

CAUSE NO. 202210399

TRAVIS VARGO, IN HIS CAPACITY AS §	IN THE DISTRICT COURT
COURT APPOINTED RECEIVER OVER §	
JOAQUIN ALTENBERG §	
§	
Plaintiff, §	HARRIS COUNTY, TEXAS
§	
VAX IMMUNE LLC D/B/A §	
VAX-IMMUNE DIAGNOSTICS §	
§	
Defendant, §	<u>165</u> JUDICIAL DISTRICT

**Plaintiff's Original Petition**

Plaintiff, Travis Vargo (“Vargo” or “Receiver”) in his capacity as the Receiver Appointed by Court Order of the 11<sup>th</sup> District Court in Cause No. 2021-09105 over Joaquin Altenberg, files this suit against Defendant Vax Immune LLC d/b/a Vax-Immune Diagnostics (“Vax Immune”).

**I. Notice of Related Case - Jurisdiction and Venue**

1. The Orders of the 11<sup>th</sup> District Court in Cause No. 2021-09105 dated May 21, 2021 provide that the 11<sup>th</sup> District Court shall have exclusive jurisdiction and venue over this matter because the 11<sup>th</sup> District Court has exclusive jurisdiction over any litigation pertaining to Joaquin Altenberg’s ownership interests disputed during Vargo’s actions against a relevant third party. Further, this Court has jurisdiction because damages sought exceed the jurisdictional minimum of the court and all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County.

**II. Summary of the Dispute**

2. The 11th District Court in Harris County, Texas in Cause No. 2021-09105 entered an order (“Receivership Order”) in May of 2021 appointing Travis Vargo as a receiver to collect a judgment against Joaquin Altenberg. The Court further ordered Joaquin Altenberg to turnover all of his nonexempt assets and provided for a charging order requiring any limited liability

company served with the Receivership Order to pay any distributions due to Altenberg to the Receiver. Mr. Altenberg previously testified under oath that he was a “significant owner” of Vax Immune, and Vargo has obtained documents that support this testimony. Several Vax Immune documents also name Mr. Altenberg as CEO, CCO and CFO of Vax Immune. Now, Vax Immune disputes Mr. Altenberg’s prior sworn testimony. The Receiver seeks a declaration from this Court establishing Altenberg’s membership in Vax Immune.

### **III. Discovery**

3. Discovery shall be conducted pursuant to level 2.

### **IV. Parties**

4. Plaintiff, Travis Vargo in his capacity as the Receiver, is before the Court.
5. Defendant Vax Immune LLC is a limited liability company that may be served through its registered agent Leonard E. Weisman at 3718 Sunset Blvd., Suite 301, Houston, TX 77005.

### **V. Facts**

6. Vax Immune is a Houston based medical technology company that invented, developed, and now sells a specimen transport system called “LabReady,” which according to the Vax Immune’s website sets “a new standard of infection diagnosis.”

7. In the beginning, Vax Immune consisted of Dr. Leonard Weisman (“Dr. Weisman”), the inventor of LabReady and his son in law, Joaquin Altenberg (“Mr. Altenberg”), a graduate of the University of Texas and Harvard Business School. Dr. Weisman handled the science and technology and Joaquin Altenberg, as the CEO, CCO, and CFO, ran the business.

8. For several years, Mr. Altenberg spent time building presentations, communicating with potential investors, and otherwise promoting and running the business of Vax Immune. He advocated for Vax Immune tirelessly through his Harvard alumni network, online venture capital

platforms, and trade shows and technology competitions such as the Houston Technology Center where Vax Immune won a prestigious Goradia Innovation Prize.

9. According to a Vax Immune internal memo apparently authored by Dr. Weisman in 2013, Mr. Altenberg purportedly owned ten percent (10%) of Vax Immune. However, in deposition given in late 2017, Mr. Altenberg professedly characterized his ownership as much more:

	Page 6
1	I -- I help out. It's a medical devices company so it's
2	not a -- I probably -- I mean, it ebbs and flows. It
3	depends when they are in fundraising mode, you know, I
4	will put in -- I mean, it probably doesn't average out
5	to much, but five hours a week maybe.
6	<b>Q. So you're not like a managing owner, you're</b>
7	<b>just the CFO? You're not a significant owner in the</b>
8	<b>company?</b>
9	A. I mean, I'm a significant owner, yeah. I mean,
10	I own a large -- a greater portion of it than --
11	<b>Q. Without going into the dollars and cents of it</b>
12	<b>what percentage of the company do you own?</b>
13	MR. FRANKLIN: Don't answer that. I'm
14	going to instruct him not to answer on the basis that it
15	invades his right to financial privacy. I don't think
16	that has any relevance to the case, and if you're
17	talking about him personally --
18	MR. SIMON: Are you objecting on the basis
19	--
20	MR. FRANKLIN: I'm objecting on the basis
21	of the right to financial privacy.

10. On May 19, 2020, a Court of Chancery in the State of Delaware issued an opinion holding Mr. Altenberg liable for breaches of fiduciary duty in the amount of \$7,277,456.93 exclusive of attorneys' fees and court costs. The attorneys' fees were awarded under the "bad faith

exception” to the American Rule. In awarding over \$1.7mm in fees, the judge commented that “Altenberg’s pre-litigation conduct reflected a pattern of fraud and misrepresentation that was sufficiently egregious to warrant shifting fees.” Further, “[d]uring th[e] litigation, Altenberg engaged in a pattern of serial misconduct that provides additional support for shifting attorneys’ fees and expenses.” Suffice it to say, Mr. Altenberg is not forthcoming or honest in his business dealings or his obligations to courts.

11. The Receivership Order appointed the Receiver in May of 2021. In the performance of his duties under the Receivership Order, the Receiver has attempted to obtain a charging order over Mr. Altenberg’s member interests in Vax Immune. Despite working hundreds of hours as the CEO, CCO, and CFO of Vax Immune without compensation (until at least 2020, if not longer) and having testified that he was a significant owner of Vax Immune, Vax Immune now claims that Altenberg has never had an ownership interest in Vax Immune.

12. This suit aims to establish Mr. Altenberg’s member interests in Vax Immune so that it can be either turned over to or charged upon by the Receiver. Alternatively, the Receiver seeks reasonable compensation for valuable risk capital services rendered by Mr. Altenberg to Vax Immune.

## **VI. Causes of Action**

### **A. Declaratory Judgment**

13. Vargo incorporates the preceding paragraphs by reference as if fully set forth herein.

14. Vargo seeks a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code. An actual justiciable controversy exists between Vargo, as the successor in interest to the legal rights of Joaquin Altenberg and Vax Immune LLC regarding Mr. Altenberg’s

ownership of Vax Immune LLC. Plaintiff requests that the Court declare, pursuant to Tex. Civ. Prac. & Rem. Code § 37.001, the ownership composition of Vax Immune LLC.

**B. Unjust Enrichment / Quantum Meruit.**

15. Vargo incorporates the preceding paragraphs by reference as if fully set forth herein.

16. In order to avoid acknowledging that Mr. Altenberg, who has served as CEO, CCO, and CFO of Vax Immune, is an owner of Vax Immune, Vax Immune claims that Mr. Altenberg provides his leadership services to Vax Immune at low or reduced compensation. Mr. Altenberg provided valuable services to Vax Immune who accepted them and had reasonable notice that Mr. Altenberg expected compensation for the services. The Receiver seeks the reasonable value of Altenberg's services from Vax Immune.

**VII. Attorneys' Fees**

17. The Receiver seeks all costs and reasonable and necessary attorneys' fees incurred by or on behalf of the Receiver, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by Section 37.009 of the Texas Civil Practice and Remedies Code.

**VIII. Rule 47 Damages Statement**

18. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, the Receiver pleads that it seeks non-monetary relief and monetary relief that will exceed \$1,000,000.

**IX. Conditions Precedent**

19. All conditions precedent to the Receiver's claims for relief have been performed, have occurred, or have been waived.

**PRAYER**

Accordingly, Plaintiff Travis Vargo, as receiver, respectfully requests that Vax Immune be cited to appear, and that Vargo has judgment against Vax Immune for the following:

1. Declaratory relief establishing the member interests in Vax Immune;
2. actual damages;
3. special, consequential, and incidental damages based on the allegation of actual damages above;
4. reasonable and necessary attorneys' fees;
5. prejudgment interest at the maximum rate of interest permitted by law, as pleaded more specifically above;
6. costs of suit;
7. post-judgment interest, at the maximum legal rate permitted by law; and
8. such further relief, both general and special, at law or in equity, to which the Plaintiff may show himself to be justly entitled.

Dated: February 18, 2022

Respectfully submitted,

**BISSINGER, OSHMAN, WILLIAMS &  
STRASBURGER LLP**

By: /s/ Jason E. Williams

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