

1 Robert Kern, Esq.
2 Nevada Bar Number 10104
3 **KERN LAW, Ltd.**
4 601 S. 6th Street
5 Las Vegas, NV 89101
6 (702) 518-4529 phone
7 (702) 825-5872 fax
8 Admin@KernLawOffices.com
9 Attorney for Appellants

Electronically Filed
Aug 17 2020 02:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 CLEMENT MUNEY; CHEF EXEC
12 SUPPLIERS, LLC,

13 Appellants,

14 vs.

15 DOMINIQUE ARNOULD,

16 Respondent.

Case Number: 81354

DOCKETING STATEMENT

17 1. Judicial District 8, Department 27 County of Clark
18 Judge Nancy Allf, District Ct. Docket No. A-19-803488-B

19 2. **Attorney Filing this docket statement:**

20 Robert Kern, Esq.
21 Nevada Bar Number 10104
22 **KERN LAW, Ltd.**
23 601 S. 6th Street
24 Las Vegas, NV 89101
25 (702) 518-4529 phone
26 (702) 825-5872 fax
27 Robert@KernLawOffices.com

28 3. **Attorney representing respondent(s):**

Phillip A. Aurbach, Esq.

1 Nevada Bar No. 1501
2 Alexander K. Calaway, Esq.
3 Nevada Bar No. 15188
4 10001 Park Run Drive
5 Las Vegas, Nevada 89145
6 .

7 4. **Nature of disposition below (check all that apply):**

- 8 ☐ Judgment after bench trial ☐ Grant/Denial of NRCP 60(b) relief
9 ☐ Judgment after jury verdict ☒ Grant/Denial of injunction
10 ☐ Summary judgment ☐ Grant/Denial of declaratory relief
11 ☐ Default judgment ☐ Review of agency determination
12 ☐ Dismissal ☐ Divorce decree:
13 ☐ Lack of jurisdiction ☐ Original ☐ Modification
14 ☐ Failure to state a claim Other disposition (specify)
15 ☐ Failure to prosecute Other (specify)

16 5. **Does this appeal raise issues concerning any of the following:**

- 17 ☐ Child Custody ☐ Termination of parental rights
18 ☐ Venue ☒ Grant/Denial of injunction or TRO
19 ☐ Adoption ☐ Juvenile matters

20 No.

21 6. **Pending and other proceedings in this court.** List the case names and docket
22 number of all appeals or original proceedings presently or previously pending before this
23 court which are related to this appeal:

24 CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81355
25 CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81356

26 7. **Pending and prior proceedings in other courts.** List the case name, number and
27 court of all pending and prior proceedings in other courts which are related to this appeal
28 (e.g. bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. **Nature of the action.** Briefly describe the nature of the action pleaded and the
results below:

1 The company Chef Exec Suppliers LLC (“Chefexec”) is owned 50/50 by Clement
2 Muney and Dominique Arnould, with Muney handling the Las Vegas portion of the
3 business, and Arnould handling the Los Angeles side of the business. Chefexec has no
4 operating agreement in place. In 2019 Arnould indicated he wished to retire, but the parties
5 disputed what compensation Arnould should receive to buyout his share of the company.
6

7 Arnould filed suit seeking judicial dissolution and claiming breach of fiduciary duty.
8 Muney filed counterclaims alleging significant self-dealing by Arnould, in favor of his
9 separately owned businesses, and at the expense of Chefexec. The parties reached
10 settlement at a settlement conference, with all material terms agreed to, conditional upon
11 Arnould obtaining financing for the deal (for which he was required to make all reasonable
12 efforts). Arnould later claimed that he was unable to obtain financing, and withdrew from
13 the agreement. Muney argued that the evidence provided of Arnould’s efforts showed that
14 the only reason financing had been denied was because Arnould refused to offer any
15 personal collateral for the loans, which did not constitute “all reasonable efforts”. Arnould
16 filed a motion for summary judgment to appoint a receiver, and Muney filed a counter
17 motion to enforce the settlement agreement.
18

19 While those motions were pending, Arnould began putting all the company funds
20 into a new bank account which only he had access to. When Muney discovered this, he
21 demanded the funds be returned, or he be given access to the new account. Arnould refused,
22 and Muney filed a motion for preliminary injunction to return the funds to mutual control of
23 both partners.
24

25 A hearing was held on the motion for preliminary injunction, and without notice, at
26 the start of the hearing, the judge informed the parties that the hearing on the motions to
27 appoint a receiver, and to enforce settlement agreement would be held at the same time. The
28 Court denied the motion for preliminary injunction, in which order she also granted the

1 motion to appoint a receiver, and denied the motion for enforcement of settlement
2 agreement, without holding an evidentiary hearing. Appellant appeals that order.
3
4

5 9. **Issues on appeal.** State concisely the principal issues in this appeal:

6 The primary issues on appeal are:

7 Whether the Court erred by holding the hearing on the motion to enforce settlement
8 without notice, and without an evidentiary hearing regarding whether Arnould's efforts to
9 secure financing were reasonable.

10 Whether the threat of one 50% partner continuing to make payments under a
11 contract the Company legally executed is sufficient justification for the other partner to
12 seize all funds of the company and deny access to said funds to the partner.

13
14 Whether one partner using his seized control of company assets to deny company
15 funds to the other partner's side of the business and to refuse to pay suppliers for the other
16 side's orders, thus damaging relationships with essential suppliers and key employees,
17 constitutes irreparable harm sufficient to justify injunctive relief.

18 Whether the COVID-19 pandemic was capable of discharging Arnould's duties
19 under the settlement agreement, prior to it having a significant impact on Company
20 business.

21
22 10. **Pending proceedings in this court raising the same or similar issues.** If you are
23 aware of any proceeding presently pending before this court which raises the same or
24 similar issues raised in this appeal, list the case name and docket number and identify the
25 same or similar issues raised:

26 N/A

27 11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and
28 the state, any state agency, or any officer or employee thereof is not a party to this appeal,
have you notified the clerk of the court and the attorney general in accordance with NRAP
44 and NRS 30. 130?

1 N/A

2 12. **Other issues.** Does this appeal involve any of the following issues?

3 ☐ Reversal of well-settled Nevada precedent (on an attachment identify the case(s))

4 ☐ An issue arising under the United States and/or Nevada Constitutions

5 ☐ An issue of public policy

6 ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

7 ☐ A ballot question

8 If so, explain:

9 N/A

10 13. **Trial.** If this action proceeded to trial how many days did the trial last? N/A

11 Was it a bench or jury trial?

12 N/A

13 14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

14 No.

15 TIMELINESS OF NOTICE OF APPEAL

16 15. **Date of entry of written judgment or order appealed from: 8 June 2020. Attach a copy.**

17 16. **Date written notice of entry of judgment or order served: 8 June 2020.**

18 **Attach a copy, including proof of service, for each order or judgment appealed from.**

19 (a) Service was electronic

20 17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), or 59),**

21 N/A

22 18. **Date of notice of appeal was filed. 15 June 2020.**

23 (a) If more than one party has appealed from the judgment or order, list the date of appeal was filed and identify by name the party filing the notice of appeal:

24 N/A

25 19. **Specify the statute or rule governing the time limit for filing the notice of appeal.**

26 NRAP 4(a)

1 20. **Specify the statute or other authority granting this court jurisdiction to review**
2 **the judgment or order appealed from:**

3 NRAP 3A(b)(3)

4 21. **List all parties involved in the action in the district court:**

5 Plaintiff: Dominique Arnould

6 Defendants: Clement Munev, Chef Exec Suppliers LLC

7 (a) If all parties in the district court are not parties to this appeal, explain in detail why those
8 parties are not involved in this appeal, e.g., formally dismissed, not served or other:

9 N/A

10 22. **Give a brief description (3 to 5 words) of each parties separate claims,**
11 **counter-claims, cross-claims or third-party claims, and the trial court's disposition of**
12 **each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and**
13 **the date of disposition of each claim. Attach a copy of each disposition.**

14 Dominique Arnould – Breach of Fiduciary Duty for leasing property from his company,
15 Judicial Dissolution of Chef Exec Suppliers– neither has been resolved.

16 Clement Munev and Chef Exec Suppliers LLC: Breach of Fiduciary Duty, Conversion,
17 Money Had and Received, Unjust Enrichment, Constructive Fraud, Fraudulent
18 Concealment. All claims are based upon allegation that Arnould has been converting
19 company funds for his own use.

20 23. **Attach copies of the last filed versions of all complaints, counter-claims, and/or**
21 **cross-claims filed in the district court.**

22 24. **Did the judgment or order appealed from adjudicate ALL the claims alleged**
23 **below and the rights and liabilities of ALL the parties to the action below:**

24 No.

25 25. **If you answered “No” to the immediately previous question, complete the**
26 **following:**

27 (a) Specify the claims remaining pending below:

28 All Claims remain pending

(b) Specify the parties remaining below:

All Parties remain

(c) Did the district court certify the judgment or order appealed from as a final judgment
pursuant to NRCP 54(b)?

No

1 (d) Did the district court make an express determination, pursuant to NRCP 54(b), that
2 No

3
4 **26. If you answered “No” to any part of question 25, explain the basis for seeking
appellant review.**

5
6 It is a denial of an injunction pursuant to NRAP 3A(b)(3)

7
8 DATED this 17th day of August, 2020.

9
10 **KERN LAW**

11 /S/ Robert Kern

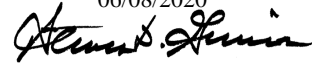
12 Robert Kern, Esq. NV Bar # 10104

13 601 S. 6th Street

14 Las Vegas, NV 89101

15 (702) 518-4529

16 Attorney for Appellant
17
18
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

ORDR
Marquis Aurbach Coffing
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar No. 15188
10001 Park Run Dr.
Las Vegas, NV 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
paurbach@maclaw.com
acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

vs.

CLEMENT MUNY; CHEF EXEC
SUPPLIERS, LLC; and DOES I through X,
inclusive; and ROE CORPORATIONS I through
X, inclusive,

Defendants,

And related counterclaims.

Case No.: A-19-803488-B
Dept. No.: 27

ORDER

This matter came before the Court on May 22, 2020 at 1:00pm, regarding the Defendants' Amended Application for Temporary Restraining Order, Plaintiff's Counter-Motion to Vacate Temporary Restraining Order, Plaintiff's Motion for Appointment of Trustee, and Defendants' Counter-Motion for Enforcement of Settlement Agreement.

Having reviewed the papers and pleadings on file herein, arguments of counsel at the time of the above identified hearing, being fully advised on the matter, and with good cause appearing therefore the Court finds and decides the following:

FINDINGS OF FACT

1. Chef Exec Suppliers LLC (the "Company") is owned in equal shares by Plaintiff Dominique Arnould ("Arnould") and Defendant Clement Muney ("Muney") (hereinafter collectively referred to as the "Parities").

2. The Company operates in Nevada and California and it sells its products to restaurants, caterers, resorts, hotels, casinos, and others (“Customers”).

3. On December 10, 2020, Arnould filed a Motion for Appointment of Trustee (“Motion for Receiver”) requesting that a receiver be appointed to wind down the Company.

4. On February 7, 2020, Arnould and Muney attended a settlement conference held by Judge Williams, wherein the Parties entered into a Memorandum of Material Terms of Agreement (“Memo”).

5. The terms of the Memo were, among other things, that:

a. Arnould would buy-out Muney’s interest in the Company for a purchase price of \$700,000 (“Purchase Price”);

b. a “final agreement [would] be drafted at a later time;”

c. the entire Memo “shall be contingent upon . . . Dominique Arnould being able to obtain financing sufficient to allow him to pay the purchase price of the Sale;”

d. that Arnould would “be required to use good faith towards seeking to obtain such financing from all reasonable sources” sufficient for him to pay the entire purchase price.

6. After February 7, 2020, Arnould made reasonable efforts to obtain financing from multiple lenders, but he was formally and informally denied and rejected by the lenders for the financing unless he offered outside collateral, which was not required by the express terms set forth in the Memo.¹

7. Whether Arnould’s financing efforts were reasonable would ordinarily be a question of fact but for the intervening COVID-19 pandemic (“Pandemic”). However, the Court takes Judicial Notice that on March 12, 2020, the Nevada Governor, Steve Sisolak, declared a state of emergency in response to the Pandemic and required the closure of non-essential businesses, many of which included the Company’s Customers.

¹ Declaration in Support of Opposition to Defendants’ Counter-Motion to Enforce Settlement Agreement, at ¶¶6-16, on file herein.

1 8. The Court additionally takes Judicial Notice that the pandemic had a severe and
2 detrimental impact on the value of the Company and the ability of either Party to perform and
3 receive the bargained for consideration under the Memo.

4 9. It is undisputed that the Pandemic was an unforeseen event that was not and could
5 not have been foreseen by either Party to the Memo. It is unclear how long these detrimental
6 impacts and impediments will continue.

7 10. On March 20, 2020, Defendants filed their Counter-Motion for Enforcement of
8 Settlement Agreement (“Motion for Enforcement”), requesting this Court “reduce the [Memo] to
9 judgment by its existing terms, and conclude the present litigation.”

10 11. On May 20, 2020, Defendants filed their Amended Application for Temporary
11 Restraining Order and Preliminary Injunction (“Application”) under NRCP 65, alleging among
12 other things, that injunctive relief is necessary to avoid irreparable harm to the Company.

13 12. The Application renewed the issues set forth in Defendants’ Motion for
14 Enforcement.

15 13. The Application included an affidavit of Clement Muney that averred, among other
16 things, that irreparable harm and immediate injury to the Company was imminent.

17 14. The Application did not, however, include a certification by the movant’s attorney
18 in writing of the efforts made to give notice and the reasons why it should not be required as set
19 forth in NRCP 65(b)(1)(B). While there is evidence of some communications between counsel
20 regarding the threat of an injunction, there was no certification by counsel in its Application per
21 the NRCP 65(b)(1)(B).

22 15. Based on Defendant’s Application, the Court issued a Temporary Restraining
23 Order and set a hearing for May 22, 2020 to consider fully consider the Application’s merits.

24 16. Plaintiff opposed the Application and disputed the Application’s claims of
25 irreparable harm and immediate injury to the Company by providing evidence of the lack of
26 irreparable harm and immediate injury because damages were an adequate remedy. Plaintiff also
27 raised the aforementioned procedural issue under NRCP 65(b)(1)(B).
28

19. Neither Party trusts the other to with the assets or operations of the Company. Thus, a receiver with limited powers would allow the expenditures and dealings of the Company to be overseen by a neutral third-party without impeding the Company's ability to carry on its business.

5. Injunctive relief is not warranted here because: (1) irreparable harm and immediate injury is not present because damages are an adequate remedy; (2) the party seeking injunctive

1 relief is not likely to prevail on the merits of its alleged conversion claim; (3) the relative interests
2 of the parties weights against injunctive relief; and (4) public policy does not favor injunctive
3 relief.

4 6. In addition, Defendants' Application for injunctive relief failed to provide the
5 notice and reasoning required by NRCP 65(b)(1)(B).

6 **ORDER**

7 Based upon a full review of the pleadings, evidence, oral arguments of counsel, findings,
8 conclusions of law and the powers of the Court:

- 9 1. It is ordered that the Defendants' Amended Application for Temporary Restraining
10 Order is hereby DENIED.
- 11 2. It is further ordered that Defendants' previously filed Counter-Motion for Enforcement
12 of Settlement Agreement is hereby DENIED.
- 13 3. It is further ordered that Plaintiff's Motion to Vacate Temporary Restraining Order is
14 GRANTED and the Temporary Restraining Order entered on May 20, 2020 is hereby
15 VACATED.
- 16 4. It is further ordered that Plaintiff's Motion for Appointment of Trustee or Receiver is
17 GRANTED to the extent that a receiver ("Receiver") with limited powers as defined
18 below ("Limited Powers").
- 19 5. It is further ordered that the Receiver's role will be to supervise the operations of the
20 Company in consultation with Arnould and Muney, to allow them to continue
21 operations of the Company, and prepare a report about the viability of the Company.
- 22 6. Pursuant to these Limited Powers, it is further ordered:
- 23 a. The Parties shall grant the Receiver full access to bank accounts, accounts
24 receivable and payable, customers' orders and suppliers' purchases, as well as
25 agreeing to respond in good faith to provide truthful answers and responses to
26 any questioning or requests for information from the receiver;
- 27 b. The Receiver shall obtain agreement from the Parties with respect to all
28 payments to landlords, suppliers, employees, and independent contractors;

- c. The Parties shall consult with the Receiver regarding all purchases of new inventory to ensure there is a need for the products, bearing in mind the downturn in business and the restriction on Company funds;
- d. The Receiver will attempt to obtain agreement of the Parties in respect of the operation of the business;
- e. In the event of a disagreement between the Parties, the Receiver will note any disagreement between the Parties in his report;
- f. The Receiver will have authority to communicate directly with the Court if necessary, after which such communications with the Court will be disclosed to the parties via minute order;
- g. Either Party or their attorney may communicate with the Receiver directly;
- h. The Receiver will have the power to recommend the transfer funds between accounts for legitimate company purposes; and
- i. The Parties will be required to report to the Receiver any removal of Company inventory or other Company items or individual items from the Company warehouses. If the removal is to fulfill sales, copies of the documents showing which customer ordered what product and the terms of payment will suffice. The Parties will also be required to justify any charges on Company credit cards or accounts;

7. It is further ordered that the Receiver will be a person either stipulated to by Arnould and Muney, or if no agreement can be reached, then a person chosen by this Court.
8. It is further ordered that once a Receiver is appointed, the Receiver will be compensated by Muney and Arnould each paying ½ of his estimated fees within 10 days of each of the Receiver's request.

//

//

//

9. It is further ordered that the Receiver who be appointed will be:

Dated this ____ day of _____, 2020.

Dated this 8th day of June, 2020

Nancy L. Alf
DISTRICT COURT JUDGE

Respectfully Submitted by:

158 CF4 77DE 0484
Nancy Alf

MARQUIS AURBACH COFFING

By: /s/ Alexander K. Calaway

Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar. No. 15188
10001 Park Run Drive
Las Vegas, Nevada, 89145
*Attorneys for Plaintiffs/Counter-
Defendants*

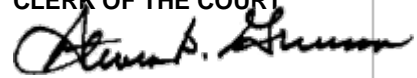
Approved as to form

Dated this 4 day of June, 2020

KERN LAW LTD.

By: /s/ Robert Kern Esq.

Robert Kern, Esq.
Nevada Bar No. 10104
601 S. 6th St.
Las Vegas, Nevada 89101



1 **Marquis Aurbach Coffing**
 2 Phillip S. Aurbach, Esq.
 3 Nevada Bar No. 1501
 4 Alexander K. Calaway, Esq.
 5 Nevada Bar No. 15188
 6 10001 Park Run Dr.
 7 Las Vegas, NV 89145
 8 Telephone: (702) 382-0711
 9 Facsimile: (702) 382-5816
 10 paurbach@maclaw.com
 11 acalaway@maclaw.com
 12 *Attorneys for Plaintiff*

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

12 CLEMENT MUNY; CHEF EXEC
 13 SUPPLIERS, LLC; and DOES I through X,
 14 inclusive; and ROE CORPORATIONS I through
 15 X, inclusive,

Defendants,

And related counterclaims.

Case No.: A-19-803488-B
 Dept. No.: 27

NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that the Order was entered on the 8th day of June, 2020. A true
 18 and correct copy of which is attached hereto.

Dated this 8th day of June, 2020.

MARQUIS AURBACH COFFING

21 By /s/ Alexander K. Calaway
 22 Phillip S. Aurbach, Esq.
 23 Nevada Bar No. 1501
 24 Alexander K. Calaway, Esq.
 25 Nevada Bar No. 15188
 26 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

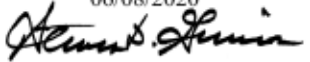
I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of June, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

/s/J. Case
An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).


CLERK OF THE COURT

ORDR
Marquis Aurbach Coffing
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar No. 15188
10001 Park Run Dr.
Las Vegas, NV 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
paurbach@maclaw.com
acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

vs.

CLEMENT MUNY; CHEF EXEC
SUPPLIERS, LLC; and DOES I through X,
inclusive; and ROE CORPORATIONS I through
X, inclusive,

Defendants,

And related counterclaims.

Case No.: A-19-803488-B
Dept. No.: 27

ORDER

This matter came before the Court on May 22, 2020 at 1:00pm, regarding the Defendants' Amended Application for Temporary Restraining Order, Plaintiff's Counter-Motion to Vacate Temporary Restraining Order, Plaintiff's Motion for Appointment of Trustee, and Defendants' Counter-Motion for Enforcement of Settlement Agreement.

Having reviewed the papers and pleadings on file herein, arguments of counsel at the time of the above identified hearing, being fully advised on the matter, and with good cause appearing therefore the Court finds and decides the following:

FINDINGS OF FACT

1. Chef Exec Suppliers LLC (the "Company") is owned in equal shares by Plaintiff Dominique Arnould ("Arnould") and Defendant Clement Muney ("Muney") (hereinafter collectively referred to as the "Parities").

2. The Company operates in Nevada and California and it sells its products to restaurants, caterers, resorts, hotels, casinos, and others (“Customers”).

3. On December 10, 2020, Arnould filed a Motion for Appointment of Trustee (“Motion for Receiver”) requesting that a receiver be appointed to wind down the Company.

4. On February 7, 2020, Arnould and Munev attended a settlement conference held by Judge Williams, wherein the Parties entered into a Memorandum of Material Terms of Agreement (“Memo”).

5. The terms of the Memo were, among other things, that:

a. Arnould would buy-out Munev’s interest in the Company for a purchase price of \$700,000 (“Purchase Price”);

b. a “final agreement [would] be drafted at a later time;”

c. the entire Memo “shall be contingent upon . . . Dominique Arnould being able to obtain financing sufficient to allow him to pay the purchase price of the Sale;”

d. that Arnould would “be required to use good faith towards seeking to obtain such financing from all reasonable sources” sufficient for him to pay the entire purchase price.

6. After February 7, 2020, Arnould made reasonable efforts to obtain financing from multiple lenders, but he was formally and informally denied and rejected by the lenders for the financing unless he offered outside collateral, which was not required by the express terms set forth in the Memo.¹

7. Whether Arnould’s financing efforts were reasonable would ordinarily be a question of fact but for the intervening COVID-19 pandemic (“Pandemic”). However, the Court takes Judicial Notice that on March 12, 2020, the Nevada Governor, Steve Sisolak, declared a state of emergency in response to the Pandemic and required the closure of non-essential businesses, many of which included the Company’s Customers.

¹ Declaration in Support of Opposition to Defendants’ Counter-Motion to Enforce Settlement Agreement, at ¶¶6-16, on file herein.

1 8. The Court additionally takes Judicial Notice that the pandemic had a severe and
2 detrimental impact on the value of the Company and the ability of either Party to perform and
3 receive the bargained for consideration under the Memo.

4 9. It is undisputed that the Pandemic was an unforeseen event that was not and could
5 not have been foreseen by either Party to the Memo. It is unclear how long these detrimental
6 impacts and impediments will continue.

7 10. On March 20, 2020, Defendants filed their Counter-Motion for Enforcement of
8 Settlement Agreement ("Motion for Enforcement"), requesting this Court "reduce the [Memo] to
9 judgment by its existing terms, and conclude the present litigation."

10 11. On May 20, 2020, Defendants filed their Amended Application for Temporary
11 Restraining Order and Preliminary Injunction ("Application") under NRCP 65, alleging among
12 other things, that injunctive relief is necessary to avoid irreparable harm to the Company.

13 12. The Application renewed the issues set forth in Defendants' Motion for
14 Enforcement.

15 13. The Application included an affidavit of Clement Muney that averred, among other
16 things, that irreparable harm and immediate injury to the Company was imminent.

17 14. The Application did not, however, include a certification by the movant's attorney
18 in writing of the efforts made to give notice and the reasons why it should not be required as set
19 forth in NRCP 65(b)(1)(B). While there is evidence of some communications between counsel
20 regarding the threat of an injunction, there was no certification by counsel in its Application per
21 the NRCP 65(b)(1)(B).

22 15. Based on Defendant's Application, the Court issued a Temporary Restraining
23 Order and set a hearing for May 22, 2020 to consider fully consider the Application's merits.

24 16. Plaintiff opposed the Application and disputed the Application's claims of
25 irreparable harm and immediate injury to the Company by providing evidence of the lack of
26 irreparable harm and immediate injury because damages were an adequate remedy. Plaintiff also
27 raised the aforementioned procedural issue under NRCP 65(b)(1)(B).

28

1 17. Muney's request for injunctive relief in favor of Defendants' Application would
2 not preserve the *status quo*, but would allow the Company to keep making payments to Muney
3 and Muney's son.

4 18. Plaintiff's Opposition to the Application and Countermotion to Vacate the
5 Temporary Restraining Order renewed its request for the Court to appoint a receiver with limited
6 powers. The attorneys for both Parties' agreed that a receiver should not interrupt the Parties'
7 direct relationships with their Customers if the Company was to remain viable upon the reopening
8 of the economy.

9 19. Neither Party trusts the other to with the assets or operations of the Company. Thus,
10 a receiver with limited powers would allow the expenditures and dealings of the Company to be
11 overseen by a neutral third-party without impeding the Company's ability to carry on its business.

12 CONCLUSIONS OF LAW

13 1. Neither party trusts the other to with the assets or operations of the Company. It is
14 therefore necessary that a neutral receiver be appointed with limited powers as defined herein.

15 2. Arnould obtaining financing was a condition precedent or an event that must occur
16 before either party became obligated to perform under the Memo. Prior to Arnould satisfying his
17 duty to make reasonable efforts to obtain financing, the Pandemic decimated the economy and any
18 hope of the condition being satisfied, rendering the Memo unenforceable.

19 3. Moreover, the Pandemic was and is an unforeseen contingency event that changed
20 the circumstances surrounding the Memo. The main purpose of the Memo was for Arnould to buy-
21 out the Company after financing was obtained. This purpose was destroyed by virtue of the
22 Pandemic.

23 4. The unforeseeable Pandemic event altered the circumstances surrounding the
24 Memo such that performance of the condition in the Memo to obtain financing could no longer be
25 fulfilled. Thus, the purposes of the financing condition and the Memo have become frustrated,
26 thereby discharging the duties arising thereunder.

27 5. Injunctive relief is not warranted here because: (1) irreparable harm and immediate
28 injury is not present because damages are an adequate remedy; (2) the party seeking injunctive

1 relief is not likely to prevail on the merits of its alleged conversion claim; (3) the relative interests
2 of the parties weights against injunctive relief; and (4) public policy does not favor injunctive
3 relief.

4 6. In addition, Defendants' Application for injunctive relief failed to provide the
5 notice and reasoning required by NRCP 65(b)(1)(B).

6 **ORDER**

7 Based upon a full review of the pleadings, evidence, oral arguments of counsel, findings,
8 conclusions of law and the powers of the Court:

- 9 1. It is ordered that the Defendants' Amended Application for Temporary Restraining
10 Order is hereby DENIED.
- 11 2. It is further ordered that Defendants' previously filed Counter-Motion for Enforcement
12 of Settlement Agreement is hereby DENIED.
- 13 3. It is further ordered that Plaintiff's Motion to Vacate Temporary Restraining Order is
14 GRANTED and the Temporary Restraining Order entered on May 20, 2020 is hereby
15 VACATED.
- 16 4. It is further ordered that Plaintiff's Motion for Appointment of Trustee or Receiver is
17 GRANTED to the extent that a receiver ("Receiver") with limited powers as defined
18 below ("Limited Powers").
- 19 5. It is further ordered that the Receiver's role will be to supervise the operations of the
20 Company in consultation with Arnould and Muney, to allow them to continue
21 operations of the Company, and prepare a report about the viability of the Company.
- 22 6. Pursuant to these Limited Powers, it is further ordered:
- 23 a. The Parties shall grant the Receiver full access to bank accounts, accounts
24 receivable and payable, customers' orders and suppliers' purchases, as well as
25 agreeing to respond in good faith to provide truthful answers and responses to
26 any questioning or requests for information from the receiver;
- 27 b. The Receiver shall obtain agreement from the Parties with respect to all
28 payments to landlords, suppliers, employees, and independent contractors;

- c. The Parties shall consult with the Receiver regarding all purchases of new inventory to ensure there is a need for the products, bearing in mind the downturn in business and the restriction on Company funds;
- d. The Receiver will attempt to obtain agreement of the Parties in respect of the operation of the business;
- e. In the event of a disagreement between the Parties, the Receiver will note any disagreement between the Parties in his report;
- f. The Receiver will have authority to communicate directly with the Court if necessary, after which such communications with the Court will be disclosed to the parties via minute order;
- g. Either Party or their attorney may communicate with the Receiver directly;
- h. The Receiver will have the power to recommend the transfer funds between accounts for legitimate company purposes; and
- i. The Parties will be required to report to the Receiver any removal of Company inventory or other Company items or individual items from the Company warehouses. If the removal is to fulfill sales, copies of the documents showing which customer ordered what product and the terms of payment will suffice. The Parties will also be required to justify any charges on Company credit cards or accounts;

7. It is further ordered that the Receiver will be a person either stipulated to by Arnould and Muney, or if no agreement can be reached, then a person chosen by this Court.
8. It is further ordered that once a Receiver is appointed, the Receiver will be compensated by Muney and Arnould each paying ½ of his estimated fees within 10 days of each of the Receiver's request.

//

//

//

9. It is further ordered that the Receiver who be appointed will be:

Dated this ____ day of _____, 2020.

Dated this 8th day of June, 2020

Nancy L. Alf
DISTRICT COURT JUDGE

Respectfully Submitted by:

158 CF4 77DE 0484
Nancy Alf

MARQUIS AURBACH COFFING

By: /s/ Alexander K. Calaway

Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar. No. 15188
10001 Park Run Drive
Las Vegas, Nevada, 89145
*Attorneys for Plaintiffs/Counter-
Defendants*

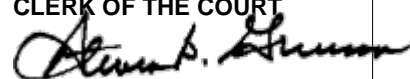
Approved as to form

Dated this 4 day of June, 2020

KERN LAW LTD.

By: /s/ Robert Kern Esq.

Robert Kern, Esq.
Nevada Bar No. 10104
601 S. 6th St.
Las Vegas, Nevada 89101



Marquis Aurbach Coffing
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
paurbach@maclaw.com
Attorneys for Plaintiff

CASE NO: A-19-803488-B
Department 27

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

vs.

CLEMENT MUNEY; CHEF EXEC
SUPPLIERS, LLC; and DOES I through X,
inclusive; and ROE CORPORATIONS I through
X, inclusive,

Defendants.

Case No.:
Dept. No.:

Arbitration Exemption Requested:
(Declaratory Relief)

Business Court Requested:
(NRS Chapters 78-92A)

COMPLAINT FOR APPOINTMENT OF A RECEIVER OR DISSOLUTION OF LLC;
DECLARATORY RELIEF; BREACH OF FIDUCIARY DUTY; AND DAMAGES

Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould") by and through his attorneys
Marquis Aurbach Coffing, alleges and complains as follows:

PARTIES

1. Clement MuneY (hereinafter MuneY) is a 50% owner/member and co-manager of
CHEF EXEC SUPPLIERS, LLC, (hereinafter Chef Suppliers or the Company).

2. Arnould is the other 50% owner/member and co-manager of Chef Suppliers.

3. MuneY and Chef Suppliers at all relevant times mentioned herein, were doing
business in Clark County, Nevada.

4. The names and capacities, whether individuals, corporate, associate or otherwise
of Defendants named herein as DOE and ROE CORPORATION are unknown or not yet

1 confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are
2 responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by
3 such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names
4 and capacities of each DOE and ROE CORPORATION Defendant at such time as the same has
5 been ascertained.

6 **JURISDICTION AND VENUE**

7 5. This Court possesses:

8 a. Subject matter jurisdiction because District Courts have subject matter
9 jurisdiction over claims that are not within the subject matter jurisdiction of the Justice Court
10 pursuant to Article 6, Section 6.1 of the Nevada Constitution and this claim is not within the
11 subject matter jurisdiction of the Justice Court.

12 b. This Court has personal jurisdiction over the Defendants because the
13 Defendants reside in and do business in Clark County, NV.

14 **BACKGROUND FACTS**

15 6. Arnould and Munev are 50/50 owners of Chef Suppliers.

16 7. Arnould and Munev are both are managers of Chef Suppliers.

17 8. Chef Suppliers has no written operating agreement.

18 9. Disputes between Arnould and Munev have arisen and are so deep that it is not
19 reasonably practicable to carry on the business of the Company.

20 10. One of the disputes is that Las Vegas rent for Chef Suppliers was approximately
21 \$3,800/month. The lease expired and the landlord wanted approximately \$5,800/month.
22 Without any joint agreement, Munev is paying almost \$11,000/month rent. This rent is paid
23 from sales of Chef Suppliers inventory. This is a breach of his fiduciary duty owed to Arnould
24 and thus, Munev should be personally responsible for the difference between \$5,800/month and
25 \$11,000/ month.

26 11. It has been impossible to get Munev to discuss his breach of fiduciary duties
27 including but not limited to forming a new entity and having payments for Chef Suppliers'

28

1 inventory go to his new entity, which was formed without the knowledge or consent of Plaintiff
2 Arnould.

3 12. A manager may ask a court to dissolve an LLC when, pursuant to NRS 86.495, it
4 is not reasonably practicable to carry on the business of the company.

5 13. Arnould is a manager.

6 14. It would be a futile effort to make a demand on Muney since Muney is not
7 disinterested, Muney's judgment is materially affected in favor of his actions and against the best
8 interests of Chef Suppliers and nothing can be accomplished when both disagree on the direction
9 of the company.

10 15. Arnould or Chef Suppliers derivatively have been damaged by Defendants'
11 actions in an amount in excess of \$15,000.

12 **FIRST CLAIM FOR RELIEF**
13 **(Declaratory Relief, Receiver and Dissolution)**

14 16. Arnould repeats and re-alleges the above paragraphs as though fully stated herein.

15 17. Because it is not reasonably practicable to carry on the business of the company
16 an Order granting dissolution should be entered pursuant to NRS 86.495 and 86.505.

17 18. This Court should declare that the requirements for the appointment of a Receiver
18 to run the Las Vegas operations of Chef Suppliers and potentially dissolve the company since the
19 requirements for Dissolution have been met.

20 19. In order to pursue his claims as a direct and proximate result of the Defendants'
21 conduct outlined herein, Arnould has incurred attorneys' fees as special damages in the sum of
22 \$5,000 as of the date of filing this pleading and increasing up to and through trial and appeal, if
23 any.

24 **SECOND CLAIM FOR RELIEF**
25 **(Breach of Fiduciary Duty & Accounting)**

26 20. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

27 21. Arnould believes that Muney has taken money and diverted business
28 opportunities and customers from Defendant Chef Suppliers and by virtue thereof has breached
his fiduciary duties to Chef Suppliers and to Arnould.

22. Defendant Muney owes such funds and profits derived therefrom to Chef Suppliers and/or Arnould.

23. The Court should order a yearly accounting of all funds taken in and spent from Chef Suppliers for the last 3 years so Arnould can determine the amount of Muney's defalcation.

24. Arnould or Chef Suppliers derivatively is entitled to a judgment in an amount in excess of \$15,000 as a direct and proximate result of Defendant Muney's actions.

25. In order to pursue and defend its claims as a direct and proximate result of the Defendants' conduct outlined herein, Arnould has incurred attorneys' fees as special damages in the sum of \$5,000 as of the date of this pleading and increasing up to and through trial and appeal, if any.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Arnould prays for the following relief against Defendants:

1. For an Order Appointing a Receiver and an Order requiring dissolution of Chef Suppliers in the ordinary course by the Receiver or by Arnould, its manager.

2. For a judgment in favor of Arnould or Chef Suppliers in a sum in excess of \$15,000; Against Muney for Defendant Muney's breach of fiduciary duty.

3. Attorneys fees as special damages in the sum of \$5,000 against Defendants as of the date of this pleading and increasing up to and through trial and appeal, if any, and

4. For any further relief as the Court deems to be just and proper.

Dated this 11th day of October, 2019.

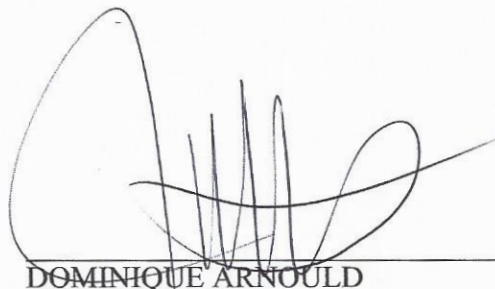
MARQUIS AURBACH COFFING

By /s/ Phillip S. Aurbach
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

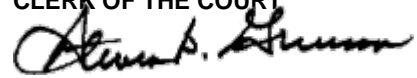
VERIFICATION

Under penalties of perjury, the undersigned declares that he is the plaintiff named in the foregoing complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

Dated this 10 day of October, 2019



DOMINIQUE ARNOULD



1 **ANS**
2 Robert Kern, Esq.
3 Nevada Bar Number 10104
4 **KERN LAW, Ltd.**
5 601 S. 6th Street
6 Las Vegas, NV 89101
7 (702) 518-4529 phone
8 (702) 825-5872 fax
9 Admin@KernLawOffices.com
10 Attorney for Defendants

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DOMINIQUE ARNOULD,

14 Plaintiff,

15 vs.

16 CLEMENT MUNNEY; CHEF EXEC
17 SUPPLIERS, LLC; and DOES I through X,
18 inclusive, and ROE CORPORATIONS I
19 through X, inclusive,

20 Defendants.

) Case Number: A-19-803488-B

) Dept. Number: 27

21 **ANSWER AND COUNTERCLAIMS**

22 CLEMENT MUNNEY; and CHEF EXEC
23 SUPPLIERS, LLC,

24 Plaintiffs,

25 vs.

26 DOMINIQUE ARNOULD,

27 Defendant.

28 COME NOW Defendants, CLEMENT MUNNEY, (hereinafter "Muney"), and CHEF
EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC") by and through their undersigned
counsel Robert Kern, ESQ., of KERN LAW, Ltd. and submit this Answer and
Counterclaims to Plaintiff's Complaint on file herein and allege and aver as follows:

1
2 1. Defendant admits the allegations contained in the following numbered
3 paragraphs in Plaintiff's Complaint: 1, 2, 3, 6, 7, 8, and 13.

4 2. Defendant denies the allegations contained in the following numbered
5 paragraphs in Plaintiff's Complaint: 9, 10, 11, 14, 15, 17, 18, 19, 22, 24, and 25.

6
7 3. Defendant does not have knowledge or information sufficient to form a belief as
8 to the truth of the allegations contained in the following numbered paragraphs in Plaintiff's
9 Complaint and, therefore, denies them: 4, 5, 12, 16, 20, 21, and 23.

10
11 **AFFIRMATIVE DEFENSES**

12 1. The Complaint, and each and every allegation thereof, fails to state facts
13 sufficient to constitute a claim against this answering Defendant.

14 2. Plaintiff's claims and damages, if any, are proximately and legally caused by
15 parties over whom Defendant had no control.

16 3. Plaintiff's cause of action is barred by the doctrine of unclean hands and
17 Plaintiff's failure to do equity.

18 4. Plaintiff's claims are barred under the equitable theory of laches.

19
20 5. Plaintiff's claims and damages, if any, have been willfully and intentionally
21 overstated. Therefore, Plaintiff's claims are barred by Plaintiff's own malfeasance and
22 misfeasance.

23 6. Plaintiff's damages, if any, are caused by its own actions, errors or omissions.

24 7. Plaintiff's damages, if any, are subject to offset.

25 8. Plaintiff's damages are barred by its breach of fiduciary duties.
26
27
28

1 9. Plaintiff has made allegations with knowledge of their actual falsity and therefore
2 said claim is violative of the rules of civil procedure and therefore the stated claims should
3 be dismissed.

4 10. Plaintiff's claims, and each of them, are barred due to fraud.

5 11. By virtue of Plaintiff's actions, conduct, and omissions, this answering
6 Defendant has been released.

7 12. The claims of Plaintiff have been waived as a result of the acts and the conduct
8 of the Plaintiff.

9 13. Plaintiff suffered no damage and therefore is not entitled to any relief.

10 14. Plaintiff, by his acts, conduct and/or omissions, has ratified the acts, conduct and
11 omissions, if any, of these answering Defendants; therefore, Plaintiff is barred from seeking
12 any relief from these answering Defendants.

13 15. These answering Defendants have not had sufficient time to prepare and obtain
14 sufficient facts to determine all potential affirmative defenses. Therefore, these answering
15 Defendants reserve the right to amend these affirmative defenses as additional facts are
16 obtained and/or additional affirmative facts are discovered.

17
18
19
20
21 **COUNTER-CLAIM**

22 Against PLAINTIFF DOMINIQUE ARNOULD

23 COME NOW Defendants, CLEMENT MUNY, (hereinafter "Muney"), and CHEF
24 EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC") by and through their undersigned
25 counsel Robert Kern, ESQ., of KERN LAW, Ltd. and submit the following
26 COUNTERCLAIMS against counter-defendant DOMINIQUE ARBOULD and allege and
27 aver as follows:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GENERAL ALLEGATIONS

1. Jurisdiction and venue have been established by the elements of Plaintiff's Complaint that Defendants have admitted to.

2. Parties Dominique Arnould (hereinafter, "Arnould") and Muney are equal co—owners of Chef Exec, LLC, a Nevada LLC with no current operating agreement.

3. From the time Chefexec was founded, Arnould managed the Los Angeles side of the company, and Muney managed the Las Vegas side of the company.

4. The different branches of the company have been run largely independently of each other, with the only exception being that Arnould has been responsible for accounting for the entire company (including invoicing for both branches), and Muney has been responsible for marketing and supply for the whole company. At no time have the parties agreed that either would receive extra compensation for the work they perform for the company.

5. Both the Los Angeles and Las Vegas branches of Chefexec have been operating at a profit for the last several years.

6. Because Arnould managed the accounting through a local version of Quickbooks, and did not share the accounting files with Muney, Muney was unaware of some details of Arnould's practices until recently, sometime after the Quickbooks account was transferred to a cloud server, allowing Muney to access the information from Las Vegas.

7. Arnould is also an owner of two other companies, AAA Food Service, and Wines of the World. Upon review of accounting records and invoices, it appears that Arnould has been self dealing in favor of AAA Food Service and Wines of the World, to the detriment of Chefexec.

8. Both parties agreed to the lease of a warehouse in LA, upon the condition that AAA Food Service and Wines of the World would split the rent of the space equally, so they could share the space. However from review of the books it appears that Arnould did not charge those companies any rent the first few months, and since then has charged both of

1 them a total of only around 10% of the rent, leaving Chefexec to pay the remaining amount,
2 in contravention of the agreement in which the lease was made.

3 9. Records also show that Arnould has sold significant merchandise from Chefexec to
4 AAA Food Service, at significant discounts, without authorization or knowledge from
5 Muney.

6 10. Records also show that although both Muney and Arnould are owners, and neither
7 have agreed to pay themselves for their work on the company, Arnould has made a practice
8 of paying himself commissions for sales, including for sales to his own company, AAA
9 Food Service, for sales to companies that the partners agreed would be “house” customers
10 (no commission paid), and sales to customers brought in by sales reps who had left the
11 company (and thus whose customers should have become “house” customers).

12 11. Records show invoices for products to customers, but assigned a zero cost without
13 explanation. Such customers have verified that they never received said products. This
14 suggests Arnould was likely either providing free product to his own companies, or selling
15 the product under the table and keeping the proceeds.

16 12. Chefexec previously leased a 7,745 sq/ft warehouse in Las Vegas, on a long-term
17 lease it had held for multiple years, giving it a the company a lower-than-market price for
18 the space.

19 13. Chefexec's lease of the previous warehouse expired on September 30, 2019. To
20 renew the lease, the landlord required a 3-year lease, with a personal guarantee signed by
21 both owners of Chefexec. When Muney requested that Arnould sign the lease renewal,
22 Arnould refused, and his counsel advised Muney to lease the space with another company
23 and sub-lease to Chefexec from that company (in an email that Arnould was copied on).

24 14. Muney did as instructed, and leased through a separate company, who charged
25 Chefexec market price for the space.

26 15. After filing the complaint initiating the present action, Arnould withdrew \$15,000
27 from Chefexec without authorization or notice, and later admitted that he had taken it, and
28

1 that he intended it as a distribution to himself. His only justification was that he disagreed
2 with Muney's signing of the Las Vegas warehouse lease.

3 16. In early 2019, Arnould indicated that he wished to retire soon and wanted to be
4 bought out from his portion of Chefexec. Arnould had made no significant complaints about
5 his partnership with Muney prior to deciding that he wished to retire.

6 17. Muney believes that a forensic audit of Chefexec's books will show additional
7 wrongdoing by Arnould.

8
9 **FIRST CAUSE OF ACTION**
10 **(Breach of Fiduciary Duty)**

11 18. Counter-Plaintiffs repeat and re-allege the allegations contained in the preceding
12 paragraphs of their Counterclaim as though fully set forth herein.

13 19. Arnould, as co-owner and co-manager of an LLC, owed a Fiduciary Duty to
14 Counter-Plaintiffs Chefexec and Muney to manage the business, funds, and assets according
15 to law and agreement.

16 20. Arnould breached that duty by acts including, but not limited to: using his position
17 as book-keeper to pay himself funds that belonged to the company, allocating himself
18 commissions that he was not entitled to, using Chefexec to provide benefits to his own
19 companies, at Chefexec's detriment, without authorization, and seeking to dissolve the
20 company when Muney did not offer him as much money as he wanted for a buyout.

21 21. As a direct result of said breach, Counter-Plaintiffs were damaged by loss of said
22 funds, and business, in an amount in excess of fifteen thousand dollars (\$15,000), the exact
23 amount to be proven at time of trial.

24 22. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
25 and they are therefore entitled to reimbursement of attorney's fees and costs incurred in this
26 action.

27 23. The damages were suffered as a direct and proximate result of the conduct described
28 herein by Counter-Defendant, who acted knowingly with malice and oppression, all to

1 Counter-Plaintiffs' harm, and therefore should be punished for their wrongful conduct with
2 punitive damages in an amount to be established at trial.
3

4 **SECOND CAUSE OF ACTION**
5 (Conversion)

6 24. Counter-Plaintiffs repeat and re-allege the allegations contained in the preceding
7 paragraphs of their Counterclaim as though fully set forth herein.

8 25. Counter-Plaintiffs are the legal owners of funds that were taken by Counter-
9 Defendant, without legal right or authorization.

10 26. Counter-Defendant wrongfully and unlawfully took control of said funds, as detailed
11 above, in denial of, and to the exclusion of, Counter-Plaintiffs' rights thereto.

12 27. As a result of Counter-Defendant's actions, Counter-Plaintiffs have incurred
13 damages in excess of fifteen thousand dollars (\$15,000), the exact amount to be proven at
14 time of trial.

15 28. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
16 and they are therefore entitled to reimbursement of attorney's fees and costs incurred in this
17 action.

18 29. The damages were suffered as a direct and proximate result of the conduct described
19 herein by Counter-Defendants, who acted knowingly with malice and oppression, all to
20 Counter-Plaintiffs' harm, and therefore should be punished for their wrongful conduct with
21 punitive damages in an amount to be established at trial.

22 **THIRD CAUSE OF ACTION**
23 (Money Had and Received)

24 30. Counter-Plaintiffs repeat and re-allege the allegations contained in the preceding
25 paragraphs of their Counterclaim as though fully set forth herein.

26 31. Arnould received monies that belonged to Counter-Plaintiffs in the form of funds
27 taken from the business.
28

1 32. Arnould ought, in equity and good conscience, to pay over the funds wrongfully
2 retained.

3 33. Arnould has so far refused to pay over the amounts owed.

4 34. As a direct result of these actions, Counter-Plaintiffs have incurred damages in an
5 amount in excess of \$15,000, the exact amount to be proven at trial.

6 35. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
7 and they are therefore entitled to reimbursement of attorney's fees and costs incurred in this
8 action.

9 36. The damages were suffered as a direct and proximate result of the conduct described
10 herein by Counter-Defendant, who acted knowingly with malice and oppression, all to
11 Counter-Plaintiffs' harm, and therefore should be punished for their wrongful conduct with
12 punitive damages in an amount to be established at trial.

13
14 **FOURTH CAUSE OF ACTION**
(Unjust Enrichment)

15 37. Counter-Plaintiffs repeat and re-allege the allegations contained in the preceding
16 paragraphs of their Counterclaim as though fully set forth herein.

17 38. The benefit of receipt of funds and monies belonging to Chefexec, or other sales
18 reps or owners of Chefexec, was conferred upon Arnould.

19 39. Arnould took and kept said funds, clearly appreciating the benefit.

20 40. Arnould did not return said funds, and thus retained the benefits received.

21 41. As said funds were over and above any funds Arnould was entitled to take from the
22 company, Arnould's taking and retention of the benefit of said funds is inequitable and
23 unjust.

24 42. As a direct result of these actions, Chefexec and Muney have incurred damages in an
25 amount in excess of \$15,000, the exact amount to be proven at trial.

26 43. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
27 and they are therefore entitled to reimbursement of attorney's fees and costs incurred in this
28 action.

1 44. The damages were suffered as a direct and proximate result of the conduct described
2 herein by Counter-Defendant, who acted knowingly with malice and oppression, all to
3 Counter-Plaintiffs' harm, and therefore should be punished for their wrongful conduct with
4 punitive damages in an amount to be established at trial.
5

6 **FIFTH CAUSE OF ACTION**
7 (Constructive Fraud)

8 45. Counter-Plaintiffs repeat and re-allege the allegations contained in the preceding
9 paragraphs of their Counterclaim as though fully set forth herein.
10

11 46. By virtue of the fiduciary relationship between Arnould, Muney, and Chefexec,
12 Arnould had a duty to lawfully manage and disburse the funds and assets belonging to
13 Chefexec. As described in the general allegations above, Arnould breached this duty by his
14 wrongful and intentional failure to do so, and by hiding his breach of duty from his business
15 partner.
16

17 47. Arnould committed the acts complained of in this cause of action with the intent to
18 deceive and defraud Chefexec and Muney. Upon information and belief, Arnould caused
19 Muney to enter a fiduciary relationship with him and offered to manage the accounting and
20 billing of the company in order to take wrongful possession of company monies, with the
21 intent to induce reliance upon Arnould in his promise to manage the finances of the
22 Company and disburse profits. Arnould breached this fiduciary duty intentionally and with
23 forethought.
24

25 48. As a result of Arnould's actions, Muney and Chefexec have incurred damages in
26 excess of fifteen thousand dollars (\$15,000), the exact amount to be proven at time of trial.
27
28

1 49. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
2 and Counter-Plaintiffs are therefore entitled to reimbursement of attorney's fees and costs
3 incurred in this action.

4
5 50. As a direct and proximate result of the representations and conduct described herein
6 by Arnould, who acted knowingly with malice and oppression, all to Counter-Plaintiffs'
7 harm, and therefore should be punished for his wrongful conduct with punitive damages in
8 an amount to be established at trial.

9
10 **SIXTH CAUSE OF ACTION**
(FRAUDULENT CONCEALMENT)

11 51. Counter-Plaintiffs reallege and incorporate herein by reference each and every
12 allegation contained in all preceding paragraphs as if fully set forth herein.

13 52. The facts (as described above) of Arnould's taking commissions that he was not
14 entitled to, of taking unauthorized disbursements, of making false invoices to account for
15 missing inventory, and upon information and belief, taking or selling that inventory for his
16 own benefit, were material facts in deciding whether or not to continue doing business with
17 Arnould, and continuing to allow Arnould to manage the accounting of Chefexec.

18
19 53. Arnould had a duty to disclose all dealing to his partner, but nonetheless
20 intentionally concealed such acts.

21 54. Arnould's concealment of his acts, as described above, was concealed specifically to
22 prevent Chefexec and Muney from taking action to stop him from taking further monies
23 from the company.

24
25 55. Because Muney and Arnould had been longtime friends, and Arnould had
26 experience managing companies, Muney's reliance upon him to lawfully and honestly
27 manage the accounting of the company was objectively reasonable.
28

1 56. As a direct result of Arnould's actions, Counter-Plaintiffs have incurred damages in
2 an amount in excess of \$15,000, the exact amount to be proven at trial.

3 57. It has been necessary for Counter-Plaintiffs to obtain the legal services of Kern Law
4 and Counter-Plaintiffs are therefore entitled to reimbursement of attorney's fees and costs
5 incurred in this action.
6

7 58. As a direct and proximate result of the representations and conduct described herein
8 by Arnould, who acted knowingly with malice and oppression, all to Counter-Plaintiffs'
9 harm, and therefore should be punished for their wrongful conduct with punitive damages in
10 an amount to be established at trial.
11

12
13 WHEREFORE, Defendants/Counter-Plaintiffs demand judgment against Plaintiff for:

- 14 1. Compensatory damages in excess of \$15,000;
- 15 2. An accounting of the business;
- 16 3. Return of all funds stolen, embezzled, or in any other way wrongfully taken;
- 17 4. Attorneys fees and costs of the action;
- 18 5. Punitive damages in an amount to be determined by the Court; and
- 19 6. All other relief this Court finds to be proper.

20 DATED this 7th day of November, 2019

KERN LAW

21 By: /s/ Robert Kern /s/
22 Robert Kern, Esq.
23 2421 Tech Center Ct. #104
24 Las Vegas, NV 89128
25 (702) 518-4529
26 Attorney for Defendants
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November 2019, I served a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIMS**, pursuant to NRCP 5(b), by electronic service, addressed to the following:

Phillip S. Aurbach, Esq.
Marquis Aurbach Coffing
Paurbach@Maclaw.com
Counsel for Dominique Arnould

/s/ Robert Kern
Employee of Kern Law

**KERN
LAW, LTD.**
601 S. 6th
Street, Las
Vegas, NV
89101
Phone: (702)
518-4529 Fax:
(702) 825-5872
Admin@KernL
awOffices.com

LAS VEGAS, NEVADA

Supreme Court Case No.: 81354

PROOF OF SERVICE

Respondent.

• • • •

1
2 I further certify that on the 17th day of August, 2020 the following party
3
4 was served with a copy of the Appellant's DOCKETING STATEMENT by
5 traditional means via U.S. Mail in a sealed envelope with postage fully
6 prepaid.
7
8

9 PERSI J. MISHEL
10 Attorney at Law – Settlement Judge
11 10161 Park Run Dr., Suite 150
12 Las Vegas, NV 89145
13
14

15 /S/ Melissa Milroy
16 An employee of Kern Law, Ltd.
17
18
19
20
21
22
23
24
25
26
27
28