

Electronically Filed
Aug 17 2020 02:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC,

Appellants,

VS.

DOMINIQUE ARNOULD,

Respondent.

DOCKETING STATEMENT

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 **X-Order Imposing Sanctions**
16 Other (specify)

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

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

21 No.

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

25 CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81354
26 CLEMENT MUNY vs. DOMINIQUE ARNOULD, case # 81355

27 **7. Pending and prior proceedings in other courts.** List the case name, number and
28 court of all pending and prior proceedings in other courts which are related to this appeal
(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 On the morning of Wednesday June 10, Respondent Arnould emailed an emergency
2 motion for preliminary injunction, demanding a hearing the same day. The motion did not
3 directly state any threat of irreparable harm, nor did its stated facts imply such a threat.
4 Counsel for Muney was scheduled for an oral argument before the Nevada Supreme Court
5 the following day, for which he had been given only 2 weeks notice, rather than the standard
6 6 weeks. Muney's counsel had previously scheduled a moot argument in preparation, with a
7 panel of eight attorneys, for 1pm that same day. Muney's counsel briefly drafted an
8 opposition indicating that he was unable to appear that day, and pointing out that opposing
9 counsel had not even asked him to correct the issue prior to filing the motion, and had
10 demonstrated no threat of irreparable harm.
11

12 The Court nonetheless sent an email scheduling a hearing at 1:30pm that day.
13 Muney's counsel responded to the email protesting that he would be unable to attend, as his
14 duty to the client facing oral argument prohibited him from skipping the preparation,
15 especially considering the resources involved, the impossibility of rescheduling, and the oral
16 argument occurring the next day. He argued that holding the hearing without representation
17 from Muney would be improper. The Court held the hearing, and when Muney's counsel
18 did not appear, ordered it continued two days so Muney's counsel could attend. At the
19 Friday continued hearing, the Court ordered sanctions imposed upon Muney's counsel for
20 failing to attend the same-day hearing, after having stated that he was unable to attend. The
21 Court held that his missing of the emergency hearing was "unexcused, inappropriate, and
22 demeaned the Court." This appeal followed.
23

24
25 9. **Issues on appeal.** State concisely the principal issues in this appeal:

26 The primary issues on appeal are:

27 Whether the Court erred by sanctioning a party's attorney for failing to
28 attend a hearing that was scheduled with less than three hours notice, with no showing of an

1 actual emergency, when appearing would have constituted a gross dereliction of his duty of
2 loyalty to a different client, and the Court had been informed that he was unable to attend.

3
4 10. **Pending proceedings in this court raising the same or similar issues.** If you are
5 aware of any proceeding presently pending before this court which raises the same or
6 similar issues raised in this appeal, list the case name and docket number and identify the
7 same or similar issues raised:

8 N/A

9 11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and
10 the state, any state agency, or any officer or employee thereof is not a party to this appeal,
11 have you notified the clerk of the court and the attorney general in accordance with NRAP
12 44 and NRS 30. 130?

13 N/A

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

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

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

17 ☐ An issue of public policy

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

20 ☐ A ballot question

21 If so, explain:

22 N/A

23 13. **Trial.** If this action proceeded to trial how many days did the trial last? N/A
24 Was it a bench or jury trial?

25 N/A

26 14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a
27 justice recuse him/herself from participation in this appeal. If so, which Justice?
28 No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from: 12 June 2020.**
Attach a copy.

16. **Date written notice of entry of judgment or order served: 12 June 2020.**
Attach a copy, including proof of service, for each order or judgment appealed from.

(a) Service was electronic

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

N/A

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

(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:

N/A

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

NRAP 4(a)

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

NRAP 3A(b)(3)

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

Plaintiff: Dominique Arnould

Defendants: Clement Muney, Chef Exec Suppliers LLC

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

N/A

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

Dominique Arnould – Breach of Fiduciary Duty for leasing property from his company, Judicial Dissolution of Chef Exec Suppliers– neither has been resolved.
Clement Muney and Chef Exec Suppliers LLC: Breach of Fiduciary Duty, Conversion, Money Had and Received, Unjust Enrichment, Constructive Fraud, Fraudulent Concealment. All claims are based upon allegation that Arnould has been converting company funds for his own use.

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

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

3 No.

4 25. If you answered "No" to the immediately previous question, complete the
5 following:

6 (a) Specify the claims remaining pending below:
All Claims remain pending

7 (b) Specify the parties remaining below:
8 All Parties remain

9 (c) Did the district court certify the judgment or order appealed from as a final judgment
10 pursuant to NRCP 54(b)?
No

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

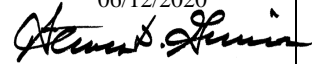
13 26. If you answered "No" to any part of question 25, explain the basis for seeking
14 appellant review.

15 It is part of an order that is otherwise appealable under NRAP 3A(b)(3)
16

17
18 DATED this 17th day of August, 2020.
19

20 **KERN LAW**

21 /S/ Robert Kern
22 Robert Kern, Esq. NV Bar # 10104
23 601 S. 6th Street
24 Las Vegas, NV 89101
25 (702) 518-4529
26 Attorney for Appellant
27
28


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

DOMINIQUE ARNOULD,

CASE NO.: A-19-803488-B

Plaintiff

vs.

DEPARTMENT 27

CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC.,

Defendants

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.

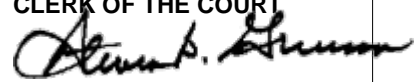
THEREFORE, COURT ORDERS for good cause appearing and after review, pursuant to the Court's inherent authority outlined in *Young*, Robert Kern, Esq. **SHALL** make a mandatory charitable donation in the amount of \$100, made payable to the Legal Aid Center of Southern Nevada, Nevada Legal Services, Clark 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



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 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'

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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.

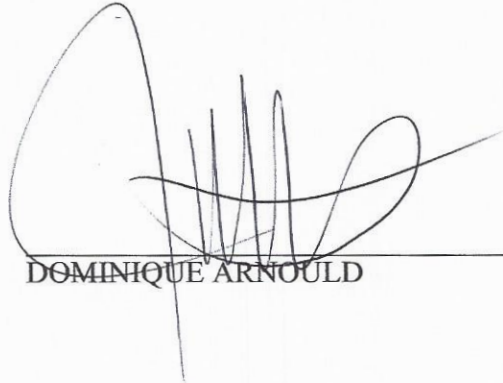
MARQUIS AURBACH COFFING

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

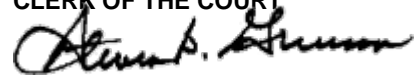
VERIFICATION

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 MUNY; 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 MUNY; and CHEF EXEC
23 SUPPLIERS, LLC,

24 Plaintiffs,

25 vs.

26 DOMINIQUE ARNOULD,

27 Defendant.

28 COME NOW Defendants, CLEMENT MUNY, (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.
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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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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:
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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
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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 Munev from taking action to stop him from taking further monies
23 from the company.

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

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
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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

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.
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