

1 THE HONORABLE JAMES P. DONOHUE
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15 UNITED STATES DISTRICT COURT
16 WESTERN DISTRICT OF WASHINGTON
17 AT SEATTLE

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19 CHIHULY, INC., a Washington corporation
20 and PORTLAND PRESS, INC., a Washington
21 corporation,

22 Plaintiffs,

23 v.

24 ROBERT KAINDL, an individual; BRYAN
25 RUBINO, individually and on behalf of his
26 marital community; ART GLASS
27 PRODUCTION, a Washington company; et al,
28
29 Defendants.

30 ROBERT KAINDL, an individual; and ART
31 GLASS PRODUCTION, a Washington
32 company,

33 Counter-Claimants,

34 v.

35 CHIHULY, INC., a Washington corporation;
36 PORTLAND PRESS, INC., a Washington
37 corporation; and DALE CHIHULY, an
38 individual,

39 Counter-Defendants.

40 NO. C05-1801-JPD

41 DECLARATION OF BILLY O'NEILL IN
42 SUPPORT OF PLAINTIFFS' AND
43 COUNTER-DEFENDANTS' MOTION
44 FOR PROTECTIVE ORDER

45 Note on Motion Calendar:
46 July 20, 2006

47 Oral Argument Requested

1 I, BILLY O'NEILL, declare as follows:
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5 1. I am the Studio Manager for Chihuly, Inc. ("Chihuly") and Portland Press, Inc.
 6 ("PPI") (collectively, the "Companies"). I make this declaration based on personal knowledge
 7 and am competent to testify to its contents.
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9 2. I have worked for the Companies for five years. In my capacity as Studio
 10 Manager, I oversee every aspect of production and implementation of studio projects, including
 11 design, fabrication, installation, scheduling, personnel, marketing, and sales. I am generally
 12 familiar with the business operations of Chihuly and PPI.
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15 3. Chihuly and PPI are private companies and not publicly owned or traded. Both
 16 support the creation, production, sale, and installation of the works of Dale Chihuly. Chihuly,
 17 Inc. incorporated in 1982 as a glassblowing studio where Mr. Chihuly could create his own
 18 blown glass sculptures and work with a collaborative team of glass blowers. PPI incorporated in
 19 1993 and is a publishing company dedicated to the production of Chihuly's studio edition glass,
 20 books, videos, DVDs, note cards, calendars, postcards and posters about Mr. Chihuly.
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23 4. Dale Chihuly is an internationally renowned glass artist with Artwork at the
 24 Metropolitan Museum of Art (New York), the Musee des Arts Decoratifs, Palais du Louvre
 25 (Paris), and the Victoria and Albert Museum (London), along with exhibitions such as *Chihuly*
 26 *Over Venice* (Venice, Italy), *Chihuly in the Light of Jerusalem* (Israel), *Chihuly Bridge of Glass*
 27 (Tacoma, U.S.) and *Gardens of Glass: Chihuly at Kew* (United Kingdom). Over the past forty
 28 years, Mr. Chihuly's stylistically daring sculptures in glass have pushed conventional boundaries
 29 and understanding of color, line and assemblage, creating a demand for his works and
 30 information regarding his art, the studio, Dale Chihuly himself and his business.
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33 5. The Companies' business is to support Dale Chihuly and his Artwork and, as
 34 such, all information regarding Mr. Chihuly and the business of Chihuly and PPI is maintained
 35 as strictly confidential. His celebrity status results in intense scrutiny and has resulted in some
 36 unique measures to protect Mr. Chihuly's privacy and to ensure the confidentiality of the
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1 business operations. Thus for example, unlike most other businesses, there is no signage on the
2 business locations and we do not publicly advertise our address on our websites. Access to our
3 facilities is controlled by security pads and access codes. In addition, all employees are required
4 to sign confidentiality agreements so as to further protect the business of the Companies; the
5 Artwork of the Companies; information about business associates, collectors and employees of
6 the Companies; former, present and future clients of the companies; and specifically any
7 personal information relating to Dale Chihuly, his family and extended family, friends and
8 associates. In a further effort to ensure confidentiality, employees are given unique log-ons and
9 passwords to access the secure computer network at Chihuly, Inc. Visitors to the main offices of
10 Chihuly, Inc. must sign in with the front desk before entering the premises, may only visit during
11 certain hours, and their access is limited based on their role and relationship with the company
12 and agreement to treat information as confidential. All clients who are under contract for
13 purchasing, exhibiting or receiving loaned Artwork are under agreements to honor the
14 confidentiality of the contract terms with Chihuly, including all information related to the sale,
15 including design elements, pricing structure, the value of the work, and the installation process.

16 6. Disclosure of non-public information regarding Mr. Chihuly or the Companies
17 would result in significant harm. First and foremost, as a celebrity, Mr. Chihuly's personal
18 privacy is extremely important to preserving a normal family life, ensuring his good health and
19 ensuring his ability to produce further Artworks. Mr. Chihuly's interests are clearly aligned with
20 those of the Companies. In addition, information regarding Mr. Chihuly and his work is the very
21 business of the Companies and widespread disclosure of such information could not only affect
22 the market for information about Mr. Chihuly but would distract attention away from the core
23 business as we seek to respond to inquiries from the press, our galleries, collectors and others.

24 7. With specific reference to particular types of information, I would advise as
25 follows:

a. **Financial.** The financial information of Chihuly and PPI including all revenue, expense, cost, profit and loss information is maintained as confidential. Accounting functions are conducted from a private office that locks. Financial information is stored in locked file cabinets and marked with an in-house confidentiality designation. Financial information is shared only with employees of Chihuly and PPI on a need-to-know basis, such as upper-level employees or board members, and is not disseminated to employees generally. We routinely decline press and other inquiries regarding financial and other business information. Disclosure of financial information regarding Mr. Chihuly or the Companies' profit and loss is sensitive and personal information. Disclosure of information regarding company operations such as the actual pricing, discounts and commissions, or the price or cost of various expenses or inputs, such as supplies, salaries, rents and similar information would put us at a disadvantage if made publicly available, including to potential clients or to other artists.

b. **Marketing and Sales.** Communications regarding internal business operations are conducted only between employees with a need to know, and not shared with other employees. Marketing and advertising decisions related to upcoming exhibitions and sales are decided at meetings where only employees attend who bring a particular role or function to the decision and have a need to be involved. Disclosure of marketing and sales information including information related to sales and marketing techniques or from which information such as client preferences regarding designs, colors or similar information could be derived would put us at a competitive disadvantage if disclosed to the public. Similarly, information regarding our actual or prospective clients, including their preferences and other information could be harmful to the Companies if made available to others.

c. **Operations.** The business operations of Chihuly, Inc. and Portland Press, Inc. are unique and known for sophistication and expertise in managing one of the world's largest and most well-known handblown glass Studios. From our processes of designing, selecting and blowing innovative, critically acclaimed, award-winning new Artworks and exhibitions to the

1 logistics and functions of cataloging, packing, warehousing, shipping, installing, displaying and
 2 deinstalling new works, our operation is unique and unparalleled. We employ many methods
 3 and techniques that have been developed internally and are not generally known, and from which
 4 we derive significant advantage from their not being known in significant detail. Chihuly has
 5 invested decades and millions of dollars in developing the resources and confidential know-how
 6 that makes it one of the world's largest and most well known hand-blown glass enterprise.
 7
 8 Disclosure of other business information—such as information regarding our suppliers,
 9 contractors, employees, contract terms, and details regarding past, current, future or abandoned
 10 business endeavors, projects, designs, techniques, methods or installations—could similarly
 11 cause significant harm if disclosed .
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13 8. Dale Chihuly, Chihuly and PPI derive artistic, aesthetic, and economic value and
 14 goodwill from keeping their artistic, business, and financial information confidential and would
 15 be harmed if such information was disseminated to the public. Dale Chihuly, Chihuly and PPI
 16 have invested decades and significant financial resources developing the artistic processes and
 17 resources that contribute to the success and goodwill of Chihuly.
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19 9. This litigation has been the subject of significant press, including news articles,
 20 radio programs, TV news, and web logs ("blogs"). For example, articles have appeared in the
 21 New York Times, the Seattle Times, the Seattle Post-Intelligencer, the Stranger, the Puget Sound
 22 Business Journal, on www.antiqueweek.com, and on the online version of the St. Petersburg
 23 Times. I am aware that the day he filed his counterclaim, Mr. Rubino's attorney appeared on a
 24 radio show with Dave Ross on 710 KIRO News Radio to speak about this litigation and about
 25 Mr. Kaindl's counterclaim. In his counterclaim, Mr. Rubino filed an internal communication
 26 from Dale Chihuly to him that related to, discussed, and included drawings of potential designs.
 27 This communication has been widely publicized on the internet and has been quoted or posted in
 28 its entirety on numerous websites and blogs. Mr. Rubino's disclosure of internal company
 29 communications, when combined with his counsel's communications to the press, give rise to
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1 significant concern that the personal and confidential information of Mr. Chihuly and the
2 Companies that is obtained through discovery in this matter will be disclosed to and distributed
3 to the press or others.
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7 I DECLARE UNDER PENALTY OF PERJURY under the laws of the United States of
8 America that the foregoing is true and correct.
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11 Signed at SEATTLE, Washington this 10 day of July, 2006.
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BILLY O'NEILL

DECLARATION OF BILLY O'NEILL
(NO. C05-1801-JPD) - 6
[23641-0003-000000/SL061840 012 (6).DOC]

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4 **CERTIFICATE OF SERVICE**
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13 I hereby certify that on July 11, 2006, I electronically filed the foregoing
 14 DECLARATION OF BILLY O'NEILL IN SUPPORT OF PLAINTIFFS' AND COUNTER-
 15 DEFENDANTS' MOTION FOR PROTECTIVE ORDER with the Clerk of the Court using the
 16 CM/ECF system which will send notification of such filing to the following attorneys of record:
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 19
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 21
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13 Kathleen T. Petrich 14 (kathleen.petrich@stokeslaw.com) 15 Bradford J. Axel 16 (bradford.axel@stokeslaw.com) 17 Stokes Lawrence, P.S. 18 800 Fifth Avenue, Suite 4000 19 Seattle, WA 98104 20 Attorneys for Defendant Bryan Rubino	21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51	22 Via hand delivery 23 Via U.S. Mail, 1st Class, 24 Postage Prepaid 25 Via Overnight Delivery 26 Via Facsimile 27 X Via E-filing 28 Via hand delivery 29 Via U.S. Mail, 1st Class, 30 Postage Prepaid 31 Via Overnight Delivery 32 Via Facsimile 33 X Via E-filing 34 Via hand delivery 35 Via U.S. Mail, 1st Class, 36 Postage Prepaid 37 Via Overnight Delivery 38 Via Facsimile 39 X Via E-filing 40 41 42 43 44 45 46 47 48 49 50 51
Scott C. Wakefield (swake@twlaw.com) Todd & Wakefield 1501 Fourth Avenue, Suite 1700 Seattle, WA 98101 <i>Attorney for Defendant Bryan Rubino</i>		Via hand delivery Via U.S. Mail, 1st Class, Postage Prepaid Via Overnight Delivery Via Facsimile X Via E-filing
Timothy L. Boller (TimB@SeedIP.com) Seed Intellectual Property Law Group PLLC 701 Fifth Avenue, Suite 6300 Seattle, WA 98104 <i>Attorneys for Defendants Robert Kaindl and Art Glass Production</i>		Via hand delivery Via U.S. Mail, 1st Class, Postage Prepaid Via Overnight Delivery Via Facsimile X Via E-filing

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED at Seattle, Washington this 11th day of July 2006.

s/ William C. Rava, WSBA # 29948
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