

CAUSE NO. D-1-GN-09-000078

**LAURA PRESSLEY,**  
Plaintiff,

v.

**RON BLACKETT, d/b/a**  
**PURE RAIN**  
Defendant.

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IN THE DISTRICT COURT

353RD  
JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

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**PLAINTIFF'S ORIGINAL PETITION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Laura Pressley ("Plaintiff"), and files this her Original Petition against Defendant Ron Blackett, d/b/a Pure Rain, and in support thereof, respectfully shows as follows:

**I. PARTIES**

1. Plaintiff, Laura Pressley, is an individual residing in Austin, Texas.
2. Defendant, Ron Blackett, an individual, may be served with process at Defendant's usual place of abode, 2237 Shark Loop, Round Rock, Texas 78660.

**II. DISCOVERY CONTROL PLAN LEVEL**

3. Plaintiff intends to conduct discovery under Level 2 pursuant to the Texas Rules of Civil Procedure.

**III. JURISDICTION**

4. This Court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

**IV. VENUE**

5. Venue is proper in Travis County, Texas under Texas Civil Practice & Remedies

Code § 15.002 because all or a substantial part of the events or omissions occurred in Travis County.

#### **V. FACTS**

6. Plaintiff Laura Pressley was presented with an alleged business opportunity by colleagues. Pressley was asked to develop, partner and co-own the business, which would capture and bottle rain water.
7. Defendant Ron Blackett is a sole proprietor doing business as Pure Rain. Blackett and Pressley agreed they would make joint business decisions, and form a partnership. In reliance on Blackett's assurances, Pressley made several investments in Pure Rain. Pressley additionally contributed hundreds of hours of her personal time to promote and grow the business in reliance on Blackett's representations, and in anticipation of realizing some financial benefit from the partnership.
8. On May 20, 2008, Pressley purchased inventory with her personal funds to be sold by Pure Rain in the amount of \$15,400.00. Pure Rain retained any inventory purchased in this transaction. She additionally spent personal funds on expenses of the company totaling \$713.00.
9. Between approximately November 29, 2007, and December 10, 2008, Pressley contributed hundreds of hours of personal time to the business. Among other things, she drafted a feasibility and profitability analysis, marketing research, and drafted a benchmarking and pricing analysis. Pressley was successful in creating critical new business relationships, negotiated the company's first private label contract and succeeded in negotiating permission to allow the Pure Rain product

into Austin markets. She additionally drafted and completed the company's water chemical testing plan and analysis. She also successfully developed a business relationship to procure Small Business Administration Investment and Research grants for the company.

10. At the request of Ron Blackett, Pressley invested another \$28,000.00 in Pure Rain on November 18, 2008. In exchange, Blackett affirmed his agreement and intention to create a business partnership, promised Pressley she would have the title of Chief Technical Officer, would own 50-51% of the company, and validated the agreement to make decisions jointly regarding Pure Rain.
11. Starting on or about December 8, 2008, Blackett communicated and began to unilaterally make key business decisions related to branding, business, partnership directions and employee decisions. Pressley was then informed that decisions would not be made jointly as was originally agreed, and Blackett made it clear he would be making decisions unilaterally.

#### **VI. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

12. Plaintiff and Defendant executed a valid and enforceable contract. By this contract, the parties agreed that Plaintiff would contribute personal funds, expertise, time and effort to the Company, and Defendant would allow Plaintiff to jointly make business decisions with Defendant, to become Chief Technical Officer, and to become partners in Pure Rain with Blackett.
13. Defendant breached the contract by making unilateral decisions that affected the business without consulting Plaintiff, by failing to perform his promises made to Plaintiff, by failing to make her Chief Technical Officer, and by refusing to provide

business cards relaying her role with the Company.

14. Defendant's breach caused injury to Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.
15. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

#### **VII. SECOND CAUSE OF ACTION – COMMON LAW FRAUD**

16. Defendant represented to Plaintiff that if she contributed money, expertise, time and effort to the Company, then Defendant would allow Plaintiff to jointly make business decisions with Defendant, to become Chief Technical Officer, and to become partners in the business known as Pure Rain.
17. Defendant's representation to Plaintiff was material because Plaintiff would not have contributed her personal funds, time and expertise had she known Defendant had no intention of forming a partnership where joint decisions would be made. Defendant's representation to Plaintiff was a false promise of future performance.
18. Further, Defendant's conduct amounted to a false representation to Plaintiff. Further, Defendant made the false representation knowing it was false. Defendant intended for Plaintiff to rely on, and/or had reason to expect Plaintiff would act in reliance on the false representation.
19. Plaintiff relied on Defendant's false representation when she contributed personal expertise, time and funds as investments and contributions to the Company.
20. Defendant's false representation directly and proximately caused injury to Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.

21. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

**VIII. THIRD CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY**

22. Plaintiff had a fiduciary relationship with Defendant. Defendant breached Defendant's fiduciary duty to Plaintiff by making promises he had no intention of keeping.

23. Defendant's breach of fiduciary duty injured Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.

24. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

**IX. FOURTH CAUSE OF ACTION – MONEY HAD AND RECEIVED**

25. Defendant holds money that, in equity and good conscience, belongs to plaintiff.

26. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

**X. FIFTH CAUSE OF ACTION – QUANTUM MERUIT**

27. Plaintiff provided Defendant with hundreds of hours of consulting time that included her expertise, experience, knowledge and advice to promote the business, seek business relationships and contracts, draft profitability and marketing analyses, and generally build the company.

28. Plaintiff provided these services for the benefit of Defendant. Defendant knew, or should have known, that Plaintiff expected compensation when Defendant accepted the valuable consulting services.

29. Defendant has obtained an enormous benefit from Plaintiff through her services on behalf of Pure Rain. Therefore, Plaintiff seeks damages for Defendant's unjust enrichment by Plaintiff's efforts and services.

30. Because Plaintiff expected compensation, Defendant's acceptance of the valuable consulting services without payment resulted in actual damages for the reasonable value of the consulting services.
31. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

#### **XI. EXEMPLARY DAMAGES**

32. Plaintiff's injury resulted from Defendant's actual fraud, gross negligence, or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### **XII. ATTORNEY'S FEES**

33. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Plaintiff is entitled to recover all reasonable and necessary attorney's fees incurred in the prosecution of this matter, and seeks to recover same.

#### **XIII. JURY DEMAND**

34. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

#### **XIV. CONDITIONS PRECEDENT**

35. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

#### **XV. PRAYER**


WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and that upon a final hearing, Plaintiff recovers judgment as follows:

- 1) Actual damages to the maximum extent recoverable at law;
- 2) Exemplary damages;

- 3) Court costs and attorney's fees;
- 4) Pre-judgment and post-judgment interest; and
- 5) For such other and further relief to which she may show herself entitled.

Respectfully submitted,

**MERICA & BOURLAND, P.C.**  
400 West 15<sup>th</sup> Street, Suite 900  
Austin, Texas 78701  
(512) 477-0100  
(512) 477-0154 (facsimile)

BY:   
\_\_\_\_\_  
CINDY OLSON BOURLAND  
State Bar No. 00790343  
SARA M. FOSKITT  
State Bar No. 24036583  
ATTORNEYS FOR PLAINTIFF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RON BLACKETT, hereinafter referred to as Defendant in the above-styled and numbered cause, and in answer to the allegations contained in Plaintiff's Original Petition alleges and at the time of hereof will show as follows:

**I. GENERAL DENIAL**

1. Defendant denies all and singular, each and every material allegation contained in Plaintiff's Original Petition and demands strict proof of the same by a preponderance of the evidence.

**II. ATTORNEY'S FEES**

2. Defendant seeks recovery of its reasonable attorney's fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, in an amount determined at trial or at a hearing on a Motion for Default or Summary Judgment, but in no event shall the amount in controversy plus reasonable attorney's fees exceed the jurisdictional limits of this Court. Defendant also seeks recovery of all of its costs of court.



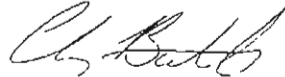
### III. REQUESTS FOR DISCLOSURES

3. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant requests that Plaintiff disclose within (30) days of service of this request, the information or material described in Rule 194.2.

### IV. PRAYER

**WHEREFORE**, for these reasons, Defendant asks the Court to dismiss this suit or render judgment that Plaintiff take nothing, assess costs against Plaintiff, and award all other relief to which Defendant is entitled.

Respectfully submitted,



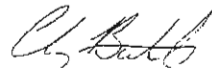
CLAY A. BUTLER  
State Bar No. 24054602

THE BUTLER FIRM, PLLC  
Attorneys for Defendant  
106 East 6th Street, STE 800  
Austin, Texas 78701  
Tel.: (512) 322-5367  
Fax: (888) 356-3151  
butler@austincontractbreach.co

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent via Fax to counsel of record, listed below, on this the 31<sup>st</sup> day of March, 2009.

Cindy Olson Bourland  
Merica & Bourland, P.C.  
400 West 15<sup>th</sup> Street, Suite 900  
Austin, Texas 78701  
Fax: 512-477-0154



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Clay A. Butler

CAUSE NO. D-1-GN-09-000078

LAURA PRESSLEY,  
Plaintiff,

v.

RON BLACKETT and  
DAVID SCHRAUB,  
Defendants.

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IN THE DISTRICT COURT

353<sup>rd</sup> JUDICIAL DIST

TRAVIS COUNTY, TEXAS

Filed In The District Court  
of Travis County, Texas  
7-02-09  
4:09 PM  
Amanda Rodriguez-Mendoza, Clerk

**TEMPORARY RESTRAINING ORDER AGAINST DAVID SCHRAUB**

On this 2d day of July, 2009, the Court heard Pressley's Application for Temporary Restraining Order against Defendant David Schraub ("Schraub") in the above-referenced case. After considering Pressley's application, the pleadings, affidavits and evidence presented, and the arguments of counsel, the Court finds that good cause exists to grant this Temporary Restraining Order. Specifically, the Court finds that Pressley has established, based on the evidence admitted, that there is a reasonable probability that she will prevail on the merits of her claims, that Pressley has no adequate remedy at law, and that Pressley will suffer irreparable loss if this injunction is not issued. Pressley has shown that the extent of monetary harm that will be suffered as the result of Schraub's actions rises to the level of irreparable harm, and that the other injuries that will be suffered will be impossible to repair.

The Court further finds that an ex parte order, without notice and/or appearance of Schraub, is necessary because there was not enough time to give notice to Schraub, hold a hearing, and issue a restraining order before the irreparable injury, loss, or damage would occur. However, Pressley's counsel made diligent efforts to advise Schraub and his counsel of this matter and served them notice of the hearing.



The Court further finds that any adequate protection to Schraub can be obtained by a bond. There is no evidence that Schraub has suffered any monetary damages relating to the topics of this restraining order, and no evidence has been offered to show that monetary damages will be suffered if the temporary restraining order is issued.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of the Court issue a Temporary Restraining Order, ordering Schraub to cease his unlawful conduct and restraining and enjoining him from:

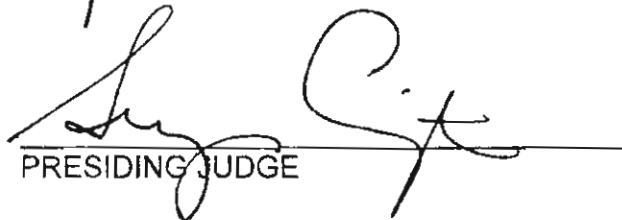
- a. Preventing Pressley from examining Pure Rain LLC's financial and contractual records, and/or withholding said records from Pressley, including, but not limited to bank records, checkbooks, financial statements, customer contracts, customer invoices, loan documents;
- b. Unilaterally managing the operations, including, but not limited to, hiring employees and entering into and/or signing contracts, without the consent and knowledge of Pressley;
- c. Making false statements that he is the sole member of Pure Rain LLC to customers, in press releases, to suppliers, and/or to employees; and
- d. Instructing employees of Pure Rain LLC to withhold information from Pressley relating to company finances or distribution information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Temporary Restraining Order shall continue in effect from the date of the signature below until the fourteenth day after that date or until the entry of a Temporary Injunction in this case, whichever is sooner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the clerk issue a notice to Schraub that a hearing on Pressley's Application for Temporary Injunction is set for July 15, 2009, at 2:00 a.m./p.m. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon presentation of a bond in the amount of \$1,000.00, the Clerk of the Court shall issue all such writs, notices, citations, and other process, including a Temporary Restraining Order, as are necessary for the enforcement of this Order.

SIGNED THIS 2d DAY OF June, 2009, at 4:00 ~~am~~ p.m.

  
PRESIDING JUDGE

CAUSE NO. D-1-GN-09-000078

LAURA PRESSLEY, Plaintiff,	§	IN THE DISTRICT COURT
	§	
v.	§	
	§	353 <sup>rd</sup> JUDICIAL DISTRICT
RON BLACKETT and DAVID SCHRAUB, Defendants.	§	
	§	
	§	TRAVIS COUNTY, TEXAS

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**PLAINTIFF'S FIRST AMENDED PETITION AND VERIFIED APPLICATION FOR  
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND  
PERMANENT INJUNCTION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Laura Pressley, and files this her First Amended Petition and Verified Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction against Defendants Ron Blackett and David Schraub, and in support thereof, respectfully shows as follows:

**I. PARTIES**

1. Plaintiff Laura Pressley ("Pressley") is an individual residing in Austin, Texas.
2. Defendant Ron Blackett ("Blackett"), an individual, has appeared and answered herein, and may be served by serving his attorney of record.
3. Defendant David Schraub ("Schraub"), an individual, may be served with process at Defendant's usual place of abode, 194 Carmen Hill Lane, Bastrop, Bastrop County, Texas.

**II. DISCOVERY CONTROL PLAN LEVEL**

4. Plaintiff intends to conduct discovery under Level 3 pursuant to the Texas Rules of Civil Procedure.

### **III. JURISDICTION**

5. This Court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

### **IV. VENUE**

6. Venue is proper in Travis County, Texas under Texas Civil Practice & Remedies Code § 15.002 because all or a substantial part of the events or omissions occurred in Travis County.

### **V. FACTS**

7. Pressley was presented with an alleged business opportunity by Schraub in November 2007. Pressley was asked to develop, partner and co-own the business, which would capture and bottle rain water.
8. In 2008, Schraub initially entrusted the operations of the business to his brother-in-law, Blackett, doing business as Pure Rain ("Pure Rain"). Schraub, Blackett and Pressley agreed they would make joint business decisions and form a partnership. In reliance on Blackett's assurances, Pressley made several investments in Pure Rain. Pressley additionally contributed hundreds of hours of her personal time to promote and grow the business in reliance on Blackett's representations, and in anticipation of realizing some financial benefit from the partnership. In 2009, Pressley became aware that Blackett was using company funds blatantly and illegally for personal use, and Schraub took little to no action to correct the matters.
9. The facts regarding Pressley's investment are as follows: on May 20, 2008, Pressley purchased inventory with her personal funds to be sold by Pure Rain in the amount of \$15,400.00. Pure Rain and Pure Rain LLC retained any inventory purchased in this transaction. She additionally spent personal funds on expenses

of Pure Rain totaling \$713.00.

10. Between approximately November 29, 2007, and December 10, 2008, Pressley contributed hundreds of hours of personal time to the business. Among other things, she drafted a feasibility and profitability analysis, marketing research, and a benchmarking and pricing analysis. Pressley created critical new business relationships, negotiated the company's first private label contract and succeeded in negotiating permission to allow the Pure Rain product into Austin markets. She additionally drafted and completed the company's water chemical testing plan and analysis. She also successfully developed a business relationship to procure Small Business Administration Investment and Research grants for the company.
11. At the request of Blackett (prior to Pressley becoming aware of his embezzlement), Pressley invested another \$28,000.00 in Pure Rain on November 18, 2008. In exchange, Blackett affirmed his agreement and intention to create a business partnership, promised Pressley she would have the title of Chief Technical Officer and own 50-51% of the company, and validated the agreement to make decisions jointly regarding Pure Rain.
12. In an effort to mitigate ongoing damage by Blackett, Pressley and Schraub agreed, in January 2009, to form a separate business entity. On or about February 2, 2009, Schraub filed a certificate of formation to turn Pure Rain, the former partnership including Blackett, into a member-governed limited liability company, (the "LLC") with Schraub as the initial member.
13. On or about February 27, 2009, Pressley entered into an agreement with Schraub to add Pressley as a member into the LLC as of the date of formation, February 2,

2009. Pressley's \$43,000 contribution to Pure Rain was transferred as a capital contribution to Pure Rain LLC, and she owned twenty (20) percent of the company pursuant to the agreement. The agreement stated the company would continue to be a member-managed limited liability company, and would be governed by the Texas Business Organizations Code ("TBOC"). True and correct copies of the documents evidencing these agreements are attached hereto as Exhibits A – B.

14. As a member of the LLC, Schraub was required to consult and inform Pressley on all new contracts, distributorship agreements, and other business decisions. Instead, Schraub entered into new contracts, including distributorship agreements binding the LLC, without Pressley's input, knowledge or consent. Further, Schraub prevented Plaintiff from accessing and examining the company's financial and contractual records, including, but not limited to bank records, checkbooks, financial statements, summaries, customer contracts, customer invoices, loan documents, general business communications. Correspondence documenting Plaintiff's requests for access to company records is attached hereto as Exhibit C.
15. Further, Schraub unilaterally directed and managed the operations (including, but not limited to, hiring, advertising, entering into and signing contracts, and customer relations) and strategies of the business (future directions, goals of sales disbursements, public relations, etc.) without the consent and engagement of Pressley, in violation of the TBOC.
16. Additionally, Schraub made fraudulent claims that he is the sole member of the LLC, an officer of the LLC, or Managing Principal of the LLC to customers, in press releases, to suppliers, or to employees. Schraub made a statement in the *Oak Hill*



*Gazette* that he was donating fifty percent of the LLC sales to another company he owns, Natural Renewable Energy. Pressley was never consulted on this decision to direct sales and/or proceeds away from Pure Rain, a decision adversely affecting Pressley because Pressley has no ownership interest in Natural Renewable Energy.

A copy of the article from the *Oak Hill Gazette* is attached hereto as Exhibit Das if set forth herein.

17. Schraub further wrongfully instructed employees of the LLC not to communicate with Pressley on company-related topics and affairs, including but not limited to the status of the business, customer updates, advertising, finances, and contracts in violation of the TBOC. Pressley went to the Pure Rain offices three days ago in an effort to meet with Schraub to obtain records and information. Staff told Pressley that Schraub would arrive in five minutes, but Schraub never appeared. When Pressley requested information from the Pure Rain staff, they told her they had been instructed not to provide any information.
18. Pressley needs immediate access to the LLC records to exercise her rights under TBOC. However, Schraub continues to prevent Pressley's access. Schraub's actions and violations of the TBOC are causing immediate and irreparable harm to the LLC.

## **VI. CAUSES OF ACTION**

### **A. CAUSE OF ACTION – BREACH OF CONTRACT AGAINST BLACKETT**

19. Plaintiff and Blackett agreed that Plaintiff would contribute personal funds, expertise, time and effort to the Pure Rain prior to its formation as an LLC, and Blackett would allow Plaintiff to jointly make business decisions with him, to become

Chief Technical Officer, and to become partners in Pure Rain with Blackett.

20. Blackett breached the contract by making unilateral decisions that affected the business without consulting Plaintiff, by failing to perform his promises made to Plaintiff, by failing to make her Chief Technical Officer, and by refusing to provide business cards relaying her role with Pure Rain.
21. Blackett's breach caused injury to Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.
22. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

**B. CAUSE OF ACTION – COMMON LAW FRAUD AGAINST BLACKETT**

23. Blackett represented to Plaintiff that if she contributed money, expertise, time and effort to the Company, he would allow Plaintiff to jointly make business decisions with him, to become Chief Technical Officer, and to become partners in the business known as Pure Rain.
24. Blackett's representation to Plaintiff was material because Plaintiff would not have contributed her personal funds, time and expertise had she known Blackett had no intention of forming a partnership where joint decisions would be made. Blackett's representation to Plaintiff was a false promise of future performance.
25. Blackett's conduct amounted to a false representation to Plaintiff. Further, Blackett made the false representation knowing it was false. Blackett intended for Plaintiff to rely on, and/or had reason to expect Plaintiff would act in reliance on, the false representation.
26. Plaintiff relied on Blackett's false representation when she contributed personal expertise, time and funds as investments and contributions to the Company.

27. Blackett's false representation directly and proximately caused injury to Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.

28. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

**C. CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY AGAINST BLACKETT**

29. Plaintiff had a fiduciary relationship with Blackett. Blackett breached his fiduciary duty to Plaintiff by making promises he had no intention of keeping.

30. Blackett's breach of fiduciary duty injured Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.

31. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

**D. CAUSE OF ACTION – MONEY HAD AND RECEIVED AGAINST BLACKETT**

32. Blackett holds money that, in equity and good conscience, belongs to Plaintiff.

33. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

**E. CAUSE OF ACTION – QUANTUM MERUIT AGAINST BLACKETT**

34. Plaintiff provided Blackett with hundreds of hours of consulting time that included her expertise, experience, knowledge and advice to promote the business, seek business relationships and contracts, draft profitability and marketing analyses, and generally build the company.

35. Plaintiff provided these services for the benefit of Blackett. Blackett knew, or should have known, that Plaintiff expected compensation when Blackett accepted the valuable consulting services.

36. Blackett has obtained an enormous benefit from Plaintiff through her services on

behalf of Pure Rain. Therefore, Plaintiff seeks damages for Blackett's unjust enrichment by Plaintiff's efforts and services.

37. Because Plaintiff expected compensation, Blackett's acceptance of the valuable consulting services without payment resulted in actual damages for the reasonable value of the consulting services.

38. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

#### **F. CAUSE OF ACTION – BREACH OF CONTRACT AGAINST SCHRAUB**

39. Plaintiff and Schraub executed a valid and enforceable contract. By this contract, the parties agreed that Plaintiff would become a member of the LLC, and Plaintiff would therefore make joint decisions pursuant to Texas law related to member-managed limited liability companies.

40. Schraub breached the contract by taking actions adverse to Plaintiff, including but not limited to: making unilateral decisions that affected the business without consulting Plaintiff, preventing access to company financial and contractual records, making fraudulent claims to third parties, by instructing employees not to communicate with Plaintiff.

41. Schraub's breach caused injury to Plaintiff, which resulted in lost investment funds and profits.

42. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

#### **G. BREACH OF FIDUCIARY DUTY AGAINST SCHRAUB**

43. Plaintiff had a fiduciary relationship with Schraub. Plaintiff entrusted Schraub with substantial investments. Schraub breached his fiduciary duty to Plaintiff by preventing access to company financial and contractual records, making fraudulent

claims to third parties, engaging in oppressive behavior by instructing employees not to communicate with Plaintiff, and making business decisions without authority and consent, and thereby damaging Plaintiff and the company.

44. Schraub's breach of fiduciary duty injured Plaintiff, which resulted in lost investment funds and lost business consulting time without payment.

45. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

#### **H. REQUEST FOR DECLARATORY JUDGMENT**

46. Pursuant to Texas Civil Practices and Remedies Code Chapter 37, Plaintiff requests declaratory judgment that Defendant Schraub and Plaintiff are the only two members of the LLC.

47. Pursuant to Texas Civil Practices and Remedies Code Chapter 37, Plaintiff further requests declaratory judgment that Defendant Schraub is required to obtain Plaintiff's agreement before entering into contracts on behalf of the LLC or binding the LLC in distributorships, vendor contracts, or other financial contracts.

48. Pursuant to Texas Civil Practices and Remedies Code Chapter 37, Plaintiff further requests declaratory judgment that Defendant Schraub must immediately allow Plaintiff access to company financial and contractual records pursuant to the TBOC.

49. Pursuant to Texas Civil Practices and Remedies Code Chapter 37, Plaintiff further requests declaratory judgment that Defendant Schraub is violating the TBOC by instructing employees not to communicate with Plaintiff, and must cease blocking Plaintiff's access to information.

#### **VII. EXEMPLARY DAMAGES**

50. Plaintiff's injury resulted from Defendants' actual fraud, gross negligence, or malice,

which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### **VIII. ATTORNEY'S FEES**

51. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Plaintiff is entitled to recover all reasonable and necessary attorneys' fees incurred in the prosecution of this matter, and seeks to recover same.

#### **IX. APPLICATION FOR TEMPORARY RESTRAINING ORDER**

52. Plaintiff realleges and incorporates the foregoing paragraphs as if set forth in full.
53. Plaintiff's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §§ 65.011 and 65.021.
54. Plaintiff asks the Court to enjoin Defendant Schraub from:
- a. Preventing Plaintiff from accessing and examining the company's financial and contractual records, including, but not limited to bank records, checkbooks, financial statements, summaries, customer contracts, customer invoices, loan documents, general business communications;
  - b. Unilaterally directing and managing the operations (including, but not limited to, hiring, advertising, entering into and signing contracts, and customer relations) and strategies of the business (future directions, goals of sales disbursements, public relations, etc.) without the consent and engagement of Plaintiff;
  - c. Making fraudulent claims and statements that he is the sole member of the LLC, an officer of the LLC, or Managing Principal of the LLC to customers, in press releases, to suppliers, or to employees; and
  - d. Instructing employees of the LLC not to communicate with Plaintiff on company-related topics and affairs, including but not limited to status of the business, customer updates, advertising, finances, and contracts.
55. It is probable that Plaintiff will recover from Defendant Schraub after a trial on the merits because Defendant Schraub is preventing Plaintiff's access to the LLC's records, which violates Texas Business Organizations Code ("TBOC"). Further, pursuant to the TBOC, Defendant Schraub cannot make decisions on behalf of the

LLC without consulting Plaintiff, which he has done repeatedly, all as described herein.

56. If Plaintiff's application is not granted, harm is imminent because Plaintiff will lose not only her investments in the LLC, but also is losing and will lose profits related to the business being unilaterally run by Defendant Schraub.
57. The harm that will result if the temporary restraining order is not issued is irreparable because the LLC is losing profits and because Defendant Schraub has stated he will transfer half of the profits to another company not owned by Plaintiff.
58. Plaintiff has no adequate remedy at law because Plaintiff's business losses, if injunctive relief is not granted, are incalculable.
59. Plaintiff is willing to post bond.

#### **X. REQUEST FOR TEMPORARY INJUNCTION**

60. Plaintiff asks the Court to set her application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant Schraub, upon all the points and authorities previously listed, which are incorporated herein by reference.
61. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39.

#### **XI. REQUEST FOR PERMANENT INJUNCTION**

62. Plaintiff asks the Court to set her request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Defendants.

#### **XII. REQUEST FOR A JURY TRIAL**

63. Plaintiff requests a trial by jury and submits herewith the requisite fee.

**XIII. CONDITIONS PRECEDENT**

64. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

**XIV. PRAYER**

65. For these reasons, Plaintiff prays for judgment as follows:
- a. Temporary restraining order as requested above;
  - b. Temporary injunction as requested above;
  - c. Permanent injunction as requested above;
  - d. Actual damages to the maximum extent recoverable at law;
  - e. The declarations requested above;
  - f. Exemplary damages;
  - g. Pre-judgment and post-judgment interest;
  - h. Attorneys' fees and court costs; and
  - i. All other relief to which Plaintiff is entitled.

Respectfully submitted,

**LAW FIRM OF CINDY OLSON BOURLAND, P.C.**  
1 Chisholm Trail, Suite 150  
Round Rock, Texas 78681  
(512) 477-0100  
(512) 477-0154 (facsimile)

BY: 

CINDY OLSON BOURLAND  
State Bar No. 00790343

ATTORNEY FOR PLAINTIFF



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail (return receipt requested)
- Facsimile
- Federal Express
- Hand Delivery

on this 2<sup>nd</sup> day of July, 2009, to-wit:

Clay Butler  
The Butler Firm  
106 East 6<sup>th</sup> St., Suite 800  
Austin, Texas 78701  
Facsimile (888) 356-3151

  
Cindy Olson Bourland

VERIFICATION

THE STATE OF TEXAS

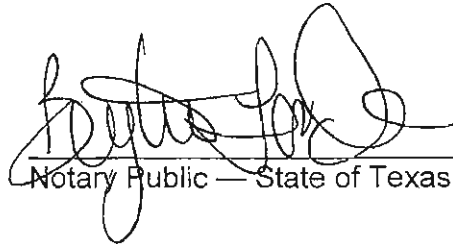
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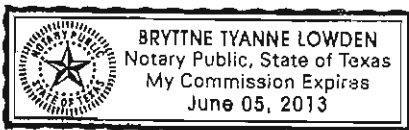
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared LAURA PRESSLEY, known to me to be the person whose name is subscribed below and, after having been duly sworn, on her oath stated that she has read the facts set forth in the Facts section of the foregoing First Amended Petition and Verified Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction, and that every statement of fact contained therein is within her personal knowledge and is true and correct.

  
\_\_\_\_\_  
LAURA PRESSLEY

SUBSCRIBED AND SWORN TO before me on this the 2 day of July, 2009.

  
\_\_\_\_\_  
Notary Public — State of Texas



# **EXHIBIT A**

Laura Pressley  
2210 White Horse Trail  
Austin, TX 78757

February 27, 2009

David M. Schraub  
194 Carmen Hill Lane  
Bastrop, Texas 78602

Dear Dave:

This is the letter that we talked about when we met in the office of my lawyer, Brian Burgess. If you agree with everything in it, you can sign it and return it to me, and it will be a contract between us (and Pat Goertz) related to Pure Rain LLC. This is the deal:

1. On February 2, 2009, you formed a Texas limited liability company, with yourself as the only member, called Pure Rain LLC. You agree to admit me as a member of Pure Rain LLC effective the date it was formed, and, assuming Pat Goertz also signs this letter, to admit Pat as a member of Pure Rain LLC, as well. We will then each own membership interests in Pure Rain LLC as follows:

Dave Schraub .....	78%	8090	JP 2/27/09
Laura Pressley .....	18%	2090	
Pat Goertz .....	4%	090	


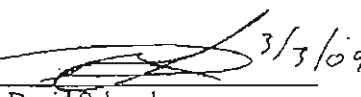
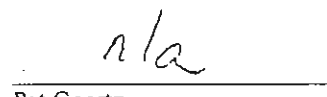
We will allocate profits and losses, and make distributions to the members, in accordance with these ownership percentages, subject to potential dilution if we agree to accept additional capital contributions. Pure Rain LLC will be taxed as a partnership for federal income tax purposes, and you will be the "tax matters partner." Pure Rain LLC will continue to be a member-managed limited liability company. With respect to all other details, Pure Rain LLC will be governed by the provisions of the Texas Business Organizations Code for now.

2. We agree to treat the money that you have already put into the "Pure Rain" business, which I understand was about \$180,000, as your capital contribution to Pure Rain LLC. Similarly, we will treat the money I put into it, which was about \$43,000, as my capital contribution to Pure Rain LLC. Pat has not paid any expenses for the "Pure Rain" business, so Pat's capital contribution to Pure Rain LLC will be treated as \$0.

3. Each of us (Schraub, Pressley, and Goertz) irrevocably transfers and assigns to Pure Rain LLC all of our respective rights and interest in any tangible or intangible asset related in any way to the business of Pure Rain LLC (human consumption of rain water, including but not limited to the collection, bottling, marketing, advertising, distribution, and/or sale of rain water as drinking water), including but not limited to any goods, inventory, equipment, money, accounts, goodwill, inventions, works of authorship, marks, formulas, processes, techniques, information, know how, data, and intellectual property rights that relate in any way to the business of Pure Rain LLC, or that were learned, developed, made, or acquired in connection with that type of business, or with funds invested by Dave or Laura in connection with that type of business.

4. We will work together to put a "Company Agreement" spelling out the details of running the Pure Rain LLC business among you, me, and Pat.

Agreed, effective Feb. 27, 2009: *as signed and dated*

 2/27/09  
Laura Pressley  
 3/3/09  
David Schraub  
 n/a  
Pat Goertz

# **EXHIBIT B**

Form 205  
(Revised 01/06)



This space reserved for office use.

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Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709  
Filing Fee: \$300

**Certificate of Formation  
Limited Liability Company**

**FILED**  
In the Office of the  
Secretary of State of Texas  
FEB 02 2009  
Corporations Section

**Article 1 – Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

*PURE RAIN LLC*

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

**Article 2 – Registered Agent and Registered Office**

(Select and complete either A or B and complete C)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

*DAVID*                      *M*                      *SCHRAUB*  
First Name                      M.I.                      Last Name                      Suffix

C. The business address of the registered agent and the registered office address is:

*194 CARMEN Hill Ln*                      *BASTROP*                      TX                      *78602*  
Street Address                      City                      State                      Zip Code

**Article 3 – Governing Authority**

(Select and complete either A or B and provide the name and address of each governing person.)

A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

**NAME OF GOVERNING PERSON** (Enter the name of either an individual or an organization, but not both.)

**IF INDIVIDUAL**

*DAVID*                      *M*                      *SCHRAUB*  
First Name                      M.I.                      Last Name                      Suffix

OR

**IF ORGANIZATION**

Organization Name

**ADDRESS OF GOVERNING PERSON**

*194 CARMEN Hill Ln*                      *BASTROP*                      TX                      USA                      *78602*  
Street or Mailing Address                      City                      State                      Country                      Zip Code

RECEIVED

<b>NAME OF GOVERNING PERSON</b> (Enter the name of either an individual or an organization, but not both.)				
<b>IF INDIVIDUAL</b>				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<b>OR</b>				
<b>IF ORGANIZATION</b>				
<i>Organization Name</i>				
<b>ADDRESS OF GOVERNING PERSON</b>				
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

<b>NAME OF GOVERNING PERSON</b> (Enter the name of either an individual or an organization, but not both.)				
<b>IF INDIVIDUAL</b>				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<b>OR</b>				
<b>IF ORGANIZATION</b>				
<i>Organization Name</i>				
<b>ADDRESS OF GOVERNING PERSON</b>				
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

**Article 4 – Purpose**

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

**Supplemental Provisions/Information**

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer:

DAVID M SCHWAB  
Name  
194 CARMEN HILL LN BASTROP Tx 78602  
Street or Mailing Address City State Zip Code

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 02/02/09

  
Signature of organizer



# **EXHIBIT C**

**Cindy Olson Bourland**

---

**From:** Cindy Olson Bourland  
**Sent:** Wednesday, June 10, 2009 2:03 PM  
**To:** 'Samuel D. McDaniel'  
**Cc:** Cindy Olson Bourland (bourland@bourlandlaw.com)  
**Subject:** RE: Status of Schraub/Pressley  
**Attachments:** Cindy Olson Bourland.vcf

**Importance:** High

Sam:

Thanks for the email response. We would like to hear Mr. Schraub's position as soon as possible.

In the meantime, Ms. Pressley needs to be updated on the company records. To that end, would you kindly provide the following by the end of the week (June 12):

- a) P&L Statements for Jan - May 2009,
- b) List of current customers and sales documentation for Jan - May 2009,
- c) Documentation of all revenue for Pure Rain Jan - May 2009,
- d) Expenditure documentation for Jan - May 2009,
- e) Meeting of partners to discuss tactical and strategic directions for the business, and
- f) Compass Bank account information passwords to access the account online.

Please let me know if you have any questions.

Regards,  
Cindy

*Law Firm of*  
**CINDY OLSON BOURLAND**  
*Professional Corporation*

1 Chisholm Trail, Suite 150  
Round Rock, Texas 78681  
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Fax 512.477.0154  
[www.bourlandlaw.com](http://www.bourlandlaw.com)  
[bourland@bourlandlaw.com](mailto:bourland@bourlandlaw.com)

*Requested some  
documents again  
on June 17, 2009  
(deadline June 24)  
- no documents  
provided*

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# **EXHIBIT D**

# Tank Town content to keep rainwater local, personal

BY CHRISTINA VARA

Richard Heinichen simply refused to settle for unacceptable well water. That determination led to the birth of a full-scale rainwater collection and bottling facility in Dripping Springs — and earned him the honor of becoming the first (and only) company licensed to bottle rainwater in America.

Heinichen, the pioneer behind Richard's Rainwater, founded Tank Town 20 years ago after collecting his own rainwater and receiving an overwhelmingly positive response from friends and neighbors. His branded, bottled rainwater has been around for almost six years.

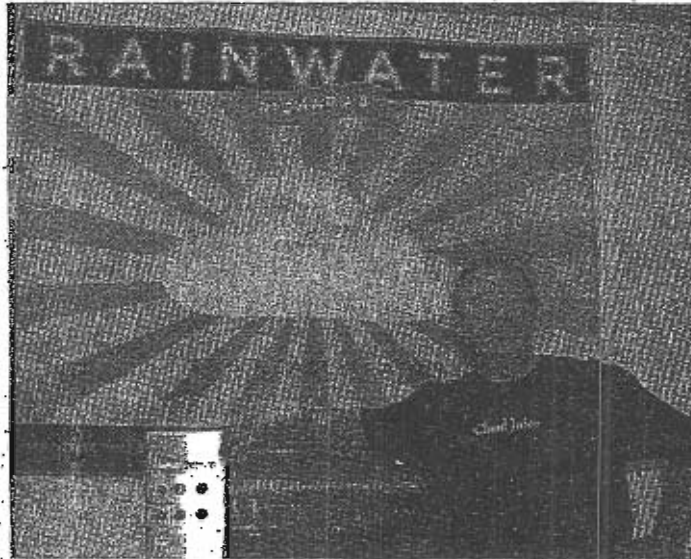
"I didn't mean for it to happen, but this turned into quite a business," Heinichen said.

With 15 rainwater tanks and a storage capacity of 300,000 gallons of water, he's not kidding. But surprisingly enough, droughts are a non-issue at Tank Town; Heinichen said they wouldn't begin to feel the effects until after 200 consecutive days without rain.

"Noah didn't build the Ark when it was raining," he said. "We store water; it has no shelf life. It'll last forever. If you store it properly you'll never have a problem with it."

Similar to cultivating a fine wine, he ages his water and employs a proprietary method before bottling.

"That's what's kinda neat," Heinichen said. "When it rains, I don't use that water for over a year."



Christina Vara : Oak Hill Gazette

Richard Heinichen prefers to market his rainwater brand, Richard's Rainwater, via word-of-mouth.

Heinichen was also the first company in the nation licensed to use rainwater as the sole source of water for a public water supply — but earning that distinction didn't come easily. The Health Department informed Heinichen he was breaking the law by bottling rainwater because it wasn't an approved water source.

"So I asked the City where their water came from, and they said they're getting it from the Colorado River," he said. "But where does that come from? Keep going back enough and all water is rainwater."

It took Heinichen four years to get Richard's Rainwater on the shelf.

He hired engineers who created a pioneer bottling plant that went on, ironically, to receive an award from the Health Department.

"They approved me on the first go-round," Heinichen said. "They said, 'This is fantastic. We applaud you.'"

But Heinichen didn't rest on his laurels for long. Running the plant meant going back to school, so he attended both The University of California, Berkeley and Texas A&M to become a certified public water operator.

"It's been a long haul, but they

See RAINWATER on p. 13

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# Rainwater available by the bottle

Continued from p. 3

can't take it away now," Heinichen laughed.

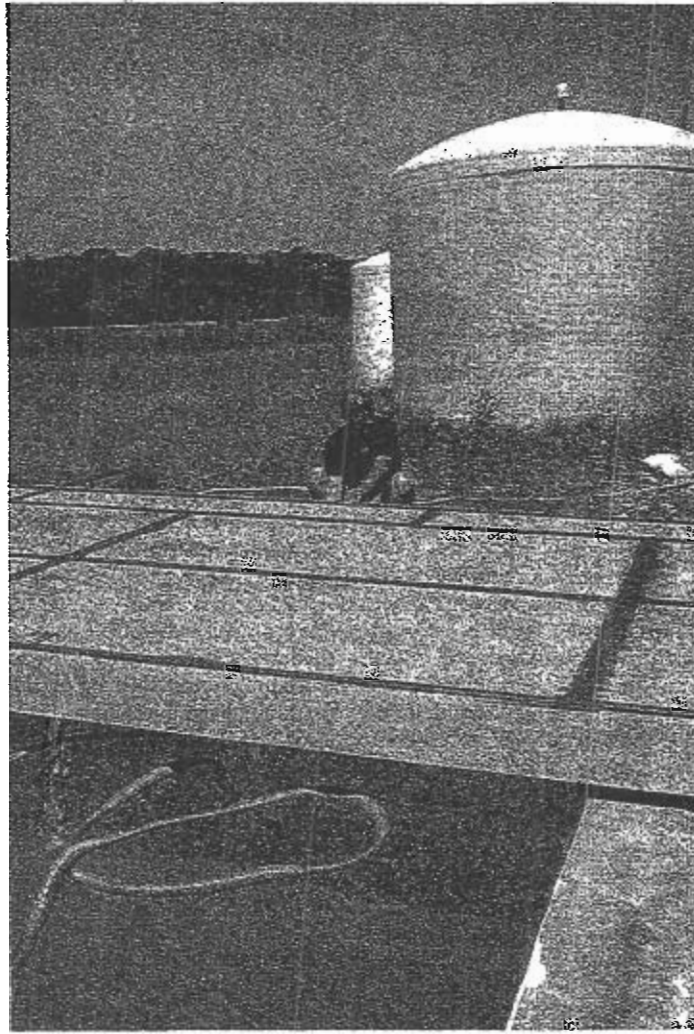
Since Tank Town is not located over a recharge zone and the water isn't pulled from springs, Tank Town has zero impact on the environment. Richard's Rainwater, nicknamed "Cloud Juice," is bottled on-site to avoid the need for chlorination - a legal necessity for competitors like Ozarka in order for water to be transported before bottling. Ozarka's springs dried up years ago so they now truck water in to be bottled, which means the water must be chlorinated, he said.

"People are paying a ridiculous price for a poor quality water," he said.

While Heinichen was quick to praise any attempts to filter city water, he contends there's still no comparison between Richard's Rainwater and, for example, Brita-filtered water because there's nothing in rainwater - and there never was. Yet as pure as his water is, Heinichen's rainwater still undergoes reverse osmosis and UV filtering to kill any lingering bacteria.

"Whatever people are doing to make their water pure, that's wonderful," Heinichen said. He maintained that most city water supplies have chemical elements present that could prove harmful to people.

"It's kinda like we've got our heads in the sand about water quality," Heinichen said. "[Rainwater is] the only way you can really guarantee yourself some safe, pollution-free water that's naturally soft. You can't make it with any machines."



Christina Vera : Oak Hill Gazette

Richard Heinichen, proprietor of Tank Town, opens the cover of a tank containing 17,000 gallons of rain water.

Mentioning the Edwards Aquifer in San Antonio, he said he's also worried about the quantity of city water left for future generations.

"There's an interesting fact about

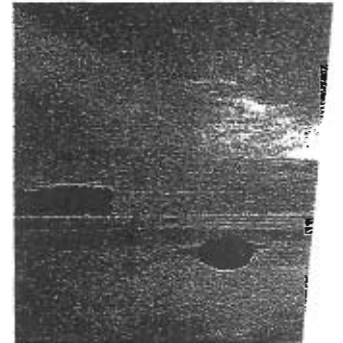
water: it's about 500 feet below your seat," Heinichen said. "It takes 30 years for that water to get

See BOTTLED on p. 19

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# Bottled rain

Continued from p. 13

down there. We're pumping that stuff out faster than the water can recharge."

Heinichen said rainwater might also have health benefits. A Richard's Rainwater devotee called him and explained that her baby had recurring rashes - until she began washing her baby in rainwater. Heinichen said he thinks this has something to do with rainwater

See SELLING on p. 24

Photo: Richard Heinichen at Tanktown.



Christina Vera - Oak Hill Gazette

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# Selling rain by the bottle

Continued from p. 19

being a universal solvent, which he says, means it's "the only water" that will completely remove the soap out of hair and clothes.

Heinichen said he also has three followers who claim their migraines return if they drink anything else. One man who dropped by Tank Town said he's been using a rainwater collection system for years and would readily give up air conditioning before having to go without rainwater.

Heinichen offers a private labeling service at Tank Town for several clients, including Mercedes-Benz, Austin Java and Texas Pure Rain. He said most of his clients have been upfront about their water essentially being Richard's Rainwater with a different label - with the exception of Pure Rain. Sold at Central Market, Whole Foods and several Walgreens locations, Pure Rain is competing directly against Richard's Rainwater.

"It could be damaging to me if (Pure Rain) is sold cheaper than my water," Heinichen said.

Pure Rain Managing Principal David Schraub said his goal with Pure Rain is to donate at least 50 percent of sales to their sister company, Natural Renewable Energy, in order to offset the cost of building solar energy collection racks. Schraub aims to position Texas as number one in both solar and wind energy.

"Yes, Texas has natural gas and oil," Schraub said, "but we also need something that's carbon and footprint-free. The public needs to do something, and not rely on the government to do something. Here's a way to support it and do it."

Since he's busier than he's ever been, Heinichen said he now wants to get out of private labeling so he can get back to focusing on Richard's Rainwater and selling rainwater collection systems for home use.

"I've probably seen a 20 percent increase in my business every year for the past 20 years," Heinichen said. "We've had hundreds - I think maybe 350 families and systems we support. Two years ago we were selling 200 cases (of Richard's Rainwater) a month; now we're selling 300 (cases) a week."

Which is why Heinichen said he's content to keep Richard's Rainwater on the shelves of Wheatsville and off the shelves of Wal-Mart. He said he wants to keep the business small and personal.

"It's peaceful out here," Heinichen said, gesturing to the rainwater tanks from under the shade of a tree. "I don't want trucks constantly coming in here and ruining it." Heinichen said word of mouth is really the best way to advertise,

and referenced Malcolm Gladwell's The Tipping Point to explain how he intends to reach people with Richard's Rainwater.

"It's all paid off, I've got people totally addicted," Heinichen said. "That's all I wanted to do, really, was to make sure people endorsed it and believed in it the way I do."

Not that Heinichen is in it to reap financial rewards.

"There's no money in it," he said. "I don't need to do it. I just enjoy it."

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CAUSE NO. D-1-GN-09-000078

LAURA PRESSLEY,  
Plaintiff,

v.

RON BLACKETT and  
DAVID SCHRAUB,  
Defendants.

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IN THE DISTRICT COURT

353<sup>rd</sup> JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

---

TEMPORARY RESTRAINING ORDER AGAINST DAVID SCHRAUB

---

On this \_\_\_\_ day of July, 2009, the Court heard Pressley's Application for Temporary Restraining Order against Defendant David Schraub ("Schraub") in the above-referenced case. After considering Pressley's application, the pleadings, affidavits and evidence presented, and the arguments of counsel, the Court finds that good cause exists to grant this Temporary Restraining Order. Specifically, the Court finds that Pressley has established, based on the evidence admitted, that there is a reasonable probability that she will prevail on the merits of her claims, that Pressley has no adequate remedy at law, and that Pressley will suffer irreparable loss if this injunction is not issued. Pressley has shown that the extent of monetary harm that will be suffered as the result of Schraub's actions rises to the level of irreparable harm, and that the other injuries that will be suffered will be impossible to repair.

The Court further finds that an ex parte order, without notice and/or appearance of Schraub, is necessary because there was not enough time to give notice to Schraub, hold a hearing, and issue a restraining order before the irreparable injury, loss, or damage would occur. However, Pressley's counsel made diligent efforts to advise Schraub and his counsel of this matter and served them notice of the hearing.



The Court further finds that any adequate protection to Schraub can be obtained by a bond. There is no evidence that Schraub has suffered any monetary damages relating to the topics of this restraining order, and no evidence has been offered to show that monetary damages will be suffered if the temporary restraining order is issued.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of the Court issue a Temporary Restraining Order, ordering Schraub to cease his unlawful conduct and restraining and enjoining him from:

- a. Preventing Pressley from examining Pure Rain LLC's financial and contractual records, and/or withholding said records from Pressley, including, but not limited to bank records, checkbooks, financial statements, customer contracts, customer invoices, loan documents;
- b. Unilaterally managing the operations, including, but not limited to, hiring employees and entering into and/or signing contracts, without the consent and knowledge of Pressley;
- c. Making false statements that he is the sole member of Pure Rain LLC to customers, in press releases, to suppliers, and/or to employees; and
- d. Instructing employees of Pure Rain LLC to withhold information from Pressley relating to company finances or distribution information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Temporary Restraining Order shall continue in effect from the date of the signature below until the fourteenth day after that date or until the entry of a Temporary Injunction in this case, whichever is sooner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the clerk issue a notice to Schraub that a hearing on Pressley's Application for Temporary Injunction is set for \_\_\_\_\_, 2009, at \_\_\_\_\_ a.m./p.m. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon presentation of a bond in the amount of \_\_\_\_\_, the Clerk of the Court shall issue all such writs, notices, citations, and other process, including a Temporary Restraining Order, as are necessary for the enforcement of this Order.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009, at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
PRESIDING JUDGE

July 2, 2009

**VIA FACSIMILE (888)356-3151**

Clay Butler  
The Butler Firm  
106 East 6th Street, Suite 800  
Austin, Texas 78701

**VIA FACSIMILE (512) 478-3269**

Sam McDaniel  
Bankston & Richardson, LLP  
400 W 15<sup>th</sup> Street, Suite 710  
Austin, Texas 78701

**Re: Cause No. D-1-GN-09-000078; *Laura Pressley v. Ron Blackett and David Schraub*, in the 353<sup>rd</sup> District Court, Travis County, Texas**

Dear Counsel:

Please find enclosed Plaintiff's First Amended Petition and Verified Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction. Also enclosed is Plaintiff's proposed Temporary Restraining Order.

Mr. McDaniel, I have called you several times this week, including twice today. Plaintiff's First Amended Petition adds Mr. Schraub as a Defendant. Please let me know immediately if you will be representing him in this litigation, and will accept service of this petition on his behalf.

The emergency hearing on Plaintiff's Application for Temporary Restraining Order is set for today at 3:45 p.m. in the 201<sup>st</sup> District Court during duty docket. I left voicemails for you both earlier today regarding this matter. If needed, counsel may appear by telephone. To coordinate this, please contact the Judge's court coordinator at (512) 854-9319. Further, if you do not plan to attend, please notify me immediately so I may certify that fact to the Court.

Feel free to contact me if you have any questions.

Sincerely,



Cindy Olson Bourland

COB/sf

Enclosures

## TRANSACTION REPORT

P.01/01

JUL/02/2009/THU 02:11 PM

## BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	JUL/02	01:43PM	4783269	0:12:03	32	OK	ECM 5252
002		01:56PM	18883563151	0:15:52	32	OK	ECM 5252
TOTAL				0:27:55	64		

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# Fax

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**DATE:** July 2, 2009      **PAGES:** 32, including cover page

**TO:** Clay Butler      **FAX:** (888) 356-3151

Sam McDaniel      (512) 478-3269

**FROM:** Cindy Olson Bourland, Anna Eby

**RE:** Cause No. D-1-GN-09-000078; *Laura Pressley v. Ron Blackett and David Schraub*, in the 353<sup>rd</sup> District Court, Travis County, Texas.

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**MESSAGE:**

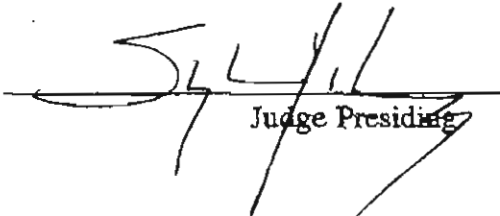
Please see the attached.

**Dismissal With Prejudice**

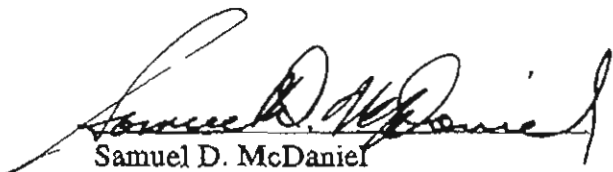
The joint motion of the parties in the above matter for dismissal with prejudice because of settlement of all matters at issue having been brought to the attention of the court is hereby granted.

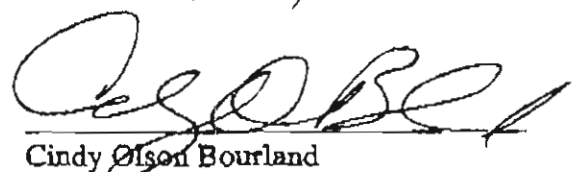
It is **ordered adjudged and decreed** that the above matter is **dismissed with prejudice** as to all parties and claims. Costs are assessed against the party who incurred the cost. This is a final order and judgment.


Signed: October 1, 2009

  
Judge Presiding

Approved, both form and substance:

  
Samuel D. McDaniel  
Attorney for Dave Schraub

  
Cindy Olson Bourland  
Attorney for Laura Pressley

  
Clay Butler  
Attorney for Ron Blackett



**CLM**

Filed in The District Court  
of Travis County, Texas  
on 7-15-09  
at 9:00 A.M.  
Amalia Rodriguez-Mendoza, Clerk

**CAUSE NO. D-1-GN-09-000078**

**LAURA PRESSLEY,**  
Plaintiff,

v.

**RON BLACKETT and**  
**DAVID SCHRAUB,**  
Defendants.

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**IN THE DISTRICT COURT**

**353<sup>rd</sup> JUDICIAL DISTRICT**

**TRAVIS COUNTY, TEXAS**

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**AFFIDAVIT OF LAURA PRESSLEY IN SUPPORT OF SHOW CAUSE ORDER**

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THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

BEFORE ME, the undersigned authority, on this day personally appeared LAURA PRESSLEY, known to me to be the person whose name is subscribed below and after having been duly sworn, on her oath stated as follows:

1. "My name is Laura Pressley. I am over twenty-one years of age, have never been convicted of a crime and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. "I went to the Pure Rain office at 10:30 a.m. on July 14, 2009. Dave Schraub was not there. Scotty McNutt, an employee, told me Schraub would arrive soon. I asked McNutt about the general business plan for the week for Pure Rain. McNutt would not talk to me or give me any information about the business. I told McNutt that Schraub was supposed to tell him to give me information. McNutt said, 'I have no knowledge of that. You'll have to call Dave.' I waited ten minutes for Dave to arrive, but he did not. I wanted to look at the company checkbook to see if any checks had been written the day before or that morning. The checkbook is kept in the lower drawer of a file cabinet. Schraub told me on Sunday, July 12, that the drawer would remain unlocked so that I could access the checkbook. However, on Tuesday, July 14, the drawer was locked. I asked McNutt for a key. He told me he didn't have a key. I asked McNutt if he was aware of the temporary restraining order. He said, 'I have no knowledge of that. And even if there is, judges sign those on a whim.' After asking McNutt to tell Schraub I had come by, I left the office.

3. "At 11:10 a.m. on July 14, 2009, I received a voicemail from McNutt, in which he stated, 'Hey Laura, Scotty here. I got a return call from Dave and now I know what my week is like. I will be servicing accounts this week and assisting Dave in winding down



7/31/09



*Bryttne Tyanne Lowden*  
Notary Public – State of Texas