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23 DISTRICT COURT
24 CLARK COUNTY, NEVADA

25 PAUL LAGUDI, an individual; and
26 WILLIAM TODD PONDER, an
27 individual.,

28 Plaintiffs,

vs.

FRESH MIX, LLC, a Delaware
limited liability company; GET
FRESH SALES, INC., a Nevada
corporation; DOES 1 through 25;
and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

Case No. A-18-785391-B

Dept. No. XI

NOTICE OF APPEAL

Please take notice that plaintiffs Paul Lagudi and William Todd Ponder
hereby appeal to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. “Decision and Order; Findings of Fact and Conclusions of Law,” filed March 2, 2020, notice of entry of which was served electronically on March 2, 2020 (Exhibit 1); and

3. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 31st day of March, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

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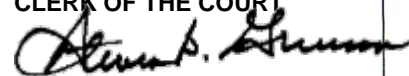
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EXHIBIT 1

EXHIBIT 1



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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

PAUL LAGUDI, an Individual; and a
WILLIAM TODD PONDER, an Individual,

Plaintiffs,

v.

FRESH MIX, LLC, a Delaware Limited
Liability Company; GET FRESH
SALES, INC., a Nevada corporation; DOES 1
through 25; and ROE BUSINESS ENTITIES
I through X, inclusive,

Defendants.

Case No.: A-18-785391-B
Dept. No.: XI

**NOTICE OF ENTRY OF DECISION AND
ORDER; FINDINGS OF FACT AND
CONCLUSIONS OF LAW**


Hearing Date: January 21-22, 2020 and
February 14, 2020

PLEASE TAKE NOTICE that a Decision and Order; Findings of Fact and Conclusions of
Law was entered in the above-captioned matter on March 2, 2020, a true and correct copy of which
is attached hereto.

DATED this 2nd day of March 2020.

PISANELLI BICE PLLC

By:



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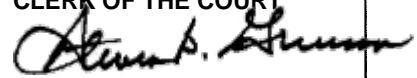
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 2nd day of March 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF DECISION AND ORDER;** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following:

Mark J. Connot, Esq.
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1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Attorneys for Plaintiffs


An employee of PISANELLI BICE PLLC



1 FFCL

2
3
4 **EIGHTH JUDICIAL DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 PAUL LAGUDI, an Individual; and a
7 WILLIAM TODD PONDER, an Individual,

8 Plaintiffs,

9 v.

10 FRESH MIX, LLC, a Delaware Limited
11 Liability Company; GET FRESH SALES,
12 INC., a Nevada corporation; DOES 1
13 through 25; and ROE BUSINESS ENTITIES
14 I through X, inclusive,

15 Defendants.

Case No.: A-18-785391-B
Dept. No.: XI

**DECISION AND ORDER; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Date of Hearing: January 21-22, 2020 and
February 14, 2020

Time of Hearing: 9:30 a.m. / 9:00 a.m.

16 On January 21 and 22, 2020, and February 14, 2020, this Court conducted an evidentiary
17 hearing on Get Fresh Sales, Inc. ("Get Fresh") and Fresh Mix, LLC's ("Fresh Mix") (Get Fresh
18 and Fresh Mix, together "Defendants") (1) Motion for Sanctions filed on August 26, 2019, (the
19 "Motion for Sanctions") and (2) Motion to Disqualify Fox Rothschild LLP filed on August 23,
20 2019 (the "Motion to Disqualify"). Based on the evidence presented, the briefs before the Court
21 and the arguments of counsel, the Court enters the following findings of fact and conclusions of
22 law.

23 **FINDINGS OF FACT**

24 **A. A Dispute Arises Between Get Fresh and Plaintiffs Lagudi and Ponder.**

25 1. Fresh Mix is owned by Get Fresh (60%), Plaintiff Paul Lagudi ("Lagudi") (30%),
26 and Plaintiff William Todd Ponder ("Ponder") (10%), each of which is Member of Fresh Mix.
27 Get Fresh, in turn, is owned by Dominic Caldara, Scott Goldberg, and John Wise. Caldara,
28 Goldberg, Wise, Lagudi, and Ponder are all Managers of Fresh Mix.

2. Beginning on January 11, 2010, Lagudi and Ponder were employees of Fresh Mix.

1 3. In late 2017/early 2018, disputes arose between Get Fresh and Plaintiffs Lagudi
2 and Ponder (Lagudi and Ponder, together "Plaintiffs") concerning Fresh Mix. Although the
3 parties endeavored to resolve their disputes without litigation, the prospect of litigation remained
4 throughout 2018. By the spring of 2018, all parties had retained counsel to guide and advise them
5 through these disputes, but also in anticipation of the arbitration mandated by Fresh Mix's
6 Operating Agreement.

7 4. In April 2018, Get Fresh retained Bruce A. Leslie, Esq. for legal advice and
8 representation related to its disputes with Plaintiffs related to Fresh Mix. Plaintiffs had already
9 retained Jeffrey Bendavid, Esq.

10 **B. The Creation of the Confidential and Privileged Memorandum.**

11 5. Near the outset of Get Fresh's retention of Leslie, Goldberg prepared a
12 memorandum at Leslie's request and for the purpose of seeking legal advice relating to the on-
13 going disputes that Get Fresh was having with Lagudi and Ponder (the "Memorandum").

14 6. Goldberg began drafting the Memorandum on his secured drive at Get Fresh. The
15 secured drive is only accessible via Goldberg's password-protected account, that of the Get Fresh
16 Senior Vice President of Finance (Mary Supchak), and the members of the IT administrator
17 group. Goldberg saved a partial draft of the Memorandum to the secured drive, and then emailed
18 the partial draft as an attachment from his password protected Get Fresh email address to his non-
19 Get Fresh business email address.

20 7. Goldberg's non-Get Fresh business email address is also password protected.

21 8. Goldberg finished drafting the Memorandum on his password-protected personal
22 desktop computer and then emailed it as an attachment from his non-Get Fresh business email
23 address to his Get Fresh email address.

24 9. On May 2, 2018, in anticipation of a May 3, 2018 meeting with Leslie and Get
25 Fresh partners, Caldara and Wise, Goldberg sent an email to Leslie with the Memorandum
26 attached, copying Caldara and Wise.

1 10. The Memorandum contains an assessment of Get Fresh's strengths and weaknesses
2 regarding its dispute with Plaintiffs concerning Fresh Mix. It also contains legal strategies and a
3 decision tree regarding potential resolution and plans.

4 11. Goldberg, Caldara, and Wise never printed the Memorandum or disseminated the
5 document outside of the privileged sphere.

6 C. **Fresh Mix Terminates Lagudi and Ponder's Employment and Get Fresh**
7 **Delivers Lagudi and Ponder's Personal Effects to them via their Attorney,**
8 **Bendavid.**

9 12. Fresh Mix sent letters terminating Lagudi and Ponder's employment on
10 November 26, 2018.

11 13. Supchak packed up Plaintiffs' personal items from their offices, separating
12 personal and company documents.

13 14. Supchak testified that the Memorandum was not in any of the boxes of documents
14 that she packed up when assembling the boxes of Plaintiffs' personal items.

15 15. On December 3, 2018, Leslie emailed Bendavid about the return of Plaintiffs'
16 personal items from their offices at Get Fresh. Bendavid testified that he intentionally refused to
17 respond to Leslie about where to deliver the boxes.

18 16. The same day, December 3, 2018, Plaintiffs initiated this action by filing the
19 Complaint.

20 17. On December 4, 2018, the boxes of Plaintiffs' personal effects were delivered to
21 Bendavid's office by Get Fresh employees Scott Putske and Marcus Sutton. A receipt of the
22 boxes was executed by an employee at Bendavid's office and returned to Get Fresh.

23 18. Bendavid did not see the boxes being delivered and he did not know how long the
24 boxes were in his office before he saw them.

25 19. Bendavid testified that the Memorandum was purportedly sticking up out of one of
26 the boxes of Plaintiffs' personal items, rolled in half but without a crease.

27 20. Bendavid testified that he did not see anyone place the Memorandum into one of
28 the boxes.

1 21. Both Putske and Sutton testified that neither of them saw a piece of paper sticking
2 out of any of the boxes they delivered, no one asked them to deliver any paper/memorandum, and
3 no one asked them to place a piece of paper such that it was sticking out of any of the boxes when
4 they were delivered.

5 22. Ponder was at Bendavid's office reviewing documents and meeting with one of
6 Bendavid's associates the day the boxes were delivered, *i.e.*, December 4, 2018.

7 23. Bendavid testified that he did not and could not see if Ponder had access to the
8 boxes prior to Bendavid seeing the boxes after they were delivered to his office.

9 24. At Bendavid's request, Ponder took all of the boxes home with him that same day,
10 and went through each one, including the boxes containing Lagudi's personal items.

11 25. Ponder testified that the boxes he took home with him did not contain the
12 Memorandum. According to Plaintiffs, Bendavid had taken it out of a box and not provided it to
13 Ponder.

14 26. Bendavid testified that he removed the Memorandum from the box, initially
15 thinking it was an inventory or receipt, but did not look at the document at that time. Instead, he
16 read and digested the Memorandum either later that same day, on December 4, 2018, or the
17 following day, December 5, 2018.

18 27. Bendavid testified that, upon his review of the Memorandum, (a) he recognized the
19 Memorandum was a document belonging to his adversaries about what they wanted to do in this
20 dispute against Plaintiffs; (b) he understood that the Memorandum contained concepts of
21 litigation strategy of his adversaries; and (c) he understood the Memorandum contained strengths
22 and weaknesses of Defendants' case.

23 28. Bendavid testified that he did not know, when he read the Memorandum, who
24 drafted it, although he knew it was not drafted by his clients, Lagudi or Ponder.

25 29. Bendavid testified that both the drafter and the source of the Memorandum were
26 anonymous to him.

1 30. Nevertheless, Bendavid said that he assumed the Memorandum was voluntarily
2 and intentionally sent by an authorized Get Fresh representative and stated also his belief that it
3 was not privileged because it was a threat.

4 31. Although he had interacted with Leslie regarding Plaintiffs' personal items in their
5 office, Bendavid did not alert Leslie nor did he alert any other counsel for Defendants to his
6 receipt of the Memorandum.

7 32. Bendavid submitted a declaration in which he stated that "had [he] had the Memo
8 [while drafting the Complaint and TRO], we would have referred to it in the Complaint and
9 attached it to the Motion for Preliminary Injunction and TRO." (Ex. 1 to Pls.' Second Suppl.
10 Opp'n, Feb. 3, 2020, Bendavid Decl. ¶ 23.)

11 33. Bendavid testified that he did not inform his clients, Lagudi and Ponder, of the
12 Memorandum for weeks. During a meeting at his office weeks after receipt, Bendavid told
13 Plaintiffs about the Memorandum, and read them excerpts from the Memorandum, but did not
14 provide them copies. Lagudi and Ponder did not ask for copies of the Memorandum.

15 **D. Bendavid Transitions Out of the Case and Sends the Memorandum to Stern**
16 **& Eisenberg and Fox Rothschild.**

17 34. Plaintiffs retained Stern & Eisenberg in or around March of 2019. On
18 March 1, 2019, Evan Barenbaum, Esq., of Stern & Eisenberg, first appeared in the arbitration
19 compelled by this Court, pending before the American Arbitration Association.

20 35. Berkley testified that Barenbaum contacted Fox Rothschild LLP about
21 representing the Plaintiffs. Brian Berkley, Esq., and Mark Connot, Esq., both of Fox Rothschild
22 LLP, subsequently interviewed to represent Plaintiffs.

23 36. Plaintiffs retained Fox Rothschild in March of 2019. Fox Rothschild attorneys
24 Berkley and Connot testified that they were co-lead counsel for Plaintiffs in this litigation and the
25 arbitration.

26 37. Upon retention, Fox Rothschild subsequently received the case file. Berkley did
27 not recall whether the file transfer was in electronic or paper form, nor did he recall whether the
28

1 files came directly from Bendavid, or went through Barenbaum. Connot testified that to the best
2 of his recollection, the bulk, if not the entirety, of the file came in an electronic format.

3 38. Fox Rothschild admits to learning of the Memorandum upon its retention, *i.e.*, in
4 March of 2019. Berkley testified that he first received the Memorandum from Barenbaum in
5 March 2019 as an attachment to an email. Fox Rothschild did not log this communication on the
6 privilege log ordered by this Court as part of the sanctions discovery.

7 39. Stern & Eisenberg's redacted billing records reveal that it, too, received the
8 Memorandum upon retention. Specifically, the billing records reveal that, on March 13, 2019,
9 Barenbaum spoke to "Mr. Bendavid re delivery of Get Fresh document."

10 40. Despite multiple interactions with Defendants' counsel, including interactions
11 directly related to the contents of the boxes delivered to Plaintiffs on December, 4, 2018 and an
12 inspection of another set of boxes in the spring of 2019, neither Fox Rothschild nor Stern &
13 Eisenberg notified Get Fresh or their counsel of their receipt or possession of the Memorandum.

14 41. Berkley testified that, prior to him reading the Memorandum, he asked Barenbaum
15 about the circumstances regarding the delivery of the Memorandum to Bendavid. Berkley and
16 Connot testified that Barenbaum told them that the Memorandum was delivered with a box of
17 documents when Lagudi and Ponder's employment was terminated, and that the Memorandum
18 was viewed as a threat. Barenbaum, as well as Lagudi and Ponder, told Berkley that the
19 Memorandum came from Get Fresh.

20 42. Connot testified that there was no specific knowledge or evidence of how the
21 Memorandum ended up in Plaintiffs' boxes; Bendavid did not have any direct knowledge
22 regarding who put the Memorandum in the boxes.

23 43. Prior to reading the Memorandum, Berkley knew that it was not Lagudi or
24 Ponder's document, and that neither of them had written it. Around the time he read the
25 Memorandum, or shortly thereafter, Connot assumed that it was Defendants' record, and that it
26 was Defendants' document.

1 E. **Plaintiffs Weaponize the Memorandum, and Refuse to Return, Sequester, or**
2 **Destroy It, Notwithstanding Multiple Court Orders.**

3 44. On July 17, 2019, Plaintiffs filed a motion to lift the stay that this Court entered
4 pending the arbitration, and to amend their complaint.

5 45. Get Fresh and Fresh Mix filed their opposition on July 25, 2019.

6 46. In preparation of their reply in support of their motion to stay (the "Reply"), on
7 July 31, 2019, Plaintiffs attorney, Barenbaum, emailed his clients Lagudi and Ponder, as well as
8 his Fox Rothschild co-counsel, Connot, Berkley,¹ and Emily Bridges, Esq., and a colleague at his
9 own firm, Thomas Shea, Esq., attaching the Memorandum to his email.

10 47. Plaintiffs logged this July 31, 2019 email communication on their
11 December 13, 2019 privilege log, and identified the Memorandum attached thereto as a Word
12 document.

13 48. Fox Rothschild attorney Berkley was the lead drafter of the Reply. Fox Rothschild
14 attorney Connot was involved in editing and revising the Reply. Berkley and Connot conferred
15 about the strategy to use the Memorandum in connection with the Reply, and agreed to do so.
16 Berkley further testified that Barenbaum participated in the decision to put the Memorandum into
17 the public record.

18 49. Plaintiffs filed their Reply on Thursday, August 1, 2019. The Reply contained
19 arguments based upon the Memorandum, including quotations from the Memorandum and
20 paraphrases of its content. Plaintiffs also attached the Memorandum to the Reply as Exhibit T.
21 Despite filing a motion to seal and redact associated with their Reply and certain exhibits thereto,
22 Plaintiffs filed the Memorandum in the public record.

23 50. Plaintiffs' Reply was the first notice Defendants received of Plaintiffs' possession
24 of the privileged Memorandum.

25
26
27 ¹ Plaintiffs filed a Motion to Associate Counsel, seeking an order permitting Berkley to
28 practice in Nevada pursuant to SCR 42 on August 20, 2019. Defendants filed a Response thereto
on August 30, 2019, and the Court subsequently granted the Motion to Associate Counsel on
October 4, 2019.

1 51. Upon receipt and review of the Reply, Get Fresh's counsel immediately took action
2 to protect Get Fresh's privileges.

3 52. On Friday, August 2, 2019, James J. Pisanelli, counsel for Get Fresh and Fresh
4 Mix, called and spoke to Plaintiffs' counsel, Connot, asserted Get Fresh's privilege claim over the
5 Memorandum, asked how Plaintiffs acquired the Memorandum, and stated that Get Fresh would
6 be seeking Court relief. Connot stated that he did not know that the Memorandum was
7 privileged because it "seems to be internal" and references getting litigation counsel.

8 53. Get Fresh moved promptly and, that same day, submitted an Emergency Motion to
9 Strike the Reply and Exhibit T, unequivocally asserting its privilege claim over the Memorandum,
10 asking that the offending Reply and Exhibit T be struck, and that Plaintiffs be directed to
11 sequester the Reply, the Memorandum, and any related notes or memos from use and review.

12 54. Fox Rothschild claimed that they sequestered the Memorandum once Get Fresh
13 alerted them of its privilege claim.

14 55. Connot submitted a declaration in which he stated that "While I disagreed with
15 whether the document was privileged, I immediately sequestered the Memo and advised by co-
16 counsel at Fox Rothschild and Stern Eisenberg, as well as my clients, to sequester the Memo."

17 56. Similarly, Berkley submitted a declaration stating that "[u]pon receipt of the notice
18 of privilege, I stopped review of the Memo"

19 57. Despite sequestration, Fox Rothschild took the position that it was permitted to
20 review and use the Memorandum (including reference to its substance) to argue that it was not
21 privileged.

22 58. The next business day, Monday, August 5, 2019, Get Fresh and Fresh Mix served
23 its privilege log related to the Memorandum. (*See* Ex. J5, Defs. Fresh Mix & Get Fresh's Initial
24 Privilege Log, Aug. 5, 2019.)

25 59. Rather than sequester the Memorandum upon notice of Get Fresh's privilege
26 assertion, on Sunday, August 4, 2019, Plaintiffs again reviewed and digested the Memorandum to
27 prepare and file their Opposition to the Emergency Motion. Throughout this Opposition,
28 Plaintiffs **again** refer to, discuss, quote, and paraphrase the privileged Memorandum.

1 60. Berkley was the lead drafter of the August 4, 2019 Opposition to the Emergency
2 Motion. Connot edited the Opposition.

3 61. At the hearing on Plaintiffs' Motion to Lift Stay and Amend the Complaint held on
4 Monday, August 5, 2019, the Court struck Exhibit T (the Memorandum) from the record and
5 permitted Get Fresh and Fresh Mix to move to redact both Plaintiffs' August 1, 2019 Reply and
6 August 4, 2019 Opposition. The Court stated:

7 I am not going to impede any efforts you make to obtain the ability
8 to use Exhibit T in whatever format. And you guys are going to
9 fight, and at that point I assume I'll do an in-camera review of
10 Exhibit T and then make a decision . . . But I'm not there. . . . I'm
11 going to mark the emergency motion, which I did not set for
hearing, and the opposition to the emergency motion which I did
not set for hearing as Court's Exhibit 1. I'm going to place them in a
sealed envelope, because they have some reference to the document
that I'm granting the striking of.

12 62. The Court's order was entered on August 22, 2019. Get Fresh and Fresh Mix
13 subsequently moved to redact the briefs, and such relief was granted.

14 63. Notwithstanding the Court's order and statements during the August 5, 2019
15 hearing, Fox Rothschild took the position that it could nevertheless use the substance of the
16 Memorandum to argue that it was not privileged or otherwise subject to protection.

17 64. Thus undeterred, Plaintiffs continued to use and paraphrase the Memorandum.
18 Plaintiffs' August 12, 2019 Response to Amended Demand for Arbitration and Counterclaims (the
19 "Response") submitted to the AAA in the arbitration compelled by this Court, paraphrases and
20 uses exact words and phrases from the Memorandum (just omitting the quotation marks). (*See*
21 *Ex. J6*, admitted under seal, ¶¶ 243, 244, 245, 300, 305, and p. 46:13-14.)

22 65. Berkley was the lead drafter of the Response. Connot was involved in analyzing,
23 editing, and revising the Response. Other attorneys at Fox Rothschild (*e.g.*, Emily Bridges)
24 worked on the Response, as did attorneys at Stern & Eisenberg.

25 66. Berkley and Connot each claim that they did not review the Memorandum when
26 working on the Response, but the exact language of the Memorandum had been part of their
27 institutional knowledge. Specifically, Berkley and Connot each submitted declarations stating
28

1 that they did not "have any intent to include references to the Memo or language from the Memo
2 in the Arbitration Response."

3 67. Berkley testified that he did not intentionally incorporate direct language from the
4 Memorandum into the Response. "That language was at that time in my head because I had
5 written that multiple times during that one week." (Feb. 14, 2020 Hr'g Tr. 89:12-14; *see also id.*
6 at 126:1-3 ("Those – those words were in my mind at that time, and the concepts and the actions
7 that were being taken in real time by the defendants was also fresh in my mind.") and 131:1-20.²)

8 68. Plaintiffs attached or relied upon their August 12, 2019 Response in briefs they
9 filed both in the arbitration and this action.

10 69. Plaintiffs cited to and relied upon the Response within a Rule 37 Motion for
11 Advancement of Indemnification under the Operating Agreement, filed on September 11, 2019.
12 In their Motion for Advancement, Plaintiffs directed the arbitration panel to the very section of
13 the Response that parroted the Memorandum.

14 70. Plaintiffs later attached the Response as Exhibit A to their Motion to Compel
15 Production of Books and Records, filed on September 30, 2019 with this Court. Plaintiffs again
16 directed the Court to the very section of the Response that parroted the Memorandum.

17
18
19 ² The final excerpt, 131:1-20 from the third day of the evidentiary hearing is as follows:

20 THE COURT: Okay. So explain to me why the terms from the memo appear less
than a week later in the reply you filed in the arbitration.

21 THE WITNESS [BERKLEY]: Because those terms were fresh in my mind at that
22 time because I had written those terms in multiple filings prior to the August 5th
23 hearing and . . . and the concepts were fresh in my mind, as well, because both the
writing of that as well as independently I had – you know, those actions were
being taken by the plaintiffs – or the defendants. Excuse me.

24 THE COURT: So the words were embedded in your mind because you'd
25 previously quoted from the memo and used it in the reply brief?

26 THE WITNESS: At that time they were, yes.

27 THE COURT: So you couldn't forget what was in the memo and not use it as I
directed because it was so fresh in your mind??

28 THE WITNESS: At that time, yes.

1 71. Trying to bolster their argument that facts that independently supported the
2 offending allegations in their Response, Plaintiffs again draw from the Memorandum in their
3 February 3, 2020 Supplemental Brief.

4 72. On August, 23, 2019, Get Fresh and Fresh Mix filed the Motion to Disqualify Fox
5 Rothschild LLP.

6 73. On August 26, 2019, because of Plaintiffs' continued use of the Memorandum and
7 refusal to sequester it, Get Fresh and Fresh Mix filed a Motion for Claw Back, Discovery, and
8 Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and
9 Other Privileged and Confidential Information.

10 74. On September 5, 2019, Plaintiffs filed their Opposition to the Motion for Claw
11 Back and Counter-Motion, *again* referring to and discussing the Memorandum, and *again*
12 attaching the Memorandum as an exhibit (Exhibit A).

13 75. Get Fresh and Fresh Mix moved to strike the Memorandum and all references to
14 and discussion of the Memorandum in the brief, and this Court granted the requested relief via its
15 order entered on September 25, 2019. Specifically, this Court ordered:

16 Defendants' request for claw back is GRANTED in that Plaintiffs
17 shall sequester the memorandum identified as Exhibit T to
18 Plaintiffs' Reply in Support of Motion to Lift Stay and Amend
19 Complaint from review and/or use. Plaintiffs may not quote, or
20 discuss the content of the memorandum in any further pleadings or
21 other papers other than in an evidentiary hearing or otherwise
22 relating to the privileged nature of the document or the motion for
23 disqualification.

24 76. Get Fresh and Fresh Mix subsequently moved to redact Plaintiffs' Opposition, and
25 this Court granted the requested relief.

26 77. Plaintiffs filed another brief seeking to inject the Memorandum into the record,
27 despite court orders and multiple filings and hearings.

28 78. In their September 19, 2019 motion, Plaintiffs moved to have the Court accept its
offending Opposition to the Motion to Strike under seal and the Memorandum. The Court denied
Plaintiffs' request in an October 8, 2019 order:

The Court previously ordered the memorandum identified as
Exhibit T to Plaintiffs' Motion to Lift Stay and Amend Complaint

1 *sequestered*. As a result, Plaintiffs shall not quote or summarize
2 Exhibit T in any briefing until further order of the Court.

3 79. Despite this history, Plaintiffs tried again, filing a Motion to Clarify the Procedure
4 related to this evidentiary hearing. In response, the Court reiterated its prior rulings:

5 The Court *previously* made a decision that the memorandum
6 identified as Exhibit T to Plaintiffs' Motion to Lift Stay and Amend
7 Complaint ("The Memorandum") is facially privileged based upon
8 the information that was provided to the Court.

9 Plaintiffs *shall continue* to sequester the Memorandum, and may
10 not quote, summarize, or discuss the content of the Memorandum.

11 (Order on Pls.' Mot. to Clarify the Procedure re: Privilege Determination, dated January 8, 2020.)

12 80. Plaintiffs' counsel held, read, reviewed, and referred to the Memorandum
13 throughout the evidentiary hearing on January 21 and 22, 2020.

14 81. Connot used the Memorandum during the examination of Scott Goldberg, while
15 Berkley read along to assist Connot in the cross-examination.

16 82. Berkley and Connot each submitted declarations testifying that, after reviewing
17 their billing records, they estimated to have spent less than two hours reviewing the Memorandum
18 since being retained by Plaintiffs.

19 83. Although Berkley had access to Stern & Eisenberg and Fox Rothschild's full
20 billing records regarding Plaintiffs' representation, he testified that he did not review these records
21 for purposes of determining the full scope of the Memorandum's circulation and digestion.
22 Berkley also testified that he did not ask his colleagues, other than Connot, how broadly the
23 Memorandum had been circulated and digested.

24 84. Connot also reviewed billing records, reading in detail his time entries relating to
25 the Memorandum.

26 85. Fox Rothschild did not take any action to remove the language from the
27 Memorandum from the arbitration. The information is presently in the arbitration record.

28 86. Following the first two days of the evidentiary hearing on January 21 and 22,
2020, Berkley directed Bridges, an associate with Fox Rothschild, to run searches of the words

1 located in paragraphs 243 - 245 of the Response that are from the Memorandum against the other
2 filings in the Arbitration. Berkley testified that Bridges emailed him the result of those searches
3 and that there were no hits. The search was limited to the exact words from the Memorandum
4 that were used in the Response, and did not capture themes derived from the Memorandum.

5 **F. Plaintiffs Received Other Get Fresh Documents from Third Parties and Did**
6 **Not Disclose Their Receipt to Defendants.**

7 87. On September 25, 2019, the Court granted Get Fresh and Fresh Mix's request for
8 discovery related to Plaintiffs' and their counsel's improper possession and use of the
9 Memorandum and other privileged and confidential information. (See Order, dated Sept. 25,
10 2019.)

11 88. While conducting the Court-ordered discovery, Plaintiffs revealed, for the first
12 time, that they had received documents from third parties unrelated to the litigation. Specifically,
13 Plaintiffs revealed that they received documents from two disgruntled former Get Fresh
14 employees.

15 89. Plaintiffs received confidential documents from David Heinrich, Get Fresh's
16 former IT director. Heinrich left Get Fresh in 2014.

17 90. Ponder testified that in August of 2018, Heinrich informed him that he was in
18 possession of certain Get Fresh purchase orders.

19 91. Later, in 2019, Heinrich gave copies of confidential Get Fresh records, specifically
20 purchase orders ("POs"), to Lagudi. Some of these POs bear print dates *years after* Heinrich
21 separated from Get Fresh, e.g., from September 2018.

22 92. Lagudi testified that in September of 2019, Matthew McClure emailed him
23 confidential Get Fresh documents and records related to a recall from 2016. McClure had
24 previously worked as a food safety consultant for Get Fresh, and left Get Fresh in 2017.

25 93. Rather than provide copies of the documents to Get Fresh, Lagudi provided these
26 documents to his attorneys to determine how best to use them in the pending dispute with
27 Defendants.

94. Plaintiffs made allegations in the arbitration related to these documents, Plaintiffs did not provide any notice to Defendants of their receipt of confidential company records outside of the ordinary discovery process from either a third party unrelated to the litigation or a person unauthorized to access or provide confidential company records.

95. Plaintiffs also did not provide Defendants' counsel with the particular details about how, when, and from whom they obtained the documents.

96. Any finding of fact stated above that is more appropriately deemed a conclusion of law shall be so deemed.

CONCLUSIONS OF LAW

A. Plaintiffs Were Required to Give Prompt Notice of Their Receipt of Their Adversary's Confidential and Privileged Document.

1. Under Nevada law, an attorney who receives confidential or privileged documents of its adversary regarding a case from an anonymous source or a third party unrelated to the litigation must promptly notify opposing counsel. *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 697, 262 P.3d 720, 725 (2011).

2. The required notice "must adequately put opposing counsel on notice that the documents were not received in the normal course of discovery and describe, with particularity, the facts and circumstances that explain how the document or evidence came into counsel's or his or her client's possession." *Id.*

3. This notice requirement is designed to prevent parties from receiving an adversary's confidential or privileged documents outside the normal course of discovery and process, and "lying in wait" to announce their procurement and use the document against their adversary.

4. The notice requirement provides the owner of the document(s) an "opportunity . . . to register an objection and demand return and non-use. . . ." *Id.* at 694, 262 P.3d at 723.

5. If an attorney fails to comply with this notice requirement, the attorney "risk[s] being in violation of his or her ethical duties and/or being disqualified a counsel." *Id.* at 697, 262 P.3d at 725.

1 6. Plaintiffs testified that they first received the Memorandum in boxes of Plaintiffs'
2 personal items from their offices at Get Fresh delivered to Bendavid in early December 2018.

3 7. Bendavid discussed the delivery of those boxes over email with Leslie, counsel for
4 Defendants, but intentionally refused to respond to Leslie about where to deliver the boxes.

5 8. The boxes were delivered on December 4, 2018, the day after Plaintiffs filed a
6 complaint in this action and the very day Plaintiffs submitted their application for temporary
7 restraining order to this Court in this action.

8 9. Discovery had not yet commenced, and therefore documents received were
9 received outside the normal course of discovery.

10 10. According to Bendavid, the Memorandum was purportedly sticking up out of one
11 of the boxes of Plaintiffs' personal items. While he initially set it aside thinking it was an
12 inventory, he read and digested the Memorandum later that same day, December 4, 2018, or the
13 following day, December 5, 2018.

14 11. Bendavid testified that (a) he recognized the Memorandum was a document
15 belonging to his adversaries about what they wanted to do in this dispute against Plaintiffs; (b) he
16 understood that the Memorandum contained concepts of litigation strategy of his adversaries; and
17 (c) he understood the Memorandum contained strengths and weaknesses of Defendants' case.

18 12. While Plaintiffs and Bendavid testified that they "believe" the Memorandum was
19 "voluntarily" or "intentionally" provided to Bendavid by Goldberg, Plaintiffs failed to offer
20 evidence, only supposition, to support this theory.

21 13. Bendavid testified that he did not see the boxes being delivered, he did not see
22 anyone place the document in a manner sticking up out of one of the boxes, and he did not know
23 how long the boxes were in his office before he saw them.

24 14. Plaintiffs themselves recognized that the Memorandum was not an item that had
25 been in their offices and therefore should not have been in boxes that were delivered to them.

26 15. Despite Bendavid's admissions regarding the general subject matters of the
27 contents of the privileged Memorandum, its suspicious receipt, and his communications with
28

1 Leslie about delivery of personal items but no company documents, Bendavid assumed that the
2 Memorandum was voluntarily or intentionally sent by an authorized Get Fresh representative.

3 16. Nevada law requires more than an "assumption" to avoid the prompt notice
4 obligation upon receipt of an adversary's confidential or privileged document outside the normal
5 course of discovery. If an assumption were sufficient, the rule would be set aside merely by one's
6 claim, without more, that their opponent gave it to them for any reason one can conjure.

7 17. It is not credible that Plaintiffs believed the Memorandum was a threat delivered to
8 them, because it revealed not only Get Fresh's strengths and weaknesses, but also the options for
9 potential resolution and plans.

10 18. Both the drafter and the source of the Memorandum were anonymous.

11 19. The notice requirement established by the Nevada Supreme Court in *Merits*
12 *Incentives* was triggered.

13 **B. Plaintiffs Failed to Give Prompt Notice of Their Receipt of Their Adversary's**
14 **Confidential and Privileged Document.**

15 20. Bendavid testified that he did not provide notice to Leslie or any other counsel for
16 Defendants of either his receipt of the Memorandum or provide with any particularity the facts
17 and circumstances that explain how the document or evidence came into his possession.

18 21. It is undisputed that neither Fox Rothschild nor Stern & Eisenberg provided notice
19 to Leslie or any other counsel for Defendants of either their receipt of the Memorandum or any
20 facts and circumstances that explain how the document or evidence came into their possession.

21 22. Failure to comply with the notice requirement and related ethical obligations may
22 result in counsel's disqualification, even when the receipt of the privileged information was
23 through no fault of their own. *Merits Incentives*, 127 Nev. at 697, 262 P.3d 725.

24 23. Fox Rothschild associated with Bendavid as counsel for Plaintiffs on May 16,
25 2019. Stern & Eisenberg is counsel for Plaintiffs in the arbitration (compelled by this Court).
26 Both Fox Rothschild and Stern & Eisenberg took over as counsel for Plaintiffs in Bendavid's
27 stead in or around March 2019. Bendavid's formal notice of withdrawal was filed on July 3,
28 2019.

1 24. Bendavid testified to transferring his file to Fox Rothschild. Bendavid's billing
2 records confirm this copying, as well as receipt and review of the files by both Fox Rothschild
3 and Stern & Eisenberg.

4 25. The Stern & Eisenberg billing records reflect that on March 13, 2019, Barenbaum
5 spoke to "Mr. Bendavid re delivery of Get Fresh document."

6 26. Fox Rothschild represented, and it is in the record, that Bendavid imputed his
7 knowledge concerning the Memorandum to Fox Rothschild. (*See* Pls.' First Suppl. Opp'n, 9:6-11
8 ("When Mr. Bendavid provided the Fresh Mix Memo to Fox Rothschild, he imputed this
9 knowledge. Accordingly, Fox Rothschild, after considering whether the Fresh Mix Memo was a
10 'corporate work document,' and the circumstance between the parties at the time, had no reason to
11 identify or suspect the Fresh Mix Memo to be privileged." (internal citation omitted).)

12 27. Fox Rothschild also represented, and it also is in the record, that they, too,
13 reviewed and digested the Memorandum. (*See, e.g., id.* at 3:23-25 ("Upon being retained by
14 Plaintiffs, Fox Rothschild learned of the Fresh Mix Memo and, like Mr. Bendavid, recognized
15 that the Fresh Mix Memo was not privileged."), 10:6-9 ("Fox Rothschild abided by its ethical
16 obligations at all times and reviewed the Fresh Mix Memo before Defendants ever claimed
17 privilege. Mr. Bendavid knew upon reading the document that it was not privileged. Fox
18 Rothschild attorneys reached the same conclusion.").)

19 28. It is undisputed that the first time Plaintiffs or any of their counsel provided notice
20 to Defendants and their counsel of their possession of the Memorandum was on August 1, 2019,
21 when Plaintiffs filed their Reply in Support of their Motion for Leave to Amend, attached the
22 Memorandum to the Reply as an exhibit, and quoted extensively from the Memorandum.

23 29. According to Plaintiffs' testimony and argument in the record, they possessed the
24 Memorandum without providing notice to Defendants or their counsel from December 4, 2018 to
25 August 1, 2019, when they affirmatively used it, quoted from it, and attached it to a public filing
26 in support of a motion they filed to advance their position.

1 30. Each and all of Plaintiffs' counsel, Bendavid, Fox Rothschild, and Stern &
2 Eisenberg (via his representation of Plaintiffs in the arbitration this Court compelled) failed to
3 comply with the notice requirement set forth in *Merits Incentives*.

4 31. Having received the Memorandum under suspicious circumstances in December 4,
5 2018 (by Bendavid) and the spring 2018 (by Stern & Eisenberg and Fox Rothschild), yet not
6 providing any notice until affirmatively using the Memorandum in a Reply brief on
7 August 1, 2019, Plaintiffs' counsel did "lie in wait" to provide notice only when it worked for
8 them in the dispute against their adversary, and denied Get Fresh of any opportunity to object,
9 demand return of the document, and non-use of the document. This is the exact type of behavior
10 the Nevada Supreme Court criticized in *Merits Incentives*. 127 Nev. at 699, 262 P.3d at 727.

11 **C. The Memorandum and Related Communications are Protected by the**
12 **Attorney-Client Privilege and Work Product.**

13 32. The attorney-client privilege protects the disclosure of a confidential
14 communication "[b]etween the client or the client's representative and the client's lawyer or the
15 representative of the lawyer" "for the purpose of facilitating the rendition of professional
16 services." NRS 49.095.

17 33. "A communication is 'confidential' if it is not intended to be disclosed to third
18 persons other than those to whom disclosure is in furtherance of the rendition of professional
19 services to the client or those reasonably necessary for the transmission of the communication.
20 NRS 49.055.

21 34. Nevada's work-product doctrine is set forth in NRCP 26(b)(3). It "protects
22 documents with two characteristics: (1) they must be prepared in anticipation of litigation or for
23 trial, and (2) they must be prepared by or for another party or by or for that other party's
24 representative." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 133 Nev. 369, 383, 399 P.3d 334,
25 347 (2017) (citing *In re Grand Jury Subpoena*, 357 F.3d 900, 907 (9th Cir. 2004)) (internal
26 quotation marks omitted).

27 35. The Nevada Supreme Court adopted the "because of" test to determine whether
28 material was prepared in anticipation of litigation, and thereby satisfy the first requirement for

1 work-product protection. "The anticipation of litigation must be the *sine qua non* for the creation
2 of the document – but for the prospect of that litigation, the document would not exist."
3 *Wynn Resorts*, 133 Nev. at 383-84, 399 P.3d at 347-48 (internal quotation marks and citation
4 omitted).

5 36. The party claiming privilege bears the burden of establishing the privilege, and
6 does so by serving a privilege log. *See Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268
7 (2011) (the proponent of privilege bears the burden of establishing the privilege); *Albourn v. Koe*,
8 *M.D., et al.*, Discovery Commissioner Opinion #10, 15 (Nov. 2001) (a party provides a factual
9 basis for its claims of privilege by producing a privilege log); *In re Grand Jury Investigation*, 974
10 F.2d 1068, 1071 (9th Cir. 1992) ("In essence, the party asserting the privilege must make a *prima*
11 *facie* showing that the privilege protects the information the party intends to withhold. We have
12 previously recognized a number of means of sufficiently establishing the privilege, one of which
13 is the privilege log approach." (citations omitted).

14 37. "The party asserting the privilege has the burden of proving its applicability,
15 including that the party has not waived it." *United States v. SDI Future Health, Inc.*, 464 F. Supp.
16 2d 1027, 1040 (D. Nev. 2006) (citing *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d
17 18, 25 (9th Cir. 1981)).

18 38. "[A] corporation's current management controls the [attorney-client privilege] 'to
19 refuse to disclose, and to prevent any other person from disclosing, confidential
20 communications.'" *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. 643, 656, 331 P.3d 905,
21 914 (2014).

22 39. "Courts in the Ninth Circuit consider the circumstances surrounding the disclosure
23 when deciding if an inadvertent disclosure has waived the privilege. These courts typically apply
24 a five-factor test to determine the waiver issue. These factors include: (1) the reasonableness of
25 the precautions to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the
26 scope of discovery; (4) the extent of disclosure; and (5) the overriding issue of fairness." *IGT v.*
27 *All. Gaming Corp.*, 2-04-CV-1676-RJC RJJ, 2006 WL 8071393, at *6 (D. Nev. Sept. 28, 2006)
28 (quotation marks and citations omitted).

1 40. The Memorandum was prepared by Goldberg, owner and Chief Financial Officer
2 for Get Fresh in April/May 2018, at the request of counsel, Leslie, providing confidential
3 information for the purpose of seeking legal advice relating to the on-going dispute between the
4 parties.

5 41. The Memorandum is facially and substantively privileged.

6 42. Get Fresh has maintained the confidentiality of the Memorandum since its
7 creation.

8 43. Get Fresh has ensured the password protected nature and secured access to email
9 and the related server.

10 44. None of the individuals on the email (Goldberg, Caldara, Wise, and Leslie) printed
11 the Memorandum. None of them have ever disseminated the Memorandum outside of the
12 privileged sphere.

13 45. Get Fresh did not voluntarily disclose the Memorandum to Plaintiffs or their
14 counsel.

15 46. There is no indication that Get Fresh waived its claim to privilege or protection
16 over the Memorandum. Any assumption as to how the document got into Plaintiffs or their
17 counsel's possession is not controlling in a determination of waiver.

18 47. Upon learning that Plaintiffs possessed the Memorandum, Get Fresh alerted
19 Plaintiffs and their counsel to its claim of privilege fewer than 24 hours later, repeatedly sought
20 (and obtained) relief from the Court in order to keep the Memorandum out of the public record.

21 48. Get Fresh served a privilege log on August 5, 2019, in which Get Fresh asserted
22 privilege over the Memorandum and communications related thereto.

23
24 **D. Plaintiffs' Counsel Did Not Return or Sequester the Memorandum as**
25 **Required By NRCP 26(b)(5)(B).**

26 49. Once a party is placed on notice that information is subject to a claim of privilege
27 or protection, NRCP 26(b)(5)(B) enumerates an affirmative obligation upon a party and their
28

1 counsel to "promptly return, sequester, or destroy the specified information and any copies it has;
2 must not use or disclose the information until the claim is resolved."

3 50. Get Fresh informed Plaintiffs, through their counsel, of their claims of privilege
4 and protection over the Memorandum on August 2, 2019. This was fewer than twenty-four hours
5 after learning that Plaintiffs were in possession of the Memorandum.

6 51. Get Fresh served a privilege log asserting their claims of privilege and protection
7 over the Memorandum and communications related thereto on August 5, 2019.

8 52. Plaintiffs admit that they did not "return, sequester, or destroy" the Memorandum
9 after Get Fresh notified them of their claims of privilege and protection August 2, 2019.

10 53. Plaintiffs admit that they relied upon the Memorandum and its substance to argue
11 that it was not privileged after they were put on notice of Get Fresh's claims.

12 54. It is "not [the receiving party's] prerogative to unilaterally determine whether the
13 information received anonymously was truly proprietary, confidential, privileged, or some
14 combination of those labels, and use the information it deem[s] appropriate." *Raymond v. Spirit*
15 *AeroSystems Holdings, Inc.*, No. 16-1282-JTM-GEB, 2017 WL 2831485, at *15 (D. Kan. June
16 30, 2017) (discussing the analogous FRCP 26(b)(5)(B)).

17 55. "Rule 26(b)(5)(B) could not be more clear. Once a producing party claims a
18 privilege in materials that have been produced, no further use is to be made of the information
19 until the claim of privilege is resolved. As far as Rule 26(b)(5)(B) is concerned, it is immaterial if
20 [the receiving parties] disagree with the claim of privilege. [The receiving parties] were
21 prohibited from making any use of the information, period." *Mafille v. Kaiser-Francis Oil Co.*,
22 18-cv-586-TCK-FHM, 2019 WL 3219151, at *1 (N.D. Okla. July 17, 2019) (discussing the
23 analogous FRCP 26(b)(5)(B); *Jensen v. Indianapolis Public Schools*, No. 1:16-cv-02047-TWP-
24 DLP, 2019 WL 911241, at *3 (S.D. Ind. Feb. 22, 2019) (while attaching a cover letter and filing a
25 motion for the court to make a privilege determination is consistent with FRCP 26, weaponizing
26 the documents by referencing its contents violates the rule).

27 56. Plaintiffs continued to use and rely upon the Memorandum, as stated above.
28

1 57. Plaintiffs and their counsel continued to use the Memorandum in conjunction with
2 the arbitration, using exact words and phrases from the Memorandum (just absent the quotation
3 marks) and paraphrasing information from it in their Response to Amended Demand for
4 Arbitration for Counterclaims. Plaintiffs and their counsel referred to and attached their Response
5 to briefing both in the arbitration and this action.

6 **E. Limited Disqualification is Necessary.**

7 58. Disqualification may be necessary to prevent disclosure of confidential
8 information that may be used to an adverse party's disadvantage. *Nev. Yellow Cab Corp. v.*
9 *Eighth Jud. Dist. Ct.*, 123 Nev. 44, 53, 152 P.3d 717, 743 (2007).

10 59. "Where the 'asserted course of conduct by counsel threatens to affect the integrity
11 of the adversarial process, [the court] should take appropriate measures, including
12 disqualification, to eliminate such taint.'" *Richards v. Jain*, 168 F. Supp. 2d 1195, 1200 (W.D.
13 Wash. 2001) (modifications in original) (quoting *MMR/Wallace Power & Indus., Inc. v. Thames*
14 *Assoc.*, 764 F. Supp. 712, 718 (D. Conn. 1991)); *cf. Clark v. Superior Court*, 196 Cal. App. 4th
15 37, 55 (Cal. App. 2011) (describing disqualification "as a prophylactic measure to prevent future
16 prejudice to the opposing party from information the attorney should not have possessed").

17 60. Where privilege information has been disclosed and misused, doubts should
18 generally be resolved in favor of disqualification. *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200,
19 1205, 14 P.3d 1266, 1269 (2000).

20 61. The Nevada Supreme Court has found that "there are situations where a lawyer
21 who has been privy to privileged information improperly obtained from the other side must be
22 disqualified." *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 698, 262 P.3d 720,
23 726 (2011).

24 62. The Court "has the power, under appropriate circumstances, to disqualify an
25 attorney even though he or she has not violated a specific disciplinary rule." *In re Meador*, 968
26 S.W. 2d 346, 351 (Tex. 1998).

27 63. When determining whether to disqualify an attorney who received an opponent's
28 privileged information outside the course of discovery, the trial court should consider, in addition

1 to "all the facts and circumstances to determine whether the interests of justice require
2 disqualification," the following non-exclusive factors:

- 3 1) Whether the attorney knew or should have known that the
4 material was privileged;
- 5 2) The promptness with which the attorney notifies the other
6 side that he or she has received its privileged information;
- 7 3) The extent to which the attorney reviews and digests the
8 privileged information;
- 9 4) The significance of the privileged information; i.e., the
10 extent to which its disclosure may prejudice the movant's
11 claim or defense, and the extent to which return of the
documents will mitigate that prejudice;
- 12 5) The extent to which movant may be at fault for the
13 unauthorized disclosure; [and]
- 14 6) The extent to which the nonmovant will suffer prejudice
15 from the disqualification of his or her attorneys.

16 *Merits Incentives*, 127 Nev. at 699, 262 P.3d at 726-27 (citations and quotation marks omitted).

17 64. While it is unclear how the Memorandum came to be in the boxes of Plaintiffs'
18 personal effects delivered to Bendavid's office on December 4, 2018, it is apparent that the
19 Memorandum was not from Plaintiffs' offices and that it was not Plaintiffs' document. Therefore,
20 *Merits Incentives* applies.

21 65. Considering the *Merits Incentives* factors, the Court concludes that Berkley's pro
22 hac shall be revoked.

- 23 i. ***Merits Incentives Factors 1 & 2: Plaintiffs knew or should have known that the
24 Memorandum was privileged; Plaintiffs failed to notify Get Fresh.***

25 66. The Court initially determined that the Memorandum is facially privileged. (*See*
26 Order on Pls.' Mot. to Clarify the Procedure Re: Privilege Determination, Jan. 7, 2020 (based
27 upon Dec. 9, 2019 hearing) ¶ 1.)

28 67. Following an *in camera* review on January 21, 2020, the Court confirmed that the
Memorandum is privileged.

68. Given the way the Memorandum appeared in Plaintiffs' possession, it was
appropriate for counsel at the time to have either sequestered the Memorandum or made a

1 notification. Plaintiffs did not sequester or notify Defendants of their receipt of the Memorandum
2 in December 2018, as required under *Merits Incentives*.

3 69. It is not credible that the Plaintiffs believed the Memorandum was a threat
4 delivered to them, because it revealed not only Get Fresh's strengths and weaknesses, but also the
5 options for potential resolution and plans. (Jan. 22, 2020 Hr'g Tr. 240:19-22.)

6 70. Counsel for Plaintiffs, Fox Rothschild and Stern & Eisenberg, became involved in
7 March of 2019, and Plaintiffs' case file, including the Memorandum, was transferred to
8 Fox Rothschild and Stern & Eisenberg at that time. Neither Fox Rothschild nor Stern &
9 Eisenberg sequestered the Memorandum or notified Defendants of their possession of the
10 Memorandum in March 2019.

11 71. Plaintiffs did not sequester the Memorandum or notify Defendants of their
12 possession of the Memorandum prior to discussing, quoting, and attaching it to their Reply in
13 Support of Motion to Lift Stay and Amend the Complaint on August 1, 2019.

14 72. Once Get Fresh notified Plaintiffs of their claims of privilege and protection
15 concerning the Memorandum on August 2, 2019, the Memorandum should have been sequestered
16 and not used for any purpose.

17 ***ii. Merits Incentives Factor 3: Plaintiffs' counsel extensively reviewed and digested***
18 ***the privileged Memorandum, even after Get Fresh asserted privilege and***
protection and after the Court struck the Memorandum.

19 73. On August 5, 2019, the Court struck Exhibit T to Plaintiffs' Reply in Support of
20 Motion to Lift Stay and Amend the Complaint, *i.e.*, the Memorandum. The Court also directed
21 Plaintiffs to not use the Memorandum for any purpose until Get Fresh's claims of privilege and
22 protection was resolved. The Court tried to be clear that it would rule on Get Fresh's claims of
23 privilege and protection during an *in camera* review, as opposed to counsel filing the document
24 with the Court's electronic filing system.

25 74. Rather than sequester the Memorandum, Plaintiffs repeatedly relied upon the
26 Memorandum to argue that it was not subject to privilege or protection.

1 75. There is no credible explanation for Plaintiffs' use of the Memorandum in the
2 Response filed in the arbitration on August 12, 2019, utilizing exact language from the
3 Memorandum which the Court has determined is privileged.

4 76. The explanation by counsel Berkley and Connot that the quotes from the
5 Memorandum were quoted and embedded in their minds because of the briefing filed in this
6 Court on August 1, 2019 and August 4, 2019 after notification by the Defendants of the claims of
7 privilege and protection is of deep concern to the Court and militates in favor of disqualification.

8 77. Based upon the information that has been provided to the Court, it appears that the
9 only person in whom the Memorandum is embedded in the brain of is Berkley.

10
11 **iii. Merits Incentives Factor 4: Plaintiffs elected to employ the Memorandum as a**
12 **playbook for their conduct in this action and the arbitration**

13 78. Plaintiffs' August 12, 2019 Response is their operating pleading in the arbitration.
14 Plaintiffs' possession and use of the Memorandum has, and continues to, prejudice Get Fresh.

15 79. Plaintiffs incorporated the Memorandum into their pleading and have used it to
16 prosecute their claims (including, as the basis for their extensive discovery requests and motions
17 for advancement and summary judgment in the arbitration). As a result, the return of the
18 Memorandum to Get Fresh would not mitigate the prejudice to Get Fresh or excise the taint
19 permeating throughout the arbitration from Plaintiffs' improper use of the content of the
20 privileged Memorandum.

21 **iv. Merits Incentives Factor 5: There is no evidence that Get Fresh is at fault for**
22 **the unauthorized disclosure of the Memorandum**

23 80. The Court is not commenting on how the Memorandum came to be in Plaintiffs'
24 possession because it is not of import in making a determination for disqualification.

25 81. Once Defendants became aware that Plaintiffs possessed the Memorandum on
26 August 1, 2019, Defendants took immediate action to protect their privilege and keep it out of the
27 Court's record.
28

1 v. ***Merits Incentives Factor 6: Plaintiffs' prejudice from disqualification is limited***

2 82. Fox Rothschild's entire representation of Plaintiffs is tainted by Plaintiffs'
3 possession and use of the Memorandum. Plaintiffs wove the Memorandum into their operative
4 pleading in the arbitration.

5 83. The inability of counsel to extricate privileged information from his or her mind
6 supports disqualification. *See, e.g., Matter of Beiny*, 129 A.D. 2d 126, 141-44 (N.Y. App. 1987)
7 (explaining that use of privileged material warrants disqualification: "While documents may be
8 effectively suppressed, the information gathered from them cannot be so easily contained. We
9 simply do not know whether the information acquired from the [privileged] files will
10 subsequently be used by [counsel], for even if [counsel] attempts to abide by the . . . suppression
11 order, there is no way of assuring that the tainted knowledge will not subtly influence its future
12 conduct of the litigation."); *McDermott Will & Emery LLP v. Superior Court*, 10 Cal. App. 5th
13 1083, 1124-25 (Cal. App. 2017) ("But the court's order could not prevent Gibson Dunn from
14 using the knowledge it acquired by carefully reviewing and analyzing the e-mail even if the e-
15 mail itself is no longer available to the firm. Even after a trial court has taken remedial action to
16 protect the privilege, 'disqualification still serves the useful purpose of eliminating from the case
17 the attorney who could most effectively exploit the unfair advantage [acquired through the earlier
18 review and use of the inadvertently disclosed, privileged materials].'"); *Clark*, 196 Cal. App. 4th
19 at 54-55 (noting that counsel's review of the privileged material would lead to "inevitable
20 questions about the sources of [counsel's] knowledge (even if [counsel] in fact obtained such
21 knowledge from legitimate sources) could undermine the public trust and confidence in the
22 integrity of the adjudicatory process"); *Rico v. Mitsubishi Motors Corp.*, 171 P.3d 1092 (Cal.
23 2007) (affirming disqualification where counsel's use of the privileged information was so
24 extensive, "the damage caused by [the] use and dissemination of the notes was irreversible").

25 84. Based upon Berkley's testimony and the evidence presented, the Memorandum is
26 embedded in his mind such that he is unable to extricate it from his knowledge of the case.

27 85. Although Connot's examination of Goldberg during the evidentiary hearing
28 utilized the Memorandum, such use was limited and not a wholesale use of the Memorandum.

1 Accordingly, Connot's mere use of the document in examining Goldberg does not rise to the level
2 of Connot's disqualification.

3 86. Based upon the evidence presented, including Even Barenbaum's circulation of the
4 Memorandum to Plaintiffs and counsel on July 31, 2019, it would be better if Stern & Eisenberg,
5 including, but not limited to, Barenbaum, did not participate in this action or any related actions
6 going forward.

7 **F. Sanctions are Necessary.**

8 87. This Court has broad discretion to enter sanctions for litigation misconduct. *Young*
9 *v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93,787 P.2d 777, 780 (1990).

10 88. The Nevada Supreme Court identified the pertinent, non-exclusive factors for the
11 district court to consider when considering the ultimate sanction, dismissal with prejudice, in
12 *Young v. Johnny Ribeiro Building, Inc.* (the "*Ribeiro* factors"):

13 [1] [T]he degree of willfulness of the offending party[;]

14 [2] [T]he extent to which the non-offending party would be prejudiced by a
15 lesser sanction[;]

16 [3] [T]he severity of the sanction of dismissal relative to the severity of the
discovery abuse[;]

17 [4] [W]hether any evidence has been irreparably lost[;]

18 [5] [T]he feasibility and fairness of alternative, less severe sanctions, such as
19 an order deeming facts relating to improperly withheld or destroyed
evidence to be admitted by the offending party[;]

20 [6] [T]he policy favoring adjudication on the merits[;]

21 [7] [W]hether sanctions unfairly operate to penalize a party for the misconduct
22 of his or her attorney[;] and

23 [8] [T]he need to deter both the parties and future litigants from similar abuses.

24 *Id.* at 93, 787 P.2d at 780.

25 89. Sanctions are necessary here to "deter and punish those who abuse the judicial
26 process." *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 678, 263 P.3d 224, 228 (2011)
27 (quoting *Red Carpet Studios Div. of Source Advan. v. Sater*, 465 F.3d 642, 645 (6th Cir. 2006)).

28 90. Considering the *Ribeiro* factors, the Court concludes that sanctions are appropriate.

1 91. Plaintiffs willfully disregarded Get Fresh's claims of privilege and protection on
2 August 2, 2019, and this Court's subsequent orders that the Memorandum be sequestered and not
3 used for any purpose, by incorporating the exact language from the Memorandum into their
4 Response in the arbitration, as well as relying upon the substance of the Memorandum to argue
5 that it was not privileged in this action.

6 92. While this Court declines to strike Plaintiffs' pleadings filed in this action, it is
7 necessary to discharge the arbitration panel, strike all documents in the arbitration, and order the
8 refiling of all documents in the arbitration. Plaintiffs and their counsel used the Memorandum in
9 their foundational pleading in the arbitration: their Response and Counterclaims. Plaintiffs
10 utilized information contained in the Memorandum since the beginning of the substantive
11 arbitration, including to support their broad discovery requests and claim for advancement.

12 93. "It is well settled that dismissal is warranted where, as here, a party has engaged
13 deliberately in deceptive practices that undermine the integrity of judicial proceedings: 'courts
14 have inherent power to dismiss an action when a party has willfully deceived the court and
15 engaged in conduct utterly inconsistent with the orderly administration of justice.'" *Anheuser-*
16 *Busch, Inc. v. Nat. Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995) (quoting *Wyle v. R.J.*
17 *Reynolds Indus., Inc.*, 709 F.2d 585, 591 (9th Cir. 1983)).

18 94. When Plaintiffs found out about the Memorandum in late January or early
19 February 2019, they recognized the Memorandum was not theirs, had not been in their offices,
20 and should not have been in the boxes that were delivered to their counsel. Plaintiffs did nothing
21 to stop their attorneys from utilizing the Memorandum in this action and the arbitration.

22 95. There is a significant need to deter Plaintiffs and future litigants from similar abuse
23 and misuse of an adversary's privileged information. Plaintiffs and their counsel acted in
24 contravention of *Merits Incentives*, this Court's orders, and Get Fresh's claims of privilege and
25 protection.

26 96. Any conclusion of law stated above that is more appropriately deemed a finding of
27 fact shall be so deemed.

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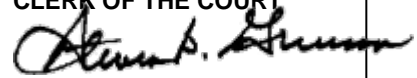
1 5. This Decision and Order; Findings of Fact and Conclusions of Law is hereby
2 STAYED for fifteen (15) days of its entry, as requested by Plaintiffs on February 14, 2020.⁴

3 IT IS SO ORDERED.

4 DATED: 2 Mar 2020

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6 ELIZABETH GONZALEZ
7 EIGHTH JUDICIAL DISTRICT COURT
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⁴ This stay includes a stay of the deadline for Get Fresh and Fresh Mix to file their application for attorneys' fees and costs.



1 **ASTA**
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22 *Attorneys for Plaintiffs Paul Lagudi and William Todd Ponder*

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DISTRICT COURT
CLARK COUNTY, NEVADA

PAUL LAGUDI, an individual; and
WILLIAM TODD PONDER, an
individual.,

Plaintiffs,

vs.

FRESH MIX, LLC, a Delaware
limited liability company; GET
FRESH SALES, INC., a Nevada
corporation; DOES 1 through 25;
and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

Case No. A-18-785391-B

Dept. No. XI

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
Plaintiffs Paul Lagudi and William Todd Ponder
2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Elizabeth G. Gonzalez

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellants Paul Lagudi and William Todd Ponder

DANIEL F. POLSENBERG
JOEL D. HENRIOD
ABRAHAM G. SMITH
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LUCY C. CROW (SBN 15,203)
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135
(702) 262-6899

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents Fresh Mix, LLC and Get Fresh Sales, Inc.

JAMES J. PISANELLI
DEBRA L. SPINELLI
AVA M. SCHAEFER
PISANELLI BICE PLLC
400 S. 7th Street, Suite 300
Las Vegas, Nevada 89101
(702) 214-2100

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

“Complaint,” filed December 3, 2018

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action stems from a dispute over the operation and revenue sharing of two intertwined produce companies. The district court sent the matter to arbitration and stayed the litigation. Defendants initiated arbitration proceedings and hired Fox Rothschild as counsel.

Plaintiffs then moved to amend the complaint and lift the stay, and defendants opposed plaintiffs’ motion. On August 1, 2019, plaintiffs filed their Reply Brief in Support of Motion to Lift Stay and Amend Complaint in the court action pending before Judge Gonzalez, which attached a document referenced by both parties as the “Memo.” The Court partially granted and partially denied plaintiffs’ Motion to Amend the Complaint and Lift the Stay, permitting plaintiffs to file the Amended Complaint, but retaining jurisdiction over the books and records and receivership issues only, and compelling the remaining claims to arbitration.

Following the alleged termination of plaintiffs, defendants delivered in boxes items from plaintiffs’ offices at Fresh Mix. Plaintiffs’ former counsel saw on top of those items a memo, which contained what counsel viewed as an intentional threat to plaintiffs. When transitioning the case to Fox Rothschild LLP, former counsel described the circumstances of the delivery of the memo as well as his impressions of the document. Plaintiffs later attached the memo to a motion to amend the complaint. Defendants asserted attorney-client privilege and asked for sanctions related to plaintiffs’ possession and use of the memo. After an evidentiary hearing, the district court sustained the privilege and imposed sanctions, including striking counsel’s pro hac vice admission, ordering the destruction of the memo and all references to it, and dissolving the arbitration panel and vacating all of its orders, forcing the parties to begin arbitration anew before a different panel. Plaintiffs appeal from these orders.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

N/A

12. Indicate whether this appeal involves child custody or visitation:

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This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Undersigned counsel is not aware of any circumstances that make settlement impossible.

Dated this 31st day of March, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Abraham G. Smith

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CASE SUMMARY**CASE NO. A-18-785391-B**

Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

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Location: **Department 11**
 Judicial Officer: **Gonzalez, Elizabeth**
 Filed on: **12/03/2018**
 Cross-Reference Case Number: **A785391**

CASE INFORMATIONCase Type: **Other Business Court Matters**

Case
 Status: **12/03/2018 Open**



DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-785391-B
 Court Department 11
 Date Assigned 12/03/2018
 Judicial Officer Gonzalez, Elizabeth

PARTY INFORMATION


		<i>Lead Attorneys</i>
Plaintiff	Lagudi, Paul	Connot, Mark J <i>Retained</i> 702-262-6899(W)
	Ponder, William Todd	Connot, Mark J <i>Retained</i> 702-262-6899(W)
Defendant	Fresh Mix LLC	Pisanelli, James J <i>Retained</i> 702-214-2100(W)
	Get Fresh Sales Inc	Pisanelli, James J <i>Retained</i> 702-214-2100(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

12/03/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Initial Appearance Fee Disclosure</i>
12/03/2018	 Complaint (Business Court) Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Complaint</i>
12/03/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Summons</i>
12/03/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Summons</i>

CASE SUMMARY

CASE NO. A-18-785391-B

12/05/2018	 Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to File Exhibit 1 to Motion for Preliminary Injunction and Ex Parte Application for Temporary Restraining Order Under Seal on Order Shortening Time</i>
12/05/2018	 Ex Parte Application Party: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Plaintiffs, Paul Lagudi and William Todd Ponder's Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time</i>
12/06/2018	 Receipt of Copy Filed by: Plaintiff Lagudi, Paul <i>Receipt of Copy</i>
12/07/2018	 Affidavit of Service Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Affidavit of Service</i>
12/07/2018	 Affidavit of Service Filed By: Plaintiff Lagudi, Paul <i>Affidavit of Service</i>
12/10/2018	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC <i>Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time and Exhibits A and B Thereto</i>
12/10/2018	 Opposition to Motion Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time</i>
12/11/2018	 Temporary Restraining Order Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Temporary Restraining Order</i>
12/11/2018	 Notice of Posting Bond Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Bond on Behalf of Plaintiffs</i>
12/11/2018	 Notice of Entry Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Entry of Temporary Restraining Order</i>
12/12/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Initial Appearance Fee Disclosure</i>
12/13/2018	 Motion to Dismiss Filed By: Defendant Fresh Mix LLC <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration on an Order Shortening Time</i>

CASE SUMMARY

CASE NO. A-18-785391-B

12/13/2018	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC <i>Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration and Seal Exhibit 1 Thereto</i>
12/14/2018	 Filed Under Seal Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix LLC and Get Fresh Sales Inc's Motion to Dismiss or in the Alternative to Stay and to Compel Arbitration on an Order Shortening Time</i>
12/17/2018	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Plaintiffs' Motion for TRO and Preliminary Injunction and Motion to Seal Exhibit 1 to Motion for TRO</i>
12/18/2018	 Filed Under Seal Filed By: Attorney Pisanelli, James J <i>Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time</i>
01/03/2019	 Stipulation Filed by: Plaintiff Lagudi, Paul <i>Stipulation and Order to Continue Plaintiffs' Hearing on Preliminary Injunction and Extend the Temporary Restraining Order Entered December 11, 2018</i>
01/09/2019	 Opposition to Motion Filed By: Plaintiff Lagudi, Paul <i>Opposition to Defendants' Motion to Dismiss or in the Alternative, to Stay and to Compel Arbitration on an Order Shortening Time</i>
01/14/2019	 Order Filed By: Plaintiff Lagudi, Paul <i>Order Granting Plaintiffs' Motion to File Exhibit 1 to Motion for Preliminary Injunction and Ex Parte Application for Temporary Restraining Order Under Seal</i>
01/14/2019	 Order Granting Motion Filed By: Defendant Fresh Mix LLC <i>Order Granting Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction and Exhibits A and B Thereto</i>
01/15/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order Granting Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction and Exhibits A and B Thereto</i>
01/15/2019	 Reply in Support Filed By: Defendant Fresh Mix LLC <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Reply in Support of Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration on an Order Shortening Time</i>
01/15/2019	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC <i>Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Reply in Support of Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration</i>

CASE SUMMARY

CASE NO. A-18-785391-B

01/16/2019	 Filed Under Seal Filed By: Defendant Fresh Mix LLC <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc's Reply in Support of Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration on an Order Shortening Time</i>
01/17/2019	 Order Granting Motion Filed By: Defendant Fresh Mix LLC <i>Order Granting Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Reply in Support of Motion to Dismiss Or, in the Alternative, to Stay and to Compel Arbitration</i>
01/18/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order Granting Motion to Redact Reply in Support of Motion to Dismiss Or, in the Alternative, to Stay and to Compel Arbitration</i>
01/25/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Defendants' Motion to Dismiss or Stay and to Compel Arbitration</i>
02/01/2019	 Notice Filed By: Defendant Fresh Mix LLC <i>Notice of Submission of Proposed Order on Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration</i>
02/01/2019	 Order Filed By: Defendant Fresh Mix LLC <i>Order Regarding Defendants' Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration</i>
02/01/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order Regarding Defendants' Motion to Dismiss Or, in the Alternative, to Stay and to Compel Arbitration</i>
03/19/2019	 Order
04/12/2019	 Motion to Intervene <i>Motion to Intervene on an Order Shortening Time</i>
05/16/2019	 Notice of Appearance Party: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Appearance</i>
05/16/2019	 Status Report Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Status Report</i>
05/16/2019	 Status Report Filed By: Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Status Report</i>
07/03/2019	 Substitution of Attorney Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Substitution of Counsel</i>










CASE SUMMARY

CASE NO. A-18-785391-B

07/15/2019	 Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Lift Stay and Amend Complaint</i>
07/15/2019	 Exhibits Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Exhibits to Motion to Lift Stay and Amend Complaint</i>
07/15/2019	 Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Redact Exhibit 1 to Plaintiff's Motion to Lift the Stay and Amend the Complaint</i>
07/17/2019	 Certificate of Service Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Certificate of Service</i>
07/17/2019	 Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Lift the Stay and Amend the Complaint on an Order Shortening Time</i>
07/17/2019	 Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Redact Exhibit 1 to Plaintiffs' Motion to Lift the Stay and Amend the Complaint on an Order Shortening Time</i>
07/17/2019	 Filed Under Seal Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Exhibit 1 to Motion to Lift Stay and Amend Complaint</i>
07/25/2019	 Opposition to Motion Filed By: Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time</i>
07/25/2019	 Motion to Seal/Redact Records Filed By: Defendant Get Fresh Sales Inc <i>Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time and Exhibit B Thereto, and (2) Seal Exhibit D Thereto</i>
07/26/2019	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time and Exhibit B Thereto, and (2) Seal Exhibit D Thereto</i>
07/26/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/26/2019	 Filed Under Seal Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time</i>

CASE SUMMARY

CASE NO. A-18-785391-B

08/01/2019	<p>Reply to Motion</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Reply Brief in Support of Motion to Lift Stay and Amend Complaint</i></p>
08/01/2019	<p>Exhibits</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Exhibits to Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Lift the Stay and Amend the Complaint</i></p>
08/01/2019	<p> Motion to Seal/Redact Records</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Motion to Seal Exhibits X-CC and Exhibit FF to Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint</i></p>
08/01/2019	<p> Filed Under Seal</p> <p>Filed By: Attorney Connot, Mark J</p> <p><i>Exhibits X, Y, Z, AA, BB, CC, and FF to Plaintiffs; Reply to Defendants' Opposition to Plaintiffs' Motion to Lift the Stay and Amend the Complaint sealed per 8/1/19 Motion to Seal Exhibits X-CC and Exhibit FF to Plaintiffs; Reply Brief in Support of Motion to Lift Stay and Amend Complaint</i></p>
08/01/2019	<p> Redacted Version</p> <p><i>PER MOTION PENDING ORDER 08/09/19 Redacted version of Reply to Motion</i></p>
08/02/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
08/02/2019	<p> Motion to Seal/Redact Records</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Motion to Redact Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint</i></p>
08/02/2019	<p> Filed Under Seal</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Reply Brief in Support of Motion to Lift Stay and Amend Complaint Confidential - Filed Under Seal (Sealed per Filed Motion on 08/2/2019)</i></p>
08/02/2019	<p> Clerk's Notice of Hearing</p> <p><i>Clerk's Notice of Hearing</i></p>
08/04/2019	<p>Opposition to Motion</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay this Action on an Order Shortening Time</i></p>
08/04/2019	<p> Redacted Version</p> <p><i>(See minutes 8/26/19) Redacted version of Opposition to Motion</i></p>
08/08/2019	<p> Status Report</p> <p>Filed By: Defendant Get Fresh Sales Inc</p> <p><i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Status Report</i></p>
08/09/2019	<p> Order</p> <p>Filed By: Defendant Get Fresh Sales Inc</p> <p><i>Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s</i></p>

CASE SUMMARY

CASE NO. A-18-785391-B

Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time and Exhibit B Thereto, and (2) Seal Exhibit D Thereto

08/09/2019



Motion to Seal/Redact Records

Filed By: Defendant Get Fresh Sales Inc

Motion to Redact: (1) Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint, and (2) Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time and Exhibit 1 Thereto on an Order Shortening Time

08/09/2019



Notice of Entry of Order

Filed By: Defendant Get Fresh Sales Inc

Notice of Entry of Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time and Exhibit B Thereto, and (2) Seal Exhibit D Thereto

08/15/2019



Notice

Filed By: Defendant Fresh Mix LLC

Notice of Submission of Proposed Orders on (1) Plaintiffs Paul Lagudi and William Todd Ponder's Motion to Lift Stay and Amend Complaint, and (2) Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action

08/15/2019



Opposition to Motion

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Plaintiffs' Opposition to Defendants' Motion to Redact: (1) Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint; and (2) Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiff's Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time and Exhibit 1 Thereto

08/19/2019



Transcript of Proceedings

Transcript of Proceedings: Hearing on Plaintiffs' Motion to Lift Stay, Amend Complaint, And Redact Exhibit T to Plaintiffs' Motion

08/19/2019



Opposition

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Plaintiffs' Opposition to Defendants' Notice of Submission of Proposed Orders on: (1) Plaintiffs' Motion to Lift the Stay and Amend Complaint; and (2) Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T thereto; and (2) Stay this Action

08/20/2019



Motion to Associate Counsel

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Motion to Associate Counsel

08/20/2019



Clerk's Notice of Hearing

Notice of Hearing

08/22/2019



Order

Filed By: Defendant Fresh Mix LLC

Order Regarding Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time

08/22/2019



Notice of Entry of Order

CASE SUMMARY

CASE NO. A-18-785391-B

	<p>Filed By: Defendant Fresh Mix LLC</p> <p><i>Notice of Entry of Order Regarding Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time</i></p>
08/23/2019	<p> Order</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Order on Plaintiffs Paul Lagudi and William Todd Ponder's Motion to Lift Stay and Amend Complaint</i></p>
08/23/2019	<p> Notice of Entry of Order</p> <p>Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd</p> <p><i>Notice of Entry of Order on Plaintiffs Paul Lagudi and William Todd Ponder's Motion to Lift Stay and Amend Complaint</i></p>
08/23/2019	<p> Motion to Disqualify Attorney</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Motion to Disqualify Fox Rothschild LLP</i></p>
08/23/2019	<p> Motion to Seal/Redact Records</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>(9/3/19 Withdrawn) Motion to Redact Motion to Disqualify Fox Rothschild LLP; Redact Exhibit 1 Thereto; and Seal Exhibits 4-7 Thereto</i></p>
08/26/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
08/26/2019	<p> Motion</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information; and Application for an Order Shortening Time</i></p>
08/26/2019	<p> Motion to Seal/Redact Records</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Motion to (1) Redact Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Seal Exhibits 3-5 Thereto</i></p>
08/26/2019	<p> Amended Certificate of Service</p> <p>Party: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Amended Certificate of Service</i></p>
08/27/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
08/27/2019	<p> Filed Under Seal</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Motion To Disqualify Fox Rothschild LLP</i></p>
08/27/2019	<p> Filed Under Seal</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p> <p><i>Motion For Claw Back, Discovery, And Sanctions Related To Plaintiffs And Their Counsel's Improper Possession And Use Of Exhibit T And Other Privileged And Confidential Information; And Application For An Order Shortening Time</i></p>

CASE SUMMARY

CASE NO. A-18-785391-B

08/29/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Defendants' Motion to Redact and Motion to Stay Action 8/26/19</i>
08/29/2019	 Notice Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Notice of Submission Regarding Revised Redactions</i>
08/30/2019	 Response Filed by: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Defendants Fresh Mix, LLC And Get Fresh Sales, Inc.'s Response To Plaintiffs' Motion To Associate Counsel (Brian A. Berkley)</i>
09/03/2019	 Amended Filed By: Defendant Get Fresh Sales Inc <i>Amended Motion to Redact Motion to Disqualify Fox Rothschild LLP, Redact Exhibit 1 Thereto, and Seal Exhibits 6 and 7 Thereto</i>
09/03/2019	 Notice of Withdrawal of Motion Filed By: Defendant Get Fresh Sales Inc <i>Notice of Withdrawal of Motion to Redact Motion to Disqualify Fox Rothschild LLP; Redact Exhibit 1 Thereto; and Seal Exhibits 4-7 Thereto</i>
09/05/2019	 Motion to Seal/Redact Records Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Seal Exhibits A, B, and C Attached Thereto</i>
09/06/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/08/2019	 Opposition to Motion Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Plaintiffs' Opposition to Defendants' Emergency Motion to Strike the Fresh Mix Memo</i>
09/10/2019	 Order Filed By: Defendant Fresh Mix LLC <i>Order On Motion to Redact: (1) Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint, and (2) Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time and Exhibit 1 Thereto</i>
09/10/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Motions to Redact and Plaintiffs' Motion to Associate Counsel 9/9/19</i>
09/10/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order On Motion to Redact: (1) Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint, and (2) Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action on an Order Shortening Time and Exhibit 1 Thereto</i>
09/12/2019	 Clerk's Notice of Hearing

CASE SUMMARY

CASE NO. A-18-785391-B

Notice of Hearing

09/16/2019



Motion to Seal/Redact Records

Filed By: Defendant Fresh Mix LLC

Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

09/16/2019



Clerk's Notice of Hearing

Notice of Hearing

09/17/2019



Order

Filed By: Defendant Fresh Mix LLC

Order on Motion to (1) Redact Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Seal Exhibits 3-5 Thereto

09/17/2019



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC

Notice of Entry of Order on Motion to (1) Redact Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Seal Exhibits 3-5 Thereto

09/18/2019



Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Order on (1) Plaintiffs' Motion to Redact Exhibit 1 to Plaintiffs' Motion to Lift the Stay and Amend the Complaint on an Order Shortening Time; and (2) Plaintiffs' Motion to Seal Exhibits X-CC and Exhibit FF to Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint on an Order Shortening Time

09/19/2019



Notice of Entry of Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Notice of Entry of Order on (1) Plaintiffs' Motion to Redact Exhibit 1 to Plaintiffs' Motion to Lift the Stay and Amend the Complaint on an Order Shortening Time; and (2) Plaintiffs' Motion to Seal Exhibits X-CC and Exhibit FF to Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint on an Order Shortening Time

09/19/2019



Amended Complaint

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Verified Amended Complaint and Derivative Action

09/19/2019



Motion for Discovery

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Plaintiffs' Motion for Limited Discovery in Connection with Defendants' Claim of Privilege Over the Fresh Mix Memo on an Order Shortening Time

09/19/2019



Notice of Compliance

Party: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Notice of Compliance and Motion to Accept Plaintiffs' Opposition Under Seal and Exhibits A and B Attached Thereto on an Order Shortening Time

09/19/2019



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Verified Amended Complaint and Derivative Action 9/18/19 Order

09/20/2019



Opposition to Motion

Filed By: Defendant Fresh Mix LLC

CASE SUMMARY

CASE NO. A-18-785391-B

Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to (1) Plaintiffs' Notice of Compliance and Motion to Accept Plaintiffs' Opposition Under Seal and Exhibits A and B Attached Thereto, and (2) Plaintiffs' Motion for Limited Discovery in Connection with Defendants' Claim of Privilege over the Fresh Mix Memo

09/24/2019



Order

Filed By: Defendant Fresh Mix LLC

Order Granting Defendants' Emergency Motion to (1) Strike Exhibit A to Plaintiffs' Opposition to Defendants Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo, and (2) Strike All References to and Discussion of Its Substance in Plaintiffs' Opposition on an Order Shortening Time

09/25/2019



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC

Notice of Entry of Order Granting Defendants' Emergency Motion to (1) Strike Exhibit A to Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo, and (2) Strike All References to and Discussion of Its Substance in Plaintiffs' Opposition on an Order Shortening Time

09/25/2019



Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Order on (1) Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Plaintiffs' Counter-Motion for Discovery Related to Fresh Mix Memo

09/25/2019



Transcript of Proceedings

Transcript of Proceedings: Hearing on All Pending Motions 9, 23, 2019

09/25/2019



Notice of Entry of Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Notice of Entry of Order on (1) Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Plaintiffs' Counter-Motion for Discovery Related to Fresh Mix Memo

09/26/2019



Opposition to Motion

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Plaintiffs' Opposition to Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

09/26/2019



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Motion to File Under Seal Exhibit A to Plaintiffs' Opposition to Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

09/27/2019



Clerk's Notice of Hearing

Notice of Hearing

09/27/2019



Filed Under Seal

Plaintiffs' Opposition to Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

09/30/2019



Motion to Compel

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

CASE SUMMARY

CASE NO. A-18-785391-B

Plaintiffs' Motion to Compel Production of Books and Records

09/30/2019



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Motion to Redact Plaintiffs' Motion to Compel Production of Books and Records, and Seal Exhibits A, B, G, and I Thereto

09/30/2019



Exhibits

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Exhibits to Plaintiffs' Motion to Compel Production of Books and Records

09/30/2019



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul

Plaintiff's Motion to Compel Production of Books and Records 9/30/19 Motion to Seal/Redact Records

09/30/2019



Clerk's Notice of Hearing

Notice of Hearing

09/30/2019



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul

Exhibits to Plaintiffs' Motion to Compel Production of Books and Records 9/30/19 Motion to Seal/Redact Records

10/02/2019



Clerk's Notice of Hearing

Notice of Hearing

10/03/2019



Status Report

Filed By: Defendant Fresh Mix LLC

Fresh Mix, LLC and Get Fresh Sales, Inc.'s Status Report Regarding Sanctions Discovery and the Briefing on the Motion to Disqualify Fox Rothschild LLP

10/03/2019



Status Report

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Plaintiffs' Status Report Regarding Court-Ordered Discovery and Status of Defendants' Pending Motions

10/04/2019



Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Order on Plaintiffs' Motion to Associate Counsel

10/04/2019



Notice of Entry of Order

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

Notice of Entry of Order on Plaintiffs' Motion to Associate Counsel

10/08/2019



Notice of Non Opposition

Filed By: Defendant Fresh Mix LLC

Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Notice of Non-Opposition to Plaintiffs' Motion to File Under Seal Exhibit A to Plaintiffs' Opposition to Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

10/08/2019



Order

Filed By: Defendant Fresh Mix LLC

Order on Plaintiffs' Motion for Limited Discovery in Connection with Defendants' Claim of

CASE SUMMARY

CASE NO. A-18-785391-B

Privilege over the Fresh Mix Memo

10/08/2019



Order

Filed By: Defendant Fresh Mix LLC

Order Denying Plaintiffs' Motion to Accept Plaintiffs' Opposition Under Seal and Exhibits A and B Attached Thereto

10/08/2019



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC

Notice of Entry of Order Denying Plaintiffs' Motion to Accept Plaintiffs' Opposition under Seal and Exhibits A and B Attached Thereto

10/08/2019



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC

Notice of Entry of Order on Plaintiffs' Motion for Limited Discovery in Connection with Defendants' Claim of Privilege over the Fresh Mix Memo

10/10/2019



Response

Filed by: Defendant Fresh Mix LLC

Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s: (1) Response to Plaintiffs' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Seal Exhibits A, B, and C Attached Thereto, and (2) Reply in Support of Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

10/10/2019



Stipulation and Order

Filed by: Defendant Fresh Mix LLC

Stipulation and Order Regarding Plaintiffs' Motion to Compel Production of Books and Records

10/10/2019



Notice of Entry of Stipulation and Order

Filed By: Defendant Fresh Mix LLC

Notice of Entry of Stipulation and Order Regarding Plaintiffs' Motion to Compel Books and Records

10/18/2019



Opposition to Motion to Compel

Filed By: Defendant Fresh Mix LLC

Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records

10/18/2019



Appendix

Filed By: Defendant Fresh Mix LLC

Appendix in Support of Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records

10/18/2019



Appendix

Filed By: Defendant Fresh Mix LLC

Appendix in Support of Fresh Mix LLC and Get Fresh Sales Inc's Opposition to Plaintiffs' Motion to Compel Production of Books and Records

10/21/2019



Motion to Seal/Redact Records

Filed By: Defendant Fresh Mix LLC

Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records (2) Seal Exhibits 2, 3, 4, 6, 7, and 8 Thereto

10/21/2019

CASE SUMMARY

CASE NO. A-18-785391-B

	 Filed Under Seal Filed By: Defendant Get Fresh Sales Inc <i>Fresh Mix LLC and Get Fresh Sales INC's Opposition to Plaintiff's Motion to Compel Production of Books and Records</i>
10/21/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/22/2019	 Stipulation and Order Filed by: Defendant Fresh Mix LLC <i>Stipulation and Order to Continue Briefing and November 6-8, 2019 Hearings</i>
10/23/2019	 Notice of Entry of Stipulation and Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Stipulation and Order to Continue Briefing and November 6-8, 2019 Hearings</i>
10/24/2019	 Order Filed By: Defendant Fresh Mix LLC <i>Order on Amended Motion to Redact Motion to Disqualify Fox Rothschild LLP, Redact Exhibit 1 Thereto, and Seal Exhibits 6 and 7 Thereto</i>
10/24/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order on Amended Motion to Redact Motion to Disqualify Fox Rothschild LLP, Redact Exhibit 1 Thereto, and Seal Exhibits 6 and 7 Thereto</i>
10/28/2019	 Order Filed By: Defendant Fresh Mix LLC <i>Order on: (1) Plaintiffs' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Seal Exhibits A, B, and C Attached Thereto, and (2) Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo</i>
10/29/2019	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC <i>Notice of Entry of Order on: (1) Plaintiffs' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Seal Exhibits A, B, and C Attached Thereto, and (2) Defendants' Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo</i>
10/29/2019	 Verification Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Verification of William Todd Ponder</i>
10/29/2019	 Verification Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Verification of Paul Lagudi</i>
10/30/2019	 Reply in Support Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Plaintiffs' Reply Brief in Support of Motion to Compel Production of Books and Records</i>
10/30/2019	 Motion to Seal/Redact Records Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd

CASE SUMMARY

CASE NO. A-18-785391-B

Motion to Redact Plaintiffs' Reply Brief in Support of Motion to Compel Production of Books and Records

10/30/2019



Clerk's Notice of Hearing
Notice of Hearing

10/31/2019



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Plaintiff's Reply Brief in Support of Motion to Compel Production of Books and Records (from Motion dated 10/30/19)

11/03/2019



Motion for Leave to File

Party: Defendant Fresh Mix LLC
Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion for Leave to File Sur-Reply or, in the Alternative, to Strike Plaintiff's Reply

11/05/2019



Transcript of Proceedings

Transcript of Proceedings: Hearing on Plaintiffs' Motion to Compel Production of Books and Records

11/19/2019



Order

Filed By: Defendant Fresh Mix LLC
Order on Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion for Leave to File Sur-Reply or, in the Alternative, to Strike Plaintiffs' Reply

11/19/2019



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC
Notice of Entry of Order on Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion for Leave to File Sur-Reply or, in the Alternative, to Strike Plaintiffs' Reply

11/19/2019



Reply

Filed by: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records

11/19/2019



Motion to Seal/Redact Records

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibit 10 Thereto

11/20/2019



Clerk's Notice of Hearing
Notice of Hearing

11/20/2019



Filed Under Seal

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiff's Motion to Compel Production of Books and Records (Per Motion to (1) Redact Defendant's Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibit 10 Thereto

11/27/2019



Motion to Clarify

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to Clarify the Procedure Regarding Privilege Determination on an Order Shortening Time

CASE SUMMARY

CASE NO. A-18-785391-B

12/02/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Plaintiffs' Motion to Compel Production and Plaintiffs' Motion to Seal Motion to Compel</i>
12/05/2019	 Motion to Compel Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery on an Order Shortening Time</i>
12/05/2019	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Motion to Seal Exhibits 10-15 to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery</i>
12/05/2019	 Filed Under Seal Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Exhibits 10-15 of Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery on Order Shortening Time (File Under Seal) From Motion Dated 12/05/19</i>
12/05/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/05/2019	 Order Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Order on Plaintiffs' Motion to Compel Production of Books and Records</i>
12/05/2019	 Notice of Entry of Order Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Entry of Order on Plaintiffs' Motion to Compel Production of Books and Records</i>
12/06/2019	 Opposition to Motion Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Clarify the Procedure Regarding Privilege Determination</i>
12/08/2019	 Opposition to Motion to Compel Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Plaintiffs' Opposition to Defendants' Motion to Compel Sanctions Discovery on an Order Shortening Time</i>
12/08/2019	 Declaration Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Declaration of Brian A. Berkley in Support of Plaintiffs' Opposition to Defendants' Motion to Compel Sanctions Discovery on an Order Shortening Time</i>
12/08/2019	 Reply to Opposition Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Reply to Defendants' Opposition to Plaintiffs' Motion to Clarify the Procedure Regarding Privilege Determination</i>
12/10/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Motion to Clarify Procedure, Motion for Sanctions, Motion to Disqualify Fox Rothschild, and Motions to Compel</i>
12/11/2019	 Order

CASE SUMMARY

CASE NO. A-18-785391-B

	<p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibits 2, 3, 4, 6, 7, and 8 Thereto</i></p>
12/11/2019	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibits 2, 3, 4, 6, 7, and 8 Thereto</i></p>
12/16/2019	<p> Status Report</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Joint Status Report Regarding Court-Ordered Deposition Scheduling</i></p>
12/19/2019	<p> Transcript of Proceedings</p> <p><i>Transcript of Proceedings: Hearing to Reschedule Motion to Clarify Procedure, Motion for Sanctions, Motion to Disqualify Fox Rothschild, and Motions to Compel</i></p>
12/19/2019	<p> Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibit 10 Thereto</i></p>
12/19/2019	<p> Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Motion to Seal Exhibits 10-15 to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery</i></p>
12/20/2019	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibit 10 Thereto</i></p>
12/20/2019	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Motion to Seal Exhibits 10-15 to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery</i></p>
01/07/2020	<p> Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Plaintiffs' Motion to Clarify the Procedure Regarding Privilege Determination</i></p>
01/08/2020	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Plaintiffs' Motion to Clarify the Procedure Regarding Privilege Determination</i></p>
01/08/2020	<p> Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery</i></p>
01/08/2020	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc</p>

CASE SUMMARY

CASE NO. A-18-785391-B

Notice of Entry of Order on Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery

01/17/2020



Supplement to Opposition

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Supplemental Briefing in Opposition to the Disqualification of Fox Rothschild LLP

01/17/2020



Supplement to Opposition

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback

01/17/2020



Supplemental Brief

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification

01/17/2020



Appendix

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Appendix in Support of Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualifications

01/17/2020



Motion to Seal/Redact Records

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification; and (2) Seal Exhibits B, C, E, F, G, H, I, K, L, and M Thereto

01/20/2020



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to Redact Plaintiffs' Supplemental Briefing in Opposition to Disqualification on an Order Shortening Time

01/20/2020



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to File Under Seal Exhibits 1, 2, 3, 4 and 5 to Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback and as Incorporated into Plaintiffs' Supplemental Briefing in Opposition to Disqualification on an Order Shortening Time

01/20/2020



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to Redact Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback on an Order Shortening Time

01/20/2020



Objection

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Plaintiffs' Objections to Defendants' Witnesses for Evidentiary Hearing and Motion to Strike Witnesses

01/21/2020



Filed Under Seal

Exhibits 3, 4, and 5 to Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback and as Incorporated Into Plaintiffs' Supplemental Briefing in Opposition to Disqualification

01/21/2020



Filed Under Seal

Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualifications per 1/17/20 Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification; and (2) Seal Exhibits B, C, E, F, G,

CASE SUMMARY

CASE NO. A-18-785391-B

H, I, K, L, and M Thereto

01/21/2020



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Supplemental Briefing in Opposition to The Disqualification of Fox Rothschild LLP (Sealed per Filed Motion to Redact Plaintiffs' Supplemental Briefing in Opposition to Disqualification on an Order Shortening Time Filed on 1/20/2020)

01/21/2020



Filed Under Seal

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Plaintiffs' Supplemental Briefing in Opposition to Defendants's Motion for Clawback (Sealed oer Filed Motion to Redact Plaintiffs' Supplemntal Briefing in Opposition to Defendants' Motion for Clawback on an Order Shortening Filed on 1/20/20)

01/21/2020



Filed Under Seal

Exhibits 1 and 2 to Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback and as Incorporated Into Plaintiffs' Supplemental Briefing in Opposition to Disqualification

01/21/2020



Clerk's Notice of Hearing

Notice of Hearing

02/03/2020



Supplemental Brief

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions

02/03/2020



Motion to Seal/Redact Records

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions and Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5 6 and 7 Thereto

02/03/2020



Clerk's Notice of Hearing

Notice of Hearing

02/03/2020



Filed Under Seal

Plaintiff's Supplemental Brief in Opposition to Disqualification and Sanctions (Per Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions an Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6, and 7 Thereto)

02/03/2020



Filed Under Seal

Exhibits 2, 3, 4, 5 and 6 to Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions (Per Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions an Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6, and 7 Thereto)

02/03/2020



Filed Under Seal

Exhibit 7 to Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions - Part 1 of 3 (PP 1-300) (Per Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions an Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6, and 7 Thereto)

02/03/2020















Filed Under Seal

Exhibit 7 to Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions - Part 2 of 3 (PP 301-601) (Per Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions an Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6, and 7 Thereto)

CASE SUMMARY

CASE NO. A-18-785391-B

02/03/2020	 Filed Under Seal <i>Exhibit 7 to Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions - Part 3 of 3 (PP 602-872) (Per Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions an Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6, and 7 Thereto)</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Evidentiary Hearing - Day 1 1/22/2020</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Evidentiary Hearing - Day 2</i>
02/12/2020	 Response Filed by: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions</i>
02/12/2020	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions; and (2) Seal Exhibit A Thereto</i>
02/13/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/13/2020	 Filed Under Seal Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions</i>
02/19/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Evidentiary Hearing - Day 3</i>
02/20/2020	 Notice of Non Opposition Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Non-Opposition</i>
02/25/2020	 Order Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Order on Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification; and (2) Seal Exhibits, B, C, E, F, G, H, I, K, L, and M Thereto</i>
02/25/2020	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification; and (2) Seal Exhibits B, C, E, F, G, H, I, K, L, and M Thereto</i>
03/02/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Decision and Order; Findings of Fact and Conclusions of Law</i>

CASE SUMMARY

CASE NO. A-18-785391-B

03/02/2020	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Decision and Order; Findings of Fact and Conclusions of Law</i>
03/17/2020	 Notice of Association of Counsel Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Association of Counsel</i>
03/17/2020	 Order Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Order on Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions and Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5, 6 and 7 Thereto</i>
03/18/2020	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
03/18/2020	 Notice of Entry of Order Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Entry of Order</i>
03/19/2020	 Stipulation and Order Filed by: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Stipulation and Order to Extend Stay</i>
03/20/2020	 Notice of Entry of Order Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Notice of Entry of Stipulation and Order to Extend Stay</i>
03/27/2020	 Order Shortening Time Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd <i>Motion to Extend Stay of Order Pending Post-Judgment Motion (on Order Shortening Time)</i>
03/30/2020	 Order <i>Order on Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions; and (2) Seal Exhibit A</i>
03/30/2020	 Notice of Entry of Order Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Notice of Entry of Order on Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions; and (2) Seal Exhibit A Thereto</i>
03/30/2020	 Opposition Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay of Order Pending Post-Judgment Motion</i>
03/30/2020	 Motion to Seal/Redact Records Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc <i>Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay of Order Pending Post-Judgment Motion; and (2) Seal Exhibit A Thereto</i>
03/30/2020	 Temporary Seal Pending Court Approval

CASE SUMMARY

CASE NO. A-18-785391-B

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay of Order Pending Post-Judgment Motion

03/30/2020



Motion to Vacate

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Motion to Vacate, Alter or Amend Sanctions Order

03/31/2020



Clerk's Notice of Hearing

Notice of Hearing

03/31/2020



Clerk's Notice of Hearing

Notice of Hearing

03/31/2020



Notice of Appeal

Filed By: Plaintiff Lagudi, Paul; Plaintiff Ponder, William Todd
Notice of Appeal

03/31/2020



Case Appeal Statement

Filed By: Plaintiff Lagudi, Paul
Case Appeal Statement

04/02/2020



Order

Order on Motion to (1) Redact Fresh Mix, LLC, and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay or Order Pending Post-Judgment and (2) Seal Exhibit A

04/02/2020



Notice of Entry of Order

Filed By: Defendant Fresh Mix LLC; Defendant Get Fresh Sales Inc
Notice of Entry of Order on Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay of Order Pending Post-Judgment and (2) Seal Exhibit A Thereto

HEARINGS

12/05/2018

CANCELED Telephonic Conference (1:15 PM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated

Telephonic Conference re: Application for Temporary Restraining Order on OST

12/06/2018

CANCELED Telephonic Conference (1:30 PM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated

Telephonic Conference re: Application for Temporary Restraining Order on OST

12/11/2018

Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to File Exhibit 1 to Motion for Preliminary Injunction and Ex Parte Application for Temporary Restraining Order Under Seal on Order Shortening Time

Granted;

12/11/2018

Motion for Preliminary Injunction (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiffs, Paul Lagudi and William Todd Ponder's Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time

Granted; limited aspect. Bond \$500.

12/11/2018



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

MOTION TO FILE EXHIBIT 1 TO MOTION FOR PRELIMINARY INJUNCTION AND EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER UNDER SEAL ON ORDER SHORTENING TIME...PLAINTIFFS, PAUL LAGUDI AND WILLIAM TODD

CASE SUMMARY**CASE No. A-18-785391-B**

PONDER, S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME APPEARANCES CONTINUED: Scott Goldberg, Client Representative for Defendants. Court noted it does not review documents in camera unless it asked for them, and returned to Mr. Bendavid Exhibit 1 that was submitted for in camera review. MOTION TO FILE EXHIBIT 1 TO MOTION FOR PRELIMINARY INJUNCTION AND EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER UNDER SEAL ON ORDER SHORTENING TIME: There being no objection, COURT ORDERED, motion to seal GRANTED. PLAINTIFFS, PAUL LAGUDI AND WILLIAM TODD PONDER'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME: As the motion to seal has now been granted, Mr. Bendavid returned to the Court Exhibit 1, the operating agreement, for the Court's reference. COURT DIRECTED Mr. Bendavid to have it FILED UNDER SEAL. Mr. Bendavid referred the Court to 8.3 and argued in support of the application for TRO. Court asked Defendants' counsel to explain why, under 5.2(b), the removal provision of the membership agreement, that what they did was right. Mr. Pisanelli argued the Plaintiffs were not removed as managers and that they still have whatever duties and responsibilities managers have. Mr. Pisanelli further argued as to 14.a, to which the Court noted it will wait to decide to compel arbitration until counsel actually files that motion, argued these claims are derivative in nature, and that at the end of the day this is an employment dispute. Reply by Mr. Bendavid as to the Plaintiffs being the only parties advancing Fresh Mix and bringing in sales. COURT ORDERED, application for TRO GRANTED in a limited aspect. To the extent that there is an attempt to remove the Plaintiffs as managers, that is ENJOINED under section 5.2b; however, issues related to employment are DENIED. With regards to the issue of the email accounts, those will be reinstituted. The Court is GRANTING injunctive relief related to the email accounts and personal property of the Defendants. In addition, the Defendants, and their respective members, shareholders, managers, directors, officers, employees, contractors, representatives, agents, and officers shall IDENTIFY to Plaintiffs each email sent to the email accounts of the Plaintiffs, which were redirected and access was denied, and IDENTIFY each individual who received, read, or reviewed each of the identified emails. Defendants will no longer tell anyone that the Plaintiffs are no longer with Fresh Mix, since they remain as managers. The issue of employment status is not an issue the Court is forced to deal with. The individuals are managers of the company and as managers have certain rights and responsibilities, which do not include keys, cellphones, offices, necessarily health insurance, but does include the email accounts, as many managers of LLC's operate with email accounts to assist with the information needed to perform their duties. The Court is concerned related to the employment status; however, at this point it appears that they were at-will employees because of the expiration of the agreement, and the Court will not grant any relief related to the employment contracts. With regards to the bond amount, Mr. Bendavid argued as to section 14.a and Mr. Pisanelli, noting Nevada law, requested a minimum of \$50,000 to cover attorney's fees. COURT ORDERED, BOND SET at \$500. With regards to discovery and briefing prior to a preliminary injunction hearing, Mr. Pisanelli stated he would like to depose the two Plaintiffs, and document production, without being overbearing, can be limited to certain categories. COURT ORDERED, parties given 10 requests for production. Mr. Bendavid stated he would like to take the deposition of the three managers and some limited requests; 10 requests for production are enough; his client is also entitled to tax returns. Court NOTED litigation does not prevent managers from obtaining information. COURT ORDERED, parties given 15 days' response time to requests for production and 10 days to notice depositions; those depositions are not preclusive of counsel taking other depositions in the case-in-chief. Upon Court's inquiry, counsel confirmed they are limiting them to the 7-hour depositions at this point. Mr. Pisanelli noted that hopefully, before fully going down the road of discovery prior to the preliminary injunction hearing, they can address and make a record on a motion for arbitrability, because an arbitrator or panel may want to manage discovery. Court noted it is not there yet. Colloquy regarding timing of the motion and scheduling the hearing. Court noted it will be out of the jurisdiction for a time in February and that it has two upcoming jury trials that each claim to be two weeks long; the Court can advance the motion to compel and motion to dismiss in the instant case and can set the preliminary injunction hearing after February 19 or on Friday, January 4, 2019. Mr. Pisanelli requested the parties meet and confer first. COURT ORDERED, preliminary injunction hearing SET for Thursday, December 27, 2018. The parties are welcome to stipulate around that date and work on a new one but must also agree to extend the TRO or agree that it will expire. Mr. Bendavid advised one of his clients lives in Australia. COURT NOTED he can testify by video. Temporary Restraining Order signed in open court and returned to Mr. Bendavid for filing. Court reminded Mr. Bendavid to file Exhibit 1. Mr. Leslie offered to the Court that as to the email accounts, 90% of the email traffic was as the Plaintiffs' role as employees. Court noted email accounts are not necessarily limited to employees and that members and managers of LLC's frequently have company email accounts. The Court will NOT LIMIT the quality or type of emails that went to the Plaintiffs'

CASE SUMMARY

CASE NO. A-18-785391-B

email addresses before or that come to those addresses now; it is certain that with respect to sales emails, Mr. Bendavid will have a discussion with this clients as to how important it is that those emails go to whoever the company has decided is managing that function. With regards to communicating to the marketplace, the Court assumes everyone will give the marketplace a good front because their goal is to keep everything going. With regards to the bond setting, Court explained that given the contractual language it appears the parties had agreed to no bond; however, in order to comply with Nevada law, the Court has set bond and limited it to a nominal amount; counsel for Defendants can file a motion. Mr. Bendavid inquired about his clients setting up a meeting with company operators / administrators. Court noted that is not a manager job, i.e. manager being top of the trees. 12-27-18 9:00 AM PRELIMINARY INJUNCTION HEARING;

12/24/2018



Motion to Dismiss (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

12/24/2018, 01/16/2019

Events: 12/13/2018 Motion to Dismiss

Defendants Fresh Mix LLC and Get Fresh Sales Inc 's Motion to Dismiss or in the Alternative to Stay and to Compel Arbitration on an Order Shortening Time

Matter Continued;

Granted in Part;

MINUTES



Motion to Dismiss

Filed By: Defendant Fresh Mix LLC

Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration on an Order Shortening Time

Matter Continued;

Granted in Part;

Journal Entry Details:

No appearances. COURT ORDERED, the instant motion and the Preliminary Injunction Hearing that is on calendar for December 27, 2018 are both RESET on Thursday, January 3, 2019 at 9 am. 1-3-19 9:00 AM DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION ON AN ORDER SHORTENING TIME...PRELIMINARY INJUNCTION HEARING 1-11-19 CHAMBERS MOTION TO REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME AND EXHIBITS A AND B THERETO 1-14-19 9:00 AM MOTION TO REDACT DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION AND SEAL EXHIBIT 1 THERETO CLERK'S NOTE: This minute order was distributed to the parties via the E-Service List. / dr 12-24-18;

01/11/2019



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Events: 12/10/2018 Motion to Seal/Redact Records

Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time and Exhibits A and B Thereto

MINUTES



Motion to Seal/Redact Records

Filed By: Defendant Fresh Mix LLC

Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Ex Parte Application for a Temporary Restraining Order and Motion for a Preliminary Injunction on an Order Shortening Time and Exhibits A and B Thereto

Granted;

Journal Entry Details:



Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20 (e) the motion to seal is deemed unopposed. As the proposed redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. 1-16-19 9:00 AM DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S MOTION TO DISMISS OR IN THE

CASE SUMMARY**CASE NO. A-18-785391-B**

	<p><i>ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION ON AN ORDER SHORTENING TIME... ..MOTION TO REDACT DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION AND SEAL EXHIBIT 1 THERETO... ..STATUS CHECK: SCHEDULING THE PRELIMINARY INJUNCTION HEARING...PRELIMINARY INJUNCTION HEARING</i></p> <p><i>CLERK'S NOTE: A copy of this minute order was distributed via the E-Service List. / dr 1-14-19;</i></p>
01/16/2019	<p>Preliminary Injunction Hearing (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p>Off Calendar;</p>
01/16/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p>Events: 12/13/2018 Motion to Seal/Redact Records</p> <p><i>Motion to Redact Defendant's Fresh Mix LLC and Get Fresh Sales Inc's Motion to Dismiss or in the Alternative to Stay and to Compel Arbitration and Seal Exhibit 1 Thereto</i></p> <p>Granted;</p>
01/16/2019	<p>Status Check (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p><i>Status Check: Scheduling the Preliminary Injunction Hearing</i></p> <p>Off Calendar;</p>
01/16/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p><i>Motion to Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Reply in Support of Motion to Dismiss or, in the Alternative, to Stay and to Compel Arbitration</i></p> <p>Granted;</p>
01/16/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>DEFENDANTS FRESH MIX LLC AND GET FRESH SALES, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION ON AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Bendavid, COURT ORDERED, based upon the information currently before the Court, it appears the employment agreement expired long ago; therefore, no arbitration provision in the employment agreement survives for purposes of this dispute. The equitable remedies that are sought in the complaint are excluded from arbitration in paragraph 14.8 of the operating agreement but the remaining claims and the basis of those claims are subject to arbitration. STATUS CHECK: SCHEDULING PRELIMINARY INJUNCTION HEARING...PRELIMINARY INJUNCTION HEARING: Court inquired whether, given the agreement to extend the applicability of the TRO until the preliminary injunction hearing, counsel wanted to discuss the scheduling of the preliminary injunction before the Court decides what the stay is. Colloquy. With the parties' agreement, COURT noting everything STAYED until arbitration concludes, ORDERED, matter SET for status check in 120 days on the chambers calendar. Counsel to file a status report regarding mediation. Preliminary Injunction Hearing taken OFF CALENDAR at this time. Upon Mr. Pisanelli's inquiry, Court clarified that except for the request of injunctive relief related to the Plaintiffs' possessions and positions as members of the LLC, parties will go to arbitration and deal with that; the injunction which is limited in nature that the Court issued will REMAIN in place until the parties return before this Court; the only thing the Court will deal with until they are done with arbitration is injunctive relief. Upon Mr. Bendavid's inquiry regarding a prior discussion on books and records, Court stated the parties will deal with the arbitrator on whether those were received; under Nevada statute, the Plaintiff has a right to file a separate books and records case or amend the complaint to add a books and records portion; however, the easiest way for the parties to deal with it may be to do it as part of their discovery in arbitration. MOTION TO REDACT DEFENDANT'S FRESH MIX LLC AND GET FRESH SALES INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION AND SEAL EXHIBIT 1 THERETO...MOTION TO REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY AND TO COMPEL ARBITRATION [Advanced from February 22, 2019 chambers]: COURT ORDERED, motions to redact GRANTED based upon commercially sensitive information. 5-17-19 CHAMBERS STATUS CHECK: ARBITRATION;</i></p>
04/22/2019	<p>CANCELED Motion to Intervene (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p>

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	<p><i>Vacated</i> <i>Motion to Intervene on an Order Shortening Time</i></p>
04/22/2019	<p>CANCELED Motion to Intervene (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Vacated - On In Error</i> <i>Kelly Lagudi and Stephanie Ponder's Motion to Intervene on Order Shortening Time</i></p>
05/17/2019	<p> Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Status Check: Arbitration</i></p> <p>MINUTES Set Status Check; Journal Entry Details: <i>COURT reviewed both status reports filed May 16, 2019, and ORDERED, matter SET for Status Check in 120 days regarding completion of arbitration. If any issues addressed in the status reports are in need of resolution, counsel to file a motion after a meet and confer. 9-13-19 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via the E-Service List. / dr 5-20-19;</i></p> <p>SCHEDULED HEARINGS CANCELED Status Check (09/13/2019 at 3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Vacated - per Judge</i> <i>Status Check: Completion of Arbitration</i></p>
08/05/2019	<p>Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Plaintiff's Motion to Lift Stay and Amend the Complaint on an Order Shortening Time</i> Granted; however, Pltfs subject to 2.1.19 order.</p>
08/05/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to Redact Exhibit 1 to Plaintiffs' Motion to Lift the Stay and Amend the Complaint on an Order Shortening Time</i> Granted;</p>
08/05/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Motion to Lift Stay and Amend Complaint on an Order Shortening Time and Exhibit B Thereto, and (2) Seal Exhibit D Thereto</i> Granted;</p>
08/05/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Plaintiffs Motion to Seal Exhibits X-CC and Exhibit FF to Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint</i> Granted;</p>
08/05/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details: <i>COURT NOTED there is apparently an issue about an Exhibit T that the Court did not read and is the subject of a motion to strike, which Mr. Pisanelli wants the Court to address first. COURT ORDERED, the motion to STRIKE EXHIBIT T is GRANTED, but NOT the reply; however, the Court will then let counsel argue whether the exhibit can be produced subject to disclosure or any protection at all. The Court will NOT READ Exhibit T, but will GRANT the motion to strike it for purposes of this hearing. COURT ORDERED, Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay this Action on an Order Shortening Time, as well as Plaintiffs' Opposition to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay this Action on an Order Shortening Time MARKED as Court's Exhibit 1 for today and SEALED. (See worksheet). However, the motion to strike is not placed on calendar for hearing. Mr. Pisanelli requested this proceeding be stayed because the other side analyzed T as part of the reply and there is a continuing violation of the privilege. Court stated it will PROCEED with the hearing; if</i></p>

CASE SUMMARY

CASE No. A-18-785391-B

counsel wishes to propose redactions to the reply, he may. Matter TRAILED. Matter RECALLED. PLAINTIFFS' MOTION TO LIFT STAY AND AMEND THE COMPLAINT ON AN ORDER SHORTENING TIME: Mr. Connot argued in support of the motion seeking the ability to amend the complaint and letting the Defendants take whatever action they want to take at this point. Mr. Pisanelli responded, arbitration was initiated but the other side simply gave a flat denial of allegations; things remain in limbo or this may be a strategy to delay arbitration; there is a motion to lift the stay, but he would suggest there is no emergency at all; indemnification was denied 4 months ago; there is no change in circumstances and the need to file an amended complaint is not reason enough. Following further argument by Mr. Connot, COURT ORDERED, motion GRANTED; however, the Plaintiffs appear to be subject to the February 1, 2019 order related to arbitration with the sole exception of the books and records issue, which the Court has previously addressed and has not been removed. If seeking receivership counsel to file a motion. COURT ORDERED, status check previously set on September 13, 2019 in chambers on the completion of arbitration VACATED. Matter set for status check in 6 months, or February 7, 2020, to see how the parties are doing on the arbitration. Court noted it can make considerations outside the stay as to what counsel would like to do about Exhibit T; if they prefer to do it in arbitration that will be fine, but the Court would like a plan before the parties leave so the Court does not lose track of it. Mr. Pisanelli stated it seems this may require action on both sides, and the problem is that it may also include disqualification of counsel. COURT ORDERED, matter SET for status check on Friday, August 9, in chambers as to whether the Court will be working with counsel on a hearing for a motion for protection or if counsel would like the Court to do an in camera review. Mr. Pisanelli advised he can give a status report by the end of the day. Court stated that if the parties do not have an agreement on redactions on the reply, the Court will hear a motion. Upon Mr. Pisanelli's request for clarification, Court concurred it is allowing the new claims and sending everything back to arbitration, except for the books and records issue and if someone wants to appoint a receiver. Upon Mr. Connot's inquiry, Court confirmed this includes the claim for indemnification, which can be raised in front of the arbitrator. ~ MOTION TO REDACT EXHIBIT 1 TO PLAINTIFFS' MOTION TO LIFT THE STAY AND AMEND THE COMPLAINT ON AN ORDER SHORTENING TIME: COURT ORDERED, motion GRANTED. MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO MOTION TO LIFT STAY AND AMEND COMPLAINT ON AN ORDER SHORTENING TIME AND EXHIBIT B THERETO, AND (2) SEAL EXHIBIT D THERETO [Advanced from August 30, 2019 - chambers]...PLAINTIFFS' MOTION TO SEAL EXHIBITS X-CC AND EXHIBIT FF TO PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT [Advanced from September 6, 2019 - chambers]: COURT ORDERED, motions ADVANCED and GRANTED because they contain confidential information, except for Exhibit T to the Reply which was stricken. 8-9-19 CHAMBERS STATUS CHECK 9-9-19 CHAMBERS PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

08/09/2019



Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order - No Hearing Held;

Journal Entry Details:

Court reviewed status report filed 8/8/19. Referenced motion may be filed without the necessity of a partial relief of stay given circumstances discussed on 8/5/19. 08/16/2019 CHAMBER CALENDAR - DEPARTMENT XI DEFENDANTS' MOTION TO REDACT: (1) PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT, AND (2) PLAINTIFFS' OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO (1) STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT AND EXHIBIT T THERETO; AND (2) STAY THIS ACTION ON AN ORDER SHORTENING TIME AND EXHIBIT 1 THERETO ON AN ORDER SHORTENING TIME 09/09/2019 9:00 AM - Department XI PLAINTIFFS MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT 02/07/2020 CHAMBER CALENDAR - DEPARTMENT XI STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8/9/19;

08/16/2019



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

08/16/2019, 08/26/2019

Defendants' Motion to Redact: (1) Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint, and (2) Plaintiffs' Opposition to Defendants' Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T

CASE SUMMARY

CASE No. A-18-785391-B

Thereto; and (2) Stay This Action on an Order Shortening Time and Exhibit 1 Thereto on an Order Shortening Time

MINUTES

Matter Continued;

Granted in Part;

Journal Entry Details:

COURT ORDERED, motion regarding clawback issues on order shortening time (OST) SET for September 9, 2019 at 9 am; OST signed and returned to counsel for filing. Opposition DUE by the Friday before (September 6) at noon. Ms. Spinelli stated she will not be here but she believes the September 9 date will work for Mr. Pisanelli. Following arguments by Ms. Spinelli and Mr. Connot, COURT ORDERED, motion to redact GRANTED IN PART. With respect to the communications related to the panelists the motion is DENIED; with all other respects it is GRANTED. Counsel to submit proposed redactions. Matter SET for status check on the chambers calendar for Friday, August 30th. 8-30-19 CHAMBERS STATUS CHECK: PROPOSED REDACTIONS BY THE DEFENDANTS 9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT... ..MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME... ..MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO 9-20-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP) 9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

Matter Continued;

Granted in Part;

Journal Entry Details:

COURT ORDERED, motion CONTINUED to the oral calendar for Monday, August 26, 2019. Counsel to APPEAR. 8-26-19 9:00 AM DEFENDANTS' MOTION TO REDACT: (1) PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT, AND (2) PLAINTIFFS' OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO (1) STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT AND EXHIBIT T THERETO; AND (2) STAY THIS ACTION ON AN ORDER SHORTENING TIME AND EXHIBIT 1 THERETO ON AN ORDER SHORTENING TIME 9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8-19-19;

SCHEDULED HEARINGS



Status Check (08/30/2019 at 3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Status Check: Proposed Redactions by the Defendants

08/30/2019



Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Status Check: Proposed Redactions by the Defendants

Minute Order - No Hearing Held; proposed redactions approved

Journal Entry Details:

Redactions submitted on August 29, 2019 APPROVED as they appear to be narrowly tailored to protect the privilege and confidentiality issues currently at issue through motion practice. 9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT... ..MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME... ..MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO 9-20-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP) 9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK S

CASE SUMMARY

CASE NO. A-18-785391-B

NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 9-3-19;

09/04/2019



Minute Order (10:48 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order Advancing Plaintiffs' Motion to Associate Counsel (Brian A. Berkley of Fox Rothschild LLP) to September 9, 2019

Minute Order - No Hearing Held;

Journal Entry Details:

COURT ORDERED, Motion to Associate Brian A. Berkley of Fox Rothschild LLP, originally scheduled for September 20, 2019 in chambers, ADVANCED to the oral calendar of September 9, 2019. 9-9-19 9:00 AM MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME...

...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)... ...PLAINTIFFS MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT... ...MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO 9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S

NOTE: Parties notified by distributing a copy of this minute order via Odyssey File and Serve. / dr 9-4-19;

09/09/2019

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiffs Motion to Redact Plaintiffs' Reply Brief in Support of Motion to Lift Stay and Amend Complaint

Granted;

09/09/2019

Motion to Associate Counsel (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

09/09/2019, 09/23/2019, 10/04/2019, 10/11/2019

Plaintiffs' Motion to Associate Counsel (Brian A. Berkley of Fox Rothschild LLP)

Matter Continued;

Matter Continued;

Matter Continued;

Moot; granted by order entered 10/4/19

Matter Continued;

Matter Continued;

Matter Continued;

Moot; granted by order entered 10/4/19

Matter Continued;

Matter Continued;

Matter Continued;

Moot; granted by order entered 10/4/19

Matter Continued;

Matter Continued;

Matter Continued;

Moot; granted by order entered 10/4/19

09/09/2019

Motion for Discovery (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information; and Application for an Order Shortening Time

Granted in Part;

09/09/2019

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to (1) Redact Motion for Claw Back, Discovery, and Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and Other Privileged and Confidential Information, and (2) Seal Exhibits 3-5 Thereto

Granted;

09/09/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

CASE SUMMARY

CASE NO. A-18-785391-B

Matter Heard;

Journal Entry Details:

COURT ORDERED, unfiled Defendants' Emergency Motion to (1) Strike Exhibit A to Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Countermotion for Discovery related to Fresh Mix Memo, and (2) Strike All References to and Discussion of its Substance in Plaintiffs' Opposition on an Order Shortening Time MARKED as Court's Exhibit 1 for today. (See worksheet.) Colloquy regarding procedure for sealing and redacting. COURT ORDERED, Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo filed September 5, 2019 STRICKEN. Mr. Pisanelli noted the redacted version was not redacted enough. MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Connot, COURT ORDERED, motion GRANTED IN PART. The Court ORDERS the documents sequestered and not quoted or referred to in any further pleadings; however, if the parties reach an evidentiary hearing it may be mentioned related to its privileged nature or to disqualification. The Court GRANTS the request for 3 depositions, not to exceed 2 hours each; Mr. Bendavid's will be strictly limited to the single communication and how he obtained the box. In addition, 5 requests for production and 5 interrogatories GRANTED. PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP): COURT ORDERED, matter CONTINUED to Monday, September 23, 2019. PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT: COURT ORDERED, motion GRANTED. MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO: COURT ORDERED, motion GRANTED. Parties advised an evidentiary hearing on the motion to disqualify will take 1 to 2 days. COURT ORDERED, matter SET for status check on September 23rd. In addition, Motion to Associate Brian Berkley of Fox Rothschild CONTINUED to that date. 9-23-19 9:00 AM STATUS CHECK...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP) 9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 10-11-19 CHAMBERS MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

09/13/2019 **CANCELED Status Check** (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
Vacated - per Judge
Status Check: Completion of Arbitration

09/23/2019 **Status Check** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
09/23/2019, 10/04/2019, 10/11/2019
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;

09/23/2019 **Motion for Discovery** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
Plaintiffs' Motion for Limited Discovery in Connection with Defendants' Claim of Privilege Over the Fresh Mix Memo on an Order Shortening Time
Denied; however, Mr. Goldberg's deposition permitted NTE 2 hrs.

09/23/2019 **Motion** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
Notice of Compliance and Motion to Accept Plaintiffs' Opposition Under Seal and Exhibits A and B Attached Thereto on an Order Shortening Time
Matter Heard;

CASE SUMMARY

CASE NO. A-18-785391-B

09/23/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

NOTICE OF COMPLIANCE AND MOTION TO ACCEPT PLAINTIFFS' OPPOSITION UNDER SEAL AND EXHIBITS A AND B ATTACHED THERETO ON AN ORDER SHORTENING TIME...PLAINTIFFS' MOTION FOR LIMITED DISCOVERY IN CONNECTION WITH DEFENDANTS' CLAIM OF PRIVILEGE OVER THE FRESH MIX MEMO ON AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Connot, COURT ORDERED, motion to accept Plaintiff's opposition unfiled DENIED; the information will not be quoted or summarized in any briefing; an opposition may be resubmitted that does not summarize, quote, or attach the information. Motion for limited discovery is NOT GRANTED; however, the Court will permit counsel to take the deposition of Mr. Goldberg for a period not to exceed 2 hours subject to limitations. PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)...STATUS CHECK: COURT ORDERED, matters CONTINUED to October 4, 2019 in chambers. Counsel to file a written status report on where they are on written discovery and production. Court noted response period is 15 days. 10-4-19 CHAMBERS STATUS CHECK...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP) 10-11-19 CHAMBERS MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO 10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

10/04/2019

Motion to Disqualify Attorney (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
10/04/2019, 12/02/2019, 12/09/2019, 12/17/2019, 01/21/2020-01/22/2020, 02/14/2020

Motion to Disqualify Fox Rothschild LLP

Matter Continued;

Matter Continued;

Matter Continued;

Hearing Set;

Matter Continued;

Matter Continued;

Granted in Part;

Matter Continued;

Matter Continued;

Matter Continued;

Hearing Set;

Matter Continued;

Matter Continued;

Granted in Part;

Matter Continued;

Matter Continued;

Matter Continued;

Hearing Set;

Matter Continued;

Matter Continued;

Granted in Part;

Matter Continued;

Matter Continued;

Matter Continued;

Hearing Set;

Matter Continued;

Matter Continued;

Granted in Part;

Matter Continued;

Matter Continued;

Matter Continued;

CASE SUMMARY

CASE NO. A-18-785391-B

Hearing Set;
Matter Continued;
Matter Continued;
Granted in Part;
Matter Continued;
Matter Continued;
Matter Continued;
Hearing Set;
Matter Continued;
Matter Continued;
Granted in Part;
Matter Continued;
Matter Continued;
Matter Continued;
Hearing Set;
Matter Continued;
Matter Continued;
Granted in Part;

10/04/2019



All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order - No Hearing Held;

Journal Entry Details:

PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..STATUS CHECK COURT reviewed status reports filed October 3, 2019, ORDERED, matter CONTINUED for one week to the chambers calendar for scheduling of hearing. 10-11-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..STATUS CHECK... ..MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO 10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO... ..MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ..PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-4-19 ;

10/11/2019

Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Seal Exhibits A, B, and C Attached Thereto

Granted in Part;

10/11/2019



All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order - No Hearing Held;

Journal Entry Details:

MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO: The Court having reviewed the Plaintiffs' Motion to Redact Opposition filed September 5, 2019 and the related briefing and being fully informed, GRANTS the motion, IN PART. The document filed September 5, 2019 is STRICKEN. The document will be refiled after removal of Exhibit A and with redactions as set forth in the response filed October 10, 2019. Counsel for Fresh Mix is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court

CASE SUMMARY

CASE No. A-18-785391-B

in briefing and argument. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment. PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP): The motion to Associate (Berkley) was granted by order entered October 4, 2019; this hearing is MOOT. MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...STATUS CHECK: Evidentiary Hearing on Motion for Sanctions SET for November 6 to 7 at 9:15 am and if needed November 8 at 1 pm. Supplemental briefs may be filed by noon on November 5th. Motion to Disqualify CONTINUED to November 6 to be resolved as part of the evidentiary hearing. 10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO... ..MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ..PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO 11-6-19 9:15 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..MOTION FOR SANCTIONS... ..EVIDENTIARY HEARING 11-7-19 9:15 AM MOTION FOR SANCTIONS...EVIDENTIARY HEARING 11-8-19 1:00 PM MOTION FOR SANCTIONS...EVIDENTIARY HEARING 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-14-19;

- | | |
|------------|--|
| 10/18/2019 | Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
<i>Amended Motion to Redact Motion to Disqualify Fox Rothschild LLP, Redact Exhibit 1 Thereto, and Seal Exhibits 6 and 7 Thereto</i> |
| 10/18/2019 | Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
<i>Motion to Redact Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo</i> |
| 10/18/2019 |  All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
Minute Order - No Hearing Held;
Journal Entry Details:
AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the amended motion to redact motion to disqualify and seal exhibits 6 and 7 is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial and confidential information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. Court further notes the other motion was handled on October 11, 2019. 11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO 11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ..PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO 11-6-19 9:15 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..MOTION FOR SANCTIONS... ..EVIDENTIARY HEARING 11-7-19 9:15 AM MOTION FOR SANCTIONS...EVIDENTIARY HEARING 11-8-19 1:00 PM MOTION FOR SANCTIONS...EVIDENTIARY HEARING 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-18-19; |
| 11/01/2019 |  Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
<i>Motion to File Under Seal Exhibit A to Plaintiffs' Opposition to Defendants' Motion to Redact</i> |

CASE SUMMARY

CASE No. A-18-785391-B

Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo

Minute Order - No Hearing Held;

Journal Entry Details:

Court notes motion handled by minute order of October 11, 2019. Order signed. 11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO 11-22-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO 12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 11-1-19;

11/04/2019

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

11/04/2019, 11/20/2019

Plaintiff's Motion to Redact Plaintiffs' Motion to Compel Production of Books and Records, and Seal Exhibits A, B, G, and I Thereto

Matter Continued;

Granted;

Matter Continued;

Granted;

11/04/2019

Motion to Compel (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

11/04/2019, 11/20/2019

Plaintiffs' Motion to Compel Production of Books and Records

Matter Continued;

Granted in Part;

Matter Continued;

Granted in Part;

11/04/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO...PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS Upon Court's inquiry, Mr. Pisanelli confirmed he would like to file a sur-reply. COURT ORDERED, matters CONTINUED to Wednesday, November 20 per the parties' request and availability. Sur-reply due the afternoon before. Further, counsel to bring to the next hearing date the NDA that was proposed at the time of the inspection that did not happen. 11-20-19 9:00 AM PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO...PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS 11-22-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO 12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

11/07/2019

CANCELED Motion for Sanctions (9:15 AM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated - per Stipulation and Order

11/08/2019

CANCELED Motion for Sanctions (1:00 PM) (Judicial Officer: Gonzalez, Elizabeth)

CASE SUMMARY

CASE NO. A-18-785391-B

Vacated - per Stipulation and Order

11/20/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO Court asked Mr. Connot to confirm for the Court whether the exhibit identified as exhibit 9 to the sur-reply is the non-disclosure agreement (NDA) that his client was provided with prior to the prior inspection request. Mr. Connot stated he has not gone through it line by line but he thinks it is. Arguments by Mr. Connot and Mr. Pisanelli. Court noted this topic is a subject of the Business Court Bench Bar meeting today and encouraged all counsel to attend. **COURT ORDERED**, the motion to compel is **GRANTED IN PART**. The Court is **ORDERING** an inspection of existing documents. The NDA in this case is fatally overbroad and will **NOT BE ADOPTED** by the Court. The Court is **NOT ORDERING** inspection of categories 7, 8, 12, or 14. Colloquy between Court and Mr. Pisanelli regarding the Court's ruling. Mr. Pisanelli requested a stay. **COURT** stated it will **NOT ORDER COMPLIANCE** for two weeks; however, if counsel wants extraordinary relief counsel may come back and ask for a stay. **COURT FURTHER ORDERED**, Plaintiff's motion to redact is **GRANTED**. 11-22-19 **CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO** 12-2-19 9:00 AM **STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ..EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS** 2-7-20 **CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;**

11/22/2019



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Compel Production of Books and Records (2) Seal Exhibits 2, 3, 4, 6, 7, and 8 Thereto

Granted;

Journal Entry Details:

Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20 (e) the motion to seal is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is **GRANTED**. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. 12-2-19 9:00 AM **STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ..EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS** 12-20-19 **CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO** 2-7-20 **CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION** **CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 11-26-19;**

12/02/2019

Motion for Sanctions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

12/02/2019, 12/09/2019, 12/17/2019, 01/21/2020-01/22/2020, 02/14/2020

Matter Continued;

Matter Continued;

Hearing Set;

Matter Continued;

Matter Continued;

Granted in Part;

Matter Continued;

Matter Continued;

Hearing Set;


CASE SUMMARY

CASE NO. A-18-785391-B

	<p>Matter Continued; Matter Continued; Granted in Part; Matter Continued; Matter Continued; Hearing Set; Matter Continued; Matter Continued; Granted in Part; Matter Continued; Matter Continued; Hearing Set; Matter Continued; Matter Continued; Granted in Part; Matter Continued; Matter Continued; Hearing Set; Matter Continued; Matter Continued; Granted in Part; Matter Continued; Matter Continued; Hearing Set; Matter Continued; Matter Continued; Granted in Part;</p>	
12/02/2019	<p>Evidentiary Hearing (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 12/02/2019, 12/09/2019, 12/17/2019, 01/21/2020-01/22/2020, 02/14/2020</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p> <p>Matter Continued; Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p>	



CASE SUMMARY

CASE NO. A-18-785391-B

	<p>Matter Continued; Hearing Set; Hearing Continued; Hearing Continued; Matter Heard;</p>
12/02/2019	<p>Status Check (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 12/02/2019, 12/09/2019, 12/17/2019 <i>Status Check: Mediation, Evidentiary Hearing on Motion for Sanctions, and Motion to Disqualify Fox Rothschild</i> Matter Continued; Matter Continued; Hearing Set; for 1/21/20 Matter Continued; Matter Continued; Hearing Set; for 1/21/20 Matter Continued; Matter Continued; Hearing Set; for 1/21/20</p>
12/02/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 12/02/2019, 12/09/2019 <i>Motion to Redact Plaintiffs' Reply Brief in Support of Motion to Compel Production of Books and Records</i> Matter Continued; Granted; Matter Continued; Granted;</p>
12/02/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details: <i>MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ..STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..EVIDENTIARY HEARING... ..MOTION FOR SANCTIONS</i> Court noted a motion to clarify set on OST for December 5, 2019. Ms. Spinelli advised that the Defendants also intend to file a motion to compel related to limited discovery that the Court granted; they will have depositions on both sides which the parties agreed would not go forward because of mediation, but they have been exchanging emails on when to reschedule them. Colloquy regarding the timing of the motions. Mr. Connot advised the motion to compel may affect the depositions. Court inquired whether the Defendants can submit their motion to compel tomorrow. Ms. Spinelli asked if they can do so on Wednesday. COURT ORDERED, today's motions as well as the motion to clarify originally set for December 5th CONTINUED to Monday, December 9, at 9 am. Mr. Pisanelli noting co-counsel who went on vacation with his family requested the date for inspection be extended. No objection by Mr. Connot. COURT SO NOTED. 12-9-19 9:00 AM MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS... ..STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..EVIDENTIARY HEARING... ..MOTION FOR SANCTIONS... ..PLAINTIFF'S MOTION TO CLARIFY THE PROCEDURE REGARDING PRIVILEGE DETERMINATION ON AN ORDER SHORTENING TIME 12-20-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;</p>
12/09/2019	<p>Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to (1) Redact Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Sur-Reply Regarding Plaintiffs' Motion to Compel Production of Books and Records; and (2) Seal Exhibit 10 Thereto</i></p>

CASE SUMMARY

CASE NO. A-18-785391-B

	Granted;
12/09/2019	Motion to Clarify (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Plaintiff's Motion to Clarify the Procedure Regarding Privilege Determination on an Order Shortening Time</i> Matter Heard;
12/09/2019	Motion to Compel (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery on an Order Shortening Time</i> Granted in Part;
12/09/2019	Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to Seal Exhibits 10-15 to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Motion to Compel Sanctions Discovery</i> Granted;
12/09/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details: <p><i>Following arguments by counsel, COURT ORDERED as follows: PLAINTIFF'S MOTION TO CLARIFY THE PROCEDURE REGARDING PRIVILEGE DETERMINATION ON AN ORDER SHORTENING TIME: COURT CLARIFIED that it had previously determined it was facially privileged based upon the information provided to the Court. The Court will do an in camera review at the evidentiary hearing and will be happy to take any briefing. The Court will not let it be part of the public record because of the issues with the public record, even if it is sealed. The Court will look at it, the parties will make their argument, and the Court will do something with the sealed envelope which includes the Court handing it back to one of the parties depending on the Court's determination, and then they will go forward with the evidentiary hearing. FRESH MIX, LLC AND GET FRESH SALES, INC.'S MOTION TO COMPEL SANCTIONS DISCOVERY ON AN ORDER SHORTENING TIME: COURT ORDERED, motion GRANTED IN PART. Because this is an unusual situation, the Court is ORDERING a privilege log for communications between the attorney and client related to this particular document, even though it is during the term of litigation, and if any redactions are provided, those need to be on the log. Interrogatories 1, 2, 3, and 4 need to be supplemented. The Court's determination is that the statement in the August 4, 2019 declaration is a waiver as to how the particular document came into possession but is not a waiver as to what was done with the document afterwards that might otherwise be privileged. Mr. Pisanelli advised they have had silence regarding deposition availability. Mr. Connot advised the Plaintiff can do the supplements and the privilege log by Thursday. COURT ORDERED this be done by Friday. Mr. Connot further advised they have provided the other side with availability; there are one or two issues but they can try to make most dates. COURT ORDERED a status report be filed as to when depositions have been set. Parties anticipated the evidentiary hearing taking two days. Court noted a Thursday or Friday, then, in January, but the Court will know after Calendar Calls on January 17. Ms. Spinelli inquired about the metadata, the Lagudi emails that were ordered produced. Court stated only those related to issues subject to the discovery here; the rest is stuff subject to arbitration. MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS: COURT ORDERED, motion GRANTED. MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO: There being no objection, COURT ORDERED, motion ADVANCED from the December 20, 2019 chambers calendar and GRANTED. MOTION TO SEAL EXHIBITS 10-15 TO DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S MOTION TO COMPEL SANCTIONS DISCOVERY: There being no objection, COURT ORDERED, motion ADVANCED from the January 10, 2020 chambers calendar and GRANTED. 12-13-19 CHAMBERS STATUS CHECK: DEPOSITIONS 2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: Placeholder created for December 17, 2019 for the following matters. Parties to be contacted after the Court's Calendar Calls on December 17. - Status Check: Mediation, Evidentiary Hearing on Motion for Sanctions, and Motion to Disqualify - Motion for Sanctions - Evidentiary Hearing - Motion to Disqualify Fox Rothschild LLP;</i></p>
12/13/2019	 Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

CASE SUMMARY

CASE NO. A-18-785391-B

Status Check: Depositions

Minute Order - No Hearing Held;

Journal Entry Details:

COURT notes arbitration not complete and ORDERS the status check on arbitration CONTINUED for 4 months. 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 12-17-19;

12/17/2019



Minute Order (2:15 PM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order Setting Evidentiary Hearing

Minute Order - No Hearing Held;

Journal Entry Details:

COURT ORDERED, evidentiary hearing SET for January 21st and 22nd, 2020 at 9:30 am. 1-21-20 9:30 AM EVIDENTIARY HEARING... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..MOTION FOR SANCTIONS 1-22-20 9:30 AM EVIDENTIARY HEARING... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP... ..MOTION FOR SANCTIONS 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 12-17-19;

01/21/2020



All Pending Motions (9:30 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

DAY 1 EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP APPEARANCES CONTINUED: Scott Goldberg, John Wise, and Dominic Caldara, Client Representatives for the Defendants. At the Court's direction, Law Clerk returned to counsel courtesy copies of unredacted versions. Court noted March 19 order on the procedure for properly filing things under seal. O ST on motion to strike submitted by Mr. Connot returned to counsel as the Court cannot sign it today to be heard on Thursday, given the need for one judicial day's notice. Court advised the hearing needs to break at 1:40 pm for Mental Health Court to take over the courtroom. Court further directed both sides to exchange their proposed findings of fact and conclusions of law. Per the parties' stipulation, COURT ORDERED, Proposed Joint Exhibits 1 through 5 and 7 to 9 ADMITTED. (See worksheet.) Following arguments by Mr. Connot and Mr. Pisanelli on discovery, witnesses, and privileged documents, COURT ORDERED, Mr. Connot's motion is GRANTED IN PART. Motion granted as to counsel of record to the Plaintiff; those witnesses will be called in the disqualification portion of the hearing when the parties get to that point. Court further advised it will review in camera the memo as it is potentially privileged and that at this point it is facially privileged; then, the exhibit will be sealed. Memo given to the Court. Mr. Pisanelli explained the contents of the envelope. COURT ORDERED, pages marked Priv 10 through 13 MARKED as Court's Exhibit 1 for today and SEALED. Court noted its initial review of the document was as an exhibit, which was stricken and ordered sequestered; what the Court has reviewed now seems to be consistent. Arguments by counsel regarding how the document will be used in these proceedings. Mr. Pisanelli stated he simply wants to make sure that the use of the document in this hearing does not constitute a waiver by them. Court noted it does constitute a waiver by them but may constitute further contamination. Further discussion regarding line numbers. Mr. Pisanelli requested they use rough drafts of depositions and supplement later with originals. Mr. Connot stated he had no objection, noting a witness may point out an error afterwards. Parties waived opening statements. Testimony and exhibits presented. (See worksheet.) COURT ORDERED, hearing CONTINUED. EVENING RECESS. 1-22-20 9:00 AM MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME... ..MOTION TO FILE UNDER SEAL EXHIBITS 1, 2, 3, 4 AND 5 TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK AND AS INCORPORATED INTO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME... ..MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK ON AN ORDER SHORTENING TIME 1-22-20 9:30 AM EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

01/22/2020

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Events: 01/20/2020 Motion to Seal/Redact Records

Motion to Redact Plaintiffs' Supplemental Briefing in Opposition to Disqualification on an

CASE SUMMARY

CASE NO. A-18-785391-B

Order Shortening Time
Granted;

01/22/2020

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Events: 01/20/2020 Motion to Seal/Redact Records

Motion to File Under Seal Exhibits 1, 2, 3, 4 and 5 to Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback and as Incorporated into Plaintiffs' Supplemental Briefing in Opposition to Disqualification on an Order Shortening Time

Granted;

01/22/2020

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Events: 01/20/2020 Motion to Seal/Redact Records

Motion to Redact Plaintiffs' Supplemental Briefing in Opposition to Defendants' Motion for Clawback on an Order Shortening Time

Granted;

01/22/2020



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME... ..MOTION TO FILE UNDER SEAL EXHIBITS 1, 2, 3, 4 AND 5 TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK AND AS INCORPORATED INTO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME... ..MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK ON AN ORDER SHORTENING TIME There being no objection, COURT ORDERED, because these are narrowly tailored and designed to protect both commercially sensitive and potentially privileged information, the motions are GRANTED. 1-22-20 9:30 AM EVIDENTIARY HEARING... ..MOTION FOR SANCTIONS... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

01/22/2020



All Pending Motions (9:30 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard; ARBITRATION STAYED pending resolution by Court

Journal Entry Details:

DAY 2 EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP Colloquy regarding remaining witnesses. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS. Proceeding resumed. Mr. Connot advised he and Mr. Pisanelli discussed that what may have been submitted as Court's Exhibit 1 may not be identical to T. Counsel approached the Bench to review Court's Exhibit 1 with the Court. COURT ORDERED, Mr. Connot's version MARKED as Court's Exhibit 2 and SEALED. Testimony and exhibits continued. (See worksheet.) Closing arguments by Mr. Pisanelli and Mr. Connot. COURT NOTED it is not commenting on how the memo came into the Plaintiffs' possession; a number of explanations have been offered but are not of import to the Court in making a determination on the two issues before the Court; it is not credible that the Plaintiffs believed the memo was a threat because it revealed not only strengths and weaknesses but also the options for potential resolutions and plans; the Plaintiffs recognized the memo was not an item that had been in their offices and therefore should not have been in the boxes that were delivered; under Sands vs. Jacob the waiver can only be made by the company; here, there has not been an indication that the company has made a waiver. For that reason, any assumption as to how the document got there will not be controlling in the determination on the waiver. For that reason the document will NOT BE USED in any way, it will NOT BE DISCLOSED, and the copies the Court has will REMAIN SEALED. Discussion regarding sequestration or other ways to resolve the issue. COURT ORDERED, J-6 will be ADMITTED and SEALED because it is a part of arbitration proceedings. Arguments by Mr. Pisanelli and Mr. Connot as to sanctions and any offers short of disqualification. Copies made of citations to the document and comments by Mr. Pisanelli on the pile given to the Court. COURT RECESSED to review the pile. Proceeding resumed. COURT ORDERED, pile MARKED collectively as Court's Exhibit 3 and SEALED. Further arguments by counsel. Mr. Connot requested an opportunity to digest the documents and submit something in writing with independent facts. COURT ORDERED, hearing CONTINUED. Further briefing on the disqualification issue SET as follows: Mr. Connot's brief DUE in 1 week (January 29, 2020) Mr. Pisanelli's brief DUE 1 week thereafter (February 5, 2020) All briefing must be completed and courtesy copies

CASE SUMMARY

CASE NO. A-18-785391-B

delivered to chambers by February 12, 2020. Hearing CONTINUED to Friday, February 14, 2020. COURT FURTHER ORDERED, ARBITRATION STAYED in its entirety pending a resolution by the Court. Counsel will notify the arbitrators. 2-14-20 9:00 AM EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

02/13/2020



Minute Order (10:40 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order Regarding Supplemental Briefing

Minute Order - No Hearing Held;

Journal Entry Details:

In preparation for the continued evidentiary hearing on February 14, 2020, the Court has reviewed the supplemental briefing. Counsel for Plaintiffs are DIRECTED to bring to the evidentiary hearing unredacted versions of the information used to refresh their recollection. The Court will hear argument on whether pursuant to NRS 50.125, the information will be produced or not at the outset of the hearing. 02-14-20 9:00 AM EVIDENTIARY HEARING... ..MOTION FOR SANCTIONS... ..MOTION TO DISQUALIFY FOX ROTHSCHILD LLP 02-24-20 9:00 AM MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUPPLEMENTAL BRIEFING ON SANCTIONS AND DISQUALIFICATION; AND (2) SEAL EXHIBITS B, C, E, F, G, H, I, K, L, AND M THERETO 3-6-20 CHAMBERS MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO DISQUALIFICATION AND SANCTIONS AND EXHIBITS 2 AND 3 THERETO, AND SEAL EXHIBITS 4, 5 6 AND 7 THERETO 3-20-20 CHAMBERS MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION AND SANCTIONS; AND (2) SEAL EXHIBIT A THERETO 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-13-20;

02/14/2020



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

MOTION FOR SANCTIONS ... EVIDENTIARY HEARING ... MOTION TO DISQUALIFY FOX ROTHSCHILD LLP Arguments by counsel. Testimony and exhibits presented (see worksheets). Request to seal Exhibit AA by Mr. Connot DENIED. Testimony and exhibits presented (see worksheets). Closing argument by Mr. Pisanelli. Closing argument by Mr. Connot. COURT stated its findings and ORDERED, Pro Hac STRICKEN; Mr. Berkley no longer permitted to participate in any form in this litigation. ADDITIONALLY, the Court requires counsel and plaintiffs to provide all copies, electronic and print, to the Defendants and provide a certification from all prior counsel that each version of the document has been destroyed and/or provided to Plaintiff counsel. FURTHER, the Court REQUIRES the appointment of a new arbitration panel, ordering the striking and refileing all the documents in the arbitration. ADDITIONALLY, Plaintiffs and their counsel to pay reasonable attorney's fees for the Defendants related to the contest of the Plaintiff's improper possession in the activities after July 31 notification occurred. Colloquy regarding limited declaration testimony by Plaintiff and Exhibit AA. At the request of Mr. Connot, COURT ORDERED, 15-Day Stay GRANTED after entry of order. Arbitration remains stayed pending anything happening in this case. Mr. Pisanelli to prepare the order.;

02/21/2020



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Briefing on Sanctions and Disqualification; and (2) Seal Exhibits B, C, E, F, G, H, I, K, L, and M Thereto
Motion Granted;

Journal Entry Details:

Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes a non- opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to redact Supplemental brief and seal Ex B, C, E f, G, H, I, K, L and M is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive financial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / lg 2-21-20;

03/06/2020



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

CASE SUMMARY

CASE NO. A-18-785391-B

Motion to Redact Plaintiffs' Supplemental Brief in Opposition to Disqualification and Sanctions and Exhibits 2 and 3 Thereto, and Seal Exhibits 4, 5 6 and 7 Thereto
Granted;

Journal Entry Details:

Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20 (e) the motion to redact and seal certain exhibits is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. 3-20-20 CHAMBERS MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION AND SANCTIONS; AND (2) SEAL EXHIBIT A THERETO 4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 3-9-10 ;

03/20/2020



Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Response to Plaintiffs' Supplemental Briefing in Opposition to Disqualification and Sanctions; and (2) Seal Exhibit A Thereto

Granted;

Journal Entry Details:

Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20 (e) the motion to redact Fresh Mix's supplemental response and seal Exhibit A is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 3-24-20;

03/31/2020

Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiff's Motion to Extend Stay of Order Pending Post-Judgment Motion (on Order Shortening Time)

Granted;

03/31/2020

Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion to (1) Redact Fresh Mix, LLC and Get Fresh Sales, Inc.'s Opposition to Plaintiffs' Motion to Extend Stay of Order Pending Post-Judgment Motion; and (2) Seal Exhibit A Thereto

Granted;

03/31/2020



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

Parties appeared by telephone. PLAINTIFF'S MOTION TO EXTEND STAY OF ORDER PENDING POST-JUDGMENT MOTION (ON ORDER SHORTENING TIME)...MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND STAY OF ORDER PENDING POST-JUDGMENT MOTION; AND (2) SEAL EXHIBIT A THERETO [ADVANCED from May 1, 2020]: Following arguments by Mr. Smith and Mr. Pisanelli, COURT ORDERED, motion GRANTED; there will be an additional stay until 15 days after the decision on the motion to alter or amend filed March 30, 2020. COURT FURTHER ORDERED, the motion to redact and to seal Exhibit A to the Opposition, filed March 30, 2020, is ADVANCED and GRANTED, because it is narrowly tailored to protect privileged information. Upon counsel's inquiry regarding security, COURT NOTED monetary issues will be discussed if they go beyond the period that is currently granted. COURT ADDITIONALLY ORDERED, the status check on the completion of arbitration currently set on April 10, 2020 in chambers is RESET on October 16, 2020 as the parties have not yet started. 5-4-20 9:00 AM PLAINTIFFS' MOTION TO VACATE, ALTER, OR AMEND SANCTIONS ORDER 10-16-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-785391-B

05/04/2020	Motion to Vacate (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Plaintiff Motion to Vacate, Alter, Or Amend Sanctions Order</i>	
10/16/2020	Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Status Check: Completion of Arbitration</i>	

DATE	FINANCIAL INFORMATION	
	Defendant Fresh Mix LLC	
	Total Charges	1,513.00
	Total Payments and Credits	1,513.00
	Balance Due as of 4/2/2020	0.00
	Plaintiff Lagudi, Paul	
	Total Charges	1,608.50
	Total Payments and Credits	1,608.50
	Balance Due as of 4/2/2020	0.00
	Plaintiff Lagudi, Paul	
	Temporary Restraining Order Balance as of 4/2/2020	500.00

BUSINESS COURT CIVIL COVER SHEET

County, Nevada

Department 11

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Paul Lagudi, an Individual and	Fresh Mix, LLC, a Delaware Limited Liability Company
William Todd Ponder, an Individual	Get Fresh Sales, Inc., a Nevada Corporation
Attorney (name/address/phone):	Attorney (name/address/phone):
Jeffery A. Bendavid, Esq.	
Moran Brandon Bendavid Moran	
630 South 4th Street	
Las Vegas, NV 89101	

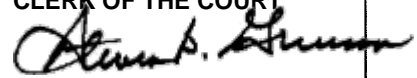
II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)
☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters WASHOE COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters
Judicial Review/Appeal/Other Civil Filing Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters		

12/31/18

Date

Signature of initiating party or representative



1 FFCL

2
3
4 **EIGHTH JUDICIAL DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 PAUL LAGUDI, an Individual; and a
7 WILLIAM TODD PONDER, an Individual,

8 Plaintiffs,

9 v.

10 FRESH MIX, LLC, a Delaware Limited
11 Liability Company; GET FRESH SALES,
12 INC., a Nevada corporation; DOES 1
13 through 25; and ROE BUSINESS ENTITIES
14 I through X, inclusive,

15 Defendants.

Case No.: A-18-785391-B
Dept. No.: XI

**DECISION AND ORDER; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Date of Hearing: January 21-22, 2020 and
February 14, 2020

Time of Hearing: 9:30 a.m. / 9:00 a.m.

16 On January 21 and 22, 2020, and February 14, 2020, this Court conducted an evidentiary
17 hearing on Get Fresh Sales, Inc. ("Get Fresh") and Fresh Mix, LLC's ("Fresh Mix") (Get Fresh
18 and Fresh Mix, together "Defendants") (1) Motion for Sanctions filed on August 26, 2019, (the
19 "Motion for Sanctions") and (2) Motion to Disqualify Fox Rothschild LLP filed on August 23,
20 2019 (the "Motion to Disqualify"). Based on the evidence presented, the briefs before the Court
21 and the arguments of counsel, the Court enters the following findings of fact and conclusions of
22 law.

23 **FINDINGS OF FACT**

24 **A. A Dispute Arises Between Get Fresh and Plaintiffs Lagudi and Ponder.**

25 1. Fresh Mix is owned by Get Fresh (60%), Plaintiff Paul Lagudi ("Lagudi") (30%),
26 and Plaintiff William Todd Ponder ("Ponder") (10%), each of which is Member of Fresh Mix.
27 Get Fresh, in turn, is owned by Dominic Caldara, Scott Goldberg, and John Wise. Caldara,
28 Goldberg, Wise, Lagudi, and Ponder are all Managers of Fresh Mix.

2. Beginning on January 11, 2010, Lagudi and Ponder were employees of Fresh Mix.

1 3. In late 2017/early 2018, disputes arose between Get Fresh and Plaintiffs Lagudi
2 and Ponder (Lagudi and Ponder, together "Plaintiffs") concerning Fresh Mix. Although the
3 parties endeavored to resolve their disputes without litigation, the prospect of litigation remained
4 throughout 2018. By the spring of 2018, all parties had retained counsel to guide and advise them
5 through these disputes, but also in anticipation of the arbitration mandated by Fresh Mix's
6 Operating Agreement.

7 4. In April 2018, Get Fresh retained Bruce A. Leslie, Esq. for legal advice and
8 representation related to its disputes with Plaintiffs related to Fresh Mix. Plaintiffs had already
9 retained Jeffrey Bendavid, Esq.

10 **B. The Creation of the Confidential and Privileged Memorandum.**

11 5. Near the outset of Get Fresh's retention of Leslie, Goldberg prepared a
12 memorandum at Leslie's request and for the purpose of seeking legal advice relating to the on-
13 going disputes that Get Fresh was having with Lagudi and Ponder (the "Memorandum").

14 6. Goldberg began drafting the Memorandum on his secured drive at Get Fresh. The
15 secured drive is only accessible via Goldberg's password-protected account, that of the Get Fresh
16 Senior Vice President of Finance (Mary Supchak), and the members of the IT administrator
17 group. Goldberg saved a partial draft of the Memorandum to the secured drive, and then emailed
18 the partial draft as an attachment from his password protected Get Fresh email address to his non-
19 Get Fresh business email address.

20 7. Goldberg's non-Get Fresh business email address is also password protected.

21 8. Goldberg finished drafting the Memorandum on his password-protected personal
22 desktop computer and then emailed it as an attachment from his non-Get Fresh business email
23 address to his Get Fresh email address.

24 9. On May 2, 2018, in anticipation of a May 3, 2018 meeting with Leslie and Get
25 Fresh partners, Caldara and Wise, Goldberg sent an email to Leslie with the Memorandum
26 attached, copying Caldara and Wise.

1 10. The Memorandum contains an assessment of Get Fresh's strengths and weaknesses
2 regarding its dispute with Plaintiffs concerning Fresh Mix. It also contains legal strategies and a
3 decision tree regarding potential resolution and plans.

4 11. Goldberg, Caldara, and Wise never printed the Memorandum or disseminated the
5 document outside of the privileged sphere.

6 C. **Fresh Mix Terminates Lagudi and Ponder's Employment and Get Fresh**
7 **Delivers Lagudi and Ponder's Personal Effects to them via their Attorney,**
8 **Bendavid.**

9 12. Fresh Mix sent letters terminating Lagudi and Ponder's employment on
10 November 26, 2018.

11 13. Supchak packed up Plaintiffs' personal items from their offices, separating
12 personal and company documents.

13 14. Supchak testified that the Memorandum was not in any of the boxes of documents
14 that she packed up when assembling the boxes of Plaintiffs' personal items.

15 15. On December 3, 2018, Leslie emailed Bendavid about the return of Plaintiffs'
16 personal items from their offices at Get Fresh. Bendavid testified that he intentionally refused to
17 respond to Leslie about where to deliver the boxes.

18 16. The same day, December 3, 2018, Plaintiffs initiated this action by filing the
19 Complaint.

20 17. On December 4, 2018, the boxes of Plaintiffs' personal effects were delivered to
21 Bendavid's office by Get Fresh employees Scott Putske and Marcus Sutton. A receipt of the
22 boxes was executed by an employee at Bendavid's office and returned to Get Fresh.

23 18. Bendavid did not see the boxes being delivered and he did not know how long the
24 boxes were in his office before he saw them.

25 19. Bendavid testified that the Memorandum was purportedly sticking up out of one of
26 the boxes of Plaintiffs' personal items, rolled in half but without a crease.

27 20. Bendavid testified that he did not see anyone place the Memorandum into one of
28 the boxes.

1 21. Both Putske and Sutton testified that neither of them saw a piece of paper sticking
2 out of any of the boxes they delivered, no one asked them to deliver any paper/memorandum, and
3 no one asked them to place a piece of paper such that it was sticking out of any of the boxes when
4 they were delivered.

5 22. Ponder was at Bendavid's office reviewing documents and meeting with one of
6 Bendavid's associates the day the boxes were delivered, *i.e.*, December 4, 2018.

7 23. Bendavid testified that he did not and could not see if Ponder had access to the
8 boxes prior to Bendavid seeing the boxes after they were delivered to his office.

9 24. At Bendavid's request, Ponder took all of the boxes home with him that same day,
10 and went through each one, including the boxes containing Lagudi's personal items.

11 25. Ponder testified that the boxes he took home with him did not contain the
12 Memorandum. According to Plaintiffs, Bendavid had taken it out of a box and not provided it to
13 Ponder.

14 26. Bendavid testified that he removed the Memorandum from the box, initially
15 thinking it was an inventory or receipt, but did not look at the document at that time. Instead, he
16 read and digested the Memorandum either later that same day, on December 4, 2018, or the
17 following day, December 5, 2018.

18 27. Bendavid testified that, upon his review of the Memorandum, (a) he recognized the
19 Memorandum was a document belonging to his adversaries about what they wanted to do in this
20 dispute against Plaintiffs; (b) he understood that the Memorandum contained concepts of
21 litigation strategy of his adversaries; and (c) he understood the Memorandum contained strengths
22 and weaknesses of Defendants' case.

23 28. Bendavid testified that he did not know, when he read the Memorandum, who
24 drafted it, although he knew it was not drafted by his clients, Lagudi or Ponder.

25 29. Bendavid testified that both the drafter and the source of the Memorandum were
26 anonymous to him.

1 30. Nevertheless, Bendavid said that he assumed the Memorandum was voluntarily
2 and intentionally sent by an authorized Get Fresh representative and stated also his belief that it
3 was not privileged because it was a threat.

4 31. Although he had interacted with Leslie regarding Plaintiffs' personal items in their
5 office, Bendavid did not alert Leslie nor did he alert any other counsel for Defendants to his
6 receipt of the Memorandum.

7 32. Bendavid submitted a declaration in which he stated that "had [he] had the Memo
8 [while drafting the Complaint and TRO], we would have referred to it in the Complaint and
9 attached it to the Motion for Preliminary Injunction and TRO." (Ex. 1 to Pls.' Second Suppl.
10 Opp'n, Feb. 3, 2020, Bendavid Decl. ¶ 23.)

11 33. Bendavid testified that he did not inform his clients, Lagudi and Ponder, of the
12 Memorandum for weeks. During a meeting at his office weeks after receipt, Bendavid told
13 Plaintiffs about the Memorandum, and read them excerpts from the Memorandum, but did not
14 provide them copies. Lagudi and Ponder did not ask for copies of the Memorandum.

15 **D. Bendavid Transitions Out of the Case and Sends the Memorandum to Stern**
16 **& Eisenberg and Fox Rothschild.**

17 34. Plaintiffs retained Stern & Eisenberg in or around March of 2019. On
18 March 1, 2019, Evan Barenbaum, Esq., of Stern & Eisenberg, first appeared in the arbitration
19 compelled by this Court, pending before the American Arbitration Association.

20 35. Berkley testified that Barenbaum contacted Fox Rothschild LLP about
21 representing the Plaintiffs. Brian Berkley, Esq., and Mark Connot, Esq., both of Fox Rothschild
22 LLP, subsequently interviewed to represent Plaintiffs.

23 36. Plaintiffs retained Fox Rothschild in March of 2019. Fox Rothschild attorneys
24 Berkley and Connot testified that they were co-lead counsel for Plaintiffs in this litigation and the
25 arbitration.

26 37. Upon retention, Fox Rothschild subsequently received the case file. Berkley did
27 not recall whether the file transfer was in electronic or paper form, nor did he recall whether the
28

1 files came directly from Bendavid, or went through Barenbaum. Connot testified that to the best
2 of his recollection, the bulk, if not the entirety, of the file came in an electronic format.

3 38. Fox Rothschild admits to learning of the Memorandum upon its retention, *i.e.*, in
4 March of 2019. Berkley testified that he first received the Memorandum from Barenbaum in
5 March 2019 as an attachment to an email. Fox Rothschild did not log this communication on the
6 privilege log ordered by this Court as part of the sanctions discovery.

7 39. Stern & Eisenberg's redacted billing records reveal that it, too, received the
8 Memorandum upon retention. Specifically, the billing records reveal that, on March 13, 2019,
9 Barenbaum spoke to "Mr. Bendavid re delivery of Get Fresh document."

10 40. Despite multiple interactions with Defendants' counsel, including interactions
11 directly related to the contents of the boxes delivered to Plaintiffs on December, 4, 2018 and an
12 inspection of another set of boxes in the spring of 2019, neither Fox Rothschild nor Stern &
13 Eisenberg notified Get Fresh or their counsel of their receipt or possession of the Memorandum.

14 41. Berkley testified that, prior to him reading the Memorandum, he asked Barenbaum
15 about the circumstances regarding the delivery of the Memorandum to Bendavid. Berkley and
16 Connot testified that Barenbaum told them that the Memorandum was delivered with a box of
17 documents when Lagudi and Ponder's employment was terminated, and that the Memorandum
18 was viewed as a threat. Barenbaum, as well as Lagudi and Ponder, told Berkley that the
19 Memorandum came from Get Fresh.

20 42. Connot testified that there was no specific knowledge or evidence of how the
21 Memorandum ended up in Plaintiffs' boxes; Bendavid did not have any direct knowledge
22 regarding who put the Memorandum in the boxes.

23 43. Prior to reading the Memorandum, Berkley knew that it was not Lagudi or
24 Ponder's document, and that neither of them had written it. Around the time he read the
25 Memorandum, or shortly thereafter, Connot assumed that it was Defendants' record, and that it
26 was Defendants' document.

1 E. **Plaintiffs Weaponize the Memorandum, and Refuse to Return, Sequester, or**
2 **Destroy It, Notwithstanding Multiple Court Orders.**

3 44. On July 17, 2019, Plaintiffs filed a motion to lift the stay that this Court entered
4 pending the arbitration, and to amend their complaint.

5 45. Get Fresh and Fresh Mix filed their opposition on July 25, 2019.

6 46. In preparation of their reply in support of their motion to stay (the "Reply"), on
7 July 31, 2019, Plaintiffs attorney, Barenbaum, emailed his clients Lagudi and Ponder, as well as
8 his Fox Rothschild co-counsel, Connot, Berkley,¹ and Emily Bridges, Esq., and a colleague at his
9 own firm, Thomas Shea, Esq., attaching the Memorandum to his email.

10 47. Plaintiffs logged this July 31, 2019 email communication on their
11 December 13, 2019 privilege log, and identified the Memorandum attached thereto as a Word
12 document.

13 48. Fox Rothschild attorney Berkley was the lead drafter of the Reply. Fox Rothschild
14 attorney Connot was involved in editing and revising the Reply. Berkley and Connot conferred
15 about the strategy to use the Memorandum in connection with the Reply, and agreed to do so.
16 Berkley further testified that Barenbaum participated in the decision to put the Memorandum into
17 the public record.

18 49. Plaintiffs filed their Reply on Thursday, August 1, 2019. The Reply contained
19 arguments based upon the Memorandum, including quotations from the Memorandum and
20 paraphrases of its content. Plaintiffs also attached the Memorandum to the Reply as Exhibit T.
21 Despite filing a motion to seal and redact associated with their Reply and certain exhibits thereto,
22 Plaintiffs filed the Memorandum in the public record.

23 50. Plaintiffs' Reply was the first notice Defendants received of Plaintiffs' possession
24 of the privileged Memorandum.

25
26
27 ¹ Plaintiffs filed a Motion to Associate Counsel, seeking an order permitting Berkley to
28 practice in Nevada pursuant to SCR 42 on August 20, 2019. Defendants filed a Response thereto
on August 30, 2019, and the Court subsequently granted the Motion to Associate Counsel on
October 4, 2019.

1 51. Upon receipt and review of the Reply, Get Fresh's counsel immediately took action
2 to protect Get Fresh's privileges.

3 52. On Friday, August 2, 2019, James J. Pisanelli, counsel for Get Fresh and Fresh
4 Mix, called and spoke to Plaintiffs' counsel, Connot, asserted Get Fresh's privilege claim over the
5 Memorandum, asked how Plaintiffs acquired the Memorandum, and stated that Get Fresh would
6 be seeking Court relief. Connot stated that he did not know that the Memorandum was
7 privileged because it "seems to be internal" and references getting litigation counsel.

8 53. Get Fresh moved promptly and, that same day, submitted an Emergency Motion to
9 Strike the Reply and Exhibit T, unequivocally asserting its privilege claim over the Memorandum,
10 asking that the offending Reply and Exhibit T be struck, and that Plaintiffs be directed to
11 sequester the Reply, the Memorandum, and any related notes or memos from use and review.

12 54. Fox Rothschild claimed that they sequestered the Memorandum once Get Fresh
13 alerted them of its privilege claim.

14 55. Connot submitted a declaration in which he stated that "While I disagreed with
15 whether the document was privileged, I immediately sequestered the Memo and advised by co-
16 counsel at Fox Rothschild and Stern Eisenberg, as well as my clients, to sequester the Memo."

17 56. Similarly, Berkley submitted a declaration stating that "[u]pon receipt of the notice
18 of privilege, I stopped review of the Memo"

19 57. Despite sequestration, Fox Rothschild took the position that it was permitted to
20 review and use the Memorandum (including reference to its substance) to argue that it was not
21 privileged.

22 58. The next business day, Monday, August 5, 2019, Get Fresh and Fresh Mix served
23 its privilege log related to the Memorandum. (*See* Ex. J5, Defs. Fresh Mix & Get Fresh's Initial
24 Privilege Log, Aug, 5, 2019.)

25 59. Rather than sequester the Memorandum upon notice of Get Fresh's privilege
26 assertion, on Sunday, August 4, 2019, Plaintiffs again reviewed and digested the Memorandum to
27 prepare and file their Opposition to the Emergency Motion. Throughout this Opposition,
28 Plaintiffs **again** refer to, discuss, quote, and paraphrase the privileged Memorandum.

1 60. Berkley was the lead drafter of the August 4, 2019 Opposition to the Emergency
2 Motion. Connot edited the Opposition.

3 61. At the hearing on Plaintiffs' Motion to Lift Stay and Amend the Complaint held on
4 Monday, August 5, 2019, the Court struck Exhibit T (the Memorandum) from the record and
5 permitted Get Fresh and Fresh Mix to move to redact both Plaintiffs' August 1, 2019 Reply and
6 August 4, 2019 Opposition. The Court stated:

7 I am not going to impede any efforts you make to obtain the ability
8 to use Exhibit T in whatever format. And you guys are going to
9 fight, and at that point I assume I'll do an in-camera review of
10 Exhibit T and then make a decision . . . But I'm not there. . . . I'm
11 going to mark the emergency motion, which I did not set for
hearing, and the opposition to the emergency motion which I did
not set for hearing as Court's Exhibit 1. I'm going to place them in a
sealed envelope, because they have some reference to the document
that I'm granting the striking of.

12 62. The Court's order was entered on August 22, 2019. Get Fresh and Fresh Mix
13 subsequently moved to redact the briefs, and such relief was granted.

14 63. Notwithstanding the Court's order and statements during the August 5, 2019
15 hearing, Fox Rothschild took the position that it could nevertheless use the substance of the
16 Memorandum to argue that it was not privileged or otherwise subject to protection.

17 64. Thus undeterred, Plaintiffs continued to use and paraphrase the Memorandum.
18 Plaintiffs' August 12, 2019 Response to Amended Demand for Arbitration and Counterclaims (the
19 "Response") submitted to the AAA in the arbitration compelled by this Court, paraphrases and
20 uses exact words and phrases from the Memorandum (just omitting the quotation marks). (*See*
21 *Ex. J6*, admitted under seal, ¶¶ 243, 244, 245, 300, 305, and p. 46:13-14.)

22 65. Berkley was the lead drafter of the Response. Connot was involved in analyzing,
23 editing, and revising the Response. Other attorneys at Fox Rothschild (*e.g.*, Emily Bridges)
24 worked on the Response, as did attorneys at Stern & Eisenberg.

25 66. Berkley and Connot each claim that they did not review the Memorandum when
26 working on the Response, but the exact language of the Memorandum had been part of their
27 institutional knowledge. Specifically, Berkley and Connot each submitted declarations stating
28

1 that they did not "have any intent to include references to the Memo or language from the Memo
2 in the Arbitration Response."

3 67. Berkley testified that he did not intentionally incorporate direct language from the
4 Memorandum into the Response. "That language was at that time in my head because I had
5 written that multiple times during that one week." (Feb. 14, 2020 Hr'g Tr. 89:12-14; *see also id.*
6 at 126:1-3 ("Those – those words were in my mind at that time, and the concepts and the actions
7 that were being taken in real time by the defendants was also fresh in my mind.") and 131:1-20.²)

8 68. Plaintiffs attached or relied upon their August 12, 2019 Response in briefs they
9 filed both in the arbitration and this action.

10 69. Plaintiffs cited to and relied upon the Response within a Rule 37 Motion for
11 Advancement of Indemnification under the Operating Agreement, filed on September 11, 2019.
12 In their Motion for Advancement, Plaintiffs directed the arbitration panel to the very section of
13 the Response that parroted the Memorandum.

14 70. Plaintiffs later attached the Response as Exhibit A to their Motion to Compel
15 Production of Books and Records, filed on September 30, 2019 with this Court. Plaintiffs again
16 directed the Court to the very section of the Response that parroted the Memorandum.

17
18
19 ² The final excerpt, 131:1-20 from the third day of the evidentiary hearing is as follows:

20 THE COURT: Okay. So explain to me why the terms from the memo appear less
than a week later in the reply you filed in the arbitration.

21 THE WITNESS [BERKLEY]: Because those terms were fresh in my mind at that
22 time because I had written those terms in multiple filings prior to the August 5th
23 hearing and . . . and the concepts were fresh in my mind, as well, because both the
writing of that as well as independently I had – you know, those actions were
being taken by the plaintiffs – or the defendants. Excuse me.

24 THE COURT: So the words were embedded in your mind because you'd
25 previously quoted from the memo and used it in the reply brief?

26 THE WITNESS: At that time they were, yes.

27 THE COURT: So you couldn't forget what was in the memo and not use it as I
directed because it was so fresh in your mind??

28 THE WITNESS: At that time, yes.

1 71. Trying to bolster their argument that facts that independently supported the
2 offending allegations in their Response, Plaintiffs again draw from the Memorandum in their
3 February 3, 2020 Supplemental Brief.

4 72. On August, 23, 2019, Get Fresh and Fresh Mix filed the Motion to Disqualify Fox
5 Rothschild LLP.

6 73. On August 26, 2019, because of Plaintiffs' continued use of the Memorandum and
7 refusal to sequester it, Get Fresh and Fresh Mix filed a Motion for Claw Back, Discovery, and
8 Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and
9 Other Privileged and Confidential Information.

10 74. On September 5, 2019, Plaintiffs filed their Opposition to the Motion for Claw
11 Back and Counter-Motion, *again* referring to and discussing the Memorandum, and *again*
12 attaching the Memorandum as an exhibit (Exhibit A).

13 75. Get Fresh and Fresh Mix moved to strike the Memorandum and all references to
14 and discussion of the Memorandum in the brief, and this Court granted the requested relief via its
15 order entered on September 25, 2019. Specifically, this Court ordered:

16 Defendants' request for claw back is GRANTED in that Plaintiffs
17 shall sequester the memorandum identified as Exhibit T to
18 Plaintiffs' Reply in Support of Motion to Lift Stay and Amend
19 Complaint from review and/or use. Plaintiffs may not quote, or
20 discuss the content of the memorandum in any further pleadings or
21 other papers other than in an evidentiary hearing or otherwise
22 relating to the privileged nature of the document or the motion for
23 disqualification.

24 76. Get Fresh and Fresh Mix subsequently moved to redact Plaintiffs' Opposition, and
25 this Court granted the requested relief.

26 77. Plaintiffs filed another brief seeking to inject the Memorandum into the record,
27 despite court orders and multiple filings and hearings.

28 78. In their September 19, 2019 motion, Plaintiffs moved to have the Court accept its
offending Opposition to the Motion to Strike under seal and the Memorandum. The Court denied
Plaintiffs' request in an October 8, 2019 order:

The Court previously ordered the memorandum identified as
Exhibit T to Plaintiffs' Motion to Lift Stay and Amend Complaint

1 *sequestered*. As a result, Plaintiffs shall not quote or summarize
2 Exhibit T in any briefing until further order of the Court.

3 79. Despite this history, Plaintiffs tried again, filing a Motion to Clarify the Procedure
4 related to this evidentiary hearing. In response, the Court reiterated its prior rulings:

5 The Court *previously* made a decision that the memorandum
6 identified as Exhibit T to Plaintiffs' Motion to Lift Stay and Amend
7 Complaint ("The Memorandum") is facially privileged based upon
8 the information that was provided to the Court.

9 Plaintiffs *shall continue* to sequester the Memorandum, and may
10 not quote, summarize, or discuss the content of the Memorandum.

11 (Order on Pls.' Mot. to Clarify the Procedure re: Privilege Determination, dated January 8, 2020.)

12 80. Plaintiffs' counsel held, read, reviewed, and referred to the Memorandum
13 throughout the evidentiary hearing on January 21 and 22, 2020.

14 81. Connot used the Memorandum during the examination of Scott Goldberg, while
15 Berkley read along to assist Connot in the cross-examination.

16 82. Berkley and Connot each submitted declarations testifying that, after reviewing
17 their billing records, they estimated to have spent less than two hours reviewing the Memorandum
18 since being retained by Plaintiffs.

19 83. Although Berkley had access to Stern & Eisenberg and Fox Rothschild's full
20 billing records regarding Plaintiffs' representation, he testified that he did not review these records
21 for purposes of determining the full scope of the Memorandum's circulation and digestion.
22 Berkley also testified that he did not ask his colleagues, other than Connot, how broadly the
23 Memorandum had been circulated and digested.

24 84. Connot also reviewed billing records, reading in detail his time entries relating to
25 the Memorandum.

26 85. Fox Rothschild did not take any action to remove the language from the
27 Memorandum from the arbitration. The information is presently in the arbitration record.

28 86. Following the first two days of the evidentiary hearing on January 21 and 22,
2020, Berkley directed Bridges, an associate with Fox Rothschild, to run searches of the words

1 located in paragraphs 243 - 245 of the Response that are from the Memorandum against the other
2 filings in the Arbitration. Berkley testified that Bridges emailed him the result of those searches
3 and that there were no hits. The search was limited to the exact words from the Memorandum
4 that were used in the Response, and did not capture themes derived from the Memorandum.

5 **F. Plaintiffs Received Other Get Fresh Documents from Third Parties and Did**
6 **Not Disclose Their Receipt to Defendants.**

7 87. On September 25, 2019, the Court granted Get Fresh and Fresh Mix's request for
8 discovery related to Plaintiffs' and their counsel's improper possession and use of the
9 Memorandum and other privileged and confidential information. (See Order, dated Sept. 25,
10 2019.)

11 88. While conducting the Court-ordered discovery, Plaintiffs revealed, for the first
12 time, that they had received documents from third parties unrelated to the litigation. Specifically,
13 Plaintiffs revealed that they received documents from two disgruntled former Get Fresh
14 employees.

15 89. Plaintiffs received confidential documents from David Heinrich, Get Fresh's
16 former IT director. Heinrich left Get Fresh in 2014.

17 90. Ponder testified that in August of 2018, Heinrich informed him that he was in
18 possession of certain Get Fresh purchase orders.

19 91. Later, in 2019, Heinrich gave copies of confidential Get Fresh records, specifically
20 purchase orders ("POs"), to Lagudi. Some of these POs bear print dates *years after* Heinrich
21 separated from Get Fresh, e.g., from September 2018.

22 92. Lagudi testified that in September of 2019, Matthew McClure emailed him
23 confidential Get Fresh documents and records related to a recall from 2016. McClure had
24 previously worked as a food safety consultant for Get Fresh, and left Get Fresh in 2017.

25 93. Rather than provide copies of the documents to Get Fresh, Lagudi provided these
26 documents to his attorneys to determine how best to use them in the pending dispute with
27 Defendants.

94. Plaintiffs made allegations in the arbitration related to these documents, Plaintiffs did not provide any notice to Defendants of their receipt of confidential company records outside of the ordinary discovery process from either a third party unrelated to the litigation or a person unauthorized to access or provide confidential company records.

95. Plaintiffs also did not provide Defendants' counsel with the particular details about how, when, and from whom they obtained the documents.

96. Any finding of fact stated above that is more appropriately deemed a conclusion of law shall be so deemed.

CONCLUSIONS OF LAW

A. Plaintiffs Were Required to Give Prompt Notice of Their Receipt of Their Adversary's Confidential and Privileged Document.

1. Under Nevada law, an attorney who receives confidential or privileged documents of its adversary regarding a case from an anonymous source or a third party unrelated to the litigation must promptly notify opposing counsel. *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 697, 262 P.3d 720, 725 (2011).

2. The required notice "must adequately put opposing counsel on notice that the documents were not received in the normal course of discovery and describe, with particularity, the facts and circumstances that explain how the document or evidence came into counsel's or his or her client's possession." *Id.*

3. This notice requirement is designed to prevent parties from receiving an adversary's confidential or privileged documents outside the normal course of discovery and process, and "lying in wait" to announce their procurement and use the document against their adversary.

4. The notice requirement provides the owner of the document(s) an "opportunity . . . to register an objection and demand return and non-use. . . ." *Id.* at 694, 262 P.3d at 723.

5. If an attorney fails to comply with this notice requirement, the attorney "risk[s] being in violation of his or her ethical duties and/or being disqualified a counsel." *Id.* at 697, 262 P.3d at 725.

1 6. Plaintiffs testified that they first received the Memorandum in boxes of Plaintiffs'
2 personal items from their offices at Get Fresh delivered to Bendavid in early December 2018.

3 7. Bendavid discussed the delivery of those boxes over email with Leslie, counsel for
4 Defendants, but intentionally refused to respond to Leslie about where to deliver the boxes.

5 8. The boxes were delivered on December 4, 2018, the day after Plaintiffs filed a
6 complaint in this action and the very day Plaintiffs submitted their application for temporary
7 restraining order to this Court in this action.

8 9. Discovery had not yet commenced, and therefore documents received were
9 received outside the normal course of discovery.

10 10. According to Bendavid, the Memorandum was purportedly sticking up out of one
11 of the boxes of Plaintiffs' personal items. While he initially set it aside thinking it was an
12 inventory, he read and digested the Memorandum later that same day, December 4, 2018, or the
13 following day, December 5, 2018.

14 11. Bendavid testified that (a) he recognized the Memorandum was a document
15 belonging to his adversaries about what they wanted to do in this dispute against Plaintiffs; (b) he
16 understood that the Memorandum contained concepts of litigation strategy of his adversaries; and
17 (c) he understood the Memorandum contained strengths and weaknesses of Defendants' case.

18 12. While Plaintiffs and Bendavid testified that they "believe" the Memorandum was
19 "voluntarily" or "intentionally" provided to Bendavid by Goldberg, Plaintiffs failed to offer
20 evidence, only supposition, to support this theory.

21 13. Bendavid testified that he did not see the boxes being delivered, he did not see
22 anyone place the document in a manner sticking up out of one of the boxes, and he did not know
23 how long the boxes were in his office before he saw them.

24 14. Plaintiffs themselves recognized that the Memorandum was not an item that had
25 been in their offices and therefore should not have been in boxes that were delivered to them.

26 15. Despite Bendavid's admissions regarding the general subject matters of the
27 contents of the privileged Memorandum, its suspicious receipt, and his communications with
28

1 Leslie about delivery of personal items but no company documents, Bendavid assumed that the
2 Memorandum was voluntarily or intentionally sent by an authorized Get Fresh representative.

3 16. Nevada law requires more than an "assumption" to avoid the prompt notice
4 obligation upon receipt of an adversary's confidential or privileged document outside the normal
5 course of discovery. If an assumption were sufficient, the rule would be set aside merely by one's
6 claim, without more, that their opponent gave it to them for any reason one can conjure.

7 17. It is not credible that Plaintiffs believed the Memorandum was a threat delivered to
8 them, because it revealed not only Get Fresh's strengths and weaknesses, but also the options for
9 potential resolution and plans.

10 18. Both the drafter and the source of the Memorandum were anonymous.

11 19. The notice requirement established by the Nevada Supreme Court in *Merits*
12 *Incentives* was triggered.

13 **B. Plaintiffs Failed to Give Prompt Notice of Their Receipt of Their Adversary's**
14 **Confidential and Privileged Document.**

15 20. Bendavid testified that he did not provide notice to Leslie or any other counsel for
16 Defendants of either his receipt of the Memorandum or provide with any particularity the facts
17 and circumstances that explain how the document or evidence came into his possession.

18 21. It is undisputed that neither Fox Rothschild nor Stern & Eisenberg provided notice
19 to Leslie or any other counsel for Defendants of either their receipt of the Memorandum or any
20 facts and circumstances that explain how the document or evidence came into their possession.

21 22. Failure to comply with the notice requirement and related ethical obligations may
22 result in counsel's disqualification, even when the receipt of the privileged information was
23 through no fault of their own. *Merits Incentives*, 127 Nev. at 697, 262 P.3d 725.

24 23. Fox Rothschild associated with Bendavid as counsel for Plaintiffs on May 16,
25 2019. Stern & Eisenberg is counsel for Plaintiffs in the arbitration (compelled by this Court).
26 Both Fox Rothschild and Stern & Eisenberg took over as counsel for Plaintiffs in Bendavid's
27 stead in or around March 2019. Bendavid's formal notice of withdrawal was filed on July 3,
28 2019.

1 24. Bendavid testified to transferring his file to Fox Rothschild. Bendavid's billing
2 records confirm this copying, as well as receipt and review of the files by both Fox Rothschild
3 and Stern & Eisenberg.

4 25. The Stern & Eisenberg billing records reflect that on March 13, 2019, Barenbaum
5 spoke to "Mr. Bendavid re delivery of Get Fresh document."

6 26. Fox Rothschild represented, and it is in the record, that Bendavid imputed his
7 knowledge concerning the Memorandum to Fox Rothschild. (*See* Pls.' First Suppl. Opp'n, 9:6-11
8 ("When Mr. Bendavid provided the Fresh Mix Memo to Fox Rothschild, he imputed this
9 knowledge. Accordingly, Fox Rothschild, after considering whether the Fresh Mix Memo was a
10 'corporate work document,' and the circumstance between the parties at the time, had no reason to
11 identify or suspect the Fresh Mix Memo to be privileged." (internal citation omitted).)

12 27. Fox Rothschild also represented, and it also is in the record, that they, too,
13 reviewed and digested the Memorandum. (*See, e.g., id.* at 3:23-25 ("Upon being retained by
14 Plaintiffs, Fox Rothschild learned of the Fresh Mix Memo and, like Mr. Bendavid, recognized
15 that the Fresh Mix Memo was not privileged."), 10:6-9 ("Fox Rothschild abided by its ethical
16 obligations at all times and reviewed the Fresh Mix Memo before Defendants ever claimed
17 privilege. Mr. Bendavid knew upon reading the document that it was not privileged. Fox
18 Rothschild attorneys reached the same conclusion.").)

19 28. It is undisputed that the first time Plaintiffs or any of their counsel provided notice
20 to Defendants and their counsel of their possession of the Memorandum was on August 1, 2019,
21 when Plaintiffs filed their Reply in Support of their Motion for Leave to Amend, attached the
22 Memorandum to the Reply as an exhibit, and quoted extensively from the Memorandum.

23 29. According to Plaintiffs' testimony and argument in the record, they possessed the
24 Memorandum without providing notice to Defendants or their counsel from December 4, 2018 to
25 August 1, 2019, when they affirmatively used it, quoted from it, and attached it to a public filing
26 in support of a motion they filed to advance their position.

1 30. Each and all of Plaintiffs' counsel, Bendavid, Fox Rothschild, and Stern &
2 Eisenberg (via his representation of Plaintiffs in the arbitration this Court compelled) failed to
3 comply with the notice requirement set forth in *Merits Incentives*.

4 31. Having received the Memorandum under suspicious circumstances in December 4,
5 2018 (by Bendavid) and the spring 2018 (by Stern & Eisenberg and Fox Rothschild), yet not
6 providing any notice until affirmatively using the Memorandum in a Reply brief on
7 August 1, 2019, Plaintiffs' counsel did "lie in wait" to provide notice only when it worked for
8 them in the dispute against their adversary, and denied Get Fresh of any opportunity to object,
9 demand return of the document, and non-use of the document. This is the exact type of behavior
10 the Nevada Supreme Court criticized in *Merits Incentives*. 127 Nev. at 699, 262 P.3d at 727.

11 **C. The Memorandum and Related Communications are Protected by the**
12 **Attorney-Client Privilege and Work Product.**

13 32. The attorney-client privilege protects the disclosure of a confidential
14 communication "[b]etween the client or the client's representative and the client's lawyer or the
15 representative of the lawyer" "for the purpose of facilitating the rendition of professional
16 services." NRS 49.095.

17 33. "A communication is 'confidential' if it is not intended to be disclosed to third
18 persons other than those to whom disclosure is in furtherance of the rendition of professional
19 services to the client or those reasonably necessary for the transmission of the communication.
20 NRS 49.055.

21 34. Nevada's work-product doctrine is set forth in NRCP 26(b)(3). It "protects
22 documents with two characteristics: (1) they must be prepared in anticipation of litigation or for
23 trial, and (2) they must be prepared by or for another party or by or for that other party's
24 representative." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 133 Nev. 369, 383, 399 P.3d 334,
25 347 (2017) (citing *In re Grand Jury Subpoena*, 357 F.3d 900, 907 (9th Cir. 2004)) (internal
26 quotation marks omitted).

27 35. The Nevada Supreme Court adopted the "because of" test to determine whether
28 material was prepared in anticipation of litigation, and thereby satisfy the first requirement for

1 work-product protection. "The anticipation of litigation must be the *sine qua non* for the creation
2 of the document – but for the prospect of that litigation, the document would not exist."
3 *Wynn Resorts*, 133 Nev. at 383-84, 399 P.3d at 347-48 (internal quotation marks and citation
4 omitted).

5 36. The party claiming privilege bears the burden of establishing the privilege, and
6 does so by serving a privilege log. *See Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268
7 (2011) (the proponent of privilege bears the burden of establishing the privilege); *Albourn v. Koe*,
8 *M.D., et al.*, Discovery Commissioner Opinion #10, 15 (Nov. 2001) (a party provides a factual
9 basis for its claims of privilege by producing a privilege log); *In re Grand Jury Investigation*, 974
10 F.2d 1068, 1071 (9th Cir. 1992) ("In essence, the party asserting the privilege must make a *prima*
11 *facie* showing that the privilege protects the information the party intends to withhold. We have
12 previously recognized a number of means of sufficiently establishing the privilege, one of which
13 is the privilege log approach." (citations omitted).

14 37. "The party asserting the privilege has the burden of proving its applicability,
15 including that the party has not waived it." *United States v. SDI Future Health, Inc.*, 464 F. Supp.
16 2d 1027, 1040 (D. Nev. 2006) (citing *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d
17 18, 25 (9th Cir. 1981)).

18 38. "[A] corporation's current management controls the [attorney-client privilege] 'to
19 refuse to disclose, and to prevent any other person from disclosing, confidential
20 communications.'" *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. 643, 656, 331 P.3d 905,
21 914 (2014).

22 39. "Courts in the Ninth Circuit consider the circumstances surrounding the disclosure
23 when deciding if an inadvertent disclosure has waived the privilege. These courts typically apply
24 a five-factor test to determine the waiver issue. These factors include: (1) the reasonableness of
25 the precautions to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the
26 scope of discovery; (4) the extent of disclosure; and (5) the overriding issue of fairness." *IGT v.*
27 *All. Gaming Corp.*, 2-04-CV-1676-RJC RJJ, 2006 WL 8071393, at *6 (D. Nev. Sept. 28, 2006)
28 (quotation marks and citations omitted).

1 40. The Memorandum was prepared by Goldberg, owner and Chief Financial Officer
2 for Get Fresh in April/May 2018, at the request of counsel, Leslie, providing confidential
3 information for the purpose of seeking legal advice relating to the on-going dispute between the
4 parties.

5 41. The Memorandum is facially and substantively privileged.

6 42. Get Fresh has maintained the confidentiality of the Memorandum since its
7 creation.

8 43. Get Fresh has ensured the password protected nature and secured access to email
9 and the related server.

10 44. None of the individuals on the email (Goldberg, Caldara, Wise, and Leslie) printed
11 the Memorandum. None of them have ever disseminated the Memorandum outside of the
12 privileged sphere.

13 45. Get Fresh did not voluntarily disclose the Memorandum to Plaintiffs or their
14 counsel.

15 46. There is no indication that Get Fresh waived its claim to privilege or protection
16 over the Memorandum. Any assumption as to how the document got into Plaintiffs or their
17 counsel's possession is not controlling in a determination of waiver.

18 47. Upon learning that Plaintiffs possessed the Memorandum, Get Fresh alerted
19 Plaintiffs and their counsel to its claim of privilege fewer than 24 hours later, repeatedly sought
20 (and obtained) relief from the Court in order to keep the Memorandum out of the public record.

21 48. Get Fresh served a privilege log on August 5, 2019, in which Get Fresh asserted
22 privilege over the Memorandum and communications related thereto.

23
24 **D. Plaintiffs' Counsel Did Not Return or Sequester the Memorandum as**
25 **Required By NRCP 26(b)(5)(B).**

26 49. Once a party is placed on notice that information is subject to a claim of privilege
27 or protection, NRCP 26(b)(5)(B) enumerates an affirmative obligation upon a party and their
28

1 counsel to "promptly return, sequester, or destroy the specified information and any copies it has;
2 must not use or disclose the information until the claim is resolved."

3 50. Get Fresh informed Plaintiffs, through their counsel, of their claims of privilege
4 and protection over the Memorandum on August 2, 2019. This was fewer than twenty-four hours
5 after learning that Plaintiffs were in possession of the Memorandum.

6 51. Get Fresh served a privilege log asserting their claims of privilege and protection
7 over the Memorandum and communications related thereto on August 5, 2019.

8 52. Plaintiffs admit that they did not "return, sequester, or destroy" the Memorandum
9 after Get Fresh notified them of their claims of privilege and protection August 2, 2019.

10 53. Plaintiffs admit that they relied upon the Memorandum and its substance to argue
11 that it was not privileged after they were put on notice of Get Fresh's claims.

12 54. It is "not [the receiving party's] prerogative to unilaterally determine whether the
13 information received anonymously was truly proprietary, confidential, privileged, or some
14 combination of those labels, and use the information it deem[s] appropriate." *Raymond v. Spirit*
15 *AeroSystems Holdings, Inc.*, No. 16-1282-JTM-GEB, 2017 WL 2831485, at *15 (D. Kan. June
16 30, 2017) (discussing the analogous FRCP 26(b)(5)(B)).

17 55. "Rule 26(b)(5)(B) could not be more clear. Once a producing party claims a
18 privilege in materials that have been produced, no further use is to be made of the information
19 until the claim of privilege is resolved. As far as Rule 26(b)(5)(B) is concerned, it is immaterial if
20 [the receiving parties] disagree with the claim of privilege. [The receiving parties] were
21 prohibited from making any use of the information, period." *Mafille v. Kaiser-Francis Oil Co.*,
22 18-cv-586-TCK-FHM, 2019 WL 3219151, at *1 (N.D. Okla. July 17, 2019) (discussing the
23 analogous FRCP 26(b)(5)(B); *Jensen v. Indianapolis Public Schools*, No. 1:16-cv-02047-TWP-
24 DLP, 2019 WL 911241, at *3 (S.D. Ind. Feb. 22, 2019) (while attaching a cover letter and filing a
25 motion for the court to make a privilege determination is consistent with FRCP 26, weaponizing
26 the documents by referencing its contents violates the rule).

27 56. Plaintiffs continued to use and rely upon the Memorandum, as stated above.
28

1 57. Plaintiffs and their counsel continued to use the Memorandum in conjunction with
2 the arbitration, using exact words and phrases from the Memorandum (just absent the quotation
3 marks) and paraphrasing information from it in their Response to Amended Demand for
4 Arbitration for Counterclaims. Plaintiffs and their counsel referred to and attached their Response
5 to briefing both in the arbitration and this action.

6 **E. Limited Disqualification is Necessary.**

7 58. Disqualification may be necessary to prevent disclosure of confidential
8 information that may be used to an adverse party's disadvantage. *Nev. Yellow Cab Corp. v.*
9 *Eighth Jud. Dist. Ct.*, 123 Nev. 44, 53, 152 P.3d 717, 743 (2007).

10 59. "Where the 'asserted course of conduct by counsel threatens to affect the integrity
11 of the adversarial process, [the court] should take appropriate measures, including
12 disqualification, to eliminate such taint.'" *Richards v. Jain*, 168 F. Supp. 2d 1195, 1200 (W.D.
13 Wash. 2001) (modifications in original) (quoting *MMR/Wallace Power & Indus., Inc. v. Thames*
14 *Assoc.*, 764 F. Supp. 712, 718 (D. Conn. 1991)); *cf. Clark v. Superior Court*, 196 Cal. App. 4th
15 37, 55 (Cal. App. 2011) (describing disqualification "as a prophylactic measure to prevent future
16 prejudice to the opposing party from information the attorney should not have possessed").

17 60. Where privilege information has been disclosed and misused, doubts should
18 generally be resolved in favor of disqualification. *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200,
19 1205, 14 P.3d 1266, 1269 (2000).

20 61. The Nevada Supreme Court has found that "there are situations where a lawyer
21 who has been privy to privileged information improperly obtained from the other side must be
22 disqualified." *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 698, 262 P.3d 720,
23 726 (2011).

24 62. The Court "has the power, under appropriate circumstances, to disqualify an
25 attorney even though he or she has not violated a specific disciplinary rule." *In re Meador*, 968
26 S.W. 2d 346, 351 (Tex. 1998).

27 63. When determining whether to disqualify an attorney who received an opponent's
28 privileged information outside the course of discovery, the trial court should consider, in addition

1 to "all the facts and circumstances to determine whether the interests of justice require
2 disqualification," the following non-exclusive factors:

- 3 1) Whether the attorney knew or should have known that the
4 material was privileged;
- 5 2) The promptness with which the attorney notifies the other
6 side that he or she has received its privileged information;
- 7 3) The extent to which the attorney reviews and digests the
8 privileged information;
- 9 4) The significance of the privileged information; i.e., the
10 extent to which its disclosure may prejudice the movant's
11 claim or defense, and the extent to which return of the
documents will mitigate that prejudice;
- 12 5) The extent to which movant may be at fault for the
13 unauthorized disclosure; [and]
- 14 6) The extent to which the nonmovant will suffer prejudice
15 from the disqualification of his or her attorneys.

16 *Merits Incentives*, 127 Nev. at 699, 262 P.3d at 726-27 (citations and quotation marks omitted).

17 64. While it is unclear how the Memorandum came to be in the boxes of Plaintiffs'
18 personal effects delivered to Bendavid's office on December 4, 2018, it is apparent that the
19 Memorandum was not from Plaintiffs' offices and that it was not Plaintiffs' document. Therefore,
20 *Merits Incentives* applies.

21 65. Considering the *Merits Incentives* factors, the Court concludes that Berkley's pro
22 hac shall be revoked.

- 23 i. ***Merits Incentives Factors 1 & 2: Plaintiffs knew or should have known that the
24 Memorandum was privileged; Plaintiffs failed to notify Get Fresh.***

25 66. The Court initially determined that the Memorandum is facially privileged. (*See*
26 Order on Pls.' Mot. to Clarify the Procedure Re: Privilege Determination, Jan. 7, 2020 (based
27 upon Dec. 9, 2019 hearing) ¶ 1.)

28 67. Following an *in camera* review on January 21, 2020, the Court confirmed that the
Memorandum is privileged.

68. Given the way the Memorandum appeared in Plaintiffs' possession, it was
appropriate for counsel at the time to have either sequestered the Memorandum or made a

1 notification. Plaintiffs did not sequester or notify Defendants of their receipt of the Memorandum
2 in December 2018, as required under *Merits Incentives*.

3 69. It is not credible that the Plaintiffs believed the Memorandum was a threat
4 delivered to them, because it revealed not only Get Fresh's strengths and weaknesses, but also the
5 options for potential resolution and plans. (Jan. 22, 2020 Hr'g Tr. 240:19-22.)

6 70. Counsel for Plaintiffs, Fox Rothschild and Stern & Eisenberg, became involved in
7 March of 2019, and Plaintiffs' case file, including the Memorandum, was transferred to
8 Fox Rothschild and Stern & Eisenberg at that time. Neither Fox Rothschild nor Stern &
9 Eisenberg sequestered the Memorandum or notified Defendants of their possession of the
10 Memorandum in March 2019.

11 71. Plaintiffs did not sequester the Memorandum or notify Defendants of their
12 possession of the Memorandum prior to discussing, quoting, and attaching it to their Reply in
13 Support of Motion to Lift Stay and Amend the Complaint on August 1, 2019.

14 72. Once Get Fresh notified Plaintiffs of their claims of privilege and protection
15 concerning the Memorandum on August 2, 2019, the Memorandum should have been sequestered
16 and not used for any purpose.

17 ***ii. Merits Incentives Factor 3: Plaintiffs' counsel extensively reviewed and digested***
18 ***the privileged Memorandum, even after Get Fresh asserted privilege and***
protection and after the Court struck the Memorandum.

19 73. On August 5, 2019, the Court struck Exhibit T to Plaintiffs' Reply in Support of
20 Motion to Lift Stay and Amend the Complaint, *i.e.*, the Memorandum. The Court also directed
21 Plaintiffs to not use the Memorandum for any purpose until Get Fresh's claims of privilege and
22 protection was resolved. The Court tried to be clear that it would rule on Get Fresh's claims of
23 privilege and protection during an *in camera* review, as opposed to counsel filing the document
24 with the Court's electronic filing system.

25 74. Rather than sequester the Memorandum, Plaintiffs repeatedly relied upon the
26 Memorandum to argue that it was not subject to privilege or protection.

1 75. There is no credible explanation for Plaintiffs' use of the Memorandum in the
2 Response filed in the arbitration on August 12, 2019, utilizing exact language from the
3 Memorandum which the Court has determined is privileged.

4 76. The explanation by counsel Berkley and Connot that the quotes from the
5 Memorandum were quoted and embedded in their minds because of the briefing filed in this
6 Court on August 1, 2019 and August 4, 2019 after notification by the Defendants of the claims of
7 privilege and protection is of deep concern to the Court and militates in favor of disqualification.

8 77. Based upon the information that has been provided to the Court, it appears that the
9 only person in whom the Memorandum is embedded in the brain of is Berkley.

10
11 **iii. Merits Incentives Factor 4: Plaintiffs elected to employ the Memorandum as a**
12 **playbook for their conduct in this action and the arbitration**

13 78. Plaintiffs' August 12, 2019 Response is their operating pleading in the arbitration.
14 Plaintiffs' possession and use of the Memorandum has, and continues to, prejudice Get Fresh.

15 79. Plaintiffs incorporated the Memorandum into their pleading and have used it to
16 prosecute their claims (including, as the basis for their extensive discovery requests and motions
17 for advancement and summary judgment in the arbitration). As a result, the return of the
18 Memorandum to Get Fresh would not mitigate the prejudice to Get Fresh or excise the taint
19 permeating throughout the arbitration from Plaintiffs' improper use of the content of the
20 privileged Memorandum.

21 **iv. Merits Incentives Factor 5: There is no evidence that Get Fresh is at fault for**
22 **the unauthorized disclosure of the Memorandum**

23 80. The Court is not commenting on how the Memorandum came to be in Plaintiffs'
24 possession because it is not of import in making a determination for disqualification.

25 81. Once Defendants became aware that Plaintiffs possessed the Memorandum on
26 August 1, 2019, Defendants took immediate action to protect their privilege and keep it out of the
27 Court's record.
28

1 v. ***Merits Incentives Factor 6: Plaintiffs' prejudice from disqualification is limited***

2 82. Fox Rothschild's entire representation of Plaintiffs is tainted by Plaintiffs'
3 possession and use of the Memorandum. Plaintiffs wove the Memorandum into their operative
4 pleading in the arbitration.

5 83. The inability of counsel to extricate privileged information from his or her mind
6 supports disqualification. *See, e.g., Matter of Beiny*, 129 A.D. 2d 126, 141-44 (N.Y. App. 1987)
7 (explaining that use of privileged material warrants disqualification: "While documents may be
8 effectively suppressed, the information gathered from them cannot be so easily contained. We
9 simply do not know whether the information acquired from the [privileged] files will
10 subsequently be used by [counsel], for even if [counsel] attempts to abide by the . . . suppression
11 order, there is no way of assuring that the tainted knowledge will not subtly influence its future
12 conduct of the litigation."); *McDermott Will & Emery LLP v. Superior Court*, 10 Cal. App. 5th
13 1083, 1124-25 (Cal. App. 2017) ("But the court's order could not prevent Gibson Dunn from
14 using the knowledge it acquired by carefully reviewing and analyzing the e-mail even if the e-
15 mail itself is no longer available to the firm. Even after a trial court has taken remedial action to
16 protect the privilege, 'disqualification still serves the useful purpose of eliminating from the case
17 the attorney who could most effectively exploit the unfair advantage [acquired through the earlier
18 review and use of the inadvertently disclosed, privileged materials].'"); *Clark*, 196 Cal. App. 4th
19 at 54-55 (noting that counsel's review of the privileged material would lead to "inevitable
20 questions about the sources of [counsel's] knowledge (even if [counsel] in fact obtained such
21 knowledge from legitimate sources) could undermine the public trust and confidence in the
22 integrity of the adjudicatory process"); *Rico v. Mitsubishi Motors Corp.*, 171 P.3d 1092 (Cal.
23 2007) (affirming disqualification where counsel's use of the privileged information was so
24 extensive, "the damage caused by [the] use and dissemination of the notes was irreversible").

25 84. Based upon Berkley's testimony and the evidence presented, the Memorandum is
26 embedded in his mind such that he is unable to extricate it from his knowledge of the case.

27 85. Although Connot's examination of Goldberg during the evidentiary hearing
28 utilized the Memorandum, such use was limited and not a wholesale use of the Memorandum.

1 Accordingly, Connot's mere use of the document in examining Goldberg does not rise to the level
2 of Connot's disqualification.

3 86. Based upon the evidence presented, including Even Barenbaum's circulation of the
4 Memorandum to Plaintiffs and counsel on July 31, 2019, it would be better if Stern & Eisenberg,
5 including, but not limited to, Barenbaum, did not participate in this action or any related actions
6 going forward.

7 **F. Sanctions are Necessary.**

8 87. This Court has broad discretion to enter sanctions for litigation misconduct. *Young*
9 *v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93,787 P.2d 777, 780 (1990).

10 88. The Nevada Supreme Court identified the pertinent, non-exclusive factors for the
11 district court to consider when considering the ultimate sanction, dismissal with prejudice, in
12 *Young v. Johnny Ribeiro Building, Inc.* (the "*Ribeiro* factors"):

13 [1] [T]he degree of willfulness of the offending party[;]

14 [2] [T]he extent to which the non-offending party would be prejudiced by a
15 lesser sanction[;]

16 [3] [T]he severity of the sanction of dismissal relative to the severity of the
discovery abuse[;]

17 [4] [W]hether any evidence has been irreparably lost[;]

18 [5] [T]he feasibility and fairness of alternative, less severe sanctions, such as
19 an order deeming facts relating to improperly withheld or destroyed
evidence to be admitted by the offending party[;]

20 [6] [T]he policy favoring adjudication on the merits[;]

21 [7] [W]hether sanctions unfairly operate to penalize a party for the misconduct
22 of his or her attorney[;] and

23 [8] [T]he need to deter both the parties and future litigants from similar abuses.

24 *Id.* at 93, 787 P.2d at 780.

25 89. Sanctions are necessary here to "'deter and punish those who abuse the judicial
26 process.'" *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 678, 263 P.3d 224, 228 (2011)
27 (quoting *Red Carpet Studios Div. of Source Advan. v. Sater*, 465 F.3d 642, 645 (6th Cir. 2006)).

28 90. Considering the *Ribeiro* factors, the Court concludes that sanctions are appropriate.

1 91. Plaintiffs willfully disregarded Get Fresh's claims of privilege and protection on
2 August 2, 2019, and this Court's subsequent orders that the Memorandum be sequestered and not
3 used for any purpose, by incorporating the exact language from the Memorandum into their
4 Response in the arbitration, as well as relying upon the substance of the Memorandum to argue
5 that it was not privileged in this action.

6 92. While this Court declines to strike Plaintiffs' pleadings filed in this action, it is
7 necessary to discharge the arbitration panel, strike all documents in the arbitration, and order the
8 refiling of all documents in the arbitration. Plaintiffs and their counsel used the Memorandum in
9 their foundational pleading in the arbitration: their Response and Counterclaims. Plaintiffs
10 utilized information contained in the Memorandum since the beginning of the substantive
11 arbitration, including to support their broad discovery requests and claim for advancement.

12 93. "It is well settled that dismissal is warranted where, as here, a party has engaged
13 deliberately in deceptive practices that undermine the integrity of judicial proceedings: 'courts
14 have inherent power to dismiss an action when a party has willfully deceived the court and
15 engaged in conduct utterly inconsistent with the orderly administration of justice.'" *Anheuser-*
16 *Busch, Inc. v. Nat. Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995) (quoting *Wyle v. R.J.*
17 *Reynolds Indus., Inc.*, 709 F.2d 585, 591 (9th Cir. 1983)).

18 94. When Plaintiffs found out about the Memorandum in late January or early
19 February 2019, they recognized the Memorandum was not theirs, had not been in their offices,
20 and should not have been in the boxes that were delivered to their counsel. Plaintiffs did nothing
21 to stop their attorneys from utilizing the Memorandum in this action and the arbitration.

22 95. There is a significant need to deter Plaintiffs and future litigants from similar abuse
23 and misuse of an adversary's privileged information. Plaintiffs and their counsel acted in
24 contravention of *Merits Incentives*, this Court's orders, and Get Fresh's claims of privilege and
25 protection.

26 96. Any conclusion of law stated above that is more appropriately deemed a finding of
27 fact shall be so deemed.

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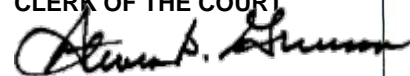
1 5. This Decision and Order; Findings of Fact and Conclusions of Law is hereby
2 STAYED for fifteen (15) days of its entry, as requested by Plaintiffs on February 14, 2020.⁴

3 IT IS SO ORDERED.

4 DATED: 2 Mar 2020

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6 ELIZABETH GONZALEZ
7 EIGHTH JUDICIAL DISTRICT COURT
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⁴ This stay includes a stay of the deadline for Get Fresh and Fresh Mix to file their application for attorneys' fees and costs.



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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

PAUL LAGUDI, an Individual; and a
WILLIAM TODD PONDER, an Individual,

Plaintiffs,

v.

FRESH MIX, LLC, a Delaware Limited
Liability Company; GET FRESH
SALES, INC., a Nevada corporation; DOES 1
through 25; and ROE BUSINESS ENTITIES
I through X, inclusive,

Defendants.

Case No.: A-18-785391-B
Dept. No.: XI

**NOTICE OF ENTRY OF DECISION AND
ORDER; FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Hearing Date: January 21-22, 2020 and
February 14, 2020

PLEASE TAKE NOTICE that a Decision and Order; Findings of Fact and Conclusions of
Law was entered in the above-captioned matter on March 2, 2020, a true and correct copy of which
is attached hereto.

DATED this 2nd day of March 2020.

PISANELLI BICE PLLC

By:



James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
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*Attorneys for Fresh Mix, LLC and
Get Fresh Sales, Inc.*

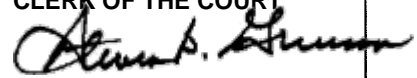
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 2nd day of March 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF DECISION AND ORDER;** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following:

Mark J. Connot, Esq.
Lucy C. Crow, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Attorneys for Plaintiffs


An employee of PISANELLI BICE PLLC



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4 **EIGHTH JUDICIAL DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 PAUL LAGUDI, an Individual; and a
7 WILLIAM TODD PONDER, an Individual,

8 Plaintiffs,

9 v.

10 FRESH MIX, LLC, a Delaware Limited
11 Liability Company; GET FRESH SALES,
12 INC., a Nevada corporation; DOES 1
13 through 25; and ROE BUSINESS ENTITIES
14 I through X, inclusive,

15 Defendants.

Case No.: A-18-785391-B
Dept. No.: XI

**DECISION AND ORDER; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Date of Hearing: January 21-22, 2020 and
February 14, 2020

Time of Hearing: 9:30 a.m. / 9:00 a.m.

16 On January 21 and 22, 2020, and February 14, 2020, this Court conducted an evidentiary
17 hearing on Get Fresh Sales, Inc. ("Get Fresh") and Fresh Mix, LLC's ("Fresh Mix") (Get Fresh
18 and Fresh Mix, together "Defendants") (1) Motion for Sanctions filed on August 26, 2019, (the
19 "Motion for Sanctions") and (2) Motion to Disqualify Fox Rothschild LLP filed on August 23,
20 2019 (the "Motion to Disqualify"). Based on the evidence presented, the briefs before the Court
21 and the arguments of counsel, the Court enters the following findings of fact and conclusions of
22 law.

FINDINGS OF FACT

A. A Dispute Arises Between Get Fresh and Plaintiffs Lagudi and Ponder.

23 1. Fresh Mix is owned by Get Fresh (60%), Plaintiff Paul Lagudi ("Lagudi") (30%),
24 and Plaintiff William Todd Ponder ("Ponder") (10%), each of which is Member of Fresh Mix.
25 Get Fresh, in turn, is owned by Dominic Caldara, Scott Goldberg, and John Wise. Caldara,
26 Goldberg, Wise, Lagudi, and Ponder are all Managers of Fresh Mix.

27 2. Beginning on January 11, 2010, Lagudi and Ponder were employees of Fresh Mix.

1 3. In late 2017/early 2018, disputes arose between Get Fresh and Plaintiffs Lagudi
2 and Ponder (Lagudi and Ponder, together "Plaintiffs") concerning Fresh Mix. Although the
3 parties endeavored to resolve their disputes without litigation, the prospect of litigation remained
4 throughout 2018. By the spring of 2018, all parties had retained counsel to guide and advise them
5 through these disputes, but also in anticipation of the arbitration mandated by Fresh Mix's
6 Operating Agreement.

7 4. In April 2018, Get Fresh retained Bruce A. Leslie, Esq. for legal advice and
8 representation related to its disputes with Plaintiffs related to Fresh Mix. Plaintiffs had already
9 retained Jeffrey Bendavid, Esq.

10 **B. The Creation of the Confidential and Privileged Memorandum.**

11 5. Near the outset of Get Fresh's retention of Leslie, Goldberg prepared a
12 memorandum at Leslie's request and for the purpose of seeking legal advice relating to the on-
13 going disputes that Get Fresh was having with Lagudi and Ponder (the "Memorandum").

14 6. Goldberg began drafting the Memorandum on his secured drive at Get Fresh. The
15 secured drive is only accessible via Goldberg's password-protected account, that of the Get Fresh
16 Senior Vice President of Finance (Mary Supchak), and the members of the IT administrator
17 group. Goldberg saved a partial draft of the Memorandum to the secured drive, and then emailed
18 the partial draft as an attachment from his password protected Get Fresh email address to his non-
19 Get Fresh business email address.

20 7. Goldberg's non-Get Fresh business email address is also password protected.

21 8. Goldberg finished drafting the Memorandum on his password-protected personal
22 desktop computer and then emailed it as an attachment from his non-Get Fresh business email
23 address to his Get Fresh email address.

24 9. On May 2, 2018, in anticipation of a May 3, 2018 meeting with Leslie and Get
25 Fresh partners, Caldara and Wise, Goldberg sent an email to Leslie with the Memorandum
26 attached, copying Caldara and Wise.

1 10. The Memorandum contains an assessment of Get Fresh's strengths and weaknesses
2 regarding its dispute with Plaintiffs concerning Fresh Mix. It also contains legal strategies and a
3 decision tree regarding potential resolution and plans.

4 11. Goldberg, Caldara, and Wise never printed the Memorandum or disseminated the
5 document outside of the privileged sphere.

6 C. **Fresh Mix Terminates Lagudi and Ponder's Employment and Get Fresh**
7 **Delivers Lagudi and Ponder's Personal Effects to them via their Attorney,**
8 **Bendavid.**

9 12. Fresh Mix sent letters terminating Lagudi and Ponder's employment on
10 November 26, 2018.

11 13. Supchak packed up Plaintiffs' personal items from their offices, separating
12 personal and company documents.

13 14. Supchak testified that the Memorandum was not in any of the boxes of documents
14 that she packed up when assembling the boxes of Plaintiffs' personal items.

15 15. On December 3, 2018, Leslie emailed Bendavid about the return of Plaintiffs'
16 personal items from their offices at Get Fresh. Bendavid testified that he intentionally refused to
17 respond to Leslie about where to deliver the boxes.

18 16. The same day, December 3, 2018, Plaintiffs initiated this action by filing the
19 Complaint.

20 17. On December 4, 2018, the boxes of Plaintiffs' personal effects were delivered to
21 Bendavid's office by Get Fresh employees Scott Putske and Marcus Sutton. A receipt of the
22 boxes was executed by an employee at Bendavid's office and returned to Get Fresh.

23 18. Bendavid did not see the boxes being delivered and he did not know how long the
24 boxes were in his office before he saw them.

25 19. Bendavid testified that the Memorandum was purportedly sticking up out of one of
26 the boxes of Plaintiffs' personal items, rolled in half but without a crease.

27 20. Bendavid testified that he did not see anyone place the Memorandum into one of
28 the boxes.

1 21. Both Putske and Sutton testified that neither of them saw a piece of paper sticking
2 out of any of the boxes they delivered, no one asked them to deliver any paper/memorandum, and
3 no one asked them to place a piece of paper such that it was sticking out of any of the boxes when
4 they were delivered.

5 22. Ponder was at Bendavid's office reviewing documents and meeting with one of
6 Bendavid's associates the day the boxes were delivered, *i.e.*, December 4, 2018.

7 23. Bendavid testified that he did not and could not see if Ponder had access to the
8 boxes prior to Bendavid seeing the boxes after they were delivered to his office.

9 24. At Bendavid's request, Ponder took all of the boxes home with him that same day,
10 and went through each one, including the boxes containing Lagudi's personal items.

11 25. Ponder testified that the boxes he took home with him did not contain the
12 Memorandum. According to Plaintiffs, Bendavid had taken it out of a box and not provided it to
13 Ponder.

14 26. Bendavid testified that he removed the Memorandum from the box, initially
15 thinking it was an inventory or receipt, but did not look at the document at that time. Instead, he
16 read and digested the Memorandum either later that same day, on December 4, 2018, or the
17 following day, December 5, 2018.

18 27. Bendavid testified that, upon his review of the Memorandum, (a) he recognized the
19 Memorandum was a document belonging to his adversaries about what they wanted to do in this
20 dispute against Plaintiffs; (b) he understood that the Memorandum contained concepts of
21 litigation strategy of his adversaries; and (c) he understood the Memorandum contained strengths
22 and weaknesses of Defendants' case.

23 28. Bendavid testified that he did not know, when he read the Memorandum, who
24 drafted it, although he knew it was not drafted by his clients, Lagudi or Ponder.

25 29. Bendavid testified that both the drafter and the source of the Memorandum were
26 anonymous to him.

1 30. Nevertheless, Bendavid said that he assumed the Memorandum was voluntarily
2 and intentionally sent by an authorized Get Fresh representative and stated also his belief that it
3 was not privileged because it was a threat.

4 31. Although he had interacted with Leslie regarding Plaintiffs' personal items in their
5 office, Bendavid did not alert Leslie nor did he alert any other counsel for Defendants to his
6 receipt of the Memorandum.

7 32. Bendavid submitted a declaration in which he stated that "had [he] had the Memo
8 [while drafting the Complaint and TRO], we would have referred to it in the Complaint and
9 attached it to the Motion for Preliminary Injunction and TRO." (Ex. 1 to Pls.' Second Suppl.
10 Opp'n, Feb. 3, 2020, Bendavid Decl. ¶ 23.)

11 33. Bendavid testified that he did not inform his clients, Lagudi and Ponder, of the
12 Memorandum for weeks. During a meeting at his office weeks after receipt, Bendavid told
13 Plaintiffs about the Memorandum, and read them excerpts from the Memorandum, but did not
14 provide them copies. Lagudi and Ponder did not ask for copies of the Memorandum.

15 **D. Bendavid Transitions Out of the Case and Sends the Memorandum to Stern**
16 **& Eisenberg and Fox Rothschild.**

17 34. Plaintiffs retained Stern & Eisenberg in or around March of 2019. On
18 March 1, 2019, Evan Barenbaum, Esq., of Stern & Eisenberg, first appeared in the arbitration
19 compelled by this Court, pending before the American Arbitration Association.

20 35. Berkley testified that Barenbaum contacted Fox Rothschild LLP about
21 representing the Plaintiffs. Brian Berkley, Esq., and Mark Connot, Esq., both of Fox Rothschild
22 LLP, subsequently interviewed to represent Plaintiffs.

23 36. Plaintiffs retained Fox Rothschild in March of 2019. Fox Rothschild attorneys
24 Berkley and Connot testified that they were co-lead counsel for Plaintiffs in this litigation and the
25 arbitration.

26 37. Upon retention, Fox Rothschild subsequently received the case file. Berkley did
27 not recall whether the file transfer was in electronic or paper form, nor did he recall whether the
28

1 files came directly from Bendavid, or went through Barenbaum. Connot testified that to the best
2 of his recollection, the bulk, if not the entirety, of the file came in an electronic format.

3 38. Fox Rothschild admits to learning of the Memorandum upon its retention, *i.e.*, in
4 March of 2019. Berkley testified that he first received the Memorandum from Barenbaum in
5 March 2019 as an attachment to an email. Fox Rothschild did not log this communication on the
6 privilege log ordered by this Court as part of the sanctions discovery.

7 39. Stern & Eisenberg's redacted billing records reveal that it, too, received the
8 Memorandum upon retention. Specifically, the billing records reveal that, on March 13, 2019,
9 Barenbaum spoke to "Mr. Bendavid re delivery of Get Fresh document."

10 40. Despite multiple interactions with Defendants' counsel, including interactions
11 directly related to the contents of the boxes delivered to Plaintiffs on December, 4, 2018 and an
12 inspection of another set of boxes in the spring of 2019, neither Fox Rothschild nor Stern &
13 Eisenberg notified Get Fresh or their counsel of their receipt or possession of the Memorandum.

14 41. Berkley testified that, prior to him reading the Memorandum, he asked Barenbaum
15 about the circumstances regarding the delivery of the Memorandum to Bendavid. Berkley and
16 Connot testified that Barenbaum told them that the Memorandum was delivered with a box of
17 documents when Lagudi and Ponder's employment was terminated, and that the Memorandum
18 was viewed as a threat. Barenbaum, as well as Lagudi and Ponder, told Berkley that the
19 Memorandum came from Get Fresh.

20 42. Connot testified that there was no specific knowledge or evidence of how the
21 Memorandum ended up in Plaintiffs' boxes; Bendavid did not have any direct knowledge
22 regarding who put the Memorandum in the boxes.

23 43. Prior to reading the Memorandum, Berkley knew that it was not Lagudi or
24 Ponder's document, and that neither of them had written it. Around the time he read the
25 Memorandum, or shortly thereafter, Connot assumed that it was Defendants' record, and that it
26 was Defendants' document.

1 E. **Plaintiffs Weaponize the Memorandum, and Refuse to Return, Sequester, or**
2 **Destroy It, Notwithstanding Multiple Court Orders.**

3 44. On July 17, 2019, Plaintiffs filed a motion to lift the stay that this Court entered
4 pending the arbitration, and to amend their complaint.

5 45. Get Fresh and Fresh Mix filed their opposition on July 25, 2019.

6 46. In preparation of their reply in support of their motion to stay (the "Reply"), on
7 July 31, 2019, Plaintiffs attorney, Barenbaum, emailed his clients Lagudi and Ponder, as well as
8 his Fox Rothschild co-counsel, Connot, Berkley,¹ and Emily Bridges, Esq., and a colleague at his
9 own firm, Thomas Shea, Esq., attaching the Memorandum to his email.

10 47. Plaintiffs logged this July 31, 2019 email communication on their
11 December 13, 2019 privilege log, and identified the Memorandum attached thereto as a Word
12 document.

13 48. Fox Rothschild attorney Berkley was the lead drafter of the Reply. Fox Rothschild
14 attorney Connot was involved in editing and revising the Reply. Berkley and Connot conferred
15 about the strategy to use the Memorandum in connection with the Reply, and agreed to do so.
16 Berkley further testified that Barenbaum participated in the decision to put the Memorandum into
17 the public record.

18 49. Plaintiffs filed their Reply on Thursday, August 1, 2019. The Reply contained
19 arguments based upon the Memorandum, including quotations from the Memorandum and
20 paraphrases of its content. Plaintiffs also attached the Memorandum to the Reply as Exhibit T.
21 Despite filing a motion to seal and redact associated with their Reply and certain exhibits thereto,
22 Plaintiffs filed the Memorandum in the public record.

23 50. Plaintiffs' Reply was the first notice Defendants received of Plaintiffs' possession
24 of the privileged Memorandum.

25
26
27 ¹ Plaintiffs filed a Motion to Associate Counsel, seeking an order permitting Berkley to
28 practice in Nevada pursuant to SCR 42 on August 20, 2019. Defendants filed a Response thereto
on August 30, 2019, and the Court subsequently granted the Motion to Associate Counsel on
October 4, 2019.

1 51. Upon receipt and review of the Reply, Get Fresh's counsel immediately took action
2 to protect Get Fresh's privileges.

3 52. On Friday, August 2, 2019, James J. Pisanelli, counsel for Get Fresh and Fresh
4 Mix, called and spoke to Plaintiffs' counsel, Connot, asserted Get Fresh's privilege claim over the
5 Memorandum, asked how Plaintiffs acquired the Memorandum, and stated that Get Fresh would
6 be seeking Court relief. Connot stated that he did not know that the Memorandum was
7 privileged because it "seems to be internal" and references getting litigation counsel.

8 53. Get Fresh moved promptly and, that same day, submitted an Emergency Motion to
9 Strike the Reply and Exhibit T, unequivocally asserting its privilege claim over the Memorandum,
10 asking that the offending Reply and Exhibit T be struck, and that Plaintiffs be directed to
11 sequester the Reply, the Memorandum, and any related notes or memos from use and review.

12 54. Fox Rothschild claimed that they sequestered the Memorandum once Get Fresh
13 alerted them of its privilege claim.

14 55. Connot submitted a declaration in which he stated that "While I disagreed with
15 whether the document was privileged, I immediately sequestered the Memo and advised by co-
16 counsel at Fox Rothschild and Stern Eisenberg, as well as my clients, to sequester the Memo."

17 56. Similarly, Berkley submitted a declaration stating that "[u]pon receipt of the notice
18 of privilege, I stopped review of the Memo"

19 57. Despite sequestration, Fox Rothschild took the position that it was permitted to
20 review and use the Memorandum (including reference to its substance) to argue that it was not
21 privileged.

22 58. The next business day, Monday, August 5, 2019, Get Fresh and Fresh Mix served
23 its privilege log related to the Memorandum. (*See* Ex. J5, Defs. Fresh Mix & Get Fresh's Initial
24 Privilege Log, Aug. 5, 2019.)

25 59. Rather than sequester the Memorandum upon notice of Get Fresh's privilege
26 assertion, on Sunday, August 4, 2019, Plaintiffs again reviewed and digested the Memorandum to
27 prepare and file their Opposition to the Emergency Motion. Throughout this Opposition,
28 Plaintiffs **again** refer to, discuss, quote, and paraphrase the privileged Memorandum.

1 60. Berkley was the lead drafter of the August 4, 2019 Opposition to the Emergency
2 Motion. Connot edited the Opposition.

3 61. At the hearing on Plaintiffs' Motion to Lift Stay and Amend the Complaint held on
4 Monday, August 5, 2019, the Court struck Exhibit T (the Memorandum) from the record and
5 permitted Get Fresh and Fresh Mix to move to redact both Plaintiffs' August 1, 2019 Reply and
6 August 4, 2019 Opposition. The Court stated:

7 I am not going to impede any efforts you make to obtain the ability
8 to use Exhibit T in whatever format. And you guys are going to
9 fight, and at that point I assume I'll do an in-camera review of
10 Exhibit T and then make a decision . . . But I'm not there. . . . I'm
11 going to mark the emergency motion, which I did not set for
12 hearing, and the opposition to the emergency motion which I did
13 not set for hearing as Court's Exhibit 1. I'm going to place them in a
14 sealed envelope, because they have some reference to the document
15 that I'm granting the striking of.

16 62. The Court's order was entered on August 22, 2019. Get Fresh and Fresh Mix
17 subsequently moved to redact the briefs, and such relief was granted.

18 63. Notwithstanding the Court's order and statements during the August 5, 2019
19 hearing, Fox Rothschild took the position that it could nevertheless use the substance of the
20 Memorandum to argue that it was not privileged or otherwise subject to protection.

21 64. Thus undeterred, Plaintiffs continued to use and paraphrase the Memorandum.
22 Plaintiffs' August 12, 2019 Response to Amended Demand for Arbitration and Counterclaims (the
23 "Response") submitted to the AAA in the arbitration compelled by this Court, paraphrases and
24 uses exact words and phrases from the Memorandum (just omitting the quotation marks). (*See*
25 *Ex. J6*, admitted under seal, ¶¶ 243, 244, 245, 300, 305, and p. 46:13-14.)

26 65. Berkley was the lead drafter of the Response. Connot was involved in analyzing,
27 editing, and revising the Response. Other attorneys at Fox Rothschild (*e.g.*, Emily Bridges)
28 worked on the Response, as did attorneys at Stern & Eisenberg.

 66. Berkley and Connot each claim that they did not review the Memorandum when
working on the Response, but the exact language of the Memorandum had been part of their
institutional knowledge. Specifically, Berkley and Connot each submitted declarations stating

1 that they did not "have any intent to include references to the Memo or language from the Memo
2 in the Arbitration Response."

3 67. Berkley testified that he did not intentionally incorporate direct language from the
4 Memorandum into the Response. "That language was at that time in my head because I had
5 written that multiple times during that one week." (Feb. 14, 2020 Hr'g Tr. 89:12-14; *see also id.*
6 at 126:1-3 ("Those – those words were in my mind at that time, and the concepts and the actions
7 that were being taken in real time by the defendants was also fresh in my mind.") and 131:1-20.²)

8 68. Plaintiffs attached or relied upon their August 12, 2019 Response in briefs they
9 filed both in the arbitration and this action.

10 69. Plaintiffs cited to and relied upon the Response within a Rule 37 Motion for
11 Advancement of Indemnification under the Operating Agreement, filed on September 11, 2019.
12 In their Motion for Advancement, Plaintiffs directed the arbitration panel to the very section of
13 the Response that parroted the Memorandum.

14 70. Plaintiffs later attached the Response as Exhibit A to their Motion to Compel
15 Production of Books and Records, filed on September 30, 2019 with this Court. Plaintiffs again
16 directed the Court to the very section of the Response that parroted the Memorandum.

18 ² The final excerpt, 131:1-20 from the third day of the evidentiary hearing is as follows:

19 THE COURT: Okay. So explain to me why the terms from the memo appear less
20 than a week later in the reply you filed in the arbitration.

21 THE WITNESS [BERKLEY]: Because those terms were fresh in my mind at that
22 time because I had written those terms in multiple filings prior to the August 5th
23 hearing and . . . and the concepts were fresh in my mind, as well, because both the
writing of that as well as independently I had – you know, those actions were
being taken by the plaintiffs – or the defendants. Excuse me.

24 THE COURT: So the words were embedded in your mind because you'd
25 previously quoted from the memo and used it in the reply brief?

26 THE WITNESS: At that time they were, yes.

27 THE COURT: So you couldn't forget what was in the memo and not use it as I
directed because it was so fresh in your mind??

28 THE WITNESS: At that time, yes.

1 71. Trying to bolster their argument that facts that independently supported the
2 offending allegations in their Response, Plaintiffs again draw from the Memorandum in their
3 February 3, 2020 Supplemental Brief.

4 72. On August, 23, 2019, Get Fresh and Fresh Mix filed the Motion to Disqualify Fox
5 Rothschild LLP.

6 73. On August 26, 2019, because of Plaintiffs' continued use of the Memorandum and
7 refusal to sequester it, Get Fresh and Fresh Mix filed a Motion for Claw Back, Discovery, and
8 Sanctions Related to Plaintiffs and Their Counsel's Improper Possession and Use of Exhibit T and
9 Other Privileged and Confidential Information.

10 74. On September 5, 2019, Plaintiffs filed their Opposition to the Motion for Claw
11 Back and Counter-Motion, *again* referring to and discussing the Memorandum, and *again*
12 attaching the Memorandum as an exhibit (Exhibit A).

13 75. Get Fresh and Fresh Mix moved to strike the Memorandum and all references to
14 and discussion of the Memorandum in the brief, and this Court granted the requested relief via its
15 order entered on September 25, 2019. Specifically, this Court ordered:

16 Defendants' request for claw back is GRANTED in that Plaintiffs
17 shall sequester the memorandum identified as Exhibit T to
18 Plaintiffs' Reply in Support of Motion to Lift Stay and Amend
19 Complaint from review and/or use. Plaintiffs may not quote, or
20 discuss the content of the memorandum in any further pleadings or
21 other papers other than in an evidentiary hearing or otherwise
22 relating to the privileged nature of the document or the motion for
23 disqualification.

24 76. Get Fresh and Fresh Mix subsequently moved to redact Plaintiffs' Opposition, and
25 this Court granted the requested relief.

26 77. Plaintiffs filed another brief seeking to inject the Memorandum into the record,
27 despite court orders and multiple filings and hearings.

28 78. In their September 19, 2019 motion, Plaintiffs moved to have the Court accept its
offending Opposition to the Motion to Strike under seal and the Memorandum. The Court denied
Plaintiffs' request in an October 8, 2019 order:

The Court previously ordered the memorandum identified as
Exhibit T to Plaintiffs' Motion to Lift Stay and Amend Complaint

1 *sequestered*. As a result, Plaintiffs shall not quote or summarize
2 Exhibit T in any briefing until further order of the Court.

3 79. Despite this history, Plaintiffs tried again, filing a Motion to Clarify the Procedure
4 related to this evidentiary hearing. In response, the Court reiterated its prior rulings:

5 The Court *previously* made a decision that the memorandum
6 identified as Exhibit T to Plaintiffs' Motion to Lift Stay and Amend
7 Complaint ("The Memorandum") is facially privileged based upon
8 the information that was provided to the Court.

9 Plaintiffs *shall continue* to sequester the Memorandum, and may
10 not quote, summarize, or discuss the content of the Memorandum.

11 (Order on Pls.' Mot. to Clarify the Procedure re: Privilege Determination, dated January 8, 2020.)

12 80. Plaintiffs' counsel held, read, reviewed, and referred to the Memorandum
13 throughout the evidentiary hearing on January 21 and 22, 2020.

14 81. Connot used the Memorandum during the examination of Scott Goldberg, while
15 Berkley read along to assist Connot in the cross-examination.

16 82. Berkley and Connot each submitted declarations testifying that, after reviewing
17 their billing records, they estimated to have spent less than two hours reviewing the Memorandum
18 since being retained by Plaintiffs.

19 83. Although Berkley had access to Stern & Eisenberg and Fox Rothschild's full
20 billing records regarding Plaintiffs' representation, he testified that he did not review these records
21 for purposes of determining the full scope of the Memorandum's circulation and digestion.
22 Berkley also testified that he did not ask his colleagues, other than Connot, how broadly the
23 Memorandum had been circulated and digested.

24 84. Connot also reviewed billing records, reading in detail his time entries relating to
25 the Memorandum.

26 85. Fox Rothschild did not take any action to remove the language from the
27 Memorandum from the arbitration. The information is presently in the arbitration record.

28 86. Following the first two days of the evidentiary hearing on January 21 and 22,
2020, Berkley directed Bridges, an associate with Fox Rothschild, to run searches of the words

1 located in paragraphs 243 - 245 of the Response that are from the Memorandum against the other
2 filings in the Arbitration. Berkley testified that Bridges emailed him the result of those searches
3 and that there were no hits. The search was limited to the exact words from the Memorandum
4 that were used in the Response, and did not capture themes derived from the Memorandum.

5 **F. Plaintiffs Received Other Get Fresh Documents from Third Parties and Did**
6 **Not Disclose Their Receipt to Defendants.**

7 87. On September 25, 2019, the Court granted Get Fresh and Fresh Mix's request for
8 discovery related to Plaintiffs' and their counsel's improper possession and use of the
9 Memorandum and other privileged and confidential information. (See Order, dated Sept. 25,
10 2019.)

11 88. While conducting the Court-ordered discovery, Plaintiffs revealed, for the first
12 time, that they had received documents from third parties unrelated to the litigation. Specifically,
13 Plaintiffs revealed that they received documents from two disgruntled former Get Fresh
14 employees.

15 89. Plaintiffs received confidential documents from David Heinrich, Get Fresh's
16 former IT director. Heinrich left Get Fresh in 2014.

17 90. Ponder testified that in August of 2018, Heinrich informed him that he was in
18 possession of certain Get Fresh purchase orders.

19 91. Later, in 2019, Heinrich gave copies of confidential Get Fresh records, specifically
20 purchase orders ("POs"), to Lagudi. Some of these POs bear print dates *years after* Heinrich
21 separated from Get Fresh, e.g., from September 2018.

22 92. Lagudi testified that in September of 2019, Matthew McClure emailed him
23 confidential Get Fresh documents and records related to a recall from 2016. McClure had
24 previously worked as a food safety consultant for Get Fresh, and left Get Fresh in 2017.

25 93. Rather than provide copies of the documents to Get Fresh, Lagudi provided these
26 documents to his attorneys to determine how best to use them in the pending dispute with
27 Defendants.

94. Plaintiffs made allegations in the arbitration related to these documents, Plaintiffs did not provide any notice to Defendants of their receipt of confidential company records outside of the ordinary discovery process from either a third party unrelated to the litigation or a person unauthorized to access or provide confidential company records.

95. Plaintiffs also did not provide Defendants' counsel with the particular details about how, when, and from whom they obtained the documents.

96. Any finding of fact stated above that is more appropriately deemed a conclusion of law shall be so deemed.

CONCLUSIONS OF LAW

A. Plaintiffs Were Required to Give Prompt Notice of Their Receipt of Their Adversary's Confidential and Privileged Document.

1. Under Nevada law, an attorney who receives confidential or privileged documents of its adversary regarding a case from an anonymous source or a third party unrelated to the litigation must promptly notify opposing counsel. *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 697, 262 P.3d 720, 725 (2011).

2. The required notice "must adequately put opposing counsel on notice that the documents were not received in the normal course of discovery and describe, with particularity, the facts and circumstances that explain how the document or evidence came into counsel's or his or her client's possession." *Id.*

3. This notice requirement is designed to prevent parties from receiving an adversary's confidential or privileged documents outside the normal course of discovery and process, and "lying in wait" to announce their procurement and use the document against their adversary.

4. The notice requirement provides the owner of the document(s) an "opportunity . . . to register an objection and demand return and non-use. . . ." *Id.* at 694, 262 P.3d at 723.

5. If an attorney fails to comply with this notice requirement, the attorney "risk[s] being in violation of his or her ethical duties and/or being disqualified a counsel." *Id.* at 697, 262 P.3d at 725.

1 6. Plaintiffs testified that they first received the Memorandum in boxes of Plaintiffs'
2 personal items from their offices at Get Fresh delivered to Bendavid in early December 2018.

3 7. Bendavid discussed the delivery of those boxes over email with Leslie, counsel for
4 Defendants, but intentionally refused to respond to Leslie about where to deliver the boxes.

5 8. The boxes were delivered on December 4, 2018, the day after Plaintiffs filed a
6 complaint in this action and the very day Plaintiffs submitted their application for temporary
7 restraining order to this Court in this action.

8 9. Discovery had not yet commenced, and therefore documents received were
9 received outside the normal course of discovery.

10 10. According to Bendavid, the Memorandum was purportedly sticking up out of one
11 of the boxes of Plaintiffs' personal items. While he initially set it aside thinking it was an
12 inventory, he read and digested the Memorandum later that same day, December 4, 2018, or the
13 following day, December 5, 2018.

14 11. Bendavid testified that (a) he recognized the Memorandum was a document
15 belonging to his adversaries about what they wanted to do in this dispute against Plaintiffs; (b) he
16 understood that the Memorandum contained concepts of litigation strategy of his adversaries; and
17 (c) he understood the Memorandum contained strengths and weaknesses of Defendants' case.

18 12. While Plaintiffs and Bendavid testified that they "believe" the Memorandum was
19 "voluntarily" or "intentionally" provided to Bendavid by Goldberg, Plaintiffs failed to offer
20 evidence, only supposition, to support this theory.

21 13. Bendavid testified that he did not see the boxes being delivered, he did not see
22 anyone place the document in a manner sticking up out of one of the boxes, and he did not know
23 how long the boxes were in his office before he saw them.

24 14. Plaintiffs themselves recognized that the Memorandum was not an item that had
25 been in their offices and therefore should not have been in boxes that were delivered to them.

26 15. Despite Bendavid's admissions regarding the general subject matters of the
27 contents of the privileged Memorandum, its suspicious receipt, and his communications with
28

1 Leslie about delivery of personal items but no company documents, Bendavid assumed that the
2 Memorandum was voluntarily or intentionally sent by an authorized Get Fresh representative.

3 16. Nevada law requires more than an "assumption" to avoid the prompt notice
4 obligation upon receipt of an adversary's confidential or privileged document outside the normal
5 course of discovery. If an assumption were sufficient, the rule would be set aside merely by one's
6 claim, without more, that their opponent gave it to them for any reason one can conjure.

7 17. It is not credible that Plaintiffs believed the Memorandum was a threat delivered to
8 them, because it revealed not only Get Fresh's strengths and weaknesses, but also the options for
9 potential resolution and plans.

10 18. Both the drafter and the source of the Memorandum were anonymous.

11 19. The notice requirement established by the Nevada Supreme Court in *Merits*
12 *Incentives* was triggered.

13 **B. Plaintiffs Failed to Give Prompt Notice of Their Receipt of Their Adversary's**
14 **Confidential and Privileged Document.**

15 20. Bendavid testified that he did not provide notice to Leslie or any other counsel for
16 Defendants of either his receipt of the Memorandum or provide with any particularity the facts
17 and circumstances that explain how the document or evidence came into his possession.

18 21. It is undisputed that neither Fox Rothschild nor Stern & Eisenberg provided notice
19 to Leslie or any other counsel for Defendants of either their receipt of the Memorandum or any
20 facts and circumstances that explain how the document or evidence came into their possession.

21 22. Failure to comply with the notice requirement and related ethical obligations may
22 result in counsel's disqualification, even when the receipt of the privileged information was
23 through no fault of their own. *Merits Incentives*, 127 Nev. at 697, 262 P.3d 725.

24 23. Fox Rothschild associated with Bendavid as counsel for Plaintiffs on May 16,
25 2019. Stern & Eisenberg is counsel for Plaintiffs in the arbitration (compelled by this Court).
26 Both Fox Rothschild and Stern & Eisenberg took over as counsel for Plaintiffs in Bendavid's
27 stead in or around March 2019. Bendavid's formal notice of withdrawal was filed on July 3,
28 2019.

1 24. Bendavid testified to transferring his file to Fox Rothschild. Bendavid's billing
2 records confirm this copying, as well as receipt and review of the files by both Fox Rothschild
3 and Stern & Eisenberg.

4 25. The Stern & Eisenberg billing records reflect that on March 13, 2019, Barenbaum
5 spoke to "Mr. Bendavid re delivery of Get Fresh document."

6 26. Fox Rothschild represented, and it is in the record, that Bendavid imputed his
7 knowledge concerning the Memorandum to Fox Rothschild. (*See* Pls.' First Suppl. Opp'n, 9:6-11
8 ("When Mr. Bendavid provided the Fresh Mix Memo to Fox Rothschild, he imputed this
9 knowledge. Accordingly, Fox Rothschild, after considering whether the Fresh Mix Memo was a
10 'corporate work document,' and the circumstance between the parties at the time, had no reason to
11 identify or suspect the Fresh Mix Memo to be privileged." (internal citation omitted).)

12 27. Fox Rothschild also represented, and it also is in the record, that they, too,
13 reviewed and digested the Memorandum. (*See, e.g., id.* at 3:23-25 ("Upon being retained by
14 Plaintiffs, Fox Rothschild learned of the Fresh Mix Memo and, like Mr. Bendavid, recognized
15 that the Fresh Mix Memo was not privileged."), 10:6-9 ("Fox Rothschild abided by its ethical
16 obligations at all times and reviewed the Fresh Mix Memo before Defendants ever claimed
17 privilege. Mr. Bendavid knew upon reading the document that it was not privileged. Fox
18 Rothschild attorneys reached the same conclusion.").)

19 28. It is undisputed that the first time Plaintiffs or any of their counsel provided notice
20 to Defendants and their counsel of their possession of the Memorandum was on August 1, 2019,
21 when Plaintiffs filed their Reply in Support of their Motion for Leave to Amend, attached the
22 Memorandum to the Reply as an exhibit, and quoted extensively from the Memorandum.

23 29. According to Plaintiffs' testimony and argument in the record, they possessed the
24 Memorandum without providing notice to Defendants or their counsel from December 4, 2018 to
25 August 1, 2019, when they affirmatively used it, quoted from it, and attached it to a public filing
26 in support of a motion they filed to advance their position.

1 30. Each and all of Plaintiffs' counsel, Bendavid, Fox Rothschild, and Stern &
2 Eisenberg (via his representation of Plaintiffs in the arbitration this Court compelled) failed to
3 comply with the notice requirement set forth in *Merits Incentives*.

4 31. Having received the Memorandum under suspicious circumstances in December 4,
5 2018 (by Bendavid) and the spring 2018 (by Stern & Eisenberg and Fox Rothschild), yet not
6 providing any notice until affirmatively using the Memorandum in a Reply brief on
7 August 1, 2019, Plaintiffs' counsel did "lie in wait" to provide notice only when it worked for
8 them in the dispute against their adversary, and denied Get Fresh of any opportunity to object,
9 demand return of the document, and non-use of the document. This is the exact type of behavior
10 the Nevada Supreme Court criticized in *Merits Incentives*. 127 Nev. at 699, 262 P.3d at 727.

11 **C. The Memorandum and Related Communications are Protected by the**
12 **Attorney-Client Privilege and Work Product.**

13 32. The attorney-client privilege protects the disclosure of a confidential
14 communication "[b]etween the client or the client's representative and the client's lawyer or the
15 representative of the lawyer" "for the purpose of facilitating the rendition of professional
16 services." NRS 49.095.

17 33. "A communication is 'confidential' if it is not intended to be disclosed to third
18 persons other than those to whom disclosure is in furtherance of the rendition of professional
19 services to the client or those reasonably necessary for the transmission of the communication.
20 NRS 49.055.

21 34. Nevada's work-product doctrine is set forth in NRCP 26(b)(3). It "protects
22 documents with two characteristics: (1) they must be prepared in anticipation of litigation or for
23 trial, and (2) they must be prepared by or for another party or by or for that other party's
24 representative." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 133 Nev. 369, 383, 399 P.3d 334,
25 347 (2017) (citing *In re Grand Jury Subpoena*, 357 F.3d 900, 907 (9th Cir. 2004)) (internal
26 quotation marks omitted).

27 35. The Nevada Supreme Court adopted the "because of" test to determine whether
28 material was prepared in anticipation of litigation, and thereby satisfy the first requirement for

1 work-product protection. "The anticipation of litigation must be the *sine qua non* for the creation
2 of the document – but for the prospect of that litigation, the document would not exist."
3 *Wynn Resorts*, 133 Nev. at 383-84, 399 P.3d at 347-48 (internal quotation marks and citation
4 omitted).

5 36. The party claiming privilege bears the burden of establishing the privilege, and
6 does so by serving a privilege log. *See Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268
7 (2011) (the proponent of privilege bears the burden of establishing the privilege); *Albourn v. Koe*,
8 *M.D., et al.*, Discovery Commissioner Opinion #10, 15 (Nov. 2001) (a party provides a factual
9 basis for its claims of privilege by producing a privilege log); *In re Grand Jury Investigation*, 974
10 F.2d 1068, 1071 (9th Cir. 1992) ("In essence, the party asserting the privilege must make a *prima*
11 *facie* showing that the privilege protects the information the party intends to withhold. We have
12 previously recognized a number of means of sufficiently establishing the privilege, one of which
13 is the privilege log approach." (citations omitted).

14 37. "The party asserting the privilege has the burden of proving its applicability,
15 including that the party has not waived it." *United States v. SDI Future Health, Inc.*, 464 F. Supp.
16 2d 1027, 1040 (D. Nev. 2006) (citing *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d
17 18, 25 (9th Cir. 1981)).

18 38. "[A] corporation's current management controls the [attorney-client privilege] 'to
19 refuse to disclose, and to prevent any other person from disclosing, confidential
20 communications.'" *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. 643, 656, 331 P.3d 905,
21 914 (2014).

22 39. "Courts in the Ninth Circuit consider the circumstances surrounding the disclosure
23 when deciding if an inadvertent disclosure has waived the privilege. These courts typically apply
24 a five-factor test to determine the waiver issue. These factors include: (1) the reasonableness of
25 the precautions to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the
26 scope of discovery; (4) the extent of disclosure; and (5) the overriding issue of fairness." *IGT v.*
27 *All. Gaming Corp.*, 2-04-CV-1676-RJC RJJ, 2006 WL 8071393, at *6 (D. Nev. Sept. 28, 2006)
28 (quotation marks and citations omitted).

1 40. The Memorandum was prepared by Goldberg, owner and Chief Financial Officer
2 for Get Fresh in April/May 2018, at the request of counsel, Leslie, providing confidential
3 information for the purpose of seeking legal advice relating to the on-going dispute between the
4 parties.

5 41. The Memorandum is facially and substantively privileged.

6 42. Get Fresh has maintained the confidentiality of the Memorandum since its
7 creation.

8 43. Get Fresh has ensured the password protected nature and secured access to email
9 and the related server.

10 44. None of the individuals on the email (Goldberg, Caldara, Wise, and Leslie) printed
11 the Memorandum. None of them have ever disseminated the Memorandum outside of the
12 privileged sphere.

13 45. Get Fresh did not voluntarily disclose the Memorandum to Plaintiffs or their
14 counsel.

15 46. There is no indication that Get Fresh waived its claim to privilege or protection
16 over the Memorandum. Any assumption as to how the document got into Plaintiffs or their
17 counsel's possession is not controlling in a determination of waiver.

18 47. Upon learning that Plaintiffs possessed the Memorandum, Get Fresh alerted
19 Plaintiffs and their counsel to its claim of privilege fewer than 24 hours later, repeatedly sought
20 (and obtained) relief from the Court in order to keep the Memorandum out of the public record.

21 48. Get Fresh served a privilege log on August 5, 2019, in which Get Fresh asserted
22 privilege over the Memorandum and communications related thereto.

23
24 **D. Plaintiffs' Counsel Did Not Return or Sequester the Memorandum as**
25 **Required By NRCP 26(b)(5)(B).**

26 49. Once a party is placed on notice that information is subject to a claim of privilege
27 or protection, NRCP 26(b)(5)(B) enumerates an affirmative obligation upon a party and their
28

1 counsel to "promptly return, sequester, or destroy the specified information and any copies it has;
2 must not use or disclose the information until the claim is resolved."

3 50. Get Fresh informed Plaintiffs, through their counsel, of their claims of privilege
4 and protection over the Memorandum on August 2, 2019. This was fewer than twenty-four hours
5 after learning that Plaintiffs were in possession of the Memorandum.

6 51. Get Fresh served a privilege log asserting their claims of privilege and protection
7 over the Memorandum and communications related thereto on August 5, 2019.

8 52. Plaintiffs admit that they did not "return, sequester, or destroy" the Memorandum
9 after Get Fresh notified them of their claims of privilege and protection August 2, 2019.

10 53. Plaintiffs admit that they relied upon the Memorandum and its substance to argue
11 that it was not privileged after they were put on notice of Get Fresh's claims.

12 54. It is "not [the receiving party's] prerogative to unilaterally determine whether the
13 information received anonymously was truly proprietary, confidential, privileged, or some
14 combination of those labels, and use the information it deem[s] appropriate." *Raymond v. Spirit*
15 *AeroSystems Holdings, Inc.*, No. 16-1282-JTM-GEB, 2017 WL 2831485, at *15 (D. Kan. June
16 30, 2017) (discussing the analogous FRCP 26(b)(5)(B)).

17 55. "Rule 26(b)(5)(B) could not be more clear. Once a producing party claims a
18 privilege in materials that have been produced, no further use is to be made of the information
19 until the claim of privilege is resolved. As far as Rule 26(b)(5)(B) is concerned, it is immaterial if
20 [the receiving parties] disagree with the claim of privilege. [The receiving parties] were
21 prohibited from making any use of the information, period." *Mafille v. Kaiser-Francis Oil Co.*,
22 18-cv-586-TCK-FHM, 2019 WL 3219151, at *1 (N.D. Okla. July 17, 2019) (discussing the
23 analogous FRCP 26(b)(5)(B); *Jensen v. Indianapolis Public Schools*, No. 1:16-cv-02047-TWP-
24 DLP, 2019 WL 911241, at *3 (S.D. Ind. Feb. 22, 2019) (while attaching a cover letter and filing a
25 motion for the court to make a privilege determination is consistent with FRCP 26, weaponizing
26 the documents by referencing its contents violates the rule).

27 56. Plaintiffs continued to use and rely upon the Memorandum, as stated above.
28

1 57. Plaintiffs and their counsel continued to use the Memorandum in conjunction with
2 the arbitration, using exact words and phrases from the Memorandum (just absent the quotation
3 marks) and paraphrasing information from it in their Response to Amended Demand for
4 Arbitration for Counterclaims. Plaintiffs and their counsel referred to and attached their Response
5 to briefing both in the arbitration and this action.

6 **E. Limited Disqualification is Necessary.**

7 58. Disqualification may be necessary to prevent disclosure of confidential
8 information that may be used to an adverse party's disadvantage. *Nev. Yellow Cab Corp. v.*
9 *Eighth Jud. Dist. Ct.*, 123 Nev. 44, 53, 152 P.3d 717, 743 (2007).

10 59. "Where the 'asserted course of conduct by counsel threatens to affect the integrity
11 of the adversarial process, [the court] should take appropriate measures, including
12 disqualification, to eliminate such taint.'" *Richards v. Jain*, 168 F. Supp. 2d 1195, 1200 (W.D.
13 Wash. 2001) (modifications in original) (quoting *MMR/Wallace Power & Indus., Inc. v. Thames*
14 *Assoc.*, 764 F. Supp. 712, 718 (D. Conn. 1991)); *cf. Clark v. Superior Court*, 196 Cal. App. 4th
15 37, 55 (Cal. App. 2011) (describing disqualification "as a prophylactic measure to prevent future
16 prejudice to the opposing party from information the attorney should not have possessed").

17 60. Where privilege information has been disclosed and misused, doubts should
18 generally be resolved in favor of disqualification. *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200,
19 1205, 14 P.3d 1266, 1269 (2000).

20 61. The Nevada Supreme Court has found that "there are situations where a lawyer
21 who has been privy to privileged information improperly obtained from the other side must be
22 disqualified." *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 698, 262 P.3d 720,
23 726 (2011).

24 62. The Court "has the power, under appropriate circumstances, to disqualify an
25 attorney even though he or she has not violated a specific disciplinary rule." *In re Meador*, 968
26 S.W. 2d 346, 351 (Tex. 1998).

27 63. When determining whether to disqualify an attorney who received an opponent's
28 privileged information outside the course of discovery, the trial court should consider, in addition

1 to "all the facts and circumstances to determine whether the interests of justice require
2 disqualification," the following non-exclusive factors:

- 3 1) Whether the attorney knew or should have known that the
4 material was privileged;
- 5 2) The promptness with which the attorney notifies the other
6 side that he or she has received its privileged information;
- 7 3) The extent to which the attorney reviews and digests the
8 privileged information;
- 9 4) The significance of the privileged information; i.e., the
10 extent to which its disclosure may prejudice the movant's
11 claim or defense, and the extent to which return of the
documents will mitigate that prejudice;
- 12 5) The extent to which movant may be at fault for the
13 unauthorized disclosure; [and]
- 14 6) The extent to which the nonmovant will suffer prejudice
15 from the disqualification of his or her attorneys.

16 *Merits Incentives*, 127 Nev. at 699, 262 P.3d at 726-27 (citations and quotation marks omitted).

17 64. While it is unclear how the Memorandum came to be in the boxes of Plaintiffs'
18 personal effects delivered to Bendavid's office on December 4, 2018, it is apparent that the
19 Memorandum was not from Plaintiffs' offices and that it was not Plaintiffs' document. Therefore,
20 *Merits Incentives* applies.

21 65. Considering the *Merits Incentives* factors, the Court concludes that Berkley's pro
22 hac shall be revoked.

- 23 i. ***Merits Incentives Factors 1 & 2: Plaintiffs knew or should have known that the
24 Memorandum was privileged; Plaintiffs failed to notify Get Fresh.***

25 66. The Court initially determined that the Memorandum is facially privileged. (*See*
26 Order on Pls.' Mot. to Clarify the Procedure Re: Privilege Determination, Jan. 7, 2020 (based
27 upon Dec. 9, 2019 hearing) ¶ 1.)

28 67. Following an *in camera* review on January 21, 2020, the Court confirmed that the
Memorandum is privileged.

68. Given the way the Memorandum appeared in Plaintiffs' possession, it was
appropriate for counsel at the time to have either sequestered the Memorandum or made a

1 notification. Plaintiffs did not sequester or notify Defendants of their receipt of the Memorandum
2 in December 2018, as required under *Merits Incentives*.

3 69. It is not credible that the Plaintiffs believed the Memorandum was a threat
4 delivered to them, because it revealed not only Get Fresh's strengths and weaknesses, but also the
5 options for potential resolution and plans. (Jan. 22, 2020 Hr'g Tr. 240:19-22.)

6 70. Counsel for Plaintiffs, Fox Rothschild and Stern & Eisenberg, became involved in
7 March of 2019, and Plaintiffs' case file, including the Memorandum, was transferred to
8 Fox Rothschild and Stern & Eisenberg at that time. Neither Fox Rothschild nor Stern &
9 Eisenberg sequestered the Memorandum or notified Defendants of their possession of the
10 Memorandum in March 2019.

11 71. Plaintiffs did not sequester the Memorandum or notify Defendants of their
12 possession of the Memorandum prior to discussing, quoting, and attaching it to their Reply in
13 Support of Motion to Lift Stay and Amend the Complaint on August 1, 2019.

14 72. Once Get Fresh notified Plaintiffs of their claims of privilege and protection
15 concerning the Memorandum on August 2, 2019, the Memorandum should have been sequestered
16 and not used for any purpose.

17 ***ii. Merits Incentives Factor 3: Plaintiffs' counsel extensively reviewed and digested***
18 ***the privileged Memorandum, even after Get Fresh asserted privilege and***
protection and after the Court struck the Memorandum.

19 73. On August 5, 2019, the Court struck Exhibit T to Plaintiffs' Reply in Support of
20 Motion to Lift Stay and Amend the Complaint, *i.e.*, the Memorandum. The Court also directed
21 Plaintiffs to not use the Memorandum for any purpose until Get Fresh's claims of privilege and
22 protection was resolved. The Court tried to be clear that it would rule on Get Fresh's claims of
23 privilege and protection during an *in camera* review, as opposed to counsel filing the document
24 with the Court's electronic filing system.

25 74. Rather than sequester the Memorandum, Plaintiffs repeatedly relied upon the
26 Memorandum to argue that it was not subject to privilege or protection.

1 75. There is no credible explanation for Plaintiffs' use of the Memorandum in the
2 Response filed in the arbitration on August 12, 2019, utilizing exact language from the
3 Memorandum which the Court has determined is privileged.

4 76. The explanation by counsel Berkley and Connot that the quotes from the
5 Memorandum were quoted and embedded in their minds because of the briefing filed in this
6 Court on August 1, 2019 and August 4, 2019 after notification by the Defendants of the claims of
7 privilege and protection is of deep concern to the Court and militates in favor of disqualification.

8 77. Based upon the information that has been provided to the Court, it appears that the
9 only person in whom the Memorandum is embedded in the brain of is Berkley.

10
11 **iii. Merits Incentives Factor 4: Plaintiffs elected to employ the Memorandum as a**
12 **playbook for their conduct in this action and the arbitration**

13 78. Plaintiffs' August 12, 2019 Response is their operating pleading in the arbitration.
14 Plaintiffs' possession and use of the Memorandum has, and continues to, prejudice Get Fresh.

15 79. Plaintiffs incorporated the Memorandum into their pleading and have used it to
16 prosecute their claims (including, as the basis for their extensive discovery requests and motions
17 for advancement and summary judgment in the arbitration). As a result, the return of the
18 Memorandum to Get Fresh would not mitigate the prejudice to Get Fresh or excise the taint
19 permeating throughout the arbitration from Plaintiffs' improper use of the content of the
20 privileged Memorandum.

21 **iv. Merits Incentives Factor 5: There is no evidence that Get Fresh is at fault for**
22 **the unauthorized disclosure of the Memorandum**

23 80. The Court is not commenting on how the Memorandum came to be in Plaintiffs'
24 possession because it is not of import in making a determination for disqualification.

25 81. Once Defendants became aware that Plaintiffs possessed the Memorandum on
26 August 1, 2019, Defendants took immediate action to protect their privilege and keep it out of the
27 Court's record.
28

1 v. ***Merits Incentives Factor 6: Plaintiffs' prejudice from disqualification is limited***

2 82. Fox Rothschild's entire representation of Plaintiffs is tainted by Plaintiffs'
3 possession and use of the Memorandum. Plaintiffs wove the Memorandum into their operative
4 pleading in the arbitration.

5 83. The inability of counsel to extricate privileged information from his or her mind
6 supports disqualification. *See, e.g., Matter of Beiny*, 129 A.D. 2d 126, 141-44 (N.Y. App. 1987)
7 (explaining that use of privileged material warrants disqualification: "While documents may be
8 effectively suppressed, the information gathered from them cannot be so easily contained. We
9 simply do not know whether the information acquired from the [privileged] files will
10 subsequently be used by [counsel], for even if [counsel] attempts to abide by the . . . suppression
11 order, there is no way of assuring that the tainted knowledge will not subtly influence its future
12 conduct of the litigation."); *McDermott Will & Emery LLP v. Superior Court*, 10 Cal. App. 5th
13 1083, 1124-25 (Cal. App. 2017) ("But the court's order could not prevent Gibson Dunn from
14 using the knowledge it acquired by carefully reviewing and analyzing the e-mail even if the e-
15 mail itself is no longer available to the firm. Even after a trial court has taken remedial action to
16 protect the privilege, 'disqualification still serves the useful purpose of eliminating from the case
17 the attorney who could most effectively exploit the unfair advantage [acquired through the earlier
18 review and use of the inadvertently disclosed, privileged materials].'"); *Clark*, 196 Cal. App. 4th
19 at 54-55 (noting that counsel's review of the privileged material would lead to "inevitable
20 questions about the sources of [counsel's] knowledge (even if [counsel] in fact obtained such
21 knowledge from legitimate sources) could undermine the public trust and confidence in the
22 integrity of the adjudicatory process"); *Rico v. Mitsubishi Motors Corp.*, 171 P.3d 1092 (Cal.
23 2007) (affirming disqualification where counsel's use of the privileged information was so
24 extensive, "the damage caused by [the] use and dissemination of the notes was irreversible").

25 84. Based upon Berkley's testimony and the evidence presented, the Memorandum is
26 embedded in his mind such that he is unable to extricate it from his knowledge of the case.

27 85. Although Connot's examination of Goldberg during the evidentiary hearing
28 utilized the Memorandum, such use was limited and not a wholesale use of the Memorandum.

1 Accordingly, Connot's mere use of the document in examining Goldberg does not rise to the level
2 of Connot's disqualification.

3 86. Based upon the evidence presented, including Even Barenbaum's circulation of the
4 Memorandum to Plaintiffs and counsel on July 31, 2019, it would be better if Stern & Eisenberg,
5 including, but not limited to, Barenbaum, did not participate in this action or any related actions
6 going forward.

7 **F. Sanctions are Necessary.**

8 87. This Court has broad discretion to enter sanctions for litigation misconduct. *Young*
9 *v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93,787 P.2d 777, 780 (1990).

10 88. The Nevada Supreme Court identified the pertinent, non-exclusive factors for the
11 district court to consider when considering the ultimate sanction, dismissal with prejudice, in
12 *Young v. Johnny Ribeiro Building, Inc.* (the "*Ribeiro* factors"):

13 [1] [T]he degree of willfulness of the offending party[;]

14 [2] [T]he extent to which the non-offending party would be prejudiced by a
15 lesser sanction[;]

16 [3] [T]he severity of the sanction of dismissal relative to the severity of the
discovery abuse[;]

17 [4] [W]hether any evidence has been irreparably lost[;]

18 [5] [T]he feasibility and fairness of alternative, less severe sanctions, such as
19 an order deeming facts relating to improperly withheld or destroyed
evidence to be admitted by the offending party[;]

20 [6] [T]he policy favoring adjudication on the merits[;]

21 [7] [W]hether sanctions unfairly operate to penalize a party for the misconduct
22 of his or her attorney[;] and

23 [8] [T]he need to deter both the parties and future litigants from similar abuses.

24 *Id.* at 93, 787 P.2d at 780.

25 89. Sanctions are necessary here to "deter and punish those who abuse the judicial
26 process." *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 678, 263 P.3d 224, 228 (2011)
27 (quoting *Red Carpet Studios Div. of Source Advan. v. Sater*, 465 F.3d 642, 645 (6th Cir. 2006)).

28 90. Considering the *Ribeiro* factors, the Court concludes that sanctions are appropriate.

1 91. Plaintiffs willfully disregarded Get Fresh's claims of privilege and protection on
2 August 2, 2019, and this Court's subsequent orders that the Memorandum be sequestered and not
3 used for any purpose, by incorporating the exact language from the Memorandum into their
4 Response in the arbitration, as well as relying upon the substance of the Memorandum to argue
5 that it was not privileged in this action.

6 92. While this Court declines to strike Plaintiffs' pleadings filed in this action, it is
7 necessary to discharge the arbitration panel, strike all documents in the arbitration, and order the
8 refiling of all documents in the arbitration. Plaintiffs and their counsel used the Memorandum in
9 their foundational pleading in the arbitration: their Response and Counterclaims. Plaintiffs
10 utilized information contained in the Memorandum since the beginning of the substantive
11 arbitration, including to support their broad discovery requests and claim for advancement.

12 93. "It is well settled that dismissal is warranted where, as here, a party has engaged
13 deliberately in deceptive practices that undermine the integrity of judicial proceedings: 'courts
14 have inherent power to dismiss an action when a party has willfully deceived the court and
15 engaged in conduct utterly inconsistent with the orderly administration of justice.'" *Anheuser-*
16 *Busch, Inc. v. Nat. Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995) (quoting *Wyle v. R.J.*
17 *Reynolds Indus., Inc.*, 709 F.2d 585, 591 (9th Cir. 1983)).

18 94. When Plaintiffs found out about the Memorandum in late January or early
19 February 2019, they recognized the Memorandum was not theirs, had not been in their offices,
20 and should not have been in the boxes that were delivered to their counsel. Plaintiffs did nothing
21 to stop their attorneys from utilizing the Memorandum in this action and the arbitration.

22 95. There is a significant need to deter Plaintiffs and future litigants from similar abuse
23 and misuse of an adversary's privileged information. Plaintiffs and their counsel acted in
24 contravention of *Merits Incentives*, this Court's orders, and Get Fresh's claims of privilege and
25 protection.

26 96. Any conclusion of law stated above that is more appropriately deemed a finding of
27 fact shall be so deemed.

1 **ORDER**

2 Based upon the foregoing, the Court grants the Motion for Sanctions and the Motion to
3 Disqualify for the reasons set forth in these Findings of Fact and Conclusions of Law. The Court
4 hereby orders the following relief:

5 1. Based upon the information that has been provided to this Court it appears that the
6 only person in whom the Memorandum is embedded in the brain of is Brian Berkley of Fox
7 Rothschild LLP. For that reason, Berkley is no longer permitted to participate in any form in this
8 litigation, including, but not limited to, this action and the arbitration. Berkley's pro hac vice
9 status is hereby STRICKEN.

10 2. Each of Plaintiffs' attorneys (including former attorneys) and Plaintiffs shall
11 provide all copies of the Memorandum, electronic and print, to Defendants. Each of Plaintiffs'
12 attorneys must provide a certification that all versions of the Memorandum have been destroyed
13 and/or provided to Defendants' counsel. This Court is concerned about the number of people
14 have who touched the Memorandum.³

15 3. The current arbitration panel shall be discharged of its duties. A new arbitration
16 shall be initiated and a new arbitration panel shall be appointed. All filings and related
17 proceedings or orders in the arbitration are hereby STRICKEN. The parties are ordered to refile
18 all documents in the arbitration, with Plaintiffs to remove all direct and indirect references to the
19 Memorandum.

20 4. An award of reasonable attorneys' fees and costs incurred related to this contest of
21 the Plaintiffs' improper possession and use of the Memorandum, and the activities after the
22 August 2, 2019 notification occurred. Get Fresh and Fresh Mix shall file their application for
23 those fees and costs within twenty (20) days of the entry of this Decision and Order.

24
25
26 ³ Plaintiffs offered to submit declarations from the other members of Plaintiffs' litigation
27 team regarding their use of the Memorandum. (See Feb. 14, 2020 Hr'g Tr. 203:16-20.) The Court
28 then provided that "If there is a particular time keeper besides Mr. Berkley that [Defendants] have
concerns for, I will have a brief hearing with [Defendants] and [Plaintiffs] related to that after
you've had the opportunity to have a declaration and decide if I need more information to make a
judgment call." (*Id.* at 203:24-204:3.)

1 5. This Decision and Order; Findings of Fact and Conclusions of Law is hereby
2 STAYED for fifteen (15) days of its entry, as requested by Plaintiffs on February 14, 2020.⁴

3 IT IS SO ORDERED.

4 DATED: 2 Mar 2020

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6 ELIZABETH GONZALEZ
7 EIGHTH JUDICIAL DISTRICT COURT
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⁴ This stay includes a stay of the deadline for Get Fresh and Fresh Mix to file their application for attorneys' fees and costs.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 11, 2018

A-18-785391-B	Paul Lagudi, Plaintiff(s) vs. Fresh Mix LLC, Defendant(s)
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December 11, 2018 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Bendavid, Jeffrey A.	Attorney
	Lagudi, Paul	Plaintiff
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- MOTION TO FILE EXHIBIT 1 TO MOTION FOR PRELIMINARY INJUNCTION AND EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER UNDER SEAL ON ORDER SHORTENING TIME...PLAINTIFFS, PAUL LAGUDI AND WILLIAM TODD PONDER,S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME

APPEARANCES CONTINUED: Scott Goldberg, Client Representative for Defendants.

Court noted it does not review documents in camera unless it asked for them, and returned to Mr. Bendavid Exhibit 1 that was submitted for in camera review.

MOTION TO FILE EXHIBIT 1 TO MOTION FOR PRELIMINARY INJUNCTION AND EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER UNDER SEAL ON ORDER

SHORTENING TIME: There being no objection, COURT ORDERED, motion to seal GRANTED.

PLAINTIFFS, PAUL LAGUDI AND WILLIAM TODD PONDER'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME: As the motion to seal has now been granted, Mr. Bendavid returned to the Court Exhibit 1, the operating agreement, for the Court's reference. Court DIRECTED Mr. Bendavid to have it FILED UNDER SEAL. Mr. Bendavid referred the Court to 8.3 and argued in support of the application for TRO. Court asked Defendants' counsel to explain why, under 5.2(b), the removal provision of the membership agreement, that what they did was right. Mr. Pisanelli argued the Plaintiffs were not removed as managers and that they still have whatever duties and responsibilities managers have. Mr. Pisanelli further argued as to 14.a, to which the Court noted it will wait to decide to compel arbitration until counsel actually files that motion, argued these claims are derivative in nature, and that at the end of the day this is an employment dispute. Reply by Mr. Bendavid as to the Plaintiffs being the only parties advancing Fresh Mix and bringing in sales.

COURT ORDERED, application for TRO GRANTED in a limited aspect. To the extent that there is an attempt to remove the Plaintiffs as managers, that is ENJOINED under section 5.2b; however, issues related to employment are DENIED. With regards to the issue of the email accounts, those will be reinstituted. The Court is GRANTING injunctive relief related to the email accounts and personal property of the Defendants. In addition, the Defendants, and their respective members, shareholders, managers, directors, officers, employees, contractors, representatives, agents, and officers shall IDENTIFY to Plaintiffs each email sent to the email accounts of the Plaintiffs, which were redirected and access was denied, and IDENTIFY each individual who received, read, or reviewed each of the identified emails. Defendants will no longer tell anyone that the Plaintiffs are no longer with Fresh Mix, since they remain as managers. The issue of employment status is not an issue the Court is forced to deal with. The individuals are managers of the company and as managers have certain rights and responsibilities, which do not include keys, cellphones, offices, necessarily health insurance, but does include the email accounts, as many managers of LLC's operate with email accounts to assist with the information needed to perform their duties. The Court is concerned related to the employment status; however, at this point it appears that they were at-will employees because of the expiration of the agreement, and the Court will not grant any relief related to the employment contracts.

With regards to the bond amount, Mr. Bendavid argued as to section 14.a and Mr. Pisanelli, noting Nevada law, requested a minimum of \$50,000 to cover attorney's fees. COURT ORDERED, BOND SET at \$500.

With regards to discovery and briefing prior to a preliminary injunction hearing, Mr. Pisanelli stated he would like to depose the two Plaintiffs, and document production, without being overbearing, can be limited to certain categories. COURT ORDERED, parties given 10 requests for production. Mr. Bendavid stated he would like to take the deposition of the three managers and some limited requests; 10 requests for production are enough; his client is also entitled to tax returns. Court NOTED litigation does not prevent managers from obtaining information. COURT ORDERED,

parties given 15 days' response time to requests for production and 10 days to notice depositions; those depositions are not preclusive of counsel taking other depositions in the case-in-chief. Upon Court's inquiry, counsel confirmed they are limiting them to the 7-hour depositions at this point.

Mr. Pisanelli noted that hopefully, before fully going down the road of discovery prior to the preliminary injunction hearing, they can address and make a record on a motion for arbitrability, because an arbitrator or panel may want to manage discovery. Court noted it is not there yet. Colloquy regarding timing of the motion and scheduling the hearing. Court noted it will be out of the jurisdiction for a time in February and that it has two upcoming jury trials that each claim to be two weeks long; the Court can advance the motion to compel and motion to dismiss in the instant case and can set the preliminary injunction hearing after February 19 or on Friday, January 4, 2019. Mr. Pisanelli requested the parties meet and confer first. COURT ORDERED, preliminary injunction hearing SET for Thursday, December 27, 2018. The parties are welcome to stipulate around that date and work on a new one but must also agree to extend the TRO or agree that it will expire. Mr. Bendavid advised one of his clients lives in Australia. COURT NOTED he can testify by video.

Temporary Restraining Order signed in open court and returned to Mr. Bendavid for filing. Court reminded Mr. Bendavid to file Exhibit 1.

Mr. Leslie offered to the Court that as to the email accounts, 90% of the email traffic was as the Plaintiffs' role as employees. Court noted email accounts are not necessarily limited to employees and that members and managers of LLC's frequently have company email accounts. The Court will NOT LIMIT the quality or type of emails that went to the Plaintiffs' email addresses before or that come to those addresses now; it is certain that with respect to sales emails, Mr. Bendavid will have a discussion with this clients as to how important it is that those emails go to whoever the company has decided is managing that function. With regards to communicating to the marketplace, the Court assumes everyone will give the marketplace a good front because their goal is to keep everything going. With regards to the bond setting, Court explained that given the contractual language it appears the parties had agreed to no bond; however, in order to comply with Nevada law, the Court has set bond and limited it to a nominal amount; counsel for Defendants can file a motion.

Mr. Bendavid inquired about his clients setting up a meeting with company operators / administrators. Court noted that is not a manager job, i.e. manager being top of the trees.

12-27-18 9:00 AM PRELIMINARY INJUNCTION HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 24, 2018

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

December 24, 2018 9:00 AM Motion to Dismiss

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No appearances.

COURT ORDERED, the instant motion and the Preliminary Injunction Hearing that is on calendar for December 27, 2018 are both RESET on Thursday, January 3, 2019 at 9 am.

1-3-19 9:00 AM DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S
MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION
ON AN ORDER SHORTENING TIME...PRELIMINARY INJUNCTION HEARING

1-11-19 CHAMBERS MOTION TO REDACT DEFENDANTS FRESH MIX, LLC AND GET
FRESH SALES, INC.'S OPPOSITION TO EX PARTE APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER
SHORTENING TIME AND EXHIBITS A AND B THERETO

1-14-19 9:00 AM MOTION TO REDACT DEFENDANTS FRESH MIX LLC AND GET
FRESH SALES INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO
COMPEL ARBITRATION AND SEAL EXHIBIT 1 THERETO

CLERK'S NOTE: This minute order was distributed to the parties via the E-Service List. / dr 12-24-18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 11, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**January 11, 2019 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to seal is deemed unopposed. As the proposed redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

1-16-19 9:00 AM DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S
MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION
ON AN ORDER SHORTENING TIME...

...MOTION TO REDACT DEFENDANTS FRESH MIX LLC AND GET FRESH SALES INC.'S
MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION
AND SEAL EXHIBIT 1 THERETO...

...STATUS CHECK: SCHEDULING THE PRELIMINARY INJUNCTION HEARING...PRELIMINARY
INJUNCTION HEARING

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service List. / dr 1-14-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 16, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

January 16, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Bendavid, Jeffrey A.	Attorney
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- DEFENDANTS FRESH MIX LLC AND GET FRESH SALES, INC'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION ON AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Bendavid, COURT ORDERED, based upon the information currently before the Court, it appears the employment agreement expired long ago; therefore, no arbitration provision in the employment agreement survives for purposes of this dispute. The equitable remedies that are sought in the complaint are excluded from arbitration in paragraph 14.8 of the operating agreement but the remaining claims and the basis of those claims are subject to arbitration.

STATUS CHECK: SCHEDULING PRELIMINARY INJUNCTION HEARING...PRELIMINARY INJUNCTION HEARING: Court inquired whether, given the agreement to extend the applicability of the TRO until the preliminary injunction hearing, counsel wanted to discuss the scheduling of the preliminary injunction before the Court decides what the stay is. Colloquy. With the parties' agreement, COURT noting everything STAYED until arbitration concludes, ORDERED, matter SET

for status check in 120 days on the chambers calendar. Counsel to file a status report regarding mediation. Preliminary Injunction Hearing taken OFF CALENDAR at this time.

Upon Mr. Pisanelli's inquiry, Court clarified that except for the request of injunctive relief related to the Plaintiffs' possessions and positions as members of the LLC, parties will go to arbitration and deal with that; the injunction which is limited in nature that the Court issued will REMAIN in place until the parties return before this Court; the only thing the Court will deal with until they are done with arbitration is injunctive relief.

Upon Mr. Bendavid's inquiry regarding a prior discussion on books and records, Court stated the parties will deal with the arbitrator on whether those were received; under Nevada statute, the Plaintiff has a right to file a separate books and records case or amend the complaint to add a books and records portion; however, the easiest way for the parties to deal with it may be to do it as part of their discovery in arbitration.

MOTION TO REDACT DEFENDANT'S FRESH MIX LLC AND GET FRESH SALES INC'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY AND TO COMPEL ARBITRATION AND SEAL EXHIBIT 1 THERETO...MOTION TO REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY AND TO COMPEL ARBITRATION [Advanced from February 22, 2019 chambers]: COURT ORDERED, motions to redact GRANTED based upon commercially sensitive information.

5-17-19 CHAMBERS STATUS CHECK: ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 17, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

May 17, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT reviewed both status reports filed May 16, 2019, and ORDERED, matter SET for Status Check in 120 days regarding completion of arbitration. If any issues addressed in the status reports are in need of resolution, counsel to file a motion after a meet and confer.

9-13-19 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service List. / dr 5-20-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 05, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

August 05, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Connot, Mark J	Attorney
	Pisanelli, James J	Attorney
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- COURT NOTED there is apparently an issue about an Exhibit T that the Court did not read and is the subject of a motion to strike, which Mr. Pisanelli wants the Court to address first. COURT ORDERED, the motion to STRIKE EXHIBIT T is GRANTED, but NOT the reply; however, the Court will then let counsel argue whether the exhibit can be produced subject to disclosure or any protection at all. The Court will NOT READ Exhibit T, but will GRANT the motion to strike it for purposes of this hearing. COURT ORDERED, Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay this Action on an Order Shortening Time, as well as Plaintiffs' Opposition to Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay this Action on an Order Shortening Time MARKED as Court's Exhibit 1 for today and SEALED. (See worksheet). However, the motion to strike is not placed on calendar for hearing.

Mr. Pisanelli requested this proceeding be stayed because the other side analyzed T as part of the

reply and there is a continuing violation of the privilege. Court stated it will PROCEED with the hearing; if counsel wishes to propose redactions to the reply, he may. Matter TRAILED.

Matter RECALLED.

PLAINTIFFS' MOTION TO LIFT STAY AND AMEND THE COMPLAINT ON AN ORDER SHORTENING TIME: Mr. Connot argued in support of the motion seeking the ability to amend the complaint and letting the Defendants take whatever action they want to take at this point. Mr. Pisanelli responded, arbitration was initiated but the other side simply gave a flat denial of allegations; things remain in limbo or this may be a strategy to delay arbitration; there is a motion to lift the stay, but he would suggest there is no emergency at all; indemnification was denied 4 months ago; there is no change in circumstances and the need to file an amended complaint is not reason enough. Following further argument by Mr. Connot, COURT ORDERED, motion GRANTED; however, the Plaintiffs appear to be subject to the February 1, 2019 order related to arbitration with the sole exception of the books and records issue, which the Court has previously addressed and has not been removed. If seeking receivership counsel to file a motion.

COURT ORDERED, status check previously set on September 13, 2019 in chambers on the completion of arbitration VACATED. Matter set for status check in 6 months, or February 7, 2020, to see how the parties are doing on the arbitration.

Court noted it can make considerations outside the stay as to what counsel would like to do about Exhibit T; if they prefer to do it in arbitration that will be fine, but the Court would like a plan before the parties leave so the Court does not lose track of it. Mr. Pisanelli stated it seems this may require action on both sides, and the problem is that it may also include disqualification of counsel. COURT ORDERED, matter SET for status check on Friday, August 9, in chambers as to whether the Court will be working with counsel on a hearing for a motion for protection or if counsel would like the Court to do an in camera review. Mr. Pisanelli advised he can give a status report by the end of the day.

Court stated that if the parties do not have an agreement on redactions on the reply, the Court will hear a motion.

Upon Mr. Pisanelli's request for clarification, Court concurred it is allowing the new claims and sending everything back to arbitration, except for the books and records issue and if someone wants to appoint a receiver. Upon Mr. Connot's inquiry, Court confirmed this includes the claim for indemnification, which can be raised in front of the arbitrator.

~

MOTION TO REDACT EXHIBIT 1 TO PLAINTIFFS' MOTION TO LIFT THE STAY AND AMEND THE COMPLAINT ON AN ORDER SHORTENING TIME: COURT ORDERED, motion GRANTED.

MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO MOTION TO LIFT STAY AND AMEND COMPLAINT ON AN ORDER SHORTENING TIME AND EXHIBIT B THERETO, AND (2) SEAL EXHIBIT D THERETO [Advanced from August 30, 2019 - chambers)...PLAINTIFFS' MOTION TO SEAL EXHIBITS X-CC AND EXHIBIT FF TO PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT [Advanced from September 6, 2019 - chambers]: COURT ORDERED, motions ADVANCED and GRANTED because they contain confidential information, except for Exhibit T to the Reply which was stricken.

8-9-19 CHAMBERS STATUS CHECK

9-9-19 CHAMBERS PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY
BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 09, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

August 09, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court reviewed status report filed 8/8/19. Referenced motion may be filed without the necessity of a partial relief of stay given circumstances discussed on 8/5/19.

08/16/2019 CHAMBER CALENDAR - DEPARTMENT XI

DEFENDANTS' MOTION TO REDACT: (1) PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT, AND (2) PLAINTIFFS' OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO (1) STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT AND EXHIBIT T THERETO; AND (2) STAY THIS ACTION ON AN ORDER SHORTENING TIME AND EXHIBIT 1 THERETO ON AN ORDER SHORTENING TIME

09/09/2019 9:00 AM - Department XI

PLAINTIFFS MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT

02/07/2020 CHAMBER CALENDAR - DEPARTMENT XI

STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr
8/9/19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 16, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**August 16, 2019 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, motion CONTINUED to the oral calendar for Monday, August 26, 2019.
Counsel to APPEAR.

8-26-19 9:00 AM DEFENDANTS' MOTION TO REDACT: (1) PLAINTIFFS' REPLY
BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT, AND (2)
PLAINTIFFS' OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO (1) STRIKE
PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT AND
EXHIBIT T THERETO; AND (2) STAY THIS ACTION ON AN ORDER SHORTENING TIME AND
EXHIBIT 1 THERETO ON AN ORDER SHORTENING TIME

9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8-19-
19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 26, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**August 26, 2019 9:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Connot, Mark J Attorney
 Leslie, Bruce Alan Attorney
 Schaefer, Ava Marie Attorney
 Spinelli, Debra L. Attorney

JOURNAL ENTRIES

- COURT ORDERED, motion regarding clawback issues on order shortening time (OST) SET for September 9, 2019 at 9 am; OST signed and returned to counsel for filing. Opposition DUE by the Friday before (September 6) at noon. Ms. Spinelli stated she will not be here but she believes the September 9 date will work for Mr. Pisanelli.

Following arguments by Ms. Spinelli and Mr. Connot, COURT ORDERED, motion to redact GRANTED IN PART. With respect to the communications related to the panelists the motion is DENIED; with all other respects it is GRANTED.

Counsel to submit proposed redactions. Matter SET for status check on the chambers calendar for Friday, August 30th.

8-30-19 CHAMBERS STATUS CHECK: PROPOSED REDACTIONS BY THE
DEFENDANTS

9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF
IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT...

...MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND
THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED
AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING
TIME...

...MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS
RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF
EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL
EXHIBITS 3-5 THERETO

9-20-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A.
BERKLEY OF FOX ROTHSCHILD LLP)

9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 30, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**August 30, 2019 3:00 AM Status Check proposed redactions
approved**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Redactions submitted on August 29, 2019 APPROVED as they appear to be narrowly tailored to protect the privilege and confidentiality issues currently at issue through motion practice.

9-9-19 9:00 AM PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' REPLY BRIEF
IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT...

...MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND
THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED
AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING
TIME...

...MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS
RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF
EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL
EXHIBITS 3-5 THERETO

9-20-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A.
BERKLEY OF FOX ROTHSCHILD LLP)

9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 9-3-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 04, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

September 04, 2019 10:48 AM Minute Order

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Motion to Associate Brian A. Berkley of Fox Rothschild LLP, originally scheduled for September 20, 2019 in chambers, ADVANCED to the oral calendar of September 9, 2019.

9-9-19 9:00 AM MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME...
...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)...
...PLAINTIFFS MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT...
...MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO

9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: Parties notified by distributing a copy of this minute order via Odyssey File and Serve. / dr 9-4-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 09, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

September 09, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Connot, Mark J Attorney
Pisanelli, James J Attorney
Schaefer, Ava Marie Attorney

JOURNAL ENTRIES

- COURT ORDERED, unfiled Defendants' Emergency Motion to (1) Strike Exhibit A to Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Countermotion for Discovery related to Fresh Mix Memo, and (2) Strike All References to and Discussion of its Substance in Plaintiffs' Opposition on an Order Shortening Time MARKED as Court's Exhibit 1 for today. (See worksheet.) Colloquy regarding procedure for sealing and redacting. COURT ORDERED, Plaintiffs' Opposition to Defendants' Motion for Claw Back, Discovery, and Sanctions and Counter-Motion for Discovery Related to Fresh Mix Memo filed September 5, 2019 STRICKEN. Mr. Pisanelli noted the redacted version was not redacted enough.

MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION; AND APPLICATION FOR AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Connot, COURT ORDERED, motion GRANTED IN PART. The Court ORDERS the documents sequestered and not quoted or referred to in any further pleadings; however, if the parties reach an evidentiary hearing it may be mentioned related to its privileged nature or to disqualification. The Court GRANTS the request for 3

depositions, not to exceed 2 hours each; Mr. Bendavid's will be strictly limited to the single communication and how he obtained the box. In addition, 5 requests for production and 5 interrogatories GRANTED.

PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP): COURT ORDERED, matter CONTINUED to Monday, September 23, 2019.

PLAINTIFFS MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO LIFT STAY AND AMEND COMPLAINT: COURT ORDERED, motion GRANTED.

MOTION TO (1) REDACT MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS RELATED TO PLAINTIFFS AND THEIR COUNSEL'S IMPROPER POSSESSION AND USE OF EXHIBIT T AND OTHER PRIVILEGED AND CONFIDENTIAL INFORMATION, AND (2) SEAL EXHIBITS 3-5 THERETO: COURT ORDERED, motion GRANTED.

Parties advised an evidentiary hearing on the motion to disqualify will take 1 to 2 days. COURT ORDERED, matter SET for status check on September 23rd. In addition, Motion to Associate Brian Berkley of Fox Rothschild CONTINUED to that date.

9-23-19 9:00 AM STATUS CHECK...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)

9-30-19 9:00 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

10-11-19 CHAMBERS MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 23, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

September 23, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Connot, Mark J Attorney
 Pisanelli, James J Attorney
 Schaefer, Ava Marie Attorney
 Spinelli, Debra L. Attorney

JOURNAL ENTRIES

- NOTICE OF COMPLIANCE AND MOTION TO ACCEPT PLAINTIFFS' OPPOSITION UNDER SEAL AND EXHIBITS A AND B ATTACHED THERETO ON AN ORDER SHORTENING TIME...PLAINTIFFS' MOTION FOR LIMITED DISCOVERY IN CONNECTION WITH DEFENDANTS' CLAIM OF PRIVILEGE OVER THE FRESH MIX MEMO ON AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Connot, COURT ORDERED, motion to accept Plaintiff's opposition unfiled DENIED; the information will not be quoted or summarized in any briefing; an opposition may be resubmitted that does not summarize, quote, or attach the information. Motion for limited discovery is NOT GRANTED; however, the Court will permit counsel to take the deposition of Mr. Goldberg for a period not to exceed 2 hours subject to limitations.

PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)...STATUS CHECK: COURT ORDERED, matters CONTINUED to October 4, 2019 in chambers. Counsel to file a written status report on where they are on written discovery and production. Court noted response period is 15 days.

10-4-19 CHAMBERS STATUS CHECK...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)

10-11-19 CHAMBERS MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO

10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 04, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

October 04, 2019 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...
...STATUS CHECK

COURT reviewed status reports filed October 3, 2019, ORDERED, matter CONTINUED for one week to the chambers calendar for scheduling of hearing.

10-11-19 CHAMBERS PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP)...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...
...STATUS CHECK...
...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO

10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7

THERETO...

...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...
...PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-4-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 11, 2019

A-18-785391-B	Paul Lagudi, Plaintiff(s)
	vs.
	Fresh Mix LLC, Defendant(s)

October 11, 2019	3:00 AM	All Pending Motions
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HEARD BY: Gonzalez, Elizabeth	COURTROOM: Chambers
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COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND SEAL EXHIBITS A, B, AND C ATTACHED THERETO: The Court having reviewed the Plaintiffs' Motion to Redact Opposition filed September 5, 2019 and the related briefing and being fully informed, GRANTS the motion, IN PART. The document filed September 5, 2019 is STRICKEN. The document will be refiled after removal of Exhibit A and with redactions as set forth in the response filed October 10, 2019. Counsel for Fresh Mix is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL (BRIAN A. BERKLEY OF FOX ROTHSCHILD LLP): The motion to Associate (Berkley) was granted by order entered October 4, 2019; this hearing is MOOT.

MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...STATUS CHECK: Evidentiary Hearing on Motion for Sanctions SET for November 6 to 7 at 9:15 am and if needed November 8 at 1 pm.

Supplemental briefs may be filed by noon on November 5th.

Motion to Disqualify CONTINUED to November 6 to be resolved as part of the evidentiary hearing.

10-18-19 CHAMBERS AMENDED MOTION TO REDACT MOTION TO DISQUALIFY
FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7
THERETO...

...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW
BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED
TO FRESH MIX MEMO

11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-
MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS
AND RECORDS...

...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF
BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO

11-6-19 9:15 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...

...MOTION FOR SANCTIONS...

...EVIDENTIARY HEARING

11-7-19 9:15 AM MOTION FOR SANCTIONS...EVIDENTIARY HEARING

11-8-19 1:00 PM MOTION FOR SANCTIONS...EVIDENTIARY HEARING

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-14-
19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 18, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

October 18, 2019 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- AMENDED MOTION TO REDACT MOTION TO DISQUALIFY FOX ROTHSCHILD LLP, REDACT EXHIBIT 1 THERETO, AND SEAL EXHIBITS 6 AND 7 THERETO...MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the amended motion to redact motion to disqualify and seal exhibits 6 and 7 is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial and confidential information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

Court further notes the other motion was handled on October 11, 2019.

11-1-19 CHAMBERS MOTION TO FILE UNDER SEAL EXHIBIT A TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO REDACT PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLAW BACK, DISCOVERY, AND SANCTIONS AND COUNTER-

MOTION FOR DISCOVERY RELATED TO FRESH MIX MEMO

11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...

...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO

11-6-19 9:15 AM MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...

...MOTION FOR SANCTIONS...

...EVIDENTIARY HEARING

11-7-19 9:15 AM MOTION FOR SANCTIONS...EVIDENTIARY HEARING

11-8-19 1:00 PM MOTION FOR SANCTIONS...EVIDENTIARY HEARING

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-18-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 01, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**November 01, 2019 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court notes motion handled by minute order of October 11, 2019. Order signed.

11-4-19 9:00 AM PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS
AND RECORDS...

...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF
BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO

11-22-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC
AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO

12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON
MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD...
...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX
ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION
TO COMPEL PRODUCTION OF BOOKS AND RECORDS

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 11-1-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 04, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

November 04, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Connot, Mark J Attorney
Pisanelli, James J Attorney
Schaefer, Ava Marie Attorney
Spinelli, Debra L. Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO...PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS

Upon Court's inquiry, Mr. Pisanelli confirmed he would like to file a sur-reply. COURT ORDERED, matters CONTINUED to Wednesday, November 20 per the parties' request and availability. Sur-reply due the afternoon before. Further, counsel to bring to the next hearing date the NDA that was proposed at the time of the inspection that did not happen.

11-20-19 9:00 AM PLAINTIFF'S MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO...PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS

11-22-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC

PRINT DATE: 04/02/2020

Page 36 of 65

Minutes Date: December 11, 2018

AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO

12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON
MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD...
...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX
ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION
TO COMPEL PRODUCTION OF BOOKS AND RECORDS

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 20, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

November 20, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Connot, Mark J	Attorney
	Crow, Lucy Clara	Attorney
	Lagudi, Paul	Plaintiff
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...PLAINTIFFS' MOTION TO REDACT PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS, AND SEAL EXHIBITS A, B, G, AND I THERETO

Court asked Mr. Connot to confirm for the Court whether the exhibit identified as exhibit 9 to the sur-reply is the non-disclosure agreement (NDA) that his client was provided with prior to the prior inspection request. Mr. Connot stated he has not gone through it line by line but he thinks it is. Arguments by Mr. Connot and Mr. Pisanelli. Court noted this topic is a subject of the Business Court Bench Bar meeting today and encouraged all counsel to attend. COURT ORDERED, the motion to compel is GRANTED IN PART. The Court is ORDERING an inspection of existing documents. The NDA in this case is fatally overbroad and will NOT BE ADOPTED by the Court. The Court is NOT

ORDERING inspection of categories 7, 8, 12, or 14.

Colloquy between Court and Mr. Pisanelli regarding the Court's ruling. Mr. Pisanelli requested a stay. COURT stated it will NOT ORDER COMPLIANCE for two weeks; however, if counsel wants extraordinary relief counsel may come back and ask for a stay.

COURT FURTHER ORDERED, Plaintiff's motion to redact is GRANTED.

11-22-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS (2) SEAL EXHIBITS 2, 3, 4, 6, 7, AND 8 THERETO

12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD...
...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 22, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**November 22, 2019 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to seal is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

12-2-19 9:00 AM STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON
MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD...
...EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX
ROTHSCHILD LLP...MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION
TO COMPEL PRODUCTION OF BOOKS AND RECORDS

12-20-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC
AND GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO

2-7-20

CHAMBERS

STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 11-26-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 02, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

December 02, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Connot, Mark J Attorney
Leslie, Bruce Alan Attorney
Pisanelli, James J Attorney
Ponder, William Todd Plaintiff
Schaefer, Ava Marie Attorney
Spinelli, Debra L. Attorney

JOURNAL ENTRIES

- MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...

...STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS, AND MOTION TO DISQUALIFY FOX ROTHSCHILD...

...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...

...EVIDENTIARY HEARING...

...MOTION FOR SANCTIONS

Court noted a motion to clarify set on OST for December 5, 2019. Ms. Spinelli advised that the Defendants also intend to file a motion to compel related to limited discovery that the Court granted; they will have depositions on both sides which the parties agreed would not go forward because of mediation, but they have been exchanging emails on when to reschedule them. Colloquy regarding the timing of the motions. Mr. Connot advised the motion to compel may affect the depositions.

Court inquired whether the Defendants can submit their motion to compel tomorrow. Ms. Spinelli asked if they can do so on Wednesday. COURT ORDERED, today's motions as well as the motion to clarify originally set for December 5th CONTINUED to Monday, December 9, at 9 am. Mr. Pisanelli noting co-counsel who went on vacation with his family requested the date for inspection be extended. No objection by Mr. Connot. COURT SO NOTED.

12-9-19 9:00 AM MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT
OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS...
...STATUS CHECK: MEDIATION, EVIDENTIARY HEARING ON MOTION FOR SANCTIONS,
AND MOTION TO DISQUALIFY FOX ROTHSCHILD...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...
...EVIDENTIARY HEARING...
...MOTION FOR SANCTIONS...
...PLAINTIFF'S MOTION TO CLARIFY THE PROCEDURE REGARDING PRIVILEGE
DETERMINATION ON AN ORDER SHORTENING TIME

12-20-19 CHAMBERS MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND
GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 09, 2019

A-18-785391-B	Paul Lagudi, Plaintiff(s) vs. Fresh Mix LLC, Defendant(s)
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December 09, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Connot, Mark J	Attorney
	Crow, Lucy Clara	Attorney
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED as follows:

PLAINTIFF'S MOTION TO CLARIFY THE PROCEDURE REGARDING PRIVILEGE DETERMINATION ON AN ORDER SHORTENING TIME: COURT CLARIFIED that it had previously determined it was facially privileged based upon the information provided to the Court. The Court will do an in camera review at the evidentiary hearing and will be happy to take any briefing. The Court will not let it be part of the public record because of the issues with the public record, even if it is sealed. The Court will look at it, the parties will make their argument, and the Court will do something with the sealed envelope which includes the Court handing it back to one of the parties depending on the Court's determination, and then they will go forward with the evidentiary hearing.

FRESH MIX, LLC AND GET FRESH SALES, INC.'S MOTION TO COMPEL SANCTIONS

DISCOVERY ON AN ORDER SHORTENING TIME: COURT ORDERED, motion GRANTED IN PART. Because this is an unusual situation, the Court is ORDERING a privilege log for communications between the attorney and client related to this particular document, even though it is during the term of litigation, and if any redactions are provided, those need to be on the log. Interrogatories 1, 2, 3, and 4 need to be supplemented. The Court's determination is that the statement in the August 4, 2019 declaration is a waiver as to how the particular document came into possession but is not a waiver as to what was done with the document afterwards that might otherwise be privileged.

Mr. Pisanelli advised they have had silence regarding deposition availability. Mr. Connot advised the Plaintiff can do the supplements and the privilege log by Thursday. COURT ORDERED this be done by Friday. Mr. Connot further advised they have provided the other side with availability; there are one or two issues but they can try to make most dates. COURT ORDERED a status report be filed as to when depositions have been set.

Parties anticipated the evidentiary hearing taking two days. Court noted a Thursday or Friday, then, in January, but the Court will know after Calendar Calls on January 17.

Ms. Spinelli inquired about the metadata, the Lagudi emails that were ordered produced. Court stated only those related to issues subject to the discovery here; the rest is stuff subject to arbitration.

MOTION TO REDACT PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS: COURT ORDERED, motion GRANTED.

MOTION TO (1) REDACT DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUR-REPLY REGARDING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF BOOKS AND RECORDS; AND (2) SEAL EXHIBIT 10 THERETO: There being no objection, COURT ORDERED, motion ADVANCED from the December 20, 2019 chambers calendar and GRANTED.

MOTION TO SEAL EXHIBITS 10-15 TO DEFENDANTS FRESH MIX, LLC AND GET FRESH SALES, INC.'S MOTION TO COMPEL SANCTIONS DISCOVERY: There being no objection, COURT ORDERED, motion ADVANCED from the January 10, 2020 chambers calendar and GRANTED.

12-13-19 CHAMBERS STATUS CHECK: DEPOSITIONS

2-7-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: Placeholder created for December 17, 2019 for the following matters. Parties to be contacted after the Court's Calendar Calls on December 17.

- Status Check: Mediation, Evidentiary Hearing on Motion for Sanctions, and Motion to Disqualify
- Motion for Sanctions

- Evidentiary Hearing
- Motion to Disqualify Fox Rothschild LLP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 13, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

December 13, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT notes arbitration not complete and ORDERS the status check on arbitration CONTINUED for 4 months.

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 12-17-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 17, 2019

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

December 17, 2019 2:15 PM Minute Order

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, evidentiary hearing SET for January 21st and 22nd, 2020 at 9:30 am.

1-21-20 9:30 AM EVIDENTIARY HEARING...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...
...MOTION FOR SANCTIONS

1-22-20 9:30 AM EVIDENTIARY HEARING...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP...
...MOTION FOR SANCTIONS

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 12-17-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 21, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

January 21, 2020 9:30 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Berkley, Brian A.	Attorney
	Connot, Mark J	Attorney
	Crow, Lucy Clara	Attorney
	Lagudi, Paul	Plaintiff
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- DAY 1

EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCCHILD LLP

APPEARANCES CONTINUED: Scott Goldberg, John Wise, and Dominic Caldara, Client Representatives for the Defendants.

At the Court's direction, Law Clerk returned to counsel courtesy copies of unredacted versions. Court noted March 19 order on the procedure for properly filing things under seal. O

ST on motion to strike submitted by Mr. Connot returned to counsel as the Court cannot sign it today to be heard on Thursday, given the need for one judicial day's notice.

Court advised the hearing needs to break at 1:40 pm for Mental Health Court to take over the courtroom.

Court further directed both sides to exchange their proposed findings of fact and conclusions of law.

Per the parties' stipulation, COURT ORDERED, Proposed Joint Exhibits 1 through 5 and 7 to 9 ADMITTED. (See worksheet.) Following arguments by Mr. Connot and Mr. Pisanelli on discovery, witnesses, and privileged documents, COURT ORDERED, Mr. Connot's motion is GRANTED IN PART. Motion granted as to counsel of record to the Plaintiff; those witnesses will be called in the disqualification portion of the hearing when the parties get to that point.

Court further advised it will review in camera the memo as it is potentially privileged and that at this point it is facially privileged; then, the exhibit will be sealed. Memo given to the Court. Mr. Pisanelli explained the contents of the envelope. COURT ORDERED, pages marked Priv 10 through 13 MARKED as Court's Exhibit 1 for today and SEALED. Court noted its initial review of the document was as an exhibit, which was stricken and ordered sequestered; what the Court has reviewed now seems to be consistent. Arguments by counsel regarding how the document will be used in these proceedings. Mr. Pisanelli stated he simply wants to make sure that the use of the document in this hearing does not constitute a waiver by them. Court noted it does constitute a waiver by them but may constitute further contamination. Further discussion regarding line numbers.

Mr. Pisanelli requested they use rough drafts of depositions and supplement later with originals. Mr. Connot stated he had no objection, noting a witness may point out an error afterwards.

Parties waived opening statements. Testimony and exhibits presented. (See worksheet.) COURT ORDERED, hearing CONTINUED.

EVENING RECESS.

1-22-20 9:00 AM MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN
OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME...
...MOTION TO FILE UNDER SEAL EXHIBITS 1, 2, 3, 4 AND 5 TO PLAINTIFFS' SUPPLEMENTAL
BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK AND AS
INCORPORATED INTO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO
DISQUALIFICATION ON AN ORDER SHORTENING TIME...
...MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO
DEFENDANTS' MOTION FOR CLAWBACK ON AN ORDER SHORTENING TIME

1-22-20 9:30 AM EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO
DISQUALIFY FOX ROTHSCHILD LLP

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 22, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

January 22, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Berkley, Brian A.	Attorney
	Connot, Mark J	Attorney
	Crow, Lucy Clara	Attorney
	Lagudi, Paul	Plaintiff
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME...

...MOTION TO FILE UNDER SEAL EXHIBITS 1, 2, 3, 4 AND 5 TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK AND AS INCORPORATED INTO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION ON AN ORDER SHORTENING TIME...

...MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTION FOR CLAWBACK ON AN ORDER SHORTENING TIME

There being no objection, COURT ORDERED, because these are narrowly tailored and designed to protect both commercially sensitive and potentially privileged information, the motions are GRANTED.

1-22-20 9:30 AM EVIDENTIARY HEARING...
...MOTION FOR SANCTIONS...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 22, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

January 22, 2020

9:30 AM

All Pending Motions

**ARBITRATION
STAYED pending
resolution by Court**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Berkley, Brian A.	Attorney
	Connot, Mark J	Attorney
	Crow, Lucy Clara	Attorney
	Lagudi, Paul	Plaintiff
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Ponder, William Todd	Plaintiff
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- DAY 2

EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX
ROTHSCHILD LLP

Colloquy regarding remaining witnesses. Testimony and exhibits presented. (See worksheet.)
LUNCH RECESS.

Proceeding resumed. Mr. Connot advised he and Mr. Pisanelli discussed that what may have been submitted as Court's Exhibit 1 may not be identical to T. Counsel approached the Bench to review Court's Exhibit 1 with the Court. COURT ORDERED, Mr. Connot's version MARKED as Court's Exhibit 2 and SEALED. Testimony and exhibits continued. (See worksheet.)

Closing arguments by Mr. Pisanelli and Mr. Connot. COURT NOTED it is not commenting on how the memo came into the Plaintiffs' possession; a number of explanations have been offered but are not of import to the Court in making a determination on the two issues before the Court; it is not credible that the Plaintiffs believed the memo was a threat because it revealed not only strengths and weaknesses but also the options for potential resolutions and plans; the Plaintiffs recognized the memo was not an item that had been in their offices and therefore should not have been in the boxes that were delivered; under Sands vs. Jacob the waiver can only be made by the company; here, there has not been an indication that the company has made a waiver. For that reason, any assumption as to how the document got there will not be controlling in the determination on the waiver. For that reason the document will NOT BE USED in any way, it will NOT BE DISCLOSED, and the copies the Court has will REMAIN SEALED.

Discussion regarding sequestration or other ways to resolve the issue. COURT ORDERED, J-6 will be ADMITTED and SEALED because it is a part of arbitration proceedings. Arguments by Mr. Pisanelli and Mr. Connot as to sanctions and any offers short of disqualification. Copies made of citations to the document and comments by Mr. Pisanelli on the pile given to the Court. COURT RECESSED to review the pile.

Proceeding resumed. COURT ORDERED, pile MARKED collectively as Court's Exhibit 3 and SEALED. Further arguments by counsel. Mr. Connot requested an opportunity to digest the documents and submit something in writing with independent facts.

COURT ORDERED, hearing CONTINUED. Further briefing on the disqualification issue SET as follows:

Mr. Connot's brief DUE in 1 week (January 29, 2020)

Mr. Pisanelli's brief DUE 1 week thereafter (February 5, 2020)

All briefing must be completed and courtesy copies delivered to chambers by February 12, 2020.

Hearing CONTINUED to Friday, February 14, 2020.

COURT FURTHER ORDERED, ARBITRATION STAYED in its entirety pending a resolution by the Court. Counsel will notify the arbitrators.

2-14-20 9:00 AM EVIDENTIARY HEARING...MOTION FOR SANCTIONS...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 13, 2020

A-18-785391-B	Paul Lagudi, Plaintiff(s)
	vs.
	Fresh Mix LLC, Defendant(s)

February 13, 2020	10:40 AM	Minute Order
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HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- In preparation for the continued evidentiary hearing on February 14, 2020, the Court has reviewed the supplemental briefing. Counsel for Plaintiffs are DIRECTED to bring to the evidentiary hearing unredacted versions of the information used to refresh their recollection. The Court will hear argument on whether pursuant to NRS 50.125, the information will be produced or not at the outset of the hearing.

02-14-20 9:00 AM EVIDENTIARY HEARING...
...MOTION FOR SANCTIONS...
...MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

02-24-20 9:00 AM MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S SUPPLEMENTAL BRIEFING ON SANCTIONS AND DISQUALIFICATION; AND (2) SEAL EXHIBITS B, C, E, F, G, H, I, K, L, AND M THERETO

3-6-20 CHAMBERS MOTION TO REDACT PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO DISQUALIFICATION AND SANCTIONS AND EXHIBITS 2 AND 3 THERETO, AND SEAL EXHIBITS 4, 5 6 AND 7 THERETO

3-20-20 CHAMBERS MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO DISQUALIFICATION AND SANCTIONS; AND (2) SEAL EXHIBIT A THERETO

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-13-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 14, 2020

A-18-785391-B	Paul Lagudi, Plaintiff(s) vs. Fresh Mix LLC, Defendant(s)
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February 14, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Michaela Tapia

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Berkley, Brian A.	Attorney
	Connot, Mark J	Attorney
	Pisanelli, James J	Attorney
	Schaefer, Ava Marie	Attorney
	Spinelli, Debra L.	Attorney

JOURNAL ENTRIES

- MOTION FOR SANCTIONS ... EVIDENTIARY HEARING ... MOTION TO DISQUALIFY FOX ROTHSCHILD LLP

Arguments by counsel. Testimony and exhibits presented (see worksheets). Request to seal Exhibit AA by Mr. Connot DENIED. Testimony and exhibits presented (see worksheets). Closing argument by Mr. Pisanelli. Closing argument by Mr. Connot. COURT stated its findings and ORDERED, Pro Hac STRICKEN; Mr. Berkley no longer permitted to participate in any form in this litigation. ADDITIONALLY, the Court requires counsel and plaintiffs to provide all copies, electronic and print, to the Defendants and provide a certification from all prior counsel that each version of the document has been destroyed and/or provided to Plaintiff counsel. FURTHER, the Court REQUIRES the appointment of a new arbitration panel, ordering the striking and refiling all the documents in the arbitration. ADDITIONALLY, Plaintiffs and their counsel to pay reasonable attorney's fees for the Defendants related to the contest of the Plaintiff's improper possession in the activities after July 31 notification occurred. Colloquy regarding limited declaration testimony by Plaintiff and Exhibit AA.

At the request of Mr. Connot, COURT ORDERED, 15-Day Stay GRANTED after entry of order. Arbitration remains stayed pending anything happening in this case. Mr. Pisanelli to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 21, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**February 21, 2020 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes a non- opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to redact Supplemental brief and seal Ex B, C, E f, G, H, I, K, L and M is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive financial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / lg 2-21-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 06, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

March 06, 2020	3:00 AM	Motion to Seal/Redact Records
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HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDED:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to redact and seal certain exhibits is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

3-20-20 CHAMBERS MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH
SALES, INC.'S RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEFING IN OPPOSITION TO
DISQUALIFICATION AND SANCTIONS; AND (2) SEAL EXHIBIT A THERETO

4-10-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 3-9-10

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 20, 2020

A-18-785391-B Paul Lagudi, Plaintiff(s)
vs.
Fresh Mix LLC, Defendant(s)

**March 20, 2020 3:00 AM Motion to Seal/Redact
Records**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the motion to redact Fresh Mix's supplemental response and seal Exhibit A is deemed unopposed. As the proposed sealing and redaction is narrowly tailored to protect sensitive commercial information, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 3-24-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 31, 2020

A-18-785391-B	Paul Lagudi, Plaintiff(s) vs. Fresh Mix LLC, Defendant(s)
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March 31, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Connot, Mark J	Attorney
	Leslie, Bruce Alan	Attorney
	Pisanelli, James J	Attorney
	Polsenberg, Daniel F.	Attorney
	Schaefer, Ava Marie	Attorney
	Smith, Abraham G.	Attorney

JOURNAL ENTRIES

- Parties appeared by telephone.

PLAINTIFF'S MOTION TO EXTEND STAY OF ORDER PENDING POST-JUDGMENT MOTION (ON ORDER SHORTENING TIME)...MOTION TO (1) REDACT FRESH MIX, LLC AND GET FRESH SALES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND STAY OF ORDER PENDING POST-JUDGMENT MOTION; AND (2) SEAL EXHIBIT A THERETO [ADVANCED from May 1, 2020]:

Following arguments by Mr. Smith and Mr. Pisanelli, COURT ORDERED, motion GRANTED; there will be an additional stay until 15 days after the decision on the motion to alter or amend filed March 30, 2020. COURT FURTHER ORDERED, the motion to redact and to seal Exhibit A to the Opposition, filed March 30, 2020, is ADVANCED and GRANTED, because it is narrowly tailored to protect privileged information.

Upon counsel's inquiry regarding security, COURT NOTED monetary issues will be discussed if they go beyond the period that is currently granted.

COURT ADDITIONALLY ORDERED, the status check on the completion of arbitration currently set on April 10, 2020 in chambers is RESET on October 16, 2020 as the parties have not yet started.

5-4-20 9:00 AM PLAINTIFFS' MOTION TO VACATE, ALTER, OR AMEND
SANCTIONS ORDER

10-16-20 CHAMBERS STATUS CHECK: COMPLETION OF ARBITRATION

EXHIBIT(S) LIST

Case No.: **A-18-785391-B**

Hearing Date: **AUGUST 5, 2019**Dept. No.: **XI**

Judge: **HON. ELIZABETH GONZALEZ**

Plaintiff: **PAUL LAGUDI**

Court Clerk: **DULCE ROMEA**

Recorder: JILL HAWKINS

Counsel for Plaintiff:

vs.

Defendant: **FRESH MIX LLC**

Counsel for Defendant:

HEARING BEFORE THE COURT

COURT'S EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.: **A-18-785391-B**

Hearing Date: **SEPTEMBER 9, 2019**

Dept. No.: **XI**

Judge: **HON. ELIZABETH GONZALEZ**

Plaintiff: **PAUL LAGUDI**

Court Clerk: **DULCE ROMEA**

Recorder: **JILL HAWKINS**

Counsel for Plaintiff: MARK CONNOT, ESQ.

vs.

Defendant: **FRESH MIX, LLC**

Counsel for Defendant: JAMET PISANELLI, ESQ.;
AVA SCHAEFER, ESQ.

HEARING BEFORE THE COURT

COURT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	DEFENDANT'S EMERGENCY MOTION TO			marked
	(1) STRIKE EXHIBIT A TO PLAINTIFFS'			
	OPPOSITION TO DEFENDANT'S MOTION FOR			
	CLAW BACK, DISCOVERY, AND SANCTIONS			
	AND COUNTERMOTION FOR DISCOVERY			
	RELATED TO FRESH MIX MEMO, AND (2)			
	STRIKE ALL REFERENCES TO AND DISCUSSION			
	OF ITS SUBSTANCE IN PLAINTIFFS' OPPOSITION			
	ON AN ORDER SHORTENING TIME			9-9-19

EXHIBIT(S) LIST

Case No.: A-18-785391-B

Hearing Date: 1/21/2020 – 1/22/2020

Dept. No.: XI

Judge: Honorable Elizabeth Gonzalez

Court Clerk: Dulce Romea

Plaintiff: PAUL LAGUDI, an Individual; and
WILLIAM TODD PONDER, an Individual

Recorder: Jill Hawkins

Counsel for Plaintiff: Mark J. Connot, Brian A. Berkley,

Lucy C. Crow, Fox Rothschild LLP

Defendant: FRESH MIX, LLC, a Delaware
Limited Liability Company; GET FRESH
SALES, INC., a Nevada corporation; DOES 1
through 25; and ROE BUSINESS ENTITIES I
through X, inclusive,

Counsel for Defendant: James J. Pisanelli, Debra L.

Spinelli, Ava M. Schaefer, Pisanelli Bice, PLLC

vs.

HEARING BEFORE THE COURT

PLAINTIFFS' EXHIBITS

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
1	PLPRIV 00001 – PLPRIV 00006	Declaration of Dominic Caldara, dated January 6, 2020, attached to Claimants and Counterclaim Respondents' Response to Respondents' Motion for Summary Judgment as to the Expiration of the Employment Agreements, and Cross-Motion for Summary Judgment re: Enforcement of the Employment Agreements			
2	PLPRIV 00007 – PLPRIV 00013	Declaration of Scott Goldberg, dated January 6, 2020, attached to Claimants and Counterclaim Respondents' Response to Respondents' Motion for Summary Judgment as to the Expiration of the Employment Agreements, and Cross-Motion for Summary Judgment re: Enforcement of the Employment Agreements			
3	PLPRIV 00014 – PLPRIV 00015	Email from Bruce Leslie to Jeffrey Bendavid, dated May 29, 2018, regarding expiration of the Employment Agreements	1-22-20	OBJ Set	
4	PLPRIV 00016 – PLPRIV 00018	Excerpt from Claimants Amended Demand for Arbitration; Statement of Claims, Demand, dated August 5, 2019			

EXHIBIT(S) LIST

5	PLPRIV 00019 – PLPRIV 00077	Respondents' Response to Amended Demand for Arbitration and Counterclaims, dated August 12, 2019			
6	PLPRIV 00078 – PLPRIV 00107	Discovery Order Entered by Chair Levine, dated December 28, 2019			
7	PLPRIV 00108	Email from Paul Lagudi's email account to Scott Goldberg, dated November 29, 2018 9:36 a.m.	1-21-20	OBJ SUST	
8	PLPRIV 00109	Email from Paul Lagudi's email account to Scott Goldberg, dated November 29, 2018 9:38 a.m.	1-21-20	OBJ SUST	
9	PLPRIV 00110	Email from Paul Lagudi's email account to Scott Goldberg, dated November 29, 2018 9:39 a.m.	1-21-20	OBJ SUST	
10	PLPRIV 00111- PLPRIV 00112	Email from Paul Lagudi's email account to Scott Goldberg, dated November 29, 2018 9:51 a.m.	1-21-20	OBJ SUST	

EXHIBIT(S) LIST

Case No.: **A-18-785391-B**

Hearing Date: **01/21/2020 – 01/22/2020**

Dept. No.: **XI**

Judge: **Honorable Elizabeth Gonzalez**

Court Clerk: **Dulce Romea**

Plaintiff: **PAUL LAGUDI, an Individual; and
WILLIAM TODD PONDER, an Individual**

Recorder: **Jill Hawkins**

Counsel for Plaintiff: **Mark J. Connot, Esq.
FOX ROTHSCHILD LLP**

vs.

Defendant: **FRESH MIX, LLC, a Delaware
Limited Liability Company; GET FRESH
SALES, INC., a Nevada corporation; DOES
1 through 25; and ROE BUSINESS
ENTITIES I through X, inclusive,**

Lucy Crow, Esq.

Brian Berkley, Esq.

Counsel for Defendant: **James J. Pisanelli, Esq.
PISANELLI BICE, PLLC**

Debra Spinelli, Esq.;

Ava Schaefer, Esq.

HEARING BEFORE THE COURT

DEFENDANT'S EXHIBITS

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
A.	A-001	Email exchange between Mary Supchak and Scott Goldberg regarding delivery and receipt, dated December 3, 2018 (GF_SANCTIONS0001)			
B.	B-001	Email from Scott Goldberg to Mary Supchak regarding delivery and receipt, dated December 3, 2018 (GF_SANCTIONS0002)	<i>1-21-20</i>	<i>NO</i>	<i>1-21-20</i> <i>PK</i>
C.	C-001	Handwritten inventory list from Mary Supchak, regarding personal items from the offices of Todd Ponder and Paul Lagudi, December 2018 (GF_SANCTIONS0006)	<i>1-21-20</i>	<i>NO</i>	<i>1-21-20</i> <i>PK</i>
D.	D-001 – D-002	Email and attachment from Mary Supchak to Scott Goldberg regarding delivery receipt, dated December 4, 2018 (GF_SANCTIONS0003-4)	<i>1-21-20</i>	<i>NO</i>	<i>1-21-20</i> <i>PK</i>
E.	E-001	Receipt of Documents signed by Ken Mohlhenrich, dated December 4, 2018 (GF_SANCTIONS0005)	<i>1-21-20</i>	<i>NO</i>	<i>1-21-20</i> <i>PK</i>
F.	F-001	Email from Jeffrey Bendavid, Esq. to Ronald Cohen, Esq., James J. Pisanelli, Esq., and Bruce Leslie, Esq. sending complaint and application for temporary restraining order (without attachments), dated December 5, 2018 (GF_SANCTIONS0012)			

EXHIBIT(S) LIST

G.	G-001 – G-004	Email exchange among Jeffrey Bendavid, Esq., James J. Pisanelli, and Bruce Leslie, Esq. regarding hearing on application for temporary restraining order, dated December 5, 2018 (GF_SANCTIONS0013 – GF_SANCTIONS0016)			
H.	H-001 – H003	Correspondence from Mark Connot, Esq. to Betsy Lamm, Esq., regarding return of personal property, dated April 2, 2019 (GF_SANCTIONS0017 – GF_SANCTIONS0019)			
I.	I-001 – I-005	Correspondence from Betsy Lamm, Esq. to Mark Connot, Esq. regarding response to letter dated April 2, 2019 questioning the return of personal property, dated April 8, 2019 (GF_SANCTIONS0020 – GF_SANCTIONS0024)			
J.	J-001 – J018	Email and attachments from Mark Connot, Esq. to Cohen Dowd Quigley (CDQ) regarding Fox Rothschild clawback of inadvertent attorney client communication emailed to Betsy Lamm, Esq. dated April 19, 2019 (GF_SANCTIONS0025 – GF_SANCTIONS0042)			
K.	K-001 – K-005	Correspondence from Betsy Lamm, Esq. to Mark Connot, Esq. responding to April 19, 2019 letter regarding return of personal property and email account information, dated April 22, 2019 (GF_SANCTIONS0043 – GF_SANCTIONS0047)			
L.	L-001 – L-003	Correspondence from Betsy Lamm, Esq. to Evan Barenbaum, Esq. and Mark Connot, Esq. regarding Paul Lagudi and Todd Ponder use of personal email to conduct Fresh Mix business, dated April 25, 2019 (GF_SANCTIONS0048 – GF_SANCTIONS0050)			
M.	M-001 – M-002	Correspondence to Mark Connot, Esq. and Brian Berkley, Esq. regarding box of items removed from the offices of Paul Lagudi and Todd Ponder to be made available for inspection, dated May 7, 2019 (GF_SANCTIONS0051 – GF_SANCTIONS0052)			
N.	N-001 – N-003	Correspondence from Daniel Quigley, Esq. to Evan Barenbaum, Esq. and Mark Connot, Esq. regarding demand that Paul Lagudi and Todd Ponder stop interjecting in day-to-day business operations, dated May 16, 2019 (GF_SANCTIONS0053 – GF_SANCTIONS0055)			
O.	O-001 – O-005	August 3, 2019 forward of May 21, 2018 email exchange between Todd Ponder and Dominic Caldara re Strategic Leadership Team (LP 0001473 – LP 001477)			

EXHIBIT(S) LIST

P.	P-001 – P-003	Declaration of William Todd Ponder in support of Plaintiffs' Opposition to Emergency Motion to (1) Strike Plaintiffs' Reply in Support of Motion to Lift Stay and Amend Complaint and Exhibit T Thereto; and (2) Stay This Action On An Order Shortening Time, dated (and filed) August 4, 2019			
Q.	Q-001 – Q-007	Correspondence from Evan Barenbaum, Esq. to Bruce Leslie, Esq., regarding Litigation Hold Notice, dated August 15, 2019 (GF_SANCTIONS0056 – GF_SANCTIONS0062)			
R.	R-001 – R-021	Documents Defendants received from former Get Fresh consultant, Matthew McClure on September 7, 2019 at 7:59 pm (Lagudi – Nev. Ct. Action 0000280 - 300)			
S.	S-001 – S-039	Documents Defendants received from former Get Fresh consultant, Matthew McClure on September 7, 2019 at 8:00 pm (LP 0000640 – LP 0000678)			
T.	T-001 – T-021	Documents Defendants received from former Get Fresh consultant, Matthew McClure on September 7, 2019 at 9:19 pm (Lagudi – Nev. Ct. Action 0000259 - 279)			
U.	U-001 – U-008	Documents Defendants received from former Get Fresh IT employee, David Heinrech (LP0027522-29)			
V.	V-001 – V-006	Paul Lagudi's Answers and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Interrogatories to Paul Lagudi, dated October 9, 2019			
W.	W-001 – W-006	Paul Lagudi's Response and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Request for Production of Documents, dated October 9, 2019			
X.	X-001 – X-006	William Todd Ponder's Answers and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Interrogatories to William Todd Ponder, dated October 9, 2019			
Y.	Y-001 – Y-006	William Todd Ponder's Response and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Request for Production of Documents, dated October 9, 2019			
Z.	Z-001 – Z-015	Email string between Debra Spinelli, Esq., Mark Connot, Esq., and Brian Berkley, Esq. regarding Plaintiffs' deficient discovery responses, dated October 14 -27, 2019 (GF_SANCTIONS0063 – GF_SANCTIONS0077)			

EXHIBIT(S) LIST

AA.	AA-001 – AA-171	Paul Lagudi and Todd Ponder's Advancement Demand for invoices from inception to October 2019, and attachments (GF_SANCTIONS0078 – GF_SANCTIONS0248)	2/14/2020	OBJ	2/14/2020
BB.	BB-001 – BB-007	Paul Lagudi and William Todd Ponder's Privilege Log (accompanying supplemental discovery responses), dated December 13, 2019	2/14/2020	NO	2/14/2020
CC.	CC-001 – CC-011	Paul Lagudi and William Todd Ponder's Privilege Log (amended and/or supplemented), dated December 18, 2019			
DD.	DD-001 – DD-004	Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Supplemental Privilege Log, dated January 18, 2020			
		The docket in this action, including all pleadings, public filings, orders, and other submissions			
		Deposition Transcripts of Paul Lagudi, Todd Ponder, Jeffrey Bendavid, and Scott Goldberg			

EXHIBIT(S) LIST

Case No.: **A-18-785391-B**

Hearing Date: **01/21/2020 – 01/22/2020**

Dept. No.: **XI**

Judge: **Honorable Elizabeth Gonzalez**

Court Clerk: **Dulce Romea**

Plaintiff: **PAUL LAGUDI, an Individual; and
WILLIAM TODD PONDER, an Individual**

Recorder: **Jill Hawkins**

Counsel for Plaintiff: **Mark J. Connot, Esq.
FOX ROTHSCHILD LLP**

vs.

Defendant: **FRESH MIX, LLC, a Delaware
Limited Liability Company; GET FRESH
SALES, INC., a Nevada corporation; DOES
1 through 25; and ROE BUSINESS
ENTITIES I through X, inclusive,**

Counsel for Defendant: **James J. Pisanelli, Esq.
PISANELLI BICE, PLLC**

HEARING BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted
J1	J1-01 – J1-02	Correspondence from Scott Goldberg to Paul Lagudi regarding termination of employment, dated November 26, 2018 (GF_SANCTIONS0007 – GF_SANCTIONS0008)	1-21-20	NO	1-21-20 <i>PK</i>
J2	J2-01 – J2-02	Correspondence from Scott Goldberg to William Todd Ponder regarding termination of employment, dated November 26, 2018 (GF_SANCTIONS0009 – GF_SANCTIONS0010)			<i>PK</i>
J3	J3-01	Email from Bruce Leslie, Esq., to Jeffrey Bendavid, Esq. and Katie Nalbach regarding directors' duties and delivery of office contents, dated December 3, 2018 (GF_SANCTIONS0011)			<i>PK</i>
J4	J4-01 – J4-03	Email exchange between Todd Ponder and Scott Goldberg regarding office furniture, dated April 3-4, 2019, forwarded by Ponder to Paul Lagudi (LP 0002098 - LP 0002100)			<i>PK</i>
J5	J5-01 – J5-03	Defendants Fresh Mix, LLC and Get Fresh Sales, Inc.'s Initial Privilege Log, dated August 5, 2019	1-21-20	NO	1-21-20 <i>PK</i>
J6	J6-01 – J6-59	Arbitration Respondents' (Lagudi and Ponder's) Response to Amended Demand for Arbitration & Counterclaim, dated August 12, 2019 (FILED UNDER SEAL as Exhibit 5 to Motion for Claw Back, Discovery & Sanctions, filed on August 26, 2019)	1-22-20	NO	1-22-20 <i>PK</i> SEALED

NOTE: J6 SEALED BY COURT ORDER. *JTK*

EXHIBIT(S) LIST

J7	J7-01 – J7-02	Declaration of Scott Goldberg In Support of Motion to Disqualify Fox Rothschild LLP, dated (and filed) on August 23, 2019 (unredacted)	1-21-20	N/D	1-21-20
J8	J8-01 – J8-07	Paul Lagudi's First Supplemental Answers and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Interrogatories to Paul Lagudi, dated December 13, 2019			
J9	J9-01 – J9-07	William Todd Ponder's First Supplemental Answers and Objections to Fresh Mix, LLC and Get Fresh Sales, Inc.'s Interrogatories to William Todd Ponder, dated December 13, 2019	1-21-20	NO	1-21-20

BQ

by

B

EVIDENTIARY

HEARING

Counsel for Defendant: JAMES PISANELLI, ESQ.;
DEBRA SPINELLI, ESQ.;
AVA SCHAEFER, ESQ.; BRUCE LESLIE, ESQ.

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARK J. CONNOT
1980 FESTIVAL PLAZA DR., #700
LAS VEGAS, NV 89135

DATE: April 2, 2020
CASE: A-18-785391-B

RE CASE: PAUL LAGUDI; WILLIAM TODD PONDER vs. FRESH MIX LLC; GET FRESH SALES, INC.

NOTICE OF APPEAL FILED: March 31, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF DECISION AND ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

PAUL LAGUDI; WILLIAM TODD PONDER,

Plaintiff(s),

vs.

FRESH MIX LLC; GET FRESH SALES, INC.,

Defendant(s),

Case No: A-18-785391-B

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of April 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk