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**BARBARA A. WIEDEMEYER
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH**

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

**TOTAL QUALITY LOGISTCS, LLC :
Plaintiff : CASE NO. 2015 CVH 01223
vs. : Judge McBride
ERIC LOVE, ET AL. : DECISION/ENTRY
Defendant :**

Lindhorst & Dreidame, Barry F. Fagel, counsel for the plaintiff Total Quality Logistics, LLC, 312 Walnut Street, Suite 3100, Cincinnati, Ohio 45202

Lundrigan Law Group Co., LPA, Nicole M. Lundrigan and Kelly Lundrigan, counsel for the defendant Shane Moore, 1080 Nimitzview Drive, Suite 201, Cincinnati, Ohio 45230

White, Getgey & Meyer Co., LPA, C. Joseph McCullough, counsel for the defendant Kansas Continental Express, 7587 Central Parke Blvd., Mason, Ohio 45103

Nichols, Speidel & Nichols, Donald W. White, counsel for the defendant Eric Love, 237 Main Street, Batavia, Ohio 45103

This cause is before the court for consideration of (1) the plaintiff Total Quality Logistics' motion to extend the September 24, 2015 temporary restraining order and (2) the motions of defendants Kansas Continental Express and Shane Moore to vacate, dissolve, or modify the temporary restraining order.

The court scheduled and held a hearing on the motions on December 21, 2015. At the conclusion of that hearing, the court took the issues raised by the motions under advisement.

Upon consideration of the motions, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The plaintiff Total Quality Logistics (hereinafter referred to as "TQL") filed its complaint against the defendants Kansas Continental Express (hereinafter referred to as "Kansas"), Eric Love, and Shane Moore on September 16, 2015 requesting a temporary and permanent restraining order and alleging claims of trade secret misappropriation, unfair competition, unjust enrichment, breach of contract, tortious interference with contractual relationship, fraud, breach of fiduciary duty, civil conspiracy, and conversion.

On September 17, 2015, TQL filed a notice certifying that all pleadings and motions were served on each of the defendants by email. The notice further certified that all defendants were notified that the hearing on the motion for a temporary restraining order ("TRO") would be held on September 18, 2015 at 1:00 P.M. In addition, counsel for TQL spoke with Shane Moore and informed him of the hearing. None of the defendants contest that they received prior notice of the September 18th hearing.

On September 18, 2015 this court held a hearing on TQL's motion for a TRO, which the court granted. Counsel for TQL and Kansas were present. On September 24th, the court entered a TRO against all the defendants. On October 15th, Eric Love requested a continuance of the preliminary injunction hearing.

During a phone conference with the court on October 19, 2015, the court granted Eric Love's continuance and rescheduled the preliminary injunction hearing to December 21, 2015. During the phone conference, TQL, Kansas, and Eric Love agreed to extend the TRO until the upcoming preliminary injunction hearing. Shane Moore was not present for the October 19th phone conference and did not subsequently agree to extend the TRO as it applied to him. On October 26th, the court entered an agreed entry among TQL, Kansas, and Eric Love extending the TRO "until the court issues a Decision on Plaintiff's Motion for Preliminary Injunction."

During a December 14, 2015 hearing before the court, all parties agreed they were not prepared to move forward with the preliminary injunction hearing set for December 21st. As such, the court vacated the preliminary injunction hearing on December 21st. Kansas stated that it would not agree to continue the TRO beyond December 21st. TQL requested that the TRO be continued through the time of the rescheduled preliminary injunction hearing and until a decision was rendered on the application for preliminary injunction. The court requested that the parties brief the issue of whether the TRO could be extended.

On December 13, 2015, TQL filed a memorandum in support of extending the TRO. That same day Kansas filed a motion to vacate, dissolve, or modify the TRO.

Subsequently, Shane Moore filed a motion to join Kansas's motion. Eric Love did not submit any briefing on his position with respect to the TRO.

The court heard argument on this issue on December 21st. During the hearing, the court stated that Shane Moore was not presently restricted by the TRO because he never agreed to extend it beyond October, as the other defendants had. Kansas and Shane Moore reiterated their objections to extending the TRO. Counsel for Eric Love was present but did not state Love's position regarding the TRO extension. After the hearing, the court permitted the parties to file reply briefs. On December 24th, TQL filed its reply in support of its motion to continue the TRO.

Following the hearing, the court took the issues regarding the TRO under advisement.

LEGAL ANALYSIS

The issuance of TROs and preliminary injunctions is governed by Civ.R. 65. With respect to a TRO, Civ.R. 65(A) permits issuance "without written or oral notice to the adverse party or his attorney."¹ The rule further provides that a TRO issued without notice "shall expire by its terms within such time after entry, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for one like period or unless the party against whom the order is directed

¹ To grant the *ex parte* TRO, the court must determine that it (1) "clearly appears from specific facts shown by affidavit or verified complaint that immediate, irreparable harm, loss or injury will result to the applicant before the adverse party or his attorney can be heard in opposition; and (2) the applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required." Civ.R. 65(A).

consents that it may be extended for a longer period.”² The “requirements of Civ.R. 65(A) are mandatory rather than directory.”³ Nevertheless, the court has “inherent authority to modify or vacate its own injunctive decree.”⁴

A TRO “contemplates the unusual emergency type situation where immediate action is required to maintain the *status quo* until a hearing can be held.”⁵ The applicant for the TRO “accepts the brief duration of the order in return for the right to be heard on the application for the order without opposition from the adverse party.”⁶ The “purpose of limiting the duration of a temporary restraining order to fourteen days in Ohio * * * is that such orders are usually sought *ex parte*.”⁷

In contrast, a preliminary injunction “requires reasonable notice for a hearing and applies to maintain the *status quo* until final hearing, unless altered by further court order.”⁸ Unlike a TRO, a preliminary injunction will enjoin the opposing party from “performing certain acts for a period usually much longer” than a TRO, and as such the opposing party “must be accorded a legitimate opportunity to oppose the injunction.”⁹ A preliminary injunction does not decide the merits of the case; it merely balances “the respective equities of the parties, [and] concludes that, pending a trial on the merits

² *Id.*

³ *Martin v. Lovejoy*, 2nd Dist. Greene No. 85 CA 39, 1985 WL 6966, *3 (Oct. 28, 1995), citing *North Electric Co. v. United Steelworkers of America*, 28 Ohio App. 2d 253, 277 N.E.2d 59, 57 O.O.2d 375 (3rd Dist. 1985).

⁴ *In re Skrha*, 98 Ohio App.3d 487, 497, 648 N.E.2d 908 (8th Dist. 1994).

⁵ 1970 Staff Note, Civ.R. 65.

⁶ *Turnoff v. Stefanac*, 16 Ohio App.3d 227, 228, 475 N.E.2d 189, 16 O.B.R. 243 (8th Dist. 1984).

⁷ *Id.*

⁸ 1970 Staff Note, Civ.R. 65.

⁹ *Sea Lakes, Inc. v. Sea Lakes Camping Inc.*, 78 Ohio App.3d 472, 477, 605 N.E.2d 422 (11th Dist. 1992).

defendant should, or that he should not, be restrained from exercising the rights claimed by him.”¹⁰

Lastly, the granting of a permanent injunction “contemplates notice and full evidentiary hearing at trial.”¹¹ Unlike a preliminary injunction hearing, the trial preceding the permanent injunction determines the merits of the complaint.¹² A trial court may not “consider permanent injunctive relief unless there has been notice of a hearing and the holding of a full evidentiary hearing on the issue.”¹³

Rule 65(A) sets forth “what is required if the temporary restraining order is granted without notice.”¹⁴ The TRO “will automatically expire within fourteen days unless within the fourteen day period of the order is extended for *one* other like period.”¹⁵ The Ohio Supreme Court has explained that “a TRO absolutely expires twenty-eight days from its original issuance unless the adverse party consents to a longer term.”¹⁶

When the opposing party has received notice of the hearing for the TRO, the time limits set forth in Civ.R. 65 are inapplicable. In such a case, a TRO does not expire by operation of law after 28 days, as with an *ex parte* TRO.¹⁷ Instead, “where both

¹⁰ *Ohio Association of Public Schools Employees v. Mayfield*, 8th Dist. Cuyahoga Nos. 44932, 45118, 1983 WL 5498, *3 (June 23, 1983), quoting *Gessler v. Madigan*, 41 Ohio App.2d 76, 322 N.E.2d 127, 70 O.O.2d 68 (3rd Dist. 1974).

¹¹ 1970 Staff Note, Civ.R. 65.

¹² *Mayfield*, 1983 WL 5498 at *3, quoting *Gessler*, 41 Ohio App.2d 76.

¹³ (Citation omitted.) *Tonti v. Birch*, 6th Dist. Wood No. WD-95-005, 1995 WL 680007, *3 (Nov. 17, 1995).

¹⁴ (Emphasis added.) 1970 Staff Note, Civ.R. 65.

¹⁵ (Emphasis original.) *Id.*

¹⁶ *State, ex rel. Pizza v. Rayford*, 62 Ohio St.3d 382, 582 N.E. 2d 992 (1992), fn. 4. See *State ex rel. Tone v. Grey*, 6th Dist. Erie No. E-04-012, 2004-Ohio-885, ¶ 16 (holding same).

¹⁷ *Citicasters Co. v. Stop 26-Riverbend Inc.*, 7th Dist. Mahoning No. 01 CA 99, 2002-Ohio-5197, ¶ 55. See *Shawnee Mental Health Center, Inc. v. Dodson*, 4th Dist. Scioto, 1993 WL 189965, *5 (May 10, 1993) (finding that the appellant had notice and appeared when the TRO was granted, making the 14-day extension provision inapplicable).

parties had notice of, were present at, and participated in the temporary restraining order hearing, the court may treat the application for a temporary restraining order as an application for a preliminary injunction."¹⁸ As discussed, a preliminary injunction does require reasonable notice and a hearing.¹⁹ However, reasonable notice can be waived by opposing counsel by attending and participating in a hearing.²⁰

The case of *Atwood v. Judge*, 63 Ohio App.2d 94, 409 N.E. 1022, 17 O.O.3d 289 (7th Dist. 1977), illustrates the circumstances under which a TRO is converted into a preliminary injunction. In *Atwood*, the party opposing the TRO argued that the TRO was wrongfully extended beyond the 28 days permitted in Civ.R. 65.²¹ Two days after receiving notice of the TRO, the opposing party had appeared at and participated in a hearing regarding the TRO.²²

At some point after the hearing on the TRO, the trial court extended the TRO beyond the 28 days, but the opposing party did not consent to the extension.²³ However, because the opposing party had notice of the TRO hearing and participated in it, the court held that the TRO was transformed into a preliminary injunction.²⁴ As such, the 28-day limit set forth in Civ.R. 65 did not defeat the preliminary injunction.²⁵

As discussed, a preliminary injunction cannot be granted "without reasonable notice to the adverse party."²⁶ The language of Civ.R. 65 "strongly implies that a

¹⁸ (Citation omitted.) *Stefanac*, 16 Ohio App.3d at 229

¹⁹ 1970 Staff Note, Civ.R. 65.

²⁰ *Sea Lakes, Inc.*, 78 Ohio App.3d at 476.

²¹ *Atwood v. Judge*, 63 Ohio App.2d 94, 409, 102 N.E. 1022, 17 O.O.3d 289 (7th Dist. 1977).

²² *Id.*

²³ *Id.* at 101-102.

²⁴ *Id.* at 102.

²⁵ *Id.*

²⁶ Civ.R. 65(B)(1).

hearing must be held before a preliminary injunction can be granted.”²⁷ As such, “courts in this state have held that a hearing on a motion for preliminary injunction is necessary.”²⁸ Hence, when a court issues a TRO after an initial hearing in which counsel appeared, the TRO becomes a preliminary injunction because it was issued with reasonable notice to the opposing party and the opposing party was heard.

Federal case law is consistent with this result and its underlying rationale. Federal cases are instructive because “Rule 65 is modeled after Federal Rule 65 and incorporates many of its provisions.”²⁹ The Sixth Circuit Court of Appeals has reflected that “[i]t is because the remedy [of a TRO] is so drastic and may have such adverse consequences that the authority to issue temporary restraining orders is carefully hedged in Rule 65(b) by protective provisions. And the most important of these protective provisions is the limitation on the time during which such an order can continue to be effective.”³⁰

Federal courts have held that a TRO that is extended indefinitely without the consent of the parties is invalid as a TRO.³¹ Rather, as under Ohio law, in such an instance the TRO ceases to be a TRO and becomes a preliminary injunction.³²

²⁷ *Sea Lakes, Inc.*, 78 Ohio App.3d at 476.

²⁸ *Id.*

²⁹ 1970 Staff Note, Civ.R. 65. See *Stefanac*, 16 Ohio App.3d at 228 (stating that Civ.R. 65 “closely parallels” Fed. R. Civ. P. 65).

³⁰ *Hudson v. Barr*, 3 F.3d 970, 975, 62 Empl. Prac. Dec. P 42, 538 26 Fed.R.Serv.3d 1087 (6th Cir. 1993), quoting *Pan American World Airways, Inc. v. Flight Engineers’ Int’l Ass’n*, 306 F.2d 840 (2d Cir. 1962). See *Walnut Private Equity Fund, L.P. v. Argo Tea, Inc.*, S.D. Ohio No.1:11-cv-770, 2011 WL 6013000, *8-9 (Dec. 2, 2011) (stating that TROs are meant to preserve the *status quo* and are of a short duration).

³¹ *Hudson*, 3 F.3d at 975. See *Pan. Am. World Airways, Inc.* 306 F.2d at 842 (“There is no statutory authority for the indefinite, successive extensions of temporary restraining orders.”).

³² *Hudson*, 3 F.3d at 975 quoting *Sims v. Green*, 160 F.2d 512 (3rd Cir. 1947). See *Walnut Private Equity Fund, L.P.*, 2011 WL 6013000 at *9 (“Here, because Defendants are on notice, the Court treats Plaintiff’s motion as a motion for a preliminary injunction rather than a motion for a temporary restraining order.”); *Kansas Hosp. Ass’n v. Whiteman*, 835 F. Supp. 1548, 1551,

The issue before the court in the instant case is whether the TRO can be extended beyond the maximum time period in Civ.R. 65 when the opposing parties do not consent to the extension. All three defendants are situated slightly differently with respect to the TRO, and therefore each will be discussed and decided separately.

(A) KANSAS

Kansas was the only party with counsel present at the September 18, 2015 hearing on the TRO. When the preliminary injunction was continued to December 21st-23rd, Kansas agreed to extend the TRO until the court issued its decision. Kansas could have reasonably anticipated that the TRO would extend until late December of 2015. On December 14, 2015, Kansas submitted that it would not consent to extending the TRO any further. Subsequently Kansas moved to dissolve, vacate, or modify the TRO. If the TRO is extended, Kansas has requested to increase the bond to \$20,000.

42 Soc.Sec.Rep.Serv. 708 (D. Kansas 1993) ("When the opposing party has been notified and a hearing held prior to the issuance of a temporary restraining order, the specific requirements of Fed.R.Civ.P. 65(b), including the ten-day limitation on the duration of such an order, do not apply * * *In such a case the court, in addressing a motion seeking a temporary restraining order, follows the same procedure as for a preliminary injunction motion.").

Notwithstanding their similarities, there is an important distinction between federal and Ohio case law. Federal courts have held that a preliminary injunction cannot be sustained unless the court sets forth findings of fact and conclusions of law. See *Hudson*, 3 F.3d at 975-76. Hence, when a TRO becomes a preliminary injunction under federal law, if the court has not made findings of fact and conclusions of law the preliminary injunction cannot be sustained. *Id.* Under Ohio law, Civ.R. 52 governs findings of fact and conclusions of law. "Civ.R. 52 by its terms concerns 'judgments.' A preliminary injunction is not a judgment." *State ex rel. Add Venture, Inc. v. Gillie*, 62 Ohio St.2d 164, 165, 404 N.E.2d 151, 16 O.O.3d 198 (1980). Therefore, the Ohio Supreme Court has found that a party's reliance on Fed. R. Civ. P. 52 and federal cases to assert that a preliminary injunction must state findings of fact and conclusions of law is misplaced. *Id.* at 164-65.

As discussed, “where both parties had notice of, were present at, and participated in the temporary restraining order hearing, the court may treat the application for a temporary restraining order as an application for a preliminary injunction.”³³ Civ.R. 65(A) governs ex parte hearings and prescribes time limits for extending TROs issued from ex parte hearings. The September 18th hearing, as it pertains to Kansas, was not *ex parte*. Kansas had notice of the TRO hearing,³⁴ was present at the TRO hearing, and participated in the TRO hearing. As such, TQL has a preliminary injunction enjoining Kansas.

Although Kansas did receive two-days advanced notice of the TRO hearing, counsel for Kansas stated in the TRO hearing that he first “got involved” with the instant case less than an hour before the hearing took place. The court recognizes that counsel for Kansas would not have had time to procure an affidavit or other evidence in Kansas’s defense for the TRO hearing during such a compressed timeframe.

This court enjoys “inherent authority to modify or vacate its own injunctive decree.”³⁵ As such, the court will provide Kansas an opportunity to present additional evidence and argument in support of its motion to vacate, dissolve, or modify the TRO on February 25, 2016, the same date as the preliminary injunction hearing for the remaining parties. Following the hearing the court will decide whether the preliminary injunction should continue until the trial and, if so, whether it requires modification. Therefore, until the court issues a decision after the February 25, 2016 hearing, the preliminary injunction currently enjoining Kansas will remain in effect.

³³ *Stefanac*, 16 Ohio App.3d at 229.

³⁴ Two-days notice prior to a TRO hearing is adequate notice for a TRO to be treated as a preliminary injunction. *Atwood*, 63 Ohio App.2d at 102. Further, a party waives reasonable notice by attending the TRO hearing. *Sea Lakes, Inc.*, 78 Ohio App.3d at 476.

³⁵ *In re Skrha*, 98 Ohio App.3d 487, 497, 648 N.E.2d 908 (8th Dist. 1994).

Should the court extend the injunction, Kansas requested that it remove restraints as they apply to Boulder Brands, Inc., Aspen Produce LLC, Skyline Potato, and L&M Companies. Kansas has argued that restraints as to these customers is not necessary because Kansas did not conduct business with the first three customers, and TQL has expressed that it will not move forward on claims regarding L&M Companies. Additionally, TQL is also no longer pursuing claims related to Boulder Brands, Inc.³⁶

TQL responds that, although Kansas has not conducted business with three of the customers, Kansas still received allegedly stolen trade secret information. Hence, under TQL's view, the continued restraint is needed to prevent Kansas from using that information in the future. Citing to R.C. 1333.62, it is TQL's position that the "threatened misappropriation" of its customer information warrants continued protection.

In consideration of these arguments, the court finds that the preliminary injunction will continue to include Aspen Produce LLC and Skyline Potato because TQL alleges that Kansas has stolen information regarding the two customers, and it continues to pursue a permanent injunction relating to those two companies. On the other hand, TQL has not adequately explained why it needs to continue to enjoin Kansas from conducting business with L&M Companies and Boulder Brands, Inc. when it does not plan to pursue claims against either at trial. If TQL has no intent to obtain a permanent injunction against L&M Companies or Boulder Brands, Inc., then it does not reason that it should preliminarily be permitted to continue to enjoin Kansas from conducting business with L&M Companies or Boulder Brands, Inc. Accordingly, the court finds that the preliminary injunction shall no longer include restraints as to L&M Companies and Boulder Brands, Inc.

³⁶ Pls. Reply at pg. 6.

Lastly, Kansas requests that the court increase TQL's bond to \$20,000. Pursuant to Civ.R. 65(C), "[n]o temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond executed by sufficient surety * * * in an amount fixed by the court or allowing it." Furthermore, a TRO bond "cannot carry over to cover a subsequently issued injunction unless it is specifically ordered by the court that the bond be fixed in the same amount and that the bond, or deposit, previously posted shall continue to cover the preliminary injunction."³⁷ The \$5,000 bond posted by TQL for the TRO is hereby carried over as the bond for the preliminary injunction against Kansas in the amount of \$5,000.

For the above reasons, the court holds that (1) TQL maintains a preliminary injunction against Kansas under the same terms as the TRO, with the exception of the reference to L&M Companies and Boulder Brands, Inc., which are now excluded from the restraint, and (2) the bond for the preliminary injunction shall be satisfied by the \$5,000 bond that TQL posted for the TRO. However, as referenced above, the court will provide Kansas an opportunity to present additional evidence and argument in support of its motion to vacate, dissolve, or modify the TRO on February 25, 2016, the same date as the preliminary injunction hearing for the remaining parties. Following the hearing the court will decide whether the preliminary injunction should continue until the trial and, if so, whether it requires modification.

(B) ERIC LOVE

³⁷ *North Elec. Co.*, 28 Ohio App.2d at 257, 227.

The second defendant, Eric Love, was provided advance notice of the September 18, 2015 TRO hearing. However, Eric Love was not present at the September 18th TRO hearing, nor was his counsel. Because Eric Love was not present at the September 18th TRO hearing, the TRO enjoining him cannot be converted into a preliminary injunction, as it was with Kansas.

Along with Kansas, Eric Love initially agreed to extend the TRO until the court issued a decision after the scheduled December 21-23 hearing. During the December 14th and 21st hearings, counsel for Eric Love did not state whether he consented to extending the TRO further. He also did not submit briefing to the court indicating whether he consents. Even so, the court will not assume that an opposing party consents to a four month long TRO extension in the absence of that party's affirmative consent.

TQL argues that Eric Love's prior notice of the September 18th hearing means that the hearing was not *ex parte*, and therefore the time restrictions for extending a TRO in Civ.R. 65(A) are inapplicable. The language of Civ.R. 65(A) indeed states that it applies to TROs "without written or oral notice to the adverse party or his attorney." However, in Ohio cases that have held that the 28-day time limit is inapplicable, the opposing parties had both received prior notice of the hearing *and* attended and participated in it, such as Kansas.³⁸ Eric Love only received notice.

The case TQL cites in support, *Citicasters Co. v. Stop 26-Riverbend Inc.*, 7th Dist. Mahoning No. 01 CA 99, 2002-Ohio-5197, held that the 28-day maximum for TROs set forth in Civ.R. 65(A) was inapplicable in a situation where the opposing party

³⁸ See *Stefanac*, 16 Ohio App.3d at 229; *Atwood*, 63 Ohio App.2d at 102.

received prior notice of the TRO hearing.³⁹ Unlike the instant case, the day that the TRO was issued in *Citicasters* the opposing party participated in a phone conference with the court and the TRO applicant.⁴⁰ The appellate court ultimately found that the TRO remained in effect beyond the 28-days after its issuance.⁴¹ However, it is not clear how much, if any, weight the court placed on the fact that the opposing party participated in the phone conference for the TRO.

Notably, the court in *Citicasters* held that the TRO was still in effect 75 days after issuance. In the case at bar, the TRO has already been in place in excess of 90-days, and if it is to extend until the February 25, 2016 preliminary injunction hearing, then it will have been in place for more than 150-days. To allow a TRO to extend for 150-days without a preliminary injunction hearing eviscerates the underlying purpose for TROs. A TRO is meant to enjoin the opposing party in an "emergency type situation where immediate action is required."⁴² As the above courts have cautioned, a TRO is a drastic measure that can have highly adverse consequences for the enjoined party.

Moreover, the court has been unable to locate either state or federal case law illustrating that a TRO can be extended to last for 150-days or more when the parties have not consented to the extension. To the contrary, the Ohio Supreme Court has opined that "a TRO absolutely expires twenty-eight days from its original issuance unless the adverse party consents to a longer term."⁴³ For these reasons, the court concludes that the TRO as it applies to Eric Love has expired and cannot be extended.

³⁹ *Citicasters Co.*, 2002-Ohio-5197 at ¶ 55.

⁴⁰ *Id.* at ¶ 55.

⁴¹ *Id.*

⁴² 1970 Staff Note, Civ.R. 65.

⁴³ *Rayford*, 62 Ohio St.3d at fn. 4. See *Grey*, 2004-Ohio-885 at ¶ 16 (holding same).

TQL will have an opportunity to seek to enjoin Eric Love again at the February 25, 2016 preliminary injunction hearing.

(C) SHANE MOORE

Unlike Kansas and Eric Love, Shane Moore never agreed to extend the TRO against him beyond the initial 28 days. As this court has previously stated, the TRO against Shane Moore expired at the end of October 2015. For similar reasons as Kansas, Shane Moore objects to continuing the TRO against him, and he moves to dissolve, vacate, or modify the TRO.

Although Shane Moore had prior notice, he did not attend the September 28, 2015 TRO hearing, nor did he have counsel attend. As discussed with Eric Love, courts typically ignore the 28-day time limit in Civ.R. 65(A) only when the opposing party had notice to and participated in the TRO hearing. In such a case, a preliminary injunction is created, not a TRO.

Given the above case law, the court cannot find that TQL has a preliminary injunction enjoining Shane Moore, nor can it hold that a TRO can be reinstated against Shane Moore absent his consent. Accordingly, the TRO as it applies to Shane Moore is expired. TQL will have an opportunity to seek to enjoin Shane Moore again at the February 25, 2016 preliminary injunction hearing.⁴⁴

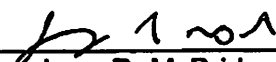
CONCLUSION

⁴⁴ Shane Moore also moved the court to increase the bond, should it extend the TRO. Since the TRO against Shane Moore has not been extended, this point is moot.

For the foregoing reasons the court holds that (1) TQL maintains a preliminary injunction order against Kansas under the same terms as the September 24, 2015 TRO, except the preliminary injunction excludes L&M Companies and Boulder Brands, Inc., (2) the bond for the preliminary injunction order against Kansas shall be satisfied by the \$5,000 bond that TQL posted for the TRO, and (3) the TRO that TQL had against Eric Love and Shane Moore is expired. Additionally a hearing will be held on the motion by Kansas to vacate, dissolve, or modify the TRO on February 25, 2016, the same date as the preliminary injunction hearing for the remaining parties. Following the hearing the court will decide whether the preliminary injunction should continue until the trial and, if so, whether it requires modification.

IT IS SO ORDERED.

DATED: 1-8-2016


Judge Jerry R. McBride