

CAUSE NO. 2014-3272-4

BALCONES DISTILLING LLC,
Plaintiff,

v.

CHARLES TATE,
Defendant.

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IN THE DISTRICT COURT OF

MCLENNAN COUNTY, TEXAS

170th JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER, VERIFIED DENIAL AND RESPONSE TO
PLAINTIFF'S VERIFIED ORIGINAL PETITION AND REQUEST FOR INJUNCTIVE
RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT.

COMES NOW Defendant Charles "Chip" Tate ("Chip") and files this his Original Answer, Verified Denial and Response to Plaintiff's Verified Original Petition and Request for Injunctive Relief ("Plaintiff's Original Petition") and in support thereof respectfully shows the Court as follows:

**I.
INTRODUCTION/FACTS**

1. The fatally defective, invalid, and false Plaintiff's Verified Original Petition and Request for Injunctive Relief (the "Petition") is premised upon the allegation and theory that Chip engaged "in a course of conduct that is damaging to Balcones and its employees...." Chip specifically denies this and the other false and unsupported allegations of the Petition, as set forth in detail below. Plaintiff's Original Petition would like to paint this as an employee dispute. This is not an employee dispute. Quite the contrary this is an attempt to purloin the plump ripe peach that is Balcones from the founder Chip, who built it with his own two hands from scratch. This is a private equity group trying to unjustifiably take advantage of a craft distiller and take his ownership in Balcones. Chip was not a harm to Balcones, he has been quite the benefit. However, as the old saying goes, "a picture is worth a 1000 words."



2. Chip and Balcones (the company that he founded and built over the course of six (6) hard years of endless hours and sacrifices), have reached unprecedented levels of success by winning over one hundred forty (140) awards and hundreds of accolades and approvals from the industry, critics, and the discriminating public. <https://player.vimeo.com/video/52709409>. Literally, Chip and Balcones could not keep their whisky “on the shelf” and could not produce their award-winning whisky fast enough to satisfy demand—an enviable position to be in for a start-up company.

3. Rather than be allowed to reap the rewards of success and reach even higher by expanding production facilities and continuing to develop award-winning products, Chip has been forced to engage in a “life or death” struggle not only over the future of Balcones and his ownership interest in the company, but over his professional and personal reputation and the very “soul” of Texas Whisky. Is the attack from a competitor? No, the attack is from within—from a foreign entity that now acts in the “name/disguise” of Balcones in terminating Chip, forcing him from the company that he founded, diluting his ownership with improper corporate actions, and now abusing the court system to enjoin him based on false accusations. Why? To keep the industry, media, public and this Court from learning the truth. It’s a neat trick not uncommon for bullies—assert a bunch of false and unfounded accusations to obtain injunctive relief that would

arguably rob Chip of his Constitutional right to deny the allegations made public by the filing of this lawsuit. Somewhere, Vladimir Putin is smiling.

4. Fortunately, not only will the evidence establish the falsity of the allegations made against Chip, it will also reveal the true villain behind this attempt to strip Balcones of its founder and very soul—PE Investors II, LLC, an Oklahoma limited liability company with 29 “members” that were not disclosed to Chip or Balcones until after the fraudulently-induced June 2013 transaction admitting it as a member to Balcones. The facts will show that not only were the allegations false, but they were made knowing they were false. Is it greed, is it the jealousy or the personality of one or more of PE’s members, or is it “aggressive” ignorance? Maybe it’s all of the above. Regardless of the reason(s), it is not the one-sided, simple employment dispute that PE, acting in the guise of the hijacked Balcones, wants this Court and the public to believe.

5. First, Chip has not been simply “suspended” as alleged in the Petition. Chip, the Founder/President/Manager of Balcones was terminated and then sued by Balcones. After an extended, multiple-week dialogue between Chip and PE about buying each other out of Balcones, Greg Allen of PE, barged, unannounced and without warning, into a meeting (literally throwing open the door and stopping the meeting) Chip was having with a corn supplier at Balcones on August 5, 2014. As Chip tried to diffuse the situation created by Allen, it was revealed to Chip that two sheriff’s deputies were waiting outside with instructions to remove Chip from the Balcones premises. Chip, contrary to the alleged threats stated in the Petition, assured the employees that their positions were not in jeopardy and that this was merely an issue to be worked out between owners, gathered some of his personal belongings and left the distillery with the understanding that he and Allen would continue to work towards finding a resolution to buy one or the other out. Chip had no firearms on his person, nor did he threaten

Allen—as alleged in the inflammatory and false Petition. Despite being ambushed and threatened with removal by two armed deputies who were hired and told they were there to assist in the termination of an unruly employee, Chip calmly attempted to work towards a business solution with Allen, reassured the employees as to their jobs, and peacefully left the facility. He certainly never threatened, as once again falsely alleged in the Petition, to set fire to the very equipment that he had spent the majority of the previous six years helping to build, re-build, operate and maintain with his own hands. In fact, the evidence will establish that Chip was the *de facto* safety officer of Balcones and a compulsive “safety Sam” who constantly strove to ensure the safety of Balcones employees.

6. Chip never returned to the Balcones distillery. Over the course of the next few days after the August 5th ambush, Chip traded proposals with Allen and continued business discussions with potential buyers for the PE interest and/or funding sources—all with the prior knowledge of Allen and the other Balcones Managers. The proposals were abruptly ended by Allen on August 8th when he sent Chip a letter notifying him that he was “suspended” and included a “board resolution” approving Chip’s “suspension.” Notably, the previously undisclosed “resolution” is dated August 5th—the very day of the Allen ambush and threatened forcible removal-by-deputy. Importantly, the “suspension” letter and the “resolution” demanded Chip to, among other things:

- Immediately turn over his phone (a mixed use device containing personal information and a phone number Chip had years prior to founding Balcones), computer, and all files in his possession;
- Not enter any company facilities, including the parking lot next to, but not actually owned by, the company;
- Refrain from communicating with any person in the spirits industry or the media about the company or his current “assignment” at the company—obviously to keep the purchasing public, the distributors, and industry critics and media from discovering that the product put out by Balcones no

longer had been blended by Chip, nor did it have his approval or sponsorship. A simple taste test will tell you why this was so important to keep from everyone;

- Refrain from contacting any employee of the company, any customer of the company, or any supplier for any reason;
- Refrain from using any company debit cards, credit cards, or other company resources.

7. Add to the above, the August 5th ambush and threatened “perp walk” out by two armed deputies. Terminated or “suspended”? Certainly, and even if the above were not clear earmarks of termination, what about when PE had Balcones file suit against Chip and get a temporary restraining order against him on August 22? It is absurd to call this anything other than a termination.

8. Importantly, and contrary to the allegations of the Petition, Chip denies doing anything to provoke or justify the request for injunctive relief requested by the Petition. Specifically, Chip did not:

- Engage in conduct harmful to the company he founded;
- Interfere with Balcones’ communications with third parties;
- Threaten harm to Allen or the facility;
- Enter or instruct a family member to enter the facility;
- Tell employees that their jobs were in danger or that there was a plan to move Balcones out of state;
- Use the company’s credit or debit cards—in fact, the American Express account, which was personally guaranteed by Chip, was moved with the company’s assistance to a new account number, which continues to this day to incur charges made by the company, not Chip.

9. This lawsuit wasn’t justified by Chip’s conduct, and the only real imminent threat and irreparable harm to Balcones comes not from Chip, but from the unconscionable actions of PE and the unauthorized actions of the improperly constituted and PE-controlled Board of

Managers. Importantly, as stated in the Amended and Restated Company Agreement, Chip must be present at any Board meeting or join in any action by written consent in order for the required quorum to be present for any vote or consent. The PE-controlled Board has taken numerous actions and passed numerous “resolutions” without the required quorum in violation of a Amended and Restated Company Agreement—including, but limited to: “suspending,” in reality terminating, Chip; violating the provisions of Chip’s Senior Management Agreement; authorizing the filing of this lawsuit and request for injunctive relief; failing to give proper written notice under the Senior Management Agreement upon Chip’s separation as an employee; authorizing the prior material breach of the Senior Management Agreement; and authorizing the improper use of Chip’s likeness and “gag” on communicating with anyone to create the impression that whisky products released after August 5, 2014 have the sponsorship or approval of Chip—a clear fraud on the public and Chip.

10. As if this were not enough, the PE-controlled Board took another action recently to improperly dilute Chip’s ownership interest in Balcones. The Board authorized an “internal offering” of \$15,000,000 of debt, convertible into units at \$70 per unit, thereby potentially tripling the number of outstanding units and diluting Chip from 27% ownership to less than 10%. Due to the terms of the Balcones operating agreement, once Chip’s ownership is less than 10% PE would be able to take over Balcones and Chip could do very little if anything about it. Not only was the required quorum not present to authorize the action, but Chip did not consent to this recapitalization, an express requirement of the Amended and Restated Company Agreement. Shockingly, less than 60 days prior to this action, PE turned down an offer to buy its interest by a third party of \$100 per unit as an “insult.” That, however, did not prevent the PE-controlled Board from authorizing a convertible debt recapitalization with a \$70 conversion option to

themselves without the required consent of Chip and in clear violation of all known conflict of interest principals... self-dealing in overdrive.

11. PE, acting in the name of Balcones, will stop at nothing to ruin Chip and run him out of the very company he founded and devoted the last six years of his life to. Although it purports to act for the benefit of Balcones, it is clear that the only beneficiary of this conduct is PE itself. The victims are Chip, the public, Balcones, the employees of Balcones, and the very soul of Texas Whisky. These actions cannot stand and the truth must and will be established.

II. GENERAL DENIAL

12. Chip asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that Plaintiff be required to prove its charges and allegations against Chip as is required by the Constitution and laws of the State of Texas.

III. VERIFIED DENIALS

13. Chip specifically denies that he has engaged in conduct harmful to Balcones.

14. Plaintiff's claims are barred, in whole or in part, because the true party bringing the suit, PE, lacks capacity to sue.

15. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to properly give notice of termination, a condition precedent to suit.

IV. AFFIRMATIVE DEFENSES

16. Chip specifically denies that any appropriate or binding Board of Managers action has occurred to suspend him. Chip is required for a quorum for Board of Managers action to be taken and he has not been at any Board meeting where such alleged action has occurred.

17. Chip specifically denies that he has interfered with Balcones communications with third parties. Chip is the President of Balcones and is authorized by the Board of Managers and by his Senior Management Agreement to act as President of Balcones which necessitates communications with Balcones business contacts.

18. Chip specifically denies that he has made statements threatening to the Balcones Chairman of the Board or the Balcones facility.

19. Chip specifically denies that he came, or sent a family member to the distillery facility after the alleged but invalid suspension.

20. Chip specifically denies that he stated that Balcones will fail in his absence or will move to an out of state location after the alleged but invalid suspension.

21. Chip specifically denies that the alleged but invalid suspension was binding upon him, therefore he was not required to forward emails from third parties attempting to contact Balcones. As the President of Balcones, he is authorized and required to deal with his own emails.

22. Chip specifically denies that he was not authorized to contact third parties in connection with Balcones business. As the President and Founding Member of Balcones he is authorized and required to contact third parties in connection with Balcones business.

23. Chip specifically denies using the Balcones credit card since the alleged but invalid suspension.

24. Chip specifically denies any harm or damages has occurred to Balcones due to his alleged actions.

25. Balcones Original Petition is based upon the premises that a) in order for Balcones to expand, it must "raise capital from outside sources," and b) the Board of Managers

of Balcones passed a resolution to suspend Chip. Both of these premises are problematic. The first premise that Balcones must raise capital from outside sources. For this to be true, Chip would have to give his prior written consent to such capital infusion. Chip specifically denies that he has given his prior written consent to such a capital raise. This is required under provision 10.14 of the Amended and Restated Company Agreement. The second premise is patently false, because for the Board of Managers to pass any resolution there must be a quorum. Per the Amended and Restated Company Agreement, there can be no quorum without Chip. Chip specifically denies he has been at any meeting of the Board of Manager in which he was suspended.

26. Even if the Court were to agree that Chip was suspended by the Board of Managers as President and Head Distiller, the Board has no authority to limit Chip's rights and obligations as Founding Member and Manager of the Board. The Amended and Restated Company Agreement gives Chip, as Founding Member and Manager specific and general rights and obligations. With these rights and obligations Chip has the right to speak to business contacts of Balcones, employees of Balcones, and to visit the property of Balcones. His rights as Founding Member and Manager are not limited by the Senior Management Agreement. Consequently Chip has the same right as any other Board Manager to speak to business contacts of Balcones, employees of Balcones, and to visit the property of Balcones. Chip has additional specific rights as Founding Member and Manager.

27. The TRO is overly broad.

28. The TRO violates Chip's rights to free speech under the constitution of Texas and the United States.

29. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any legally cognizable damages.

30. Plaintiff's claims are barred, in whole or in part, by the fraud of its members.

31. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

Respectfully submitted,

/s/ David R. Clouston

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing was served via E-mail and U.S. Mail upon the following on this the 12th day of September, 2014:

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/S/ David R. Clouston
David R. Clouston

VERIFICATION

STATE OF TEXAS §
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COUNTY OF MCLENNAN §

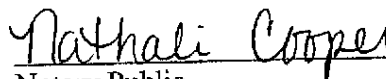
BEFORE ME, the undersigned authority, on this day personally appeared Charles "Chip" Tate, who, after being duly sworn upon his oath deposed and stated that he has read the foregoing Original Answer, Verified Denial and Response to Plaintiff's Verified Original Petition and Request for Injunctive Relief in the above-entitled and numbered cause, that he is authorized to provide this Verification and that factual statements contained in Sections I and III are true and correct and within his personal knowledge.



Charles "Chip" Tate

STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

SUBSCRIBED AND SWORN TO BEFORE me this 12th day of September, 2014, to certify which witness my hand and official seal.



Nathali Cooper
Notary Public
State of Texas

My Commission Expires:
8-13-15

