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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEMENT MUNNEY; AND CHEF
EXEC SUPPLIERS, LLC,

Appellants,

vs.

DOMINIQUE ARNOULD,

Respondent.

Case No.: 81356

Appeal from the Eighth Judicial District
Court, The Honorable Judge Nancy L.
Allf Presiding.

MOTION TO DISMISS APPEAL

Dominique Arnould, by and through his attorneys of record, Marquis Aurbach Coffing, hereby moves this Court to dismiss this appeal with prejudice pursuant to NRAP 27. This Motion is made and based upon the Memorandum of Points and Authorities and the pleadings and papers on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This appeal suffers from severe jurisdictional defects. Pursuant to NRCP 54(b), the Court should dismiss this appeal for its failure to appeal from a final and appealable order. The order at issue in this appeal awarded sanctions against Appellant's counsel, which is not a final appealable determination. Since the defects in this appeal are jurisdictional, Respondent respectfully requests that this Court dismiss this appeal pursuant to NRAP 27.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 11, 2019, Plaintiff, Dominique Arnould ("Arnould"), filed a Complaint seeking the judicial dissolution of Defendant Chef Exec Suppliers, LLC (the "Company").¹ The Complaint also sought the appointment of a receiver, declaratory relief, accounting, and breach of fiduciary duty against Defendant Clement Muney ("Muney"). On November 7, 2019, Defendant Muney filed an Answer to Arnould's Complaint and filed Counterclaims against Arnould.²

On or about June 10, 2020, Muney locked Arnould out of the Company's Nevada warehouse, forcing Arnould to file his Emergency Request for Telephonic Hearing For Appointment of Receiver to Take Over the Warehouse of For the

¹ See Complaint, attached hereto as **Exhibit A**.

² See Answer and Counterclaims, attached hereto as **Exhibit B**.

Order Allowing Access (the “Emergency Request”).³ The gist of Arnould’s Emergency Request was for the appointed receiver to oversee access of the warehouse.⁴

On June 10, 2020, a hearing was held following the Emergency Request.⁵ Counsel for Respondent appeared.⁶ However, Robert Kern, Esq., counsel for Appellants, failed to appear.⁷ It was later found that Mr. Kern had the time to file a responsive pleading stating that he’s unable to attend the hearing as he was preparing for oral argument before the Nevada Supreme Court, but refused to make the time to attend the telephonic hearing.⁸ It was found that Mr. Kern emailed the Court and counsel “protesting” any hearing being held without his presence.⁹

The District Court’s staff attempted to contact Mr. Kern prior to the hearing, but was informed that Mr. Kern was unavailable.¹⁰ Nevertheless, the hearing went

³ See Plaintiff’s Emergency Request for Telephonic Hearing for An Appointment of Receiver to Take Over the Warehouse, attached hereto as **Exhibit C**.

⁴ See *id.*

⁵ See Order Issuing Sanction, attached hereto as **Exhibit D**.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

forward on June 10, 2020, and, out of professional courtesy, the District Court, *sua sponte*, continued the matter to June 12, 2020.¹¹ At the June 12, 2020 hearing, Mr. Kern was provided an opportunity to explain his June 10, 2020 actions on the record.¹²

On June 12, 2020, the District Court entered its Order Issuing Sanctions (the “Order”) which is the subject of this appeal.¹³ The District Court found Mr. Kern’s failure to appear at the June 10, 2020 hearing or respond to the District Court’s staff was unexcused, inappropriate, and demeaned the District Court.¹⁴ Finally, the District Court noted its discretion to impose sanctions for professional misconduct.¹⁵

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* citing *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990); *see also Lioce vs. Cohen*, 124 Nev. 1 (2008) (explaining that “sanctions for professional misconduct at trial in civil cases are best considered in the first instance by the district court. Therefore, the district court may, on a party's motion or *sua sponte*, impose sanctions for professional misconduct at trial ...”).

Notably, the Order Issuing Sanctions, was not certified as a final order under NRCP 54(b). Regardless, on June 15, 2020, Muney filed his Notice of Appeal, and, on July 28, 2020, Muney filed his Case Appeal Statement.¹⁶

III. LEGAL ARGUMENT

A final, appealable order is “one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). In examining finality, this Court looks at “what the order or judgment actually does” with respect to each claim. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994).

Under NRCP 54(b), when multiple parties are involved in an action, a judgment is not final unless the rights and liabilities of all parties are adjudicated. *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979). Only when a district court expressly determines that there is no just reason for delay and directs the entry of judgment as final, does the judgment become final. *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990). The Supreme Court has

¹⁶ See Case Appeal Statement, attached hereto as **Exhibit E**.

jurisdiction to entertain an appeal only where an appeal is authorized by statute or court rule. *See e.g. Valley Bank of Nevada*, 110 Nev. at 444, 874 P.2d. at 732.

In the instant case, the Appellants have not appealed from an appealable order under NRCP 54(b), and, therefore, his appeal is jurisdictionally defective. The District Court's Order at issue was never certified as final under NRCP 54(b); nor did the Order adjudicate all of the claims, rights, and liabilities of all parties.¹⁷ Because this appeal is from an order that was not final, this appeal is jurisdictionally defective and must be dismissed. The Appellants' Case Appeal Statement even admits that the order being appealed was an order which "Awarded Sanctions against counsel," which is also not an appealable determination under NRAP 3A(b).¹⁸ In sum, the Order Issuing Sanctions is not final, and, therefore, this appeal must be dismissed as jurisdictionally defective.

¹⁷ *See* **Exhibit D**.

¹⁸ *See* **Exhibit E**, at p. 2, ¶10.

IV. CONCLUSION

Pursuant NRCP 54(b), the Court must dismiss this appeal for its failure to appeal from a final and appealable Order. Since the defects in this appeal are jurisdictional, Respondent respectfully requests this Court dismiss this appeal pursuant to NRAP 27.

Dated this 31st day of July, 2020.

MARQUIS AURBACH COFFING

By /s/ Alexander K. Calaway
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Nevada Bar No. 1501
Alexander K. Calaway, Esq.
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10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO DISMISS APPEAL** was filed electronically with the Nevada Supreme Court on the 31st day of July, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert Kern

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Persi J. Mishel
10161 Park Run Dr., Suite 150
Las Vegas, Nevada 89145
Settlement Judge

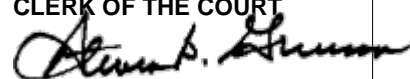
/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

INDEX OF EXHIBITS TO MOTION TO DISMISS APPEAL

Exhibit No.	Description
A.	Complaint (10/11/19)
B.	Answer and Counterclaims (11/07/19)
C.	Plaintiff's Emergency Request for Telephonic Hearing for Appointment of Receiver to Take Over the Warehouse or for Order Allowing Access (06/10/20)
D.	Order Issuing Sanctions (06/12/20)
E.	Case Appeal Statement (07/28/20)

Exhibit A



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Attorneys for Plaintiff

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

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.

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.

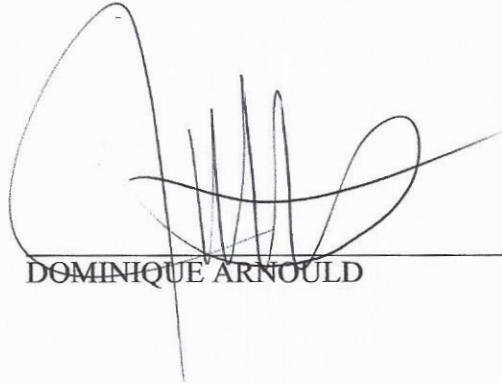
MARQUIS AURBACH COFFING

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

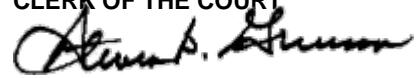
Under penalties of perjury, the undersigned declares that he is the plaintiff named in the foregoing complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be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

Dated this 10 day of October, 2019



DOMINIQUE ARNOULD

Exhibit B



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.

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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 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

25 8. Both parties agreed to the lease of a warehouse in LA, upon the condition that AAA
26 Food Service and Wines of the World would split the rent of the space equally, so they
27 could share the space. However from review of the books it appears that Arnould did not
28 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
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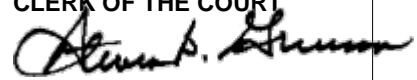
CERTIFICATE OF SERVICE

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

Exhibit C



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

**PLAINTIFF'S EMERGENCY REQUEST
FOR TELEPHONIC HEARING FOR
APPOINTMENT OF RECEIVER TO
TAKE OVER THE WAREHOUSE OR
FOR ORDER ALLOWING ACCESS**

**Hearing requested on shortened time-by
telephonic conference**

Plaintiff, DOMINIQUE ARNOULD (hereinafter "Arnould" or "Plaintiff"), by and through his attorneys, Marquis Aurbach Coffing, requests a telephonic conference today to appoint a Receiver to take control of the warehouse storing Chef Exec inventory or in the interim, enter an Order that Arnould can drop off inventory from the Los Angeles warehouse and pick up inventory from the Las Vegas warehouse—Defendant Muney changed the locks and Arnould has no access.

This Opposition is made and based upon the pleadings on file herein, the following points and authorities, and any argument allowed by the Court at the time of hearing.

Dated this 10th day of June, 2020.

MARQUIS AURBACH COFFING

By /s/ Phillip S. Aurbach
Phillip S. Aurbach, Esq., #1501
Alexander K. Calaway, Esq., #15188
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES**I. ARNOULD NEEDS ACCESS TODAY TO THE LAS VEGAS WAREHOUSE TO PICK UP INVENTORY TO TAKE TO LOS ANGELES FOR CUSTOMERS IN LOS ANGELES AND MUNNEY WILL NOT ALLOW ACCESS TO CHEF EXEC INVENTORY**

1. Last Friday June 5, 2020, Plaintiff, Dominique Arnould, and Defendant, Clement Munney. had the following email exchange¹:

Clement

The warehouse we are currently using at Northstar lost their lease. They have asked us to move out. We have 29 pallets stored there which need to be moved before June 13. all other pallets have been stored at our location in Van Nuys. I could bring them back to our Las Vegas warehouse or rent another space I have already identified.

If we bring that inventory back to Las Vegas, i will need to Bring back some of the following products:

Spheres

Small Glass

Round slanted cups.

What would you like me to do?

Dominique

Munney's response was "tell me why you need those items."

From: Clement Munney <clement@chefexecsuppliers.com>

To: DOMINIQUE ARNOUD <domiarnould@aol.com>

Cc: Clement Chef Exec <clement@chefexecsuppliers.com>

Sent: Fri, Jun 5, 2020 4:26 pm

Subject: Re: Inventory

Dominique,

I have no problem to store the products back in Las Vegas that you don't need in LA. I have no problem, as usual, to give what is necessary for LA's needs, as long as it is justified.

I just want the company to operate normally.

If there's anything in Vegas that you end up needing in LA at a later date, we can always ask Win distribution to bring you what you need. It just costs 105\$ per pallet and you would have that in 1 or 2 days.

Tell me what you need for the coming few months and how you want to proceed.

Clement Munney

(702) 340 8697 Sent from my iPhone

¹ If Defendant Munney denies this email exchange, we will provide a declaration regarding the same, but because of the time constraints, we copied the contents into this pleading.

2. Plaintiff Dominique Arnould drove the 12 pallets to Las Vegas to access the warehouse, drop off the pallets and pick up the following inventory that he needs for Los Angeles clients:

Spheres cups: 4 pallets 96 cases
Small Glass TC: 72 cases
Umbrella dish: 48 cases
Round slanted cups: 1 pallet 72 cases
Rhum Shot: 36 cases
Espresso cups: 24 cases
Cubic wave green: 72 cases or 1 pallet
Cubic wave clear: 30 cases.

3. Muney had the locks changed and Arnould cannot access any inventory—drop off or pick up.

4. Arnould is in Las Vegas with the 12 pallets for Muney's Las Vegas Customers and he needs to pick up inventory.

5. The receiver hearing is not set until July 9, 2020.

- a. A telephone conference is needed today to appoint a receiver to take control of the warehouse, log all inventory, control inventory taken out and added so either owner has authority to access the inventory,
- b. Alternatively, this Court should enter an Order that either party has access to the warehouse and both must document inventory in and inventory out.

6. In sum, Arnould is in Las Vegas with pallets for the LV warehouse and Muney will not allow access for Arnould to pick up inventory for California clients.

Dated this 10th day of June, 2020.

MARQUIS AURBACH COFFING

By /s/ Phillip S. Aurbach
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar No. 15188
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S EMERGENCY REQUEST FOR TELEPHONIC HEARING FOR APPOINTMENT OF RECEIVER TO TAKE OVER THE WAREHOUSE OR FOR ORDER ALLOWING ACCESS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10th day of June, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

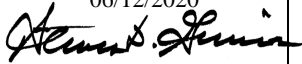
Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

² 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).

Exhibit D


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

DOMINIQUE ARNOULD,

Plaintiff

vs.

CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC.,

Defendants

CASE NO.: A-19-803488-B

DEPARTMENT 27

ORDER ISSUING SANCTION

COURT FINDS after review that on June 10, 2020, a hearing was held following Plaintiff's Emergency Request for Hearing. Phillip Aurbach, Esq. and Alexander Calaway, Esq. appeared for Plaintiff Dominique Arnould. Robert Kern, Esq. failed to appear for Defendants. Rather, Mr. Kern had the time to file a responsive pleading stating that he's unable to attend the hearing as he was preparing for oral argument before the Nevada Supreme Court. Moreover, Mr. Kern emailed the Court and counsel "protesting" any hearing being held without his presence. The Court's staff attempted to contact Mr. Kern prior to the hearing, but was informed that Mr. Kern was unavailable. Nevertheless, the hearing went forward on June 10, 2020 and out of professional courtesy, the Court, *sua sponte*, continued the matter to June 12, 2020.

COURT FURTHER FINDS after review that at the June 12, 2020 hearing, Mr. Kern was provided an opportunity to explain his June 10, 2020 actions on the record.

COURT FURTHER FINDS after review that Mr. Kern's failure to appear at the June 10, 2020 hearing or respond to the Court's staff was unexcused, inappropriate, and demeaned the Court.

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///

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

COURT FURTHER FINDS after review that district courts have inherent and broad discretion to impose sanctions for professional misconduct. *See generally* *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990); *see also* *Lioce vs. Cohen*, 124 Nev. 1 (2008) (explaining that “sanctions for professional misconduct at trial in civil cases are best considered in the first instance by the district court. Therefore, the district court may, on a party’s motion or *sua sponte*, impose sanctions for professional misconduct at trial ...”).

COURT FURTHER FINDS after review that as such, broad discretion permits this Court to issue sanctions for any “litigation abuses not specifically proscribed by statute.” *Young*, 106 Nev. at 92, 787 P.2d at 779.

THEREFORE, COURT ORDERS for good cause appearing and after review, pursuant to the Court's inherent authority outlined in *Young*, Robert Kern, Esq. **SHALL** make a mandatory charitable donation in the amount of \$100, made payable to the Legal Aid Center of Southern Nevada, Nevada Legal Services, Clark County Law Library, Nevada Law Foundation, Clark County Law Foundation, Southern Nevada Senior Law Project, or a proper entity specified in Rule 6.1 of the Nevada Rules of Professional Conduct.

COURT FURTHER ORDERS for good cause appearing and after review sufficient proof of the donation, such as a receipt, must be provided to the Court to indicate that the charitable donation has been received, within 30 days from the date of this Order.

DATED this 12th day of June, 2020

Dated this 12th day of June, 2020

NANCY ALLIF
DISTRICT COURT JUDGE
CD8 2A5 B7E3 1B02
Nancy Allif

Exhibit E

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 Defendants

Electronically Filed
Jul 28 2020 05:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DOMINIQUE ARNOULD,

13 Plaintiff/Counter-Defendant,

14 vs.

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

19 Defendants/Counter-Claimants.)

) Case Number: 81356

) Dept. Number: 27

20 **CASE APPEAL STATEMENT**

21 1. Name of appellant filing this case appeal statement: CLEMENT MUNNEY, CHEF
22 EXEC SUPPLIERS, LLC

23 2. Identify the judge issuing the decision, judgment, or order appealed from: **The**
24 **Honorable Nancy Allf, Eighth Judicial District Court, Department 27.**

25 3. Identify each appellant and the name and address of counsel for each appellant:
26 **Appellants Clement Muney and Chef Exec Suppliers, LLC, represented by Robert**
27 **Kern, Esq., 601 S. 6th Street, Las Vegas, Nevada 89101**

28 4. Identify each respondent and the name and address of appellate counsel, if known, for
each respondent: **Respondent Dominique Arnould, represented by Alexander Calaway,**
Esq. and Phillip Aurbach, Esq., 10001 Park Run Dr., Las Vegas, NV 89145

5. Indicate whether any attorney identified above in response to question 3 or 4 is not
licensed to practice law in Nevada and, if so, whether the district court granted that attorney
permission to appear under [SCR 42](#): **All identified counsel is licensed to practice law in**
Nevada.

1
2 6. Indicate whether appellant was represented by appointed or retained counsel in the
3 district court: **Appellants were represented by retained counsel in the district court.**

4 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
5 **Appellants are represented by retained counsel on appeal.**

6 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
7 of entry of the district court order granting such leave: **Appellants have not been granted
8 leave to proceed in forma pauperis.**

9 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
10 indictment, information, or petition was filed): **The proceedings commenced in the
11 district court upon the filing of Complaint on October 11, 2019.**

12 10. Provide a brief description of the nature of the action and result in the district court,
13 including the type of judgment or order being appealed and the relief granted by the district
14 court: **The action was brought seeking judicial dissolution of an LLC. The order being
15 appealed from Awarded Sanctions against Counsel.**

16 11. Indicate whether the case has previously been the subject of an appeal to or original
17 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
18 number of the prior proceeding: **This case has not previously been the subject of an
19 appeal to or original writ proceeding in the Supreme Court, however there are
20 concurrent related appeals, Docket Numbers 81354 and 81355.**

21 12. Indicate whether this appeal involves child custody or visitation: **This case does not
22 involve child custody or visitation.**

23 13. If this is a civil case, indicate whether this appeal involves the possibility of
24 settlement: **Settlement is not possible.**

25 DATED this 28th day of July, 2020.

26 By: /S/ Robert Kern
27 Robert Kern, Esq.
28 NV Bar #10104
601 S. 6th Street Las Vegas, NV 89101
(702) 518-4529
Attorney for Plaintiff/Appellant