Location: 230 N. First Ave.
Courtroom 703
Phoenix, Arizona

23 Pursuant to 11 U.S.C. §§ 105(a) and Fed.R.Bankr.P. 9011, 9014 and 9020, the City
24 of Glendale, Arizona ("Glendale"), respectfully submits this "Application for Issuance of
25 an Order to Show Cause Against Moyes and Their Counsel Jennings, Strauss & Salmon,
26 PLC" ("Application") why Jerry and Vickie Moyes and the Moyes Family Trust

1 (collectively, “Moyes”) and their counsel Jennings, Strouss & Salmon, PLC (the
2 “Jennings Strouss firm”) should not be held in contempt of Court in the administration of
3 the bankruptcy estate for willfully violating the Court’s “Order Governing the Exchange
4 and Use of Confidential Information” dated July 18, 2009 (Dkt. No. 455)
5 (“Confidentiality Order”). This Application is based upon the following authorities, the
6 attached Exhibit, the accompanying Declaration of Edward Beasley, the pleadings, papers
7 and other records on file herein, and such argument and further evidence presented to the
8 Court at the time of the hearing. This Application also incorporates by reference the
9 “Reply in Support of Motion to Reschedule and in Support of Sale” to be filed by
10 Glendale.

11 Glendale is **absolutely outraged** that Moyes and the Jennings Strouss firm would
12 intentionally disclose confidential information produced in discovery and willfully violate
13 the Court’s Confidentiality Order. Glendale requests that appropriate relief be fashioned
14 immediately to curb and mitigate the damage and the chilling effect this disclosure and
15 willful violation of the Confidentiality Order has had and will have on the Glendale sale
16 process.

17 It is undeniable that the parties agreed upon a confidentiality agreement as a part of
18 the request for discovery leading up to the August 5 sale hearing. After days of
19 negotiation on the text of the proposed Confidentiality Order, the parties agreed to and
20 submitted a form of the Confidentiality Order to the Court. Moyes through their counsel
21 Peter Sorensen and Carolyn Johnsen at the Jennings Strouss firm expressly agreed to the
22 Confidentiality Order. On page 9 of the Confidentiality Order, Peter Sorensen from the
23 Jennings Strouss firm signed the Confidentiality Order and “approved as to form and
24 content.” On July 18, 2009 the Court entered the Confidentiality Order. Among other
25 things, the Confidentiality Order states that the parties during the discovery could
26 designate documents and information as Confidential Information and Highly

1 Confidential Information. Paragraph 2 of the Confidentiality Order expressly states that
2 “[t]his Order shall govern, among other things, documents and information produced
3 pursuant to Rules 26, 34 or 45 of the Federal Rules of Civil Procedure and Rules 2004,
4 9014 and 1018 of the Federal Rules of Bankruptcy Procedure, 2004 examination,
5 deposition and/or trial transcripts, all information contained therein, and all copies,
6 excerpts or summaries thereof.” Thus it was crystal clear that the information itself and
7 any summaries prepared by the parties which might contain such confidential information
8 were governed by the Confidentiality Order.

9 At the deposition of Michael Nealy, the current CFO of the Debtors, on July 29,
10 2009, the parties discussed the filing of upcoming pleadings and how they would handle
11 the use of the confidential information. Mr. Sorensen acknowledged on the deposition
12 record that Moyes and their counsel would need to file their objection under seal to
13 protect the confidentiality of the information discussed. Specifically, Mr. Sorensen said, “I
14 don’t see how any objection or response to an objection can be filed in this case anyway
15 other than under seal. I mean, so many parts of depositions have been designated
16 confidential or highly confidential, so many documents have been so designated, I plan to
17 file Jerry’s objection under seal. And I think we ought to all just plan on doing that”

18 However, Moyes, through their counsel the Jennings Strouss firm, on Friday July
19 31, 2009, publicly filed their “(I.) Objection to Proposed Glendale Auction and Sale and
20 to Motion to Assume Executory Contracts and Leases; and (II.) Statement of Position
21 Regarding NHL’s Request for Continuance of Glendale Auction and Sale” (Dkt. No.
22 525)(“Moyes Objection”). In footnote 1 on page 5 of Moyes Objection, Moyes states
23 “The [Reinsdorf Group] APA contains a host of contingencies which must be resolved
24 before the Court can even consider it as a ‘bid.’ A summary of the more important of
25 these conditions and contingencies is found in Appendix A, hereto.” Moyes then attached
26 to the public pleading the Appendix A which is a summary of terms being negotiated

1 between the Reinsdorf Group¹ and Glendale, including confidential terms that were
2 revealed in the discovery and which were subject to the Confidential Order. The text of
3 the Moyes Objection also includes confidential information on page 6. Glendale's
4 counsel read the Moyes Objection, realized the breach of confidentiality and called
5 Moyes' counsel immediately demanding that the harm be remedied. The Clerk's Office
6 subsequently removed the Appendix A and replaced it with a sheet that stated "The
7 attachment originally filed under this docket entry has been removed. The removed
8 attachment contained confidential information and therefore was removed at the request
9 of the attorney." (Dkt. No. 525-2) The confidential information in the text on page 6 was
10 not and has not yet been removed.

11 While removed from the Court's docket the same day, the damage had already
12 been done. The press, public groups and other bidders had the opportunity to review this
13 confidential information. Significant damage to the integrity of the sale process had been
14 done and the whole sale process was compromised. This is not an overstatement or
15 hysterical reaction. It is the very harm that was not supposed to happen.

16 Note that the footnote and text do not indicate that they intended to file the
17 information under seal or serve an unredacted version on the parties. There is no reference
18 to such an action and there was no effort to take any such steps. Also noteworthy is that
19 Moyes did not attach a copy of the documents themselves which are clearly marked with a
20 "Confidential" and "Highly Confidential" stamp on each page of the documents. Instead
21 the Jennings Strouss firm went to the extreme of drafting a detailed summary of the
22 confidential terms of the Reinsdorf Group's bid negotiation documents and attached the
23 summary. The summary also editorializes and recharacterizes the confidential information
24 and the status of the negotiations, and because it is confidential Glendale cannot even

25
26

¹ For purposes of this pleading, "the Reinsdorf Group" means the Glendale Hockey, LLC
and Glendale Arena, LLC , a group lead by Jerry Reinsdorf.

1 comment publicly to correct the inaccurate information. The summary itself is not even
2 marked “Contains Confidential Information” or “Subject to Confidentiality Order”. The
3 Jennings Strouss firm then attached the summary as the Appendix A to the Moyes
4 Objection—with no redaction for confidential information.

5 On Friday July 31, 2009 and Saturday August 1, 2009, the Reinsdorf Group
6 through its counsel expressed its complete disbelief that such confidential information was
7 released by Moyes and threatened to walk away from the bidding process. As reflected in
8 the Declaration of Edward Beasley, the City Manager for Glendale, the disclosure of the
9 terms being negotiated between Glendale and the Reinsdorf Group over the Arena and
10 other issues undermines the ability to get a deal negotiated with any bidder, including Ice
11 Edge² and the Reinsdorf Group. This has had a predictable chilling effect on this sale
12 process two (2) business days before the sale auction. The Reinsdorf Group is rightfully
13 upset because the terms with Glendale concern economic issues which it is seeking to
14 resolve in making its bid. These economic terms and analyses could have an impact on the
15 competitive bidding and the ultimate bids provided by any other bidders. Competitors in
16 the auction now could know how the Reinsdorf Group is approaching the issues with
17 Glendale. This could give competitors quite a competitive advantage. Competitors might
18 also be upset because potentially the terms of its own negotiations with Glendale could
19 also be disclosed and could impact its analysis and bid. This very type of disclosure has a
20 chilling effect on auctions and is one of the exact reasons the Confidentiality Order was
21 discussed and entered into by the parties. If the bidders walk away from this Glendale sale
22 process, the damage caused by the disclosure will be staggering for Glendale.³

23 Note that the Superior Court of the State of Arizona said exactly the same thing

24 _____
25 ² For purposes of this pleading “Ice Edge” means Ice Edge Holdings, LLC.

26 ³ Glendale expressly reserves the right to bring an appropriate damage lawsuit against
Moyes, the Jennings Strouss firm and any one else who ultimately might be responsible
for this breach and violation.

1 recently when a taxpayer watchdog group, the Goldwater Institute, asked for confidential
2 information about the bids to be released to them and to the public. The State Court Judge
3 Edward Burke stated “Notwithstanding the importance of whatever information
4 [Glendale] may currently have regarding negotiations, the Court finds that disclosing the
5 records of negotiations with prospective bidders for the Team would have an important
6 and harmful effect on the City and the application process in the Bankruptcy Court. The
7 proceedings in the Bankruptcy Court strongly suggest that compelled disclosure of
8 negotiations now could have a chilling effect on and unduly influence the bidding
9 process.” Attached as Exhibit A is a copy of the Superior Court’s Minute Entry issued on
10 July 21, 2009 in Goldwater Institute v. City of Glendale, CV No. 2009-020757.

11 On Sunday August 2, 2009, the news reports started to pick up the disclosure of the
12 confidential information. At least one such article was posted and published. Glendale
13 does not include a copy with this article because it does not want to republish such
14 confidential information. But the details for Appendix A from the Moyes Objection were
15 detailed in the news story. This was a major story in the evening’s local news. The egg
16 cannot be unscrambled.

17 As the Court is well aware, there are a lot of other items and issues which are
18 confidential in nature in this sale process. Much of it has been provided by bidders on a
19 confidential basis to the parties. For example, the applications for the ownership transfer
20 of the team given to the NHL also has confidential information. If the confidential
21 information concerning the negotiations with Glendale has been breached and released,
22 then how can a bidder be certain that other information will not be revealed?

23 Unfortunately this is not the only conduct that has had a negative impact on the
24 Glendale sale process. The Reinsdorf Group was already concerned about the interference
25 and resistance being put up by the Debtors and Moyes in the Glendale sales efforts and the
26 intense scrutiny of public interest groups with incorrect, premature and incomplete

1 information causing havoc with any orderly process. Moyes has thrown gas on the fire of
2 misinformation and turmoil. Combined with the deliberate and willful disclosure of
3 confidential information it is clear that Moyes and the Debtors had no intention and are
4 not capable of running a fair and unbiased sale process. The Debtors, along with Moyes,
5 also filed an objection to the Glendale sales and the bids. The integrity of the whole
6 process has been compromised thus having a chilling effect on the sale and creating a real
7 question about the loyalties and motives of the Debtors and Moyes.

8 Further, the willful disclosure of confidential information by Moyes and their
9 counsel concerning the Reinsdorf Group's negotiations with Glendale need to be seen in
10 light of other activities that happened during the week. On Wednesday, July 29, 2009, the
11 NHL announced to the Court that the NHL had conditionally approved the application to
12 transfer ownership made by the Reinsdorf Group, had continued the consideration of the
13 application filed by Ice Edge and was seeking additional information, and had denied the
14 application of PSE Sports and Entertainment LP ("PSE") to transfer the ownership of the
15 team. The Reinsdorf Group's counsel at the same hearing expressed its objection to
16 proceeding with discovery of the Reinsdorf Group indicating that discovery might cause
17 the Reinsdorf Group to withdraw from the sale process. With the Reinsdorf Group being
18 the only applicant that has been conditionally approved by the NHL and knowing that the
19 Reinsdorf Group was not receptive about proceeding with discovery, it is curious that just
20 two (2) business days before the Glendale sale hearing the confidential information would
21 be released. One wonders if Moyes just wanted to induce the Reinsdorf Group to
22 withdraw from the Glendale sale process. The timing is suspicious.

23 Section 105(a) authorizes Bankruptcy Courts to award sanctions for ordinary civil
24 contempt. Pace v. Taxel (In re Pace), 67 F.3d 187, 193 (9th Cir. 1995); see In re
25 Ionosphere Clubs, Inc., 171 B.R. 18 (Bankr. S.D.N.Y. 1994). Section 105(a) of the
26 Bankruptcy Code provides:

1 The court may issue any order, process, or judgment that is
2 necessary or appropriate to carry out the provisions of this
3 title. No provision of this title providing for the raising of an
4 issue by a party in interest shall be construed to preclude the
5 court from, sua sponte, taking any action or making any
6 determination necessary or appropriate to enforce or
7 implement court orders or rules, or to prevent an abuse of
8 process.

9 Fed.R.Bankr.P. 9020 states that Rule 9014 governs a motion for an order of contempt
10 made by the United States Trustee or a party in interest. Rule 9011 also provides for
11 sanctions and appropriate orders against the attorneys and the parties to remedy a
12 violation. Thus, this Court may order Moyes and the Jennings Strouss firm and anyone
13 else who might be responsible to show cause why they should not be held in contempt of
14 Court for deliberately disclosing confidential information and willfully violating the
15 Court's Confidentiality Order.

16 It is well-settled that where there is non-compliance with a clear and unambiguous
17 order and the responding party has not been reasonably diligent and energetic in
18 compliance, a finding of civil contempt is justified. Fed'n of Puerto Rican Org. of
19 Brownsville, Inc. v. Howe, 157 B.R. 206, 210 (Bankr. E.D.N.Y. 1993). Damages in the
20 form of costs and attorneys' fees is an appropriate (but here not fully compensatory)
21 sanction for civil contempt. See Pace v. Taxel (In re Pace), 67 F.3d 187 (9th Cir. 1995);
22 see also In re Del Mission Ltd., 98 F.3d 1147, 1152 (9th Cir. 1996)(stating that Bankruptcy
23 courts may award damages to a trustee for a violation of the automatic stay under its
24 contempt power pursuant to Section 105(a) of the Bankruptcy Code).

25 In light of the current status of the Glendale sale process and the willful violation
26 by Moyes, the owner of the team and the CEO of the Debtor, Glendale asserts that the
following remedies are appropriate and are the only way to right the ship. Glendale
respectfully requests the following actions be taken:

1. The Court should continue the Glendale sale process for a reasonable period

1 of time. The integrity of the process has been severely compromised by the Moyes
2 misconduct. Emotions are running high. Less than one business day has passed. The
3 Glendale sale hearing is less than two business days away. Glendale needs some time to
4 try and meet with the bidders and reestablish a basis for the negotiations.

5 2. The Court should remove Mr. Moyes, the current CEO and a director of the
6 Debtors, and the Debtors from the sale process so that there can be a fair and reasonable
7 shot at getting a sale in Glendale. Clearly the Debtors and Moyes do not want the sale to
8 go forth in Glendale and are making every effort to disrupt the Glendale sale process. The
9 conduct has risen to an outrageous level. Confidential information has been willfully
10 disclosed which has had a significant chilling effect on any Glendale sale process. To
11 reestablish the relationship of the parties and the opportunity to reach a reasonable
12 negotiation, the Debtors and Mr. Moyes need to be removed from the process and
13 someone else should be put in charge of the process and negotiations. After such a breach
14 as occurred here, it is almost impossible to reestablish trust and a level of confidence that
15 bidders are being treated fairly and that reasonable efforts to achieve a sale are being
16 made. It is an expensive undertaking for bidders to do their due diligence and spend the
17 time and effort to submit a bid and negotiate the extensive agreements needed for this
18 kind of sale. If bidders can't be assured they have a fair shot at a successful bid, they
19 won't participate in the process.

20 3. The Court should determine that the team will play in Glendale during the
21 2009-2010 season. The Debtors' CFO, Michael Nealy, testified this week that continued
22 uncertainty as to the possible move to Ontario has greatly slowed ticket revenue and
23 sponsorship renewals. The NHL has expressed it will fund the team during the upcoming
24 season. The additional time will give the parties the time to work with the two bidders to
25 further develop their bids and work through the complex and difficult issues proposed by
26 a sale of a professional sports team. At this point since PSE's application has been denied,

1 there is no possible Relocation sale and so the rush to accomplish a sale this week makes
2 no sense at all.

3 4. Moyes and the Jennings Strouss firm should be sanctioned and a monetary
4 award should be issued.

5 WHEREFORE, the requested Order to Show Cause should be immediately issued
6 and served so that the Order to Show Cause may be heard on Monday August 3, 2009 at
7 the 1:30 p.m. hearing on the motion to reschedule the auction or on Wednesday August 5,
8 2009 at the 9:00 a.m. Glendale sale hearing.

9 Dated: August 2, 2009

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22 This document was electronically filed
23 with the U.S. Bankruptcy Court on this
24 2nd day of August, 2009.

25 COPY of the foregoing mailed or emailed
26 the same day to:

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