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12 **Specially appearing for Defendants Richard
 13 Sultanov and Paul Ostling for the purposes of
 14 Responding to the Court's Order to Show
 15 Cause, opposing Plaintiffs' Motion for
 16 Expedited Discovery, and contesting Personal
 17 Jurisdiction*

18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN JOSE DIVISION**

21 OOO BRUNSWICK RAIL MANAGEMENT, a
 22 Russian limited liability company, and
 23 BRUNSWICK RAIL GROUP LIMITED, a
 24 Bermuda company,

25 Plaintiff,

26 v.

27 RICHARD SULTANOV and PAUL OSTLING,
 28 individuals,

Defendant.

Case No. 5:17-cv-00017-EJD

Hon. Edward J. Davila

**DEFENDANTS' RESPONSE TO THE
 COURT'S ORDER TO SHOW
 CAUSE, DKT. NO. 15**

Date: January 20, 2017

Time: 10:00 a.m.

Dept.: 4

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1 Defendants Paul Ostling and Richard Sultanov specially appear¹ for the sole purpose of
 2 responding to the Court’s order to show cause why a preliminary injunction should not be made,
 3 Dkt. No. 15.

4 INTRODUCTION

5 Brunswick Rail’s decision to hide material information from creditors, bondholders and
 6 shareholders is not a trade secret. Exercising rights and duties to disclose information to
 7 shareholders and creditors is not misappropriation. Brunswick Rail’s lawsuit is a desperate and
 8 shameful attempt to hide its corporate wrong-doing and silence whistleblowers.

9 This case is not a dispute about trade secrets – Plaintiffs do not assert that Defendants
 10 started a competing business, or gave trade secrets to a competitor, or did anything else in their
 11 own self-interest. Plaintiffs seek to misuse trade secret law to silence Mr. Ostling, the former
 12 CEO and chair of the audit committee, and Mr. Sultanov. Indeed, in its motion for expedited
 13 discovery, Plaintiffs all but admit that they simply want to buy time and impose a gag order
 14 silencing Defendants.

15 Before even getting to the substance of Plaintiff’s claims, there is a fatal defect to
 16 Plaintiffs’ suit: **this Court clearly lacks personal jurisdiction over Defendants, neither of**
 17 **whom live or work in California.** Plaintiffs are two companies—one Russian, one Bermudian—
 18 who are suing two individuals—a resident of Russia and a resident of Connecticut—for events that
 19 occurred in Russia and allegedly caused harm only in Russia. Nor do any of Plaintiffs’ causes of
 20 action arise out of any of Defendants’ minor and long passed contacts with California.

21 Further, Mr. Ostling’s employment agreement requires disputes to be resolved via
 22 mandatory arbitration in London, decided under the law of England and Wales. The Russian
 23 plaintiff’s employment dispute with Mr. Sultanov similarly requires adjudication by Russian
 24 courts applying Russian law. California simply has no connection to this case.

25 Plaintiffs’ sole basis asking this Court to assert personal jurisdiction is that Defendants
 26 used “Gmail,” and Google’s headquarters are in this District. Plaintiffs’ logic would extend

27 _____
 28 ¹ Defendants specifically assert and reserve their objections to lack of personal jurisdiction, improper venue, insufficient service of process, failure to state a claim upon which relief can be granted, as well as to compel arbitration in an alternative forum.

1 personal jurisdiction to over one billion people who use web-based services like Google or
2 Yahoo. That violates not only the Constitution, but common sense. Although Defendants have
3 faithfully complied with this Court's TRO to date, Plaintiffs' Complaint must be dismissed and
4 the people of California and this Court simply have no interest in this dispute.

5 Plaintiffs' proposed injunction also contains numerous other critical defects discussed
6 below. Plaintiffs do not meet the necessary burden of establishing they are likely to succeed on
7 the merits. Moreover, Plaintiffs seek equitable relief here, but altogether ignore the balance of
8 equities and the public interest in seeking to silence Defendants from blowing the whistle
9 regarding Plaintiffs' misconduct and acting pursuant to their fiduciary duties; fatal flaws that
10 prevents granting the extraordinary remedy of a preliminary injunction as a matter of law.

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CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiffs’ Motion should be denied in its entirety, and the Court’s current Temporary Restraining Order, Dkt. No. 15, be discharged.

Dated: January 18, 2017

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