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7 *Attorneys for Jerry Moyes*

8 **IN THE UNITED STATES BANKRUPTCY COURT**

9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 DEWEY RANCH HOCKEY, LLC

12 COYOTES HOLDINGS, LLC

14 COYOTES HOCKET, LLC and

15 ARENA MANAGEMENT GROUP,  
16 LLC,

Debtors

Chapter 11 Proceedings

Case No. 2:09-bk-09488-RTBP

(Jointly Administered)

**MOYES' RESPONSE IN OPPOSITION  
TO GLENDALE'S APPLICATION FOR  
ISSUANCE OF AN ORDER TO SHOW  
CAUSE AGAINST MOYES AND THEIR  
COUNSEL JENNINGS STROUSS &  
SALMON, PLC**

**Hearing Date: TBD**

**Time: TBD**

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20 Jerry Moyes, Vicki Moyes and the Jerry and Vicki Moyes Family Trust  
21 (collectively, "Moyes"), together with their counsel, Jennings, Strouss & Salmon, PLC  
22 ("Counsel" or the "Firm") hereby respond to the Application for Issuance of an Order to  
23 Show Cause Against Moyes and Their Counsel Jennings Strouss & Salmon, PLC (the  
24 "OSC"). This Response is supported by the Declarations attached hereto as **Exhibits "1" –**  
25 **"4."**

26 1. On July 6, 2009, the Court entered the Order Approving Bid Procedures for  
Auction/Sale of Phoenix Coyotes National Hockey League Team and Related Assets and the

1 Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “Bid  
2 Procedures Order”). Through that Order, the Court set an auction to sell the Phoenix  
3 Coyotes Hockey Club (the “Team”) at auction on August 5, 2009, to any qualified bidder,  
4 provided that such qualified bidder’s intent was to keep the Team in Glendale, Arizona.<sup>1</sup>  
5 The Bid Procedures Order also required that any qualified bidder must have filed with the  
6 Court a complete asset purchase agreement (“APA”) by July 24, 2009. On that date, one  
7 entity (the “Reinsdorf Group”) submitted what it called an APA. Another group (“Ice  
8 Edge”) also submitted what it called a letter of intent whereby the group announced its  
9 intention to submit an APA at a later date.

10 2. In accordance with the Bid Procedures Order, on July 31, 2009, Counsel  
11 filed its objection on behalf of Moyes to the proposed Glendale Auction in general, the APA  
12 submitted by the Reinsdorf Group and the Ice Edge letter (the “Moyes Objection”).

13 3. Peter W. Sorensen, Esq., a partner of the Firm, was principally responsible  
14 for preparation of the Moyes Objection. Knowing that information relevant thereto had been  
15 designated as confidential pursuant to a Court order, Mr. Sorensen intended to protect the  
16 confidentiality of such information by describing it in an Appendix to be filed under seal. In  
17 the Appendix, Mr. Sorensen described what he believed were certain contingencies and  
18 conditions in the Reinsdorf APA, including certain terms and conditions proposed by the  
19 Reinsdorf Group to the City of Glendale. *See* Declaration of Peter W. Sorensen attached  
20 hereto as Exhibit “1” and incorporated herein (“Sorensen Declaration”), ¶¶ 3 – 6.

21 4. Some of the information described above had previously been designated  
22 by the City of Glendale as “Confidential” under the Confidentiality Order signed by the  
23 Court on July 18, 2009 (Dkt. # 455). Sorensen Declaration, ¶ 6.

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<sup>1</sup> That auction date has now been postponed to September 10, 2009, and will be held  
in conjunction with the auction for qualified bidders even if such bidders contemplate  
relocating the team outside Glendale, Arizona. (Dkt. # 572.)

1           5. Mr. Sorensen was aware of the City’s confidentiality designations. As  
2 stated above, he intended to protect the confidential nature of the information. However, he  
3 made a mistake. When he caused the Moyes Objection to be filed in the late afternoon of  
4 Friday, July 31, 2009, Mr. Sorensen forgot to direct that the Appendix be filed under seal in  
5 compliance with the Confidentiality Order. Sorensen Declaration, ¶ 8.

6           6. Mr. Sorensen first learned about his error approximately an hour after filing  
7 the Moyes Objection. He received a telephone call stating that a journalist had obtained a  
8 copy of the Appendix from the Court’s website and had questions about it. Sorensen  
9 Declaration, ¶ 12; Declaration of Steve Roman, attached hereto as Exhibit “2” and  
10 incorporated herein (“Roman Declaration”), ¶¶ 3 – 7. Counsel immediately contacted the  
11 Clerk of the Court’s Office and, although it was then after 5:00 p.m., Counsel was able to  
12 remove the Appendix from the public docket. Sorensen Declaration, ¶ 15. The Appendix  
13 was available to the public for approximately 90 minutes. *Id.* Unfortunately, that was  
14 enough time for the information to become widely known through press coverage.<sup>2</sup>

15           7. The error in filing Appendix A was entirely Counsel’s responsibility. Mr.  
16 Moyes bears no responsibility for the error. Mr. Moyes did not know that the error had  
17 occurred until Mr. Sorensen told him about it after the Appendix was removed from the  
18 public docket. Counsel did not consult with Mr. Moyes or any of his representatives prior to  
19 filing the Objection. Mr. Moyes was not asked to review the filing and did not see it before  
20 it was filed. Neither Mr. Moyes nor any of his representatives gave any instructions  
21 whatever with regard to filing this Objection. *Id.* ¶¶ 8 – 11; Declaration of Jerry Moyes  
22 attached hereto as Exhibit “4” and incorporated herein (“Moyes Declaration”), ¶¶ 4 – 6. Nor

23  
24           <sup>2</sup> The City also contends that a short sentence in the Objection also violates the  
25 Confidentiality Order. Though the City does not identify the section it believes to be  
26 offending, Counsel believes that the language the City complains of refers to information  
that has been available from representatives of the Reinsdorf Group since before the  
bankruptcy filing. *See* Declaration of Earl Scudder attached hereto as Exhibit “3” and  
incorporated herein, at ¶ 3.

1 were there any communications with Debtors' counsel regarding the Moyes Objection before  
2 it was filed. Sorensen Declaration, ¶ 10.

3 8. With regret, Counsel admits that, through this unfortunate oversight, it has  
4 violated the terms of the Confidentiality Order and may have caused inconvenience and  
5 difficulties for the Court and other parties. Counsel sincerely apologizes for this inadvertent  
6 oversight.

7 9. The relief sought by the City is overbroad. Counsel understands and  
8 embraces its duties to the Court and the other parties. Counsel stands ready to accept  
9 whatever consequences that the Court believes are reasonably warranted *against Counsel* for  
10 these events. However, the City seeks sanctions that, in essence, would alter the complexion  
11 and structure of the Court's orderly process of managing the bankruptcy estate. Both the  
12 nature and the extent of the City's proposed remedies far exceed what is reasonable in light  
13 of the party responsible for the error and the damage caused by this inadvertent mistake.  
14 Indeed the proposed remedies bespeak opportunism as opposed to legitimate actions that are  
15 commensurate with the inadvertent nature of the offense and the actual damages caused.

16 Specifically, the City seeks:

17 A. *Continuance of the August 5, 2009, Glendale Auction date.* The  
18 Court has already ruled that this auction is to be postponed until September 10,  
19 2009.

20 B. *Removal of Moyes and the Debtors "from the sale process so that*  
21 *there can be a fair and reasonable shot at getting a sale in Glendale."* OSC at 9,  
22 ¶ 2. Moyes is not responsible for these events. The Firm does not represent the  
23 Debtors. Neither Moyes nor the Debtors were aware that the Appendix had been  
24 erroneously filed in the public sector of the Docket. Therefore, there simply is no  
25 evidence to suggest that either Mr. Moyes or the Debtors were involved in  
26 Counsel's errors. They have done nothing to call into question the "integrity of

1 the process.”

2 C. *An immediate determination by the Court that the Team should play*  
3 *the 2009-2010 season in Glendale.* The Court has addressed this matter at the  
4 hearing on the NHL’s Motion to Continue Auction Sale and has recently ruled that  
5 the auctions for both the Glendale-only sale and the relocation sale shall take place  
6 at the same time on September 10, 2009. This requested relief is, therefore, moot.  
7 (Dkt. # 572.)

8 D. *Moyes and Counsel should be sanctioned and a monetary award*  
9 *made.* Moyes had no involvement in and was unaware of Counsel’s error. No  
10 monetary sanctions against Moyes would be appropriate. Counsel respectfully  
11 leaves the question of monetary sanctions against Counsel to the Court’s sound  
12 discretion after reviewing all of the factors presented in this Response and at any  
13 subsequent hearing.

14  
15 10. The Appendix to the Moyes Objection, which Counsel filed on Friday, July  
16 31, 2009, inadvertently was not filed under seal. Counsel admits and apologizes for its  
17 unintentional violation of the Court’s order regarding confidential documents. Counsel  
18 deeply regrets its error and makes no effort herein to minimize the importance of its  
19 mistake. However, Mr. Moyes played no role whatsoever in Counsel’s oversight. This  
20 mistake should not result in a remedy that will prejudice the legitimate interests of Moyes  
21 or the Debtors. The relief that the City seeks is vindictive, overbroad and now largely  
22 moot. Counsel’s error, while regrettable, should not cause a detrimental effect on the  
23 Court’s process for moving toward an auction of the Team.  
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1 Dated this 6<sup>th</sup> day of August, 2009.

2 JENNINGS, STROUSS & SALMON, P.L.C.

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