

**AT&T Mobility Holdings B.V. v Grupo Salinas
Telecom, S.A. de C.V.**

2025 NY Slip Op 33093(U)

August 12, 2025

Supreme Court, New York County

Docket Number: Index No. 650330/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AT&T MOBILITY HOLDINGS B.V.,
Plaintiff,

INDEX NO. 650330/2020

- v -

MOTION DATE _____

GRUPO SALINAS TELECOM, S.A. DE C.V. and GRUPO
SALINAS TELECOM II, S.A. DE C.V.,

MOTION SEQ. NO. 019 020

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 019) 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 947, 955, 956, 963, 964, 966, 968, 969, 972, 973, 974, 995, 999, 1000, 1001, 1005, 1006, 1009, 1010

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 938, 939, 940, 941, 942, 943, 944, 945, 946, 954, 959, 960, 961, 962, 965, 967, 970, 971, 975, 976, 977, 1002, 1007, 1008, 1011, 1012

were read on this motion to/for CONTEMPT.

In mot. seq. no. 019, receiver Robert W. Seiden (Receiver) moves by Order to Show Cause (OSC) for (1) a finding that nonparties to this action - Grupo Elektra SAB de CV (Elektra), Banco Azteca SA (Banco), Ricardo Salinas Pliego (Salinas), and Francisco Borrego (collectively, Nonparties) - are in civil contempt of the court’s July 18, 2024 Receivership Order (NYSCEF Doc. No. [NYSCEF] 755) and July 18, 2024 Turnover Order (NYSCEF 756); (2) a finding of civil contempt against Elektra, Banco, Salinas (collectively, Alter Egos) and Borrego based on their contemptuous conduct, which impaired, impeded, prejudiced, and defeated plaintiff AT&T Mobility Holdings B.V.’s (AT&T) rights by frustrating the Receiver’s ability to effectuate the Orders and frustrating AT&T’s ability to collect upon its judgment; (3) sanctions in the form of a

compensatory fine¹ against the Nonparties pursuant to Judiciary Law § 753, jointly and severally, in an amount up to the judgment amount in this action plus statutory interest; (4) incarceration of Salinas and Borrego until such time as they either pay the entirety of any judgment or they comply with the Turnover Order and relinquish the shares to the Receiver and produce documents responsive to the Receiver's October 22, 2024 demand (NYSCEF 908) and October 31, 2024 demand (NYSCEF 912); and (5) authority to serve this motion on the Nonparties by electronic service on defendants' counsel, Kenneth Caruso, as well as Roberto Finzi, a Paul Weiss partner.²

In mot. seq. no. 020, AT&T moves by OSC for an order (1) holding the Nonparties in civil contempt pursuant to CPLR 5251 and Judiciary Law Sections §§ 753 and 773; (2) awarding AT&T attorneys' fees in the amount of \$1,047,378.90; and (3) permitting alternate service on the Nonparties pursuant to CPLR 308(5) and 311(b).³

Following a bench trial ending with a decision on the record on September 19, 2023, AT&T holds a December 2023 judgment in the amount of \$20 million against defendants Grupo Salina Telecom, SA DE CV (GST) and Grupo Salinas Telecom II, SA DE CV (GST II) (together, Grupo). (NYSCEF 578, Notice of Entry of Judgment.)

¹ The Appellate Division, First Department struck the coercive fine of \$15,000 per business day imposed by this court to coerce compliance with both the Turnover Order (NYSCEF 756) and the order to produce alter ego documents. (NYSCEF 765 and 774). (*AT&T Mobility Holdings B.V. v Grupo Salinas Telecom*, ___AD3d___, 2025 NY Slip Op 03860 [1st Dept 2025].) Parties may brief whether a fine to coerce compliance is permissible in light of the First Department's decision.

² The Nonparties accepted service without prejudice subject to personal jurisdiction objections. (NYSCEF 965, May 13, 2025 Stipulation.)

³ *Id.*

Although the Grupo conglomerate⁴ is a successful⁵ and massive international conglomerate,⁶ they have yet to pay the judgment.

Post-Trial Events

On September 25, 2023, Salinas transferred \$10 million worth of Elektra shares owned by GST II from a U.S. broker account to Banco in Mexico. (NYSCEF 780, Communication to Vector Global [VG] [Letter of Instruction to broker].) On October 16, 2023, GST II liquidated \$10.12 million shares⁷ in Security International Investments Inc., a Canadian company, and used those funds to make a loan to its subsidiary, Servicios Tplay S.A. de C.V (STP). (NYSCEF 779, Grupo's Response and Objections to AT&T's Info Subpoena, Question 16[d] at 22-23.)

⁴ Grupo is a conglomerate "made up of approximately 300 individual companies." (NYSCEF 283, Borrego tr aff ¶7.)

⁵ On July 28, 2025, the second quarter of 2025, Elektra reported EBITDA of Ps.6,129 million and operating income of Ps.3,714 million. (<https://www.gruposalinas.com/es/Noticias/22772>.) One dollar is equal to .053 Mexican Pesos. (<https://www.google.com/finance/quote/MXN-USD?>)

⁶ "The Grupo Salinas companies ... are present in Mexico, the United States, and Central and South America, and span across a wide range of industries. They include Banco Azteca, the leading bank in Latin America, with more than 30 million deposit accounts ... and Elektra, the leading financial services and retail company in Latin America and the provider of six in every 10 motorcycles in Mexico." (NYSCEF 732, Defendants' MOL in Opposition to AT&T's Motion to Compel at 12.) "These entities include . . . one of the two main television providers of Spanish language content in the world, one of the most advanced broadband internet platforms in Mexico, the leading financial services and retail company in Latin America." (*Id.* at 3. [internal citations omitted].) Elektra is "Latin America's leading specialty retailer and financial services company, and the largest non-bank provider of cash advance services in the United States," with operations in Mexico and Central America. (NYSCEF 925, Elektra's Third Quarter 2023 Financial Statement at 3, 7.) NYSCEF pagination is used throughout this decision.

⁷ The VG statement reports the value of shares at \$10,502,686.52. (NYSCEF 777, VG September 1, 2023 Statement.)

On February 19, 2024, AT&T served Grupo with post-judgment discovery subpoenas. (NYSCEF 652, AT&T's Information Subpoena; NYSCEF 653, AT&T's Subpoena Duces Tecum.) Grupo responded to the subpoenas in April 2024. (NYSCEF 657, Grupo's Response and Objections to AT&T's Information Subpoena; NYSCEF 693, Grupo's Response and Objections to AT&T's Information Subpoena.)

On June 27, 2024, the court granted AT&T's motion to compel post-judgment discovery (mot. seq. no. 012) and directed GST to provide certain of that discovery by July 12, 2024 (Discovery Order). (NYSCEF 765, Decision and Order [mot. seq. no. 012]; NYSCEF 774, June 27, 2024 argument tr at 39:15-40:10 [mot. seq. no. 012].)

On April 24, 2024, AT&T filed an OSC for a turnover order seeking turnover of Grupo's: (1) cash on hand, (2) shares in Elektra,⁸ and (3) shares in STP.⁹ (NYSCEF 597, OSC at 1-2 [mot. seq. no. 009].) On June 26, 2024, the court granted that motion. (NYSCEF 746, Decision and Order at 2, 6-7 [mot. seq. no. 009].)

Shortly after the Turnover Order issued, on July 10, 2024, defendants terminated Grupo's trial counsel, Paul Weiss (PW). (NYSCEF 753, Jay Cohen¹⁰ aff ¶10.) PW advised the court that "[m]y understanding is that [Grupo] does not intend to participate

⁸ Elektra is a part of Grupo Salinas, a conglomerate. (NYSCEF 519, Borrego Depo tr 21:6-15.) "It's worth mentioning or it's important to mention that Salinas Grupo, or Grupo Salinas, is not a legal entity. It's a series of professionals who provide services in accountancy, human resources, legal issues, to those companies in which Grupo Salinas has invested. Among them, we have the Grupo Electra and its subsidiaries; TV Azteca, Digital Azteca, and its subsidiaries; Totalplay and its subsidiaries; and some others." (*Id.*)

⁹ STP is GST II's sole subsidiary. (NYSCEF 779, Grupo's Response and Objections to AT&T's Subpoena Q8 at 10; NYSCEF 819, Martinez Medina aff ¶ 3.)

¹⁰ Paul Weiss partner representing Grupo.

further in [actions pending in New York State Supreme Court].¹¹ (*Id.* ¶ 9.) [Grupo] has determined to pursue a course of action with which Paul Weiss has a fundamental disagreement.” (*Id.*) At the July 22, 2024 appearance on PW’s motion to withdraw as counsel, PW informed the court that it advised the First Department that Grupo also planned to “abandon” its related action against AT&T.¹² (NYSCEF 826, July 22, 2024 argument tr at 7:5-8 [mot. seq. no. 015].) Going forward, the court directed service of all litigation documents on PW and Borrego by email. (NYSCEF 764, August 5, 2024 Order.¹³)

On July 18, 2024, this court appointed Robert W. Seiden as receiver of Grupo’s shares in Elektra and STP (Receivership Order) (NYSCEF 755) and directed Grupo to turn over the shares to the Receiver within 30 days (Turnover Order) (NYSCEF 756) (collectively Orders). The Receivership Order provides that the Receiver

¹¹ Cohen listed those actions as “(1) this action, *AT&T Mobility Holdings B.V. v. Grupo Salinas Telecom, S.A. de C.V. and Grupo Salinas Telecom II, S.A. de C.V.*, Index No. 650330/2020 (the ‘SOS Case’); (2) the appeal of the Judgment in this action, *AT&T Mobility Holdings B.V. v. Grupo Salinas Telecom, S.A. de C.V. and Grupo Salinas Telecom II, S.A. de C.V.*, Case No. 2024-00331 (the ‘SOS Appeal’), in the New York Supreme Court, Appellate Division - First Judicial Department; or (3) a related action, *Grupo Salinas Telecom, S.A. de C.V. and Grupo Salinas Telecom II, S.A. de C.V. v. AT&T Mobility Holdings B.V. and New Cingular Wireless Services, Inc.*, Index No. 652411/2022 (the ‘IMPAC Case’), in the Supreme Court of the State of New York, County of New York.” (NYSCEF 753, Cohen aff ¶ 9.)

¹² *Grupo Salinas Telecom, S.A. DE C.V. et al v. AT&T Mobility Holdings B.V. et al.*, Index no. 652411/2022 (New York County Supreme Court – Commercial Division).

¹³ “Under these unusual circumstances, as discussed on the record on July 23, 2024, which is incorporated in this decision, and on consent, PW shall continue to receive service of documents in this case and forward such documents to Grupo. (See *Hendry v Hilton*, 283 AD 168 [2d Dept 1953] [construing the predecessor of CPLR 321(b) and holding that the withdrawing attorney shall be treated as the client’s authorized agent until CPLR 321 is satisfied]; *Gabriel v The City of New York*, 2023 NY Slip Op 32968(U), *4 [Sup Ct, NY County 2023].) Consistent with the agreement, AT&T shall also serve all documents in this matter upon Grupo’s General Counsel Francisco [Borrego] by email.” (NYSCEF 764, August 5, 2024 Order.)

1. “take possession, receipt, ownership, and control of all shares” and to “exercise all powers and authority that Grupo possesses by virtue of the [ownership of the shares] that Receiver deems reasonable and prudent to effectuate or implement the terms of the Turnover Order or to satisfy the judgment...” (NYSCEF 755, Receivership Order at 2.)
2. “cause any certificates of the Ownership Interests by Grupo to be cancelled,” “exercise any and all voting rights associated with the [shares],” “enter into any transaction or make any request or demand for documents or information from any person ... on the authority of such Ownership Interests,” and “direct officers, directors and employees, attorneys, advisors, agents or other representatives of Grupo ... to take or refrain from taking any actions to the extent Receiver deems necessary to effectuate or implement the terms of this Order or the Turnover Order.” (*Id.* at 2-3.)

In an October 22, 2024 letter to Borrego, the Receiver demanded GST II’s Elektra shares and certain documents. (NYSCEF 908, Demand Letter.)

On October 31, 2024,¹⁴ the court found Grupo in civil contempt for failing to comply with the Turnover Order and the Discovery Order, which directed production of alter ego documents. (NYSCEF 851, October 31, 2024 argument tr at 50:23-51:2 [mot. seq. no. 016]; NYSCEF 843, November 7, 2024 Decision and Order [mot. seq. no. 016].) The court granted AT&T’s request for an adverse inference that Banco, Elektra, Salinas, and STP are alter egos of Grupo based on Grupo’s failure to comply with the Discovery Order. (NYSCEF 843, November 7, 2024 Decision and Order at 2, 5 [mot. seq. no. 016].) This part of the order was affirmed. (*AT&T Mobility Holdings B.V. v Grupo Salinas Telecom*, ___AD3d___, 2025 NY Slip Op 03860 [1st Dept 2025].)

In an October 31, 2024 letter to Salinas, with a copy to Borrego, as well as officers and executives of Elektra, the Receiver demanded turnover of the Elektra

¹⁴ A decision was issued on the record on October 31, 2024. The court issued a written Decision and Order on November 7, 2024. (NYSCEF 843, Decision and Order [mot. seq. no. 016].)

shares. (NYSCEF 907, Seiden aff ¶ 17; NYSCEF 914, 10/31/24 Email to Salinas attaching Demand Letter; NYSCEF 915, 10/31/24 FedEx Records for Demand Letter to Salinas; NYSCEF 910, 10/31/24 Demand Letter to Felix with FedEx records; NYSCEF 911, 10/31/24 Demand Letter to Jimenez with FedEx records; NYSCEF 912, October 31, 2024 Demand Letter to Marquez with FedEx records.) The Receiver made another demand on November 12, 2024. (NYSCEF 907, Seiden aff ¶ 20; NYSCEF 918, November 12, 2024 Follow-up Email to Salinas.) On December 18, 2024, the Receiver wrote to Banco's director and demanded the Elektra shares and followed up on January 15, 2025 and February 11, 2025. (NYSCEF 907, Seiden aff ¶¶ 22, 23.) On February 20, 2025, the Receiver again attempted personal service of the demand on Salinas at a Florida conference. (*Id.* ¶ 37; NYSCEF 928, Pinto aff ¶¶ 2, 11 [process server].)

On November 27, 2024, the Receiver learned that Elektra called a shareholder meeting scheduled for December 27, 2024. The stated purpose of the meeting was to delist Elektra from the Mexican Stock Exchange which would privatize Elektra, and thus, hinder the Receiver's ability to liquidate the shares. (NYSCEF 907, Seiden aff ¶¶ 24, 25.) The Receiver notified Elektra via email that his counsel would attend the meeting. (*Id.* ¶ 27; NYSCEF 921, Morales Galvan Duque aff ¶ 6.) Personal delivery of this notification was attempted on December 26, 2024 but was thwarted. (NYSCEF 907, Seiden aff ¶ 27; NYSCEF 921, Morales Galvan Duque aff ¶ 7.) The Receiver's counsel attempted to attend the December 27, 2024 meeting, but was blocked as the Receiver's name was listed at the door on a "no-entry" list. (NYSCEF 907, Seiden aff ¶¶ 28-29; NYSCEF 921, Morales Galvan Duque aff ¶¶ 11-17; NYSCEF 922, Elektra Corporate Resolution Notice [Dec. 27, 2024].)

Jurisdiction

As a preliminary matter, the Nonparties object to this court's jurisdiction over them. For the reasons stated below, the court has jurisdiction over the Nonparties.

First, the court has jurisdiction over the Alter Egos. In this action,¹⁵ on November 7, 2024, the court granted AT&T's request for an adverse inference that Banco, Elektra, Salinas, and STP are Grupo's alter egos. (NYSCEF 843, Decision and Order at 2, 5 [mot. seq. no. 016].) "[W]here a court has personal jurisdiction over a defendant, the court also has jurisdiction over the defendant's alter ego, and such jurisdiction over the alter ego does not offend due process." (*RP Bus. Mktg., Inc. v Timlin Indus., Inc.*, 67 Misc 3d 1205(A), *6 [Sup Ct, NY County Apr. 10, 2020] [citations omitted].)¹⁶

As to Borrego, and alternatively as to the Alter Egos, "[u]nder New York law, a signatory to a contract may invoke a forum selection clause against a non-signatory if the non-signatory is 'closely related' to one of the signatories such that 'enforcement of the forum selection clause is foreseeable by virtue of the relationship between the signatory and the party sought to be bound.'" (*Cortlandt St. Recovery Corp. v Bonderman*, 73 Misc 3d 1217(A), *8-9 [Sup Ct NY County Nov. 10, 2021] [internal quotation marks and citation omitted].) "The rationale for binding non-signatories is

¹⁵ In the related matter, *Grupo Salinas Telecom, S.A. DE C.V. et al v AT&T Mobility Holdings B.V. et al.*, Index no. 652411/2022 (New York County Supreme Court), the court granted AT&T's motion to add Banco, Elektra, Salinas, and Servicios Tplay S.A. de C.V., as defendants under an alter ego theory. (NYSCEF 140, May 8, 2025 Decision.)

¹⁶ The Nonparties' request for a hearing on veil piercing is denied as unnecessary, except to waste time, increase litigation expenses, and is far too late. (NYSCEF 1012, June 20, 2025 argument tr 23:24-24:4 [mot. seq. no. 020]; *AT&T Mobility Holdings B.V. v Grupo Salinas Telecom*, ___AD3d___, 2025 NY Slip Op 03860 [1st Dept 2025].)

based on the notion that forum selection clauses ‘promote stable and dependable trade relations,’ and thus, that it would be contrary to public policy to allow non-signatory entities through which a party acts to evade the forum selection clause.” (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd.*, 184 AD3d 116, 123 [1st Dept 2020] [internal quotation marks and citation omitted].) A “separate due process analysis is [not] necessary because ‘the concept of foreseeability is built into the closely-related doctrine, which explicitly requires that the relationship between the parties be such that it is foreseeable that the non-signatory will be bound by the forum selection clause.’” (*EPAC Tech. Ltd. v Interforum S.A.*, 217 AD3d 623, 625–26 [1st Dept 2023] [internal quotation marks and citations omitted], *lv dismissed* 41 NY3d 975 [2004]; *see also Highland*, 184 AD3d at 122 [consent to jurisdiction under forum selection clause by virtue of close relationship “obviate(s) the need for a separate analysis of constitutional propriety”].) “[P]ersonal jurisdiction based on a forum-selection clause is proper over a non-signatory who “has an ownership interest or a direct or indirect controlling interest in the signing party or [where] the entities or individuals consulted with each other regarding decisions and were intimately involved in the decision-making process.” (*Universal Inv. Advisory SA v Bakrie Telecom Pte., Ltd.*, 154 AD3d 171, 179 [1st Dept 2017] [citation omitted]; *see also Tate & Lyle Ingredients Americas, Inc. v Whitefox Techs. USA, Inc.*, 98 AD3d 401, 402–3 [1st Dept 2012] [jurisdiction over parent company whose president was “intimately involved” in subsidiary’s decision-making process]; *Firefly Equities LLC v Ultimate Combustion Co.*, 736 F Supp 2d 797, 800–801 [SDNY 2010] [jurisdiction over company president who signed agreement on party’s behalf and collecting cases].)

Borrego

The court has jurisdiction over Borrego, who is closely related to Grupo by virtue of his position of power as general counsel and his involvement in the November 2014 Stock Purchase Agreement (SPA) which contained the forum selection provision and the indemnification provision which gave rise to this litigation. (*Tate & Lyle Ingredients Americas, Inc. v Whitefox Tech. USA, Inc.*, 98 AD3d 401, 403 [1st Dept 2012] [“Tate PLC’s involvement with Tate USA in many phases of the licensing agreement and the dispute arising from it, was such that the forum selection clause was properly asserted against it.”].) Borrego was involved in the negotiation of the SPA. (See e.g. NYSCEF 316, Oct. 28, 2014 draft SPA; NYSCEF 321, Nov. 3, 2014 draft SPA.) Indeed, Borrego is identified as the sole “notice party” in the SPA. (NYSCEF 128, SPA at 96.) As general counsel of the Grupo conglomerate, over 300 attorneys report to him. (NYSCEF 566, September 12, 2023 Trial tr at 458:23-25.) He directed the Mexican tax litigation at issue in this indemnification litigation. (NYSCEF 566, September 12, 2023 Trial tr at 458:23-25; NYSCEF 519, Borrego Depo tr at 16:22-17:12; 39:17-41:25 [“we would assume the control of the defense of the audits.”]) He personally oversees all of Grupo’s litigations, including this action and the related action *Grupo v AT&T*, Index No. 652411/2022. (NYSCEF 519, Borrego Depo tr at 16:22-17:12.) Indeed, Borrego appeared as a witness for Grupo at trial in this action. (NYSCEF 283, Borrego tr aff.) Accordingly, he would be responsible for Grupo’s decision to abandon Grupo’s New York State court litigations, which thwarted Grupo’s compliance with the Discovery Order. (NYSCEF 823, July 22, 2024 argument tr at 7:5-8 [mot. seq. no. 015]; NYSCEF 753, Cohen aff ¶ 9 [PW reporting “fundamental disagreement” with Grupo’s strategy].)

Certainly, Borrego is closely related to Grupo such that “enforcement of the forum selection clause is foreseeable” based on his powerful position at Grupo and his intimate relationship with the SPA and the underlying litigation. (See *Universal Inv. Advisory SA v Bakrie Telecom PTE, Ltd.*, 154 AD3d 171 [1st Dept 2017].)

Salinas

Even in the absence of alter ego jurisdiction,¹⁷ Salinas is closely related to Grupo such that the court has jurisdiction over him because of his ownership interest in Grupo and involvement in the 2014 SPA which contains the forum selection clause.

(*Universal Inv. Advisory SA v Bakrie Telecom PTE, Ltd.*, 154 AD3d 171, 179 [1st Dept 2017] [“If the nonsignatory party has an ownership interest or a direct or indirect controlling interest in the signing party, . . . then, a finding of personal jurisdiction based on a forum selection clause may be proper.”) Salinas chaired Elektra’s Board of Directors during the relevant period between September 18, 2000 and December 2024. (NYSCEF 907, Seiden aff ¶16; NYSCEF 912, 10/31/24 Demand Letter to Marquez with FedEx records at 5-8.) He is now Honorary Chair. (NYSCEF 907, Seiden aff ¶16; NYSCEF 913, Copies of Public Elektra Board Meeting Records.) Salinas executed the SPA – the contract at issue – on Grupo’s behalf, which he signed as “Attorney-In-Fact,” and is an owner and agent of Grupo. (NYSCEF 159, SPA at 98; NYSCEF 780, Communication to VG [Letter of Instruction to broker] at 3 [referring to GST II’s U.S. brokerage account as “my account”]; *Id.* at 6-8 [GST II “Corporate Resolution

¹⁷ The court notes that to disregard the corporate form and find alter ego jurisdiction, the court applies a stricter standard than that applied for closely related jurisdiction which revolves around the forum selection clause and the contract at issue. Accordingly, the court’s application of the closely related analysis to the Alter Egos is an alternative theory of jurisdiction.

Certification] [signed by Salinas and identifying him as beneficial owner].) Grupo admits that Salinas is “not a stranger to the SPA,” and is Grupo’s “agent.” (*Grupo v ATT*, Index No. 652411/2022, NYSCEF 123, Grupo MOL at 20.)

Salinas’ close relationship to GST II is exemplified by his asserted control over the transfer of GST II’s Elektra shares. GST II had a U.S. brokerage account where it held Elektra shares until Salinas closed the account on September 25, 2023. (NYSCEF 780, Communication to VG [Letter of Instruction to broker] at 2-3, 9.) Salinas provided the broker with a GST II Corporate Resolution Certification, executed by Salinas, which identifies Salinas as GST II’s “sole Managing Member,” the sole individual authorized to act on GST II’s behalf, and “beneficial owner.” (*Id.* at 6-7 [Corporate Resolution].)

Salinas directed the broker to transfer the Elektra shares out of GST II’s U.S. brokerage account to Banco in Mexico. (*Id.* at 2-3, 9 [Letter of Instruction]; NYSCEF 777, VG September 2023 Statement;¹⁸ NYSCEF 779, Grupo Responses and Objections at 18, 20.) Salinas designated officers of Elektra and Banco as appropriate contacts for “any questions regarding the transfer.” (NYSCEF 780, Communication to VG at 9 [Letter of Instruction to broker].) To be clear, Salinas’s transfer of GST II’s Elektra shares from VG to Banco is not evidence of the contempt at issue here, since it preceded the Turnover Order, but it is evidence of Salinas’ control and close relationship to GST II.

Elektra and Banco

Elektra and Banco are closely related to Grupo such that the court has jurisdiction over them. (See NYSCEF 814, Corporate Resolution at 6 [identifying Banco

¹⁸ The VG statement reports the value of shares at \$10,502,686.52. (NYSCEF 777, VG September 2023 Statement.)

Azteca, Elektra, and Salinas as shareholders of all outstanding shares of GST].) Elektra, Banco, and Grupo share personnel, e.g. Borrego. (NYSCEF 519, Borrego Depo tr at 30:20-31:14.) Grupo states that its shareholders, i.e. Banco, which owns 99.9% of GST II, have decision making authority for Grupo. (NYSCEF 779, Grupo Responses and Objections to AT&T's Information Subpoena at 7.) A parent company, here Banco, is closely related to its wholly-owned subsidiary, here GST II, making it "reasonably foreseeable that it would be bound by the forum selection clause." (*EPAC Techs.*, 217 AD3d at 625 [internal quotations marks and citations omitted]; *Cfirstclass Corp. v Silverjet PLC*, 560 F Supp 2d 324, 328 [SDNY 2008] [closely related doctrine applies to nonparty corporations where "an individual, who was a signatory to a contract containing a forum selection clause, owned 99 percent of [one of the] corporation[s], which, in turn, wholly owned [the] second corporation".])

Accordingly, the court rejects the Nonparties' objection to this court's jurisdiction over them, and thus, declines their invitation for jurisdictional discovery.

Nonparties' Responsibility for Grupo's Contempt

For a finding of civil contempt, movants must satisfy the requirements of Judiciary Law § 753: (1) a determination "that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect;" (2) the "appear[ance], with reasonable certainty, that the order has been disobeyed;" (3) "knowledge of the court's order;" and (4) "prejudice to the right of a party to the litigation." (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [internal quotation marks omitted].) "Although the contempt punishment is not available for the general enforcement of money judgments[,] it does serve as the sanction to implement several of the devices that

Article 52 of the CPLR offers to aid in the money judgment enforcement process.”
(*Home Heating Oil Corp. v Parris*, 65 Misc 3d 1216[A], 2019 NY Slip Op 51663[U], *4 [Civ Ct, Kings County 2019] [emphasis and internal quotation marks omitted].) Indeed, the text of CPLR 5251 permits the court to impose “contempt” sanctions on a judgment debtor for “[r]efusal or willful neglect . . . to obey a[n] . . . order granted, pursuant to this title.” “The power to punish a judgment debtor for civil contempt resides in” the court issuing the judgment and “Section 753 et seq. of the Judiciary Law provide that the punishment may take the forms of fine and commitment.” (*Sure Fire Fuel Corp. v Martinez*, 75 Misc 2d 714, 715 [Civ Ct, New York County 1973].) For example, “[t]he wilful failure to comply with [a] . . . payment order can render a judgment debtor liable for punishment for contempt. Without this right there would be no power in the court to enforce its order.” (*Bank of Smithtown v Troy & Troy, P.C.*, 56 Misc 3d 1220[A], 2017 NY Slip Op 51107[U], *1 [Sup Ct, Suffolk County 2017] [citations omitted].)

A court has the power to levy contempt sanctions on corporate “principal[s] and officer[s]” in their personal capacities where they are “responsible for [the corporation’s] affairs and as such may be held personally liable for its contempt.” (*773 Fulton LLC v Brooklyn Cigar Bar Lounge Corp*, 66 Misc 3d 1231[A], 2020 NY Slip Op 50331[U], *7 n.5 [Civ Ct, Kings County 2020] [citations omitted].) As long as the corporate officer “was properly served with the contempt motion, and had knowledge of the terms of the subject orders of which she was in violation, the court [i]s empowered to find her in contempt without plaintiff commencing a special proceeding.” (*Kozel v Kozel*, 161 AD3d 700, 701 [1st Dept 2018]; see also *Citibank, N. A. v Anthony Lincoln-Mercury, Inc.*, 86 AD2d 828, 829 [1st Dept 1982].)

The motions to hold the Nonparties responsible for Grupo's contemptuous noncompliance with court orders is granted for the reasons stated below.

The court's turnover order and order appointing the receiver are "lawful order[s] of the court, clearly expressing an unequivocal mandate" in effect at the time of the contemptuous acts. (*AT&T Mobility Holdings B.V. v Grupo Salinas Telecom*, ___AD3d___, 2025 NY Slip Op 03860 [1st Dept 2025] [holding the Turnover Order and Discovery Order lawful.]) The Nonparties do not challenge the turnover order, but Grupo argues that this court's receivership order lacks legal and linguistic clarity. As to legal clarity, Grupo insists that the Nonparties had no duty to comply with the order appointing the Receiver because they are Mexican nationals and this court's orders have no meaning in Mexico. The court has already rejected this argument – i.e., that its orders have no effect in Mexico. (NYSCEF 746, Decision and Order at 5 [mot. seq. no. 009] ["As long as the court has personal jurisdiction over a judgment debtor ... it can exercise authority over its extraterritorial property" (citation omitted)].) The court's orders are binding on persons over which it has jurisdiction, wherever located. (*Pala Assets Holdings, Ltd. v Rolta, LLC*, 2021 NY Misc. LEXIS 51480, 2021 WL 3725604, *2 [Sup Ct, NY County, Aug. 23, 2021, No. 652798/2018], *affd as mod* 206 AD3d 438 [1st Dept 2022] ["Contrary to defendants' arguments, the court has personal jurisdiction over defendants with respect to the enforcement proceedings based on the broad consent to jurisdiction provision in the relevant indenture documents. The orders at issue, which require defendants and the receiver to initiate foreign proceedings or undertake other actions necessary to obtain foreign bank or government approvals that would allow for

the effectuation of the underlying judgments for default on notes, do not offend considerations of international comity”].)

As to linguistic clarity, Grupo argues that since the direction to turnover the shares is not repeated in the Receiver’s appointing order, the Nonparties need not comply with it. Grupo’s argument overlooks the Turnover Order which neither Grupo nor the Nonparties challenge. Further, Grupo clearly misunderstands the order appointing the receiver which simply gives the receiver authority to act, while the Turnover Order gives direction: turnover the shares now. The Orders work together.

The Nonparties were aware of the court’s orders. Indeed, the Nonparties do not challenge notice, nor could they in light of the Receiver’s exhaustive efforts to make the Nonparties aware of the orders as listed infra will not be repeated here. Even before the Receiver’s efforts, Borrego had notice based on his participation in the trial, which Grupo lost resulting in a \$20 million judgment, his supervision of Grupo’s post-trial activities such as its response, or the lack thereof, to AT&T’s collection efforts, and his receipt of all documents in this case served by email consistent with this court’s August 5, 2024 Order. (See e.g. NYSCEF 772 and 773, August 16, 2024 Aff of Service by PW; NYSCEF 797, September 9, 2024 Aff of Service.)

The orders were disobeyed. Grupo can only act through others because they are holding companies. (NYSCEF 819, Martinez Medina aff ¶ 3.) Borrego testified that, while the Grupo conglomerate has “110,000 employees,” “neither [GST nor GST II] have any employees.” (NYSCEF 519, Borrego depo tr at 30:10-19, 31:10-16, 34:17-21; NYSCEF 779, Grupo Info Subpoena Response, Response No. 4 [defendants have no “officers, directors, or employees” other than Francisco Medina]; Response No. 2

[Grupo “does not provide any products or services]; Response No. 9 [defendants have no phone number or fax number; defendants merely identified the address of the Grupo conglomerate and phone number of their attorneys].) Therefore, the question is who controls or acts for Grupo.

The court finds that the Nonparties control Grupo and Grupo acts through them as well. As a beneficial shareholder of more than 10% of Elektra, Salinas exercises significant influence over Elektra and is admittedly part of the control group that controls 73.91% of the outstanding shares. (NYSCEF 786, Elektra 2023 Annual Report at 5.) AT&T asserts, and Grupo does not dispute, that Elektra owns Banco, which owns 99.99% of GST II.¹⁹ (NYSCEF 793, AT&T MOL [cites shareholding certificate, but it is not in the record].)²⁰ Further, Salinas, Banco, and Elektra are Grupo’s alter egos. (NYSCEF 843, Decision and Order at 2, 5 [mot. seq. no. 016].)

Grupo’s failure to comply with the Turnover Order clearly prejudices AT&T’s right to collect on its \$20 million judgment. Likewise, Grupo’s impediments to paying, e.g. terminating PW and barring the Receiver from the shareholder meeting delay payment to AT&T, are thus equally prejudicial.

Therefore, the Nonparties are responsible for Grupo’s contempt. One “who assists another in a violation of judicial mandate can be equally as guilty of contempt as the primary contemnor.” (*McCormick v Axelrod*, 59 NY2d 574, 584 [1983] [citation

¹⁹ Parties shall stop citing their own MOLs as if they are sources for facts. (See NYSCEF 793, AT&T MOL at 17 [citation to a shareholder certificate text is not in the record]; see *also* NYSCEF 968, Grupo’s MOL citing its own MOL as authority; NYSCEF 808, Grupo’s MOL in Opposition to Motion for Contempt and Adverse Inferences; NYSCEF 816, Grupo’s MOL in support of Grupo’s Motion to Vacate Orders.)

²⁰ Grupo did not file a Disclosure Statement as required by Commercial Division Rule 35.

omitted].) “A corporate executive will be held in contempt of the court when he actively participates in a corporate defendant’s evasion of the court’s orders.” (*Pala*, 2023 WL 3386774, *7). Likewise, corporate affiliates are liable for contempt. (*Telenor Mobile Communs AS v Storm LLC*, 587 F Supp 2d 594, 619-22 [SDNY 2008], *affd* 351 F App’x 467, 469 [2d Cir 2009].) The Nonparties controlled Grupo which makes them “jointly and severally liable for the full amount” of the contempt. (*Pala*, 2023 WL 3386774, *1.)

The court also finds that Borrego’s decision to terminate PW was a calculated attempt to avoid AT&T’s \$20 million judgment and violate the Turnover Order. (See NYSCEF 764, Decision and Order at 1-2 [mot. seq. no. 015].) Therefore, the court finds that Borrego is independently in contempt of the Turnover Order.

The Nonparties are also in contempt of the Receiver Order for failing to recognize the Receiver’s authority to at least be present at the shareholder meeting and for listing the Receiver on the “no-entry” list.

Defenses to Holding the Nonparties in Contempt

Grupo makes a series of specious arguments in opposition to the contempt motion against the Nonparties. For example, the court rejects Grupo’s assertion that Borrego has no liability for their contempt because certain powers of attorney were revoked. The powers of attorney are not before the court. (NYSCEF 814 and 815, Corporate Resolutions of GST and GST II.) Moreover, the resolutions are redacted, notably without a motion seeking permission to redact. (*Id.* at 9; NYSCEF 815, Corporate Resolutions of GST II at 10.) Likewise, to the extent the resolutions relieve Borrego of liability for anything he did pursuant to the mysterious power of attorney, such a release is between Borrego and Grupo. The resolution does not change the fact

that Borrego is Grupo's general counsel who directs the legal affairs of Grupo.

Accordingly, this evidence is useless and an apparent effort to waste the court's time.

Next, Grupo claims that this court's alter ego finding is unenforceable because it was not ordered and adjudged. Such a judgment would be improper. (CPLR 5011.)

There was no such relief requested in form of a declaratory judgment. Therefore, CPLR 2211 and CPLR 2219(a) are applicable here.

Grupo also asserts that conflicting testimony precludes a finding of Nonparty contempt. Specifically, Grupo appears to rely on the attorney expert affidavits as to whether the Alter Egos had authority to comply with the Receiver's request for the Elektra shares and to vote the shares. As the court finds Nonparty contempt based primarily on Grupo's contempt of the Turnover Order, Grupo's argument is irrelevant.

Finally, Katia Sainz López, Elektra's Legal Manager, states that the 150,000 Elektra shares that the Receiver demanded represents only .07% of Elektra stock which is insufficient to block the delisting of Elektra. (NYSCEF 973, Sainz López aff ¶¶ 6, 16.) Since the Receiver is charged with collecting assets to satisfy the \$20 million judgment, the percentage ownership is irrelevant to the Receiver's task. The only relevant question is the market price and whether sale of the shares will fully or partially satisfy the judgment.²¹ Therefore, the court rejects Sainz López's affidavit as irrelevant.

Sanctions for Contempt

The Receiver seeks to sanction the Nonparties with a fine in the amount of the judgment and incarceration of Salinas and Borrego until such time as there is

²¹ During the last fifty-two weeks the price ranged from \$186.36 to \$1,068.87. (Yahoo Finance, <https://finance.yahoo.com/quote/ELEKTRA.MX/> (last visited July 6, 2025).)

compliance with the Turnover Order. A court has the power to levy contempt sanctions of sufficient size to coerce compliance with its orders. (See, e.g., *Ardent Harmony Fund Inc. v Barrick*, 2019 NY Slip Op. 34007[U], *2 [Sup Ct, Nassau County 2019] [imposing fine on judgment debtor of “\$25,000 per day until compliance” with the court’s order, pursuant to CPLR 5251 and Judiciary Law § 753].) For example, a fine of \$1 million per day was imposed under Judiciary Law § 751(a)(3) “in the nature of a coercive, per diem sanction meant to compel Local 100 to alter its conduct to comply with the December 13, 2005, order,” e.g., “to end the strike and get the transit system up and running.” (*NY City Tr. Auth. v Transp. Workers Union of Am., AFL-CIO*, 35 AD3d 73, 88 [2d Dept 2006].) The amount of the judgment itself is an appropriate fine against a co-conspirator where “[t]he record reveals an elaborate scheme to defeat the collection of the plaintiffs’ judgment against the appellant’s husband, the judgment-debtor in the underlying action,” including the co-conspirator refusing to participate in the judicial process. (*Corpuel v Galasso*, 240 AD2d 531, 532 [2d Dept 1997].) Fundamentally, “once there [is] a New York judgment on the merits, the courts of this State [are] entitled to protect it” from “defendant’s harassing and bad faith foreign litigation.” (*Indosuez Intl. Fin., B.V. v Natl. Reserve Bank*, 304 AD2d 429, 430-31 [1st Dept 2003] [citations omitted].) Accordingly, the Nonparties are sanctioned \$20 million, the amount of the judgment plus interest. (*AT&T Mobility Holdings B.V. v Grupo Salinas Telecom, S.A. de C.V.*, 239 AD3d 562 [1st Dept 2025] [rejecting the court’s coercive fine of \$15,000 per day the Appellate Division stated that “any loss plaintiff sustained from defendants’ misconduct is indistinguishable from the loss defendants already were adjudged liable to pay in the December 2023 money judgment”].) Failing that, Salinas and Borrego

shall be incarcerated until such time as the judgment is paid or the shares are turned over.

AT&T's Attorneys' Fees

AT&T seeks legal fees in the amount of \$750,576.95 from October 1, 2024 to March 31, 2025 to be paid by the Nonparties. The court has already awarded such fees to AT&T for Grupo's contempt. (NYSCEF 843, Decision and Order [mot. seq. no. 016], *aff AT&T Mobility Holdings B.V. v Grupo Salinas Telecom*, ___AD3d___, 2025 NY Slip Op 03860 [1st Dept 2025].) As AT&T has incurred these attorneys' fees to collect on its judgment as a direct result of Grupo's contemptuous conduct, AT&T is entitled to reimbursement. (*Children's Vill. v Greenburgh Eleven Teachers' Union Fedn. of Tchrs., Local 1532, AFT, AFL-CIO*, 249 AD2d 435, 435 [2d Dept 1998] [Attorney's fees incurred in opposing appeal of contempt order were a "direct product" of the contempt proceeding and, therefore, "recoverable"]; *Holskin v 22 Prince St. Assocs.*, 178 AD2d 347, 349 [1st Dept 1991] [fees incurred in proving the contempt itself were recoverable as a "a direct product of the contempt proceeding"].).

The question is whether the Nonparties should be held accountable for these fees. As discussed above, the court has jurisdiction over the Nonparties under various theories. Accordingly, Grupo's continued contempt can be traced to those who make decisions and act for Grupo. As discussed above, Grupo's actions are directed by the Nonparties, so they too are responsible for these fees.

Finally, Grupo challenges the amount of the fees. To determine the reasonableness of the requested attorneys' fee, the court is guided by the following factors: (1) "the time and labor required, the difficulty of the questions involved, and the

skill required to handle the problems presented”; (2) “the lawyer’s experience, ability, and reputation”; (3) “the amount involved and benefit resulting to the client from the services”; (4) “the customary fee charged by the Bar for similar services”; (5) “the contingency or certainty of compensation”; (6) “the results obtained”; and (7) “the responsibility involved.” (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York § 61:7, Criteria for Determining Reasonableness [5th ed, Oct. 2023 update].) The court also relies on its own knowledge of hourly rates charged by private firms who practice in the Commercial Division, New York County. (See *Miele v New York State Teamsters Conference Pension & Retirement Fund*, 831 F2d 407, 409 [2d Cir 1987].)

AT&T has satisfied the elements for its additional fees incurred as a result of Grupo’s continuing contempt. (NYSCEF 939, Abensohn aff; NYSCEF 943, Shehigian aff; NYSCEF 942, Quinn Emanuel Urquhart & Sullivan, LLP time logs; NYSCEF 944, Dorf Nelson & Zauderer LLP time logs.) The court finds that the rates charged to AT&T by its attorneys who worked on this matter are usual and customary for commercial law firms in New York City. The court also finds that, generally, the hours charged for the various tasks are reasonable. The court rejects Grupo’s assertion of overstaffing because of eleven timekeepers and two law firms. Prosecuting contempt is time consuming and expensive.

Accordingly, it is

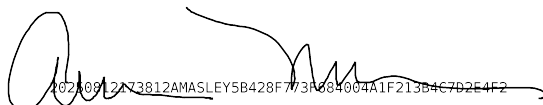
ORDERED the Receiver’s motion is granted, in part; and it is further

ORDERED that Grupo Elektra SAB de CV, Banco Azteca SA, Ricardo Salinas Pliego, and Francisco Borrego are in contempt of the court’s Turnover Order, and they are fined \$20 million jointly and severally; and it is further

ORDERED that Grupo Elektra SAB de CV, Banco Azteca SA, Ricardo Salinas Pliego, and Francisco Borrego shall pay the \$20 million within 14 days of the date of this order or Salinas and Borrego shall be incarcerated until such time as they either pay the entirety of the penalty resulting from this decision or they comply with the Turnover Order and relinquish the shares to the Receiver; and it is further

ORDERED that the portion of the Receiver’s motion seeking authority to serve this motion on the Nonparties by electronic service on defendants’ counsel, Kenneth Caruso, as well as PW partner, Roberto Finzi is moot; and it is further

ORDERED that plaintiff and judgment creditor AT&T’s motion is granted, in part, to the extent that the court finds Grupo Elektra SAB de CV, Banco Azteca SA, Ricardo Salinas Pliego, and Francisco Borrego in civil contempt pursuant to CPLR 5251 and Judiciary Law Sections §§ 753 and 773, and thus, AT&T is awarded attorneys’ fees in the amount of \$1,047,378.90 against Grupo Elektra SAB de CV, Banco Azteca SA, Ricardo Salinas Pliego, and Francisco Borrego, jointly and severally. The portion of AT&T’s motion seeking alternative service is moot.



8/12/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

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