

CAUSE NO. 19-7298-367

ROBERT OBLON,  
OF

Plaintiff,

v.

JORDAN BROCK,

Defendant.

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IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

367<sup>th</sup> JUDICIAL DISTRICT

**INDIVIDUAL NON-PARTIES' MOTION FOR RECONSIDERATION AND  
ALTERNATIVE MOTION FOR STAY**

TO THE HONORABLE JUDGE OF SAID COURT:

Non-parties Keith Halls, John “JT” Thatch, and Kip A. Allison, individually, and in his capacity as trustee of the Alchemist Holdings, LLC Stock Voting Trust Agreement (collectively “the Individual Non-Parties”) file this Motion For Reconsideration and Alternative Motion For Stay, and would show the Court as follows:

**Motion for Reconsideration**

1. On February 11, 2020, the Court entered the attached Order on Plaintiff’s Amended Motion to Show Cause (“Show Cause Order”).

2. Prior to the entry of the Show Cause Order, the Individual Non-Parties filed their Objections to the proposed Show Cause Order (“Objections”), which the Court implicitly overruled when it entered the Show Cause Order. *See Court’s Docket, 02/07/2020.* The Individual Non-Parties incorporate those Objections herein.

3. Further, on January 27, 2020, the Individual Non-Parties filed their Plea to the Jurisdiction, wherein the Individual Non-Parties challenge the Court’s subject matter jurisdiction to either entertain Plaintiff’s Motion to Show Cause or to enter any order on such motion. *See Court’s Docket, 02/07/2020.* The Court has yet to rule on the Plea to the Jurisdiction.

4. In the interest of justice, and for all the reasons set forth in said Objections, the Plea to the Jurisdiction, and the arguments below, the Individual Non-Parties' respectfully request that the Court reconsider the Show Cause Order and vacate and set it aside.

5. The entry of the Show Cause Order constitutes a clear abuse of discretion resulting in harm to the Individual Non-Parties for which there is no adequate appellate remedy. Specifically, under the express provisions of Rule 683 of the Texas Rules of Civil Procedure, the August 22, 2019 TRO (which is the basis of the Show Cause Order) had no binding effect on the Individual Non-Parties because: 1) there is no evidence or finding by the Court that the Individual Non-Parties were "in active concert or participation" with any party to this lawsuit or their attorneys in the alleged violations of the of the TRO, as required by Rule 683; and/or 2) there is no evidence or finding by the Court that the Individual Non-Parties received "actual notice of the [August 22, 2019] order by personal service or otherwise," as required by Rule 683.<sup>1</sup> *See* TEX. CIV. PRO. 183; *see also see also Ex parte Davis*, 470 S.W.2d 647, 649 (Tex. 1971) (per curiam) (explaining that a person is "in active concert or participation" with a named party only when there is "some evidence of involvement with the named enjoined party or involvement in the original injunctive proceeding" and holding non-party could not be held in contempt for violating a temporary injunction because there was no such evidence); *State v. Cook United, Inc.*, 469 S.W.2d 709, 712 (Tex. 1971) (non-parties who did not receive notice of

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<sup>1</sup> *See also Mapco, Inc. v. Carter*, 817 S.W.2d 686, 688 (Tex. 1991) (per curiam) (trial court erred in entering judgment against non-party parent company over which it did not have personal jurisdiction and there had been no alter ego allegations or findings); *In re Tex. Dept. of Family & Protective Servs.*, 415 S.W.3d 522, 528 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding) (contempt order against non-party over which trial court had not acquired jurisdiction was void); *In re Suarez*, 261 S.W.3d 880, 883-85 (Tex. App.—Dallas 2008, orig. proceeding) (trial court did not have authority to sanction non-party for violating court order when trial court had not obtained personal jurisdiction over non-party).

temporary injunction and were not agents or employees of the named party were not bound by the injunction).

6. Thus, as a matter of law, because the August 22, 2019 TRO has no binding effect on the Individual Non-Parties, the Court clearly abused its discretion by: 1) entering the Show Cause Order based on the unsupported conclusion that the Individual Non-Parties violated “the letter and spirit” of such order, and 2) entering orders attempting to nullify the votes cast for and on behalf of non-party Alchemist Holdings, LLC for the election of the Individual Non-Parties to the Board of Directors for non-party Sharing Services Global Corporation. For these reasons, the Show Cause order should be vacated and set aside.

7. Moreover, even assuming the requirements of Rule 683 had been met as to the Individual Non-Parties (which they clearly were not)—and further assuming that there was any evidence that the Individual Non-Parties disobeyed the August 22, 2019 TRO, thus subjecting them to the contempt provisions of Rule 692 (which there is not)—the Court has no power, inherent or otherwise, to retroactively undo or unwind the practical and/or legal effect of the shareholder votes cast for and on behalf of non-party Alchemist Holdings, LLC. An act done in violation of a restraining order is *not* a nullity under settled Texas law. *Estate of Korzekwa v. Prudential Ins. Co. of Am.*, 669 S.W.2d 775, 778 (Tex. App.—San Antonio 1984, writ dismissed) (“Proceedings for violation of an injunction are in the nature of a contempt proceeding. An injunction operates *in personam*, and an act done in violation of an injunction is not a nullity.”); *see Suntex Dairy v. Bergland*, 591 F.2d 1063, 1067–68 (5th Cir. 1979) (same). Thus in attempting to retroactively nullify shareholder votes cast for and on behalf of non-party Alchemist Holdings, LLC the Court has acted without the guidance of any recognized legal principle or authority, and has thus clearly abused its discretion in entering the Show Cause Order. *See Nath v. Tex. Children’s Hosp.*, 446 S.W.3d 355, 371 (Tex. 2014) (“A trial court

abuses its discretion by failing to adhere to guiding rules and principles.”); *see also*, *Altesse Healthcare Sols., Inc. v. Wilson*, 540 S.W.3d 570, 574-76 (Tex. 2018) (per curiam) (even though party violated TRO, trial court abused its discretion in entering excessive sanctions that gave plaintiff a merits ruling and more relief than plaintiff was entitled to). For this additional reason, the Show Cause Order should be vacated and set aside.

#### **Alternative Motion for Stay**

8. The Show Cause Order is not appealable. In the event the Court does not vacate and set aside the Show Cause Order as requested herein, the Individual Non-Parties will be forced to file a petition for writ of mandamus. If this becomes necessary, the Individual Non-Parties respectfully request that the Court stay the Show Cause Order until such time as the Individual Non-Parties fully exhaust their mandamus remedies in the appellate courts.

WHEREFORE, PREMISES CONSIDERED, the Individual Non-Parties pray that the Court grant the Individual Non-Parties Motion for Reconsideration and enter an order vacating and setting aside the Show Cause Order. In the alternative, the Individual Non-Parties pray that the Court enter an order staying the effectiveness of the Show Cause Order and any proceedings predicated thereon until such time as the Individual Non-Parties fully exhaust their remedies of mandamus in the appellate courts. The Individual Non-Parties request such other and further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR KEITH HALLS, JOHN "JT"  
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INDIVIDUALLY, AND AS TRUSTEE OF THE  
ALCHEMIST HOLDINGS, LLC STOCK  
VOTING TRUST AGREEMENT

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served via e-mail, to all counsel of record on this 18<sup>th</sup> day of February 2020.

/s/ Scott R. Meyer  
Scott R. Meyer