

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT KERN,  
Petitioner,

Electronically Filed  
Jan 26 2022 12:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF CLARK; AND THE  
HONORABLE NANCY L. ALLF, DISTRICT JUDGE,

Respondents.

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**RESPONDENTS' APPENDIX IN SUPPORT OF ANSWER TO  
PETITION FOR EXTRAORDINARY RELIEF**

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AARON D. FORD  
Nevada Attorney General  
STEVE SHEVORSKI  
Chief Litigation Counsel  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
(702) 486-3420 (phone)  
sshevorski@ag.nv.gov  
*Attorney for Respondents*

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DATED this 26th day of January, 2022.

AARON D. FORD  
Attorney General

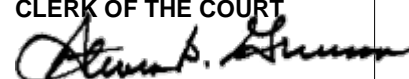
By: /s/ Steve Shevorski  
Steve Shevorski (Bar No. 8256)  
Chief Litigation Counsel

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 26th day of January, 2022, and e-served the same on all parties listed on the Court's Master Service List.

/s/ Traci Plotnick

Traci Plotnick, an employee of  
the office of the Nevada Attorney General



**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 MUNNEY; 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 Munev 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 Munev'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 Munev'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 Munev for Defendant Munev'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.

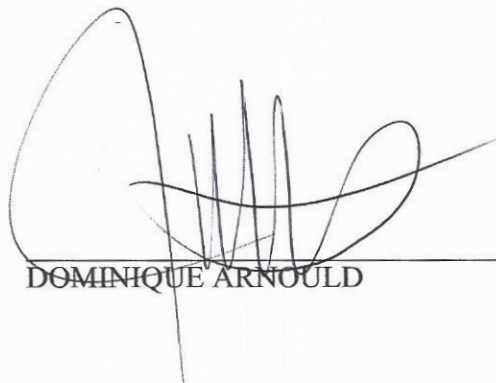
MARQUIS AURBACH COFFING

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

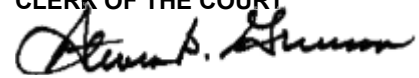
Under penalties of perjury, the undersigned declares that he is the plaintiff named in the foregoing complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be 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. 6<sup>th</sup> Street  
6 Las Vegas, NV 89101  
7 (702) 518-4529 phone  
8 (702) 825-5872 fax  
9 [Admin@KernLawOffices.com](mailto: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 MUNNEY, (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  
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  
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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 7<sup>th</sup> day of November, 2019

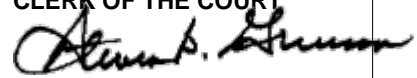
**KERN LAW**

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

Employee of Kern Law



**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 exchange<sup>1</sup>:

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

<sup>1</sup> 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:<sup>2</sup>

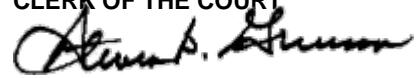
Robert Kern  
Melissa Milroy

Robert@Kernlawoffices.com  
Admin@KernLawOffices.com

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

<sup>2</sup> 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).





Robert Kern, Esq.  
Nevada Bar Number 10104  
**KERN LAW, Ltd.**  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 518-4529 phone  
(702) 825-5872 fax  
Admin@KernLawOffices.com  
Attorney for Defendants

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter-Claimants.

Case Number: A-19-803488-B

Dept. Number: 27

**RESPONSE TO ARNOULD'S REQUEST  
FOR EMERGENCY TELEPHONIC  
HEARING**

COME NOW Defendants, CHEF EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC"), and CLEMENT MUNEY, (hereinafter "Muney"), by and through their undersigned counsel Robert Kern, ESQ., of KERN LAW, Ltd. submit this Response to Arnould's request for emergency telephonic hearing.

Counsel for Muney apologizes for the brevity of this response, however I have an Oral Argument before the Nevada Supreme Court in 24 hours, and have been given less than ¼ of the standard time to prepare. For this reason, I have no ability to attend a hearing of any kind prior to tomorrow's oral argument.

Second, nowhere in the request was there any indication (nor any affidavit or other evidence in support) to show why this matter was an emergency, nor why it must be heard

**KERN LAW,  
LTD.**  
601 S. 6<sup>th</sup> Street,  
Las Vegas, NV  
89101  
Phone: (702)  
518-4529 Fax:  
(702) 825-5872  
Admin@KernLa  
wOffices.com

1 today, rather than, for example, Friday. Counsel for Muney would ask the court, that if the  
2 Court believes a hearing is necessary, that it be held on Friday when Muney's counsel can  
3 participate, as there has been no showing why holding it Friday would prejudice any party.  
4

5 Third, there is no reason a hearing is necessary; counsel for Arnould have made zero  
6 attempt to resolve this outside of the courtroom; the sole communication I have received  
7 from them on the subject was a single email forwarding the email exchange between our  
8 clients, without comment. My client asked Mr. Arnould to explain why he needs inventory  
9 that is not normally sold by the LA branch; Arnould has failed to answer. Now Arnould  
10 asks this court to intervene because he's forced to answer a question before taking Las  
11 Vegas inventory, whereas 3 weeks ago, he took control of 100% of the entire company's  
12 funds, and used that control to dictate how Muney could run his half of the company. Before  
13 this Court is asked to intervene, there is no reason we should not at least follow the most  
14 basic attempts to resolve outside of court, such as Arnould answering the email to tell  
15 Muney why he needs inventory that the records suggest he does not need, and failing that,  
16 Arnould's counsel should communicate their issue with myself, Muney's counsel, to see if  
17 we can resolve the matter.  
18

19 For these reasons, Muney asks the Court to deny the request entirely, at least until  
20 more regular methods of resolving the issue are attempted, or failing that, to hold the  
21 hearing on Friday where counsel for Muney can attend without prejudice.  
22

23 DATED this 10<sup>th</sup> day of June, 2020.

24 **KERN LAW**

25 By: /s/ Robert Kern /s/  
26 Robert Kern, Esq.  
27 601 S. 6<sup>th</sup> Street  
28 Las Vegas, NV 89101  
(702) 518-4529  
Attorney for Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of June 2020, I served a true and correct copy of the foregoing **Response to Arnould’s Request for Emergency Hearing**, by electronic service, addressed to the following:

Phillip S. Aurbach, Esq.  
Marquis Aurbach Coffing  
Paurbach@Maclaw.com  
*Counsel for Dominique Arnould*  
  
Alexander Callaway  
Marquis Aurbach Coffing  
acalaway@maclaw.com  
*Counsel for Dominique Arnould*

\_\_\_\_\_  
/s/ Robert Kern  
Employee of Kern Law

**CASE No. A-19-803488-B**



Counter Claimant	Chef Exec Suppliers, LLC	Lead Attorneys <b>Robert J. Kern</b> <i>Retained</i> 702-518-4529(W)
Counter Claimant	Muney, Clement	<b>Robert J. Kern</b> <i>Retained</i> 702-518-4529(W)
Counter Defendant	Arnould, Dominique	<b>Phillip S. Aurbach</b> <i>Retained</i> 7029422155(W)
Defendant	Chef Exec Suppliers, LLC	<b>Robert J. Kern</b> <i>Retained</i> 702-518-4529(W)
Defendant	Muney, Clement	<b>Robert J. Kern</b> <i>Retained</i> 702-518-4529(W)
Other	Southern Nevada Senior Law Project	
Plaintiff	Arnould, Dominique	<b>Phillip S. Aurbach</b> <i>Retained</i> 7029422155(W)

## RESP. APP025

Colloquy regarding continuing matter and advancing the July 5, 2020 matter for appointment of trustee. COURT ORDERED, matter CONTINUED, Plaintiff Dominique Arnould's Motion for Appointment of Trustee set July 5, 2020 CONTINUED to June 12, 2020 at 12:30 p.m. CONTINUED TO 6/12/2020 12:30 PM

06/12/2020 12:30 PM

[Parties Present](#)

[Return to Register of Actions](#)

**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 June 12, 2020 at 12:30pm, regarding the Plaintiff's Motion to Select Receiver (the "Motion") and Plaintiff's Emergency Request For Telephonic Hearing For Appointment of Receiver To Take Over the Warehouse Or For the Order Allowing Access (the "Emergency Request").

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:

1. On May 22, 2020 this Court requested that the Parties provide this Court with their suggestions as to who could serve as a court-appointed receiver in this matter.

2. After considering both parties suggestions, the Court finds Larry L. Bertsch to be suitable to serve as the court-appointed receiver ("Receiver"), consistent with the powers set forth in this Court's previous June 8, 2020 order regarding the appointment of a receiver.

3. Also, consistent with this Court's June 8, 2020 order, the Receiver will be compensated by Clement Muney ("Muney") and Dominique Arnould ("Arnould") each paying 1/2 of his estimated fees within 10 days of the Receiver's request.

4. The Court also finds that despite the fact that Muney and Arnould are each 50% owners of Chef Exec Suppliers, LLC ("Company"), Muney changed the locks to the warehouse located at 3655 West Quail Ave, Las Vegas, Nevada ("Nevada Warehouse"), which currently stores Company inventory.

5. The Court also finds that Muney refused to allow Arnould access to the Nevada Warehouse to obtain the Company inventory.

6. The Court also finds that Muney's actions have required further monitoring of the Nevada Warehouse so that the Company can continue to fulfill the needs of its customers.

### ORDER

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

1. It is ordered that Defendants immediately provide Plaintiff access to the Nevada Warehouse.
2. It is further ordered that Clement Muney hire and pay for security to monitor the Nevada Warehouse when Plaintiff accesses the same.
3. It is further ordered that the Receiver change the locks on the Nevada Warehouse so that all parties can have access to the same with the consent of the Receiver.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Dated this 12th day of June, 2020

*Nancy L Alf*

DISTRICT COURT JUDGE  
FBA 175 1437 4DD6

Page 2 of 3 Nancy Alf

MAC:15755-001 ORDER regarding June 12 2020 Motion to Select Reciever 6/12/2020 4:07 PM

RESP. APP028

Submitted by:

Dated this 12<sup>th</sup> day of June, 2020

**MARQUIS AURBACH COFFING**

By: /s/ Alex Calaway

Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Alexander K. Calaway, Esq.  
Nevada Bar No. 15188  
10001 Park Run Dr.  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff*

Approved to as form and content:

Dated this 12<sup>th</sup> day of June, 2020

**KERN LAW LTD.**

By: /s/ Robert Kern

Robert Kern, Esq.  
Nevada Bar No. 10104  
601 S. 6<sup>th</sup> St.  
Las Vegas, Nevada 89101  
*Attorney for Defendants*



DISTRICT COURT  
CLARK COUNTY, NEVADA

Dominique Arnould, Plaintiff(s)	CASE NO: A-19-803488-B
vs.	DEPT. NO. Department 27
Clement Muney, Defendant(s)	

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6178664  
Service Date: 6/12/2020

Jennifer Case	jcase@maclaw.com
Robert Kern	Robert@Kernlawoffices.com
Melissa Milroy	Admin@KernLawOffices.com
Phillip Aurbach	PSA@maclaw.com
Javie-Anne Bauer	jbauer@maclaw.com
Alexander Calaway	acalaway@maclaw.com

**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/Counter-Defendant*

**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

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER**

Plaintiffs'/Counterdefendants' Motion for Summary Judgment ("Motion for Summary Judgment") and Defendants' Motion to Compel ("Motion to Compel") came before this Court for hearing on July 29, 2021 (the "Hearing"). Alexander K. Calaway, Esq. of Marquis Aurbach Coffing, appeared on behalf of Plaintiff/Counterdefendant, Dominique Arnould ("Arnould"); Robert Kern, Esq. or Kern Law, Ltd. appeared on behalf of Defendants/Counterplaintiff Muney Arnould ("Arnould") and Chef Exec Suppliers, LLC ("CES"). The Court having considered the pleadings and papers on file herein and good cause appearing therefore, the Court hereby grants Plaintiff's Motion for Summary Judgment, denies Defendants' Motion to Compel, and enters these Findings of Fact and Conclusions of law:

1     **I. FINDINGS OF FACT**

2             **A. PARTIES AND THEIR RESPECTIVE CLAIMS**

3             1. Mr. Muney and Mr. Arnould are equal co-owners and co-managers of CES.

4             2. CES is a Nevada limited liability company, validly formed under Nevada law,  
5 with no operating agreement.

6             3. CES had two branches of operations: one in Las Vegas, NV and the other in Los  
7 Angeles, CA.

8             4. In managing the affairs of CES, Mr. Muney and Mr. Arnould both had access to  
9 CES's QuickBooks account via cloud-based server.

10            5. Mr. Arnould brought derivative claims on behalf of CES against Mr. Muney for:  
11 (1) Declaratory relief for the appointment of a receiver and judicial dissolution; and (2) an  
12 accounting of CES and breach of fiduciary duty.

13            6. Mr. Muney brought direct counterclaims against Mr. Arnould for: (1) breach of  
14 fiduciary duty; (2) conversion; (3) money had and received; (4) unjust enrichment; (5)  
15 constructive fraud; and (6) fraudulent concealment.

16             **B. APPOINTMENT OF A RECEIVER**

17            7. On June 8, 2020, the Court found the requirements to appoint a receiver over CES  
18 had been met and ordered the appointment of a receiver with limited powers to prepare a report  
19 about the viability of CES.<sup>1</sup>

20            8. On June 12, 2020, this Court appointed a receiver to take control of the Nevada  
21 warehouse and inventory (hereinafter the "Receiver").<sup>2</sup>

22            9. On August 21, 2020, this Court found that:

23 \_\_\_\_\_  
24  
25 1 Findings of fact included in June 8, 2020 Order, on file herein and incorporated herein; *see*  
26 *also* Feb. 17, 2021, Order, at ¶1, on file herein; *see also* Opposition to Motion for Summary  
Judgment (hereinafter the "Opposition") (The Opposition fails to dispute this fact because it does  
not cite to any declaration, affidavit, or exhibit that might dispute the fact).

27 2 Findings of fact included in June 12, 2020 Order, on file herein and incorporated herein; *see*  
28 *also* Opposition (The Opposition fails to dispute this fact because it does not cite to any  
declaration, affidavit, or exhibit that might dispute the fact).

Both Parties don't dispute and stipulated that it is not reasonably practicable to carry on the business of [CES] in conformance with the operating agreement since there is no operating agreement and since the owners of [CES] cannot get along and disagree about the operation of [CES]. Therefore, [CES] must be dissolved... [and] the date of dissolution should be September 30, 2020.<sup>3</sup>

### C. RECEIVER'S ACCOUNTING AND FINAL REPORT

10. On December 7, 2020, the Receiver issued his Final Report and Recommendations (hereinafter the "Final Report").<sup>4</sup>

11. In his Final Report, the Receiver made recommendations as to the distribution of the assets and liabilities of the Company to each Partner on an equitable basis.

12. The Receiver's report includes the results of his investigation, analysis, and accounting opinions.

13. The Defendants/Counter-Plaintiffs did not retain an expert witness to rebut the receiver's findings, analysis or opinions.<sup>5</sup>

14. The findings, analysis and opinions set forth in the Receiver's Final Report are hereby adopted by the Court.

15. On January 29, 2021, Mr. Muney's counsel filed a written objection to the Receiver's Final Report and the Receiver responded to the objections on February 6, 2021.

16. This written objection filed by counsel for Mr. Muney objected to:

a. The Receiver's allocation of rent expense for the warehouses in Nevada and California, and that the Receiver improperly calculated and accounted for rent expenses related to these warehouses;

b. the Receiver's accounting of various expenditures, such as shipping charges and how they were expensed, CES's checks and how they were recorded in the books, classification of business expenses, and invoicing;

---

<sup>3</sup> Order of Dissolution, at ¶¶1-2, on file herein.

<sup>4</sup> Final Report, on file herein; *see also* Opposition (The Opposition fails to dispute this fact because it does not cite to any declaration, affidavit, or exhibit that might dispute the fact).

<sup>5</sup> *See* Opposition.

1 c. the Receiver's calculations as to how CES's delivery truck costs should be  
2 allocated and how the truck itself should be valued; and

3 d. the Receiver's analysis of various expenditures related to partner spending.

4 17. The written objection filed by counsel for Mr. Muney contained no expert  
5 testimony in support, no declaration/affidavit in support, and no authenticated documentary  
6 evidence.

7 18. The written objection filed by counsel for Mr. Muney only contained arguments  
8 by counsel and unauthenticated exhibits.

9 19. On February 17, 2021, the Receiver's Final Report was approved and accepted by  
10 this Court and the Receiver was discharged.

11 20. On May 14, 2021, Mr. Arnould designated the Receiver as an expert witness to be  
12 called at trial and designated the Receiver's Final Report as an expert written report.

13 21. The Receiver was timely designated as an expert witness to give opinion  
14 testimony to the Court, and that the Receiver's Final Report was timely designated as an expert  
15 witness report.

16 22. No evidentiary challenge was made by either party as to the Receiver's  
17 specialized knowledge and qualifications, skill, experience, training and education as to matters  
18 within the scope of accounting.

19 23. No evidentiary challenge was made by either party as to the facts or data relied  
20 upon by the Receiver in his Final Report.

21 24. The Receiver:

22 a. Has been a Certified Public Accountant for over 55 years;

23 b. Has worked as a court-appointed receiver, forensic accountant, bankruptcy  
24 trustee, and the chief financial officer over several large hotel and casinos;

25 c. Has administered and closed over 8,000 Chapter 7 bankruptcies and  
26 numerous Chapter 11 and Chapter 7 operating bankruptcies;

1 d. Has served as a special master, liquidating trustee, and a receiver in  
2 hundreds of cases involving partnerships, limited liability companies, corporations, and divorces;  
3 and

4 e. Has experience in testifying on accounting and forensic accounting  
5 matters and has testified in both state and federal courts.

6 25. The Receiver is competent to testify as an expert regarding the investigation and  
7 facts contained in his Final Report including CES, its books, QuickBooks, accounts, capital  
8 accounts, financial documents, and issues surrounding the Complaint, Counter-Complaint, and  
9 pleadings in this case.

10 26. The Receiver's opinions in his Final Report are based upon a review and analysis  
11 of the relevant documents, items, and events in this matter, including CES's QuickBooks files.

12 27. The Receiver's Final Report relies upon, among other things, the QuickBooks and  
13 supporting documents which were supplied to the Receiver by both Mr. Arnould and Mr. Muney  
14 in this matter.

15 28. The Receiver and the opinions expressed in his Final Report are credible.

16 29. The Receiver's Final Report calculated the distribution of CES assets and the  
17 amounts that Mr. Muney and Mr. Arnould owed to CES.

18 30. Pursuant to the Receiver's findings in the Final Report and stipulation of the  
19 Parties, Mr. Muney and Mr. Arnould were required to each pay \$22,712.56 to the Receiver to be  
20 applied to their respective obligations to CES.

21 31. According to the Receiver's Final Report, Mr. Muney had a negative capital  
22 account with CES and owes \$6,303.93 to Mr. Arnould.

23 32. To date, Mr. Muney has not paid Mr. Arnould the \$6,303.93 he owed to equalize  
24 the capital account in accordance with the Final Report.

25 33. On May 14, 2021, Mr. Muney designated Andrew Martin, MS, CFE, CFF,  
26 CGMA, CICA, CPA ("Martin") and Gene Proctor ("Proctor") as expert witnesses.

27 34. Mr. Muney did not timely disclose a written expert report for Messrs. Martin and  
28 Mr. Proctor in this matter.

1           35. Mr. Muney did not disclose any expert testimony that would dispute Receiver's  
2 accounting and opinions.

3           36. On May 14, 2021, discovery closed in this matter.

4           **D. FACTS PERTAINING TO DISCOVERY AND THE MOTION TO**  
5           **COMPEL**

6           37. On December 7, 2020, Mr. Arnould timely served his Responses to Defendants'  
7 Requests for Production and Defendants' Interrogatories (the "Responses").

8           38. On February 24, 2021, Mr. Arnould served his Second Supplement to Initial  
9 Disclosure of Witnesses and Documents Pursuant to NRCP 16.1 (the "Second Supplement").  
10 The Second Supplement contained, among other things, the native QuickBooks file of CES.

11           39. On March 11, 2021, Arnould served his Third Supplement to Initial Disclosure of  
12 Witnesses and Documents Pursuant to NRCP 16.1 (the "Third Supplement").

13           40. The Third Supplement contained additional documents responsive to M. Muney's  
14 requests, including CES documents, payroll documents, invoices, and tax returns from 2007  
15 through 2019 for the company, and other corporate documents.

16           41. On June 14, 2021, Mr. Arnould filed his Motion for Summary Judgment.

17           42. On July 9, 2021, Mr. Muney filed his Motion to Compel and requested this Court  
18 compel Mr. Arnould to supplement his Responses.

19           43. On July 23, 2021, Mr. Arnould filed his opposition to the Motion to Compel.

20           44. If any of these Findings of Fact is a Conclusion of Law, it shall be deemed a  
21 Conclusion of Law and if any Conclusion of Law is a Finding of Fact, it shall be deemed a  
22 Finding of Fact.

23           **II. CONCLUSIONS OF LAW**

24           **A. JURISDICTION IS PROPER**

25           1. This Court may exercise jurisdiction over the Parties because all Parties have  
26 appeared in these proceedings and consented to jurisdiction.

1           2.       The Plaintiff's claims, including declaratory relief, accounting, appointment of a  
2 receiver, and related counterclaims are not within the subject matter jurisdiction of the Justice  
3 Court.

4           3.       This Order and the Findings of Fact and Conclusions of Law herein resolves all  
5 claims and counterclaims which were or could have been submitted in this case.

6           4.       The Court finds that all issues between the Parties have been resolved or  
7 abandoned except those issues listed below between the above-named Parties.

8           **B.       MR. ARNOULD IS ENTITLED TO JUDGMENT IN HIS FAVOR ON ALL**  
9           **CLAIMS**

10          5.       In *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598,  
11 602, 172 P.3d 131, 134 (2007), the Nevada Supreme Court set forth the standard for summary  
12 judgment in Nevada under NRCP 56(a).

13          6.       Summary judgment is appropriate "when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate  
15 that no genuine issue of material fact exists, and the moving party is entitled to judgment as a  
16 matter of law." *Id.* (internal citations omitted).

17          7.       Nevada courts follow the federal approach outlined in *Celotex Corp. v. Catrett*  
18 with respect to burdens of proof and persuasion in the summary judgment context, and as such,  
19 "[t]he party moving for summary judgment bears the initial burden of production to show the  
20 absence of a genuine issue of material fact," thereafter, "the party opposing summary judgment  
21 assumes a burden of production to show the existence of a genuine issue of material fact. *Id.*  
22 (citing 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *see also*, *Clauson v. Lloyd*, 103  
23 Nev. 432, 743 P.2d 631 (1987) (explaining *Celotex's* application in Nevada); *see also* *Wood v.*  
24 *Safeway, Inc.*, 121 Nev. 724, 731–32, 121 P.3d 1026, 1031 (2005) (adopting the summary  
25 judgment standard set forth in *Celotex* and other Supreme Court decisions).

26          8.       Pursuant to NRCP 56(c)(1), a party asserting that a fact cannot be or is genuinely  
27 disputed must support the assertion by:  
28



1           9.       (A) citing to particular parts of materials in the record, including depositions,  
2 documents, electronically stored information, affidavits or declarations, stipulations (including  
3 those made for purposes of the motion only), admissions, interrogatory answers, or other  
4 materials; or (B) showing that the materials cited do not establish the absence or presence of a  
5 genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

6           10.      Pursuant to NRCP 54(c)(2), either party may “object that the material cited to  
7 support or dispute a fact cannot be presented in a form that would be admissible in evidence.”

8           11.      Pursuant to NRCP 54(c)(3) the court “need consider only the cited materials, but  
9 it may consider other materials in the record.”

10          12.      “An affidavit or declaration used to support or oppose a motion must be made on  
11 personal knowledge, set out facts that would be admissible in evidence, and show that the affiant  
12 or declarant is competent to testify on the matters stated.” NRCP 54(c)(4).

13          13.      Pursuant to NRCP 56(e)(3),

14               If a party fails to properly support an assertion of fact or fails to properly address  
15 another party's assertion of fact as required by Rule 56(c), the court may: . . .  
16 consider the fact undisputed for purposes of the motion.... [or] grant summary  
judgment if the motion and supporting materials--including the facts considered  
undisputed--show that the movant is entitled to it.

17          14.      Mr. Muney's opposition fails to meet the requirements NRCP 56(c).<sup>6</sup>

18          15.      The Court need only consider cited materials pursuant to NRCP 54(c)(3).

19          16.      Mr. Muney failed to provide any exhibit, declaration, or affidavit that might put  
20 any fact in dispute.

21          17.      Mr. Muney failed to cite to any material facts that support his defenses and  
22 counterclaims in this matter.

23          18.      Mr. Muney's Opposition failed to support for claims and defenses in this case.

24          19.      Therefore, the Court grants summary judgment against Mr. Muney and in favor of  
25 Mr. Arnould and CES derivatively.

26  
27  
28       6 See Opposition (The Opposition fails to dispute this fact because it does not cite to any  
declaration, affidavit, or exhibit that might dispute the fact).

1           **C.     MR. ARNOULD PREVAILED DERIVATIVELY ON HIS FIRST CLAIM**  
2           **FOR RELIEF**

3           20.     Mr. Arnould's first claim for relief was for declaratory relief for the appointment  
4 of a receiver and dissolution of CES.

5                   **1.     Mr. Arnould Prevailed on Declaratory Relief for Dissolution of CES**

6           21.     The Court finds that Mr. Arnould prevailed on his first cause of action for  
7 declaratory relief that CES should be dissolved and a receiver appointed.

8           22.     NRS 86.495 authorizes a member of a limited liability company to apply for a  
9 decree of dissolution whenever it is not reasonably practicable to carry on the business of the  
10 company in conformity with the articles of organization or operating agreement.

11           23.     Mr. Arnould had standing to apply for a decree of dissolution of CES because Mr.  
12 Arnould was a 50% member of CES.

13           24.     Mr. Arnould's first cause of action sought declaratory relief from the Court that it  
14 is not reasonably practicable to carry on CES and an order granting judicial dissolution pursuant  
15 to NRS 86.495 and 86.505.

16           25.     Mr. Arnould's verified complaint stated that the disputes between he and Muney  
17 have arisen and are so deep that it is not reasonably practicable to carry on the business of the  
18 Company.

19           26.     On August 21, 2020, this Court found that:

20                   Both Parties don't dispute and stipulated that it is not reasonably practicable to  
21 carry on the business of the Company in conformance with the operating  
22 agreement since there is no operating agreement and since the owners of the  
Company cannot get along and disagree about the operation of the Company.  
Therefore, the Company must be dissolved.... [and] the date of dissolution should  
be September 30, 2020.<sup>7</sup>

23           27.     On November 3, 2020, the Receiver filed articles of dissolution for CES.

24           28.     Therefore, Mr. Arnould prevailed on his first cause of action for declaratory relief  
25 and dissolution.

26  
27  
28           7 See Order of Dissolution, at ¶¶1-2, on file herein.

1           29.     Mr. Muney's Opposition failed to support his defenses to this particular claim.<sup>8</sup>

2                     **2.     Mr. Arnould Prevailed on Declaratory Relief and Appointment of**  
3                     **Receiver**

4           30.     Mr. Arnould's first cause of action also sought a declaration that the requirements  
5     for appointment of a receiver to run the Las Vegas operations of CES and potentially dissolve the  
6     company."

7           31.     NRS 32.010(6) provides: "A receiver may be appointed by the court in which an  
8     action is pending, or by the judge thereof: ... In all other cases where receivers have heretofore  
9     been appointed by the usages of the courts of equity."

10          32.     In general, "[a] receiver's primary purpose is to preserve the property's value for  
11     those to whom it is ultimately determined that the property belongs, so to accommodate all  
12     claims possible." *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215,  
13     197 P.3d 1051, 1057 (2008) (internal citations omitted); *see also Bowler v. Leonard*, 70 Nev.  
14     370, 269 P.2d 833 (1954).

15          33.     In appointing the Receiver over CES, this Court found:

16                 a.     That neither Party trusted the other with the assets or operations of the  
17     Company;

18                 b.     That the expenditures and dealings of the Company be accounted for and  
19     overseen by a neutral third-party without impeding the Company's ability to carry on its  
20     business;

21                 c.     That it was necessary that a neutral receiver be appointed to supervise the  
22     operations of the Company in consultation with Mr. Arnould and Mr. Muney, and to allow them  
23     to continue operations of the Company, and have the Receiver prepare a report about the  
24     viability of the Company;

25                 d.     That despite the fact that Mr. Muney and Mr. Arnould are each 50%  
26     owners of CES, Mr. Muney changed the locks to the warehouse located at 3655 West Quail Ave,  
27     Las Vegas, Nevada which stored CES inventory;

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28     <sup>8</sup> See Opposition,

1 e. That Mr. Muney refused to allow Arnould access to the Nevada  
2 warehouse to obtain the CES inventory; and

3 f. That Mr. Muney's actions required further monitoring of the Nevada  
4 warehouse so that CES could continue to fulfill the needs of its customers.

5 34. Therefore, Mr. Arnould prevailed on his first cause of action for declaratory relief  
6 and for appointment of a receiver.

7 35. Mr. Muney's Opposition failed to support his defenses to this particular claim.<sup>9</sup>

8 **3. Mr. Arnould Prevailed Derivatively on his First Claim for Relief**

9 36. The Court finds that Mr. Arnould's first cause of action was properly plead as a  
10 derivative claim and that Mr. Arnould prevailed derivatively on this claim.

11 37. The pleading standards for derivative claims brought on behalf of a Nevada LLC  
12 are set forth in NRCP 23.1<sup>10</sup> and NRS 86.487.<sup>11</sup>

13  
14 <sup>9</sup> See Opposition, on file herein.

15 <sup>10</sup> NRCP 23.1 provides:

16 In a derivative action brought by one or more shareholders or members to enforce  
17 a right of a corporation or of an unincorporated association, the corporation or  
18 association having failed to enforce a right that may properly be asserted by it, the  
19 complaint must be verified and must allege that the plaintiff was a shareholder or  
20 member at the time of the transaction of which the plaintiff complains, or that the  
21 plaintiff's share or membership thereafter devolved on the plaintiff by operation  
22 of law. The complaint must also allege with particularity the efforts, if any, made  
23 by the plaintiff to obtain the action the plaintiff desires from the directors or  
24 comparable authority and, if necessary, from the shareholders or members, and  
25 the reasons for the plaintiff's failure to obtain the action or for not making the  
26 effort. The derivative action may not be maintained if it appears that the plaintiff  
27 does not fairly and adequately represent the interests of the shareholders or  
28 members similarly situated in enforcing the right of the corporation or association.  
The action may not be dismissed or compromised without the approval of the  
court, and notice of the proposed dismissal or compromise must be given to  
shareholders or members in such manner as the court directs.

11 NRS 86.487 provides:

In a derivative action, the complaint must set forth with particularity: 1. The effort  
of the plaintiff to secure initiation of the action by a manager or member; or 2.  
The reasons for the plaintiff not making the effort to secure initiation of the action  
by a manager or member.

1           38.     The Court finds that, pursuant to NRCP 23.1 and NRS 86.487, Mr. Arnould met  
2 the derivative pleading requirements for his first cause of action because:

- 3           a.     Mr. Arnould's complaint was a verified complaint;
- 4           b.     Mr. Arnould's complaint sufficiently alleged that Mr. Arnould had  
5 standing as a member of CES;
- 6           c.     Mr. Arnould particularly alleged that it would be a futile effort to make a  
7 demand on Mr. Muney since Mr. Muney is not disinterested, Mr. Muney's judgment is  
8 materially affected in favor of his actions and against the best interests of Chef Suppliers and  
9 nothing can be accomplished when both disagree on the direction of the company; and
- 10          d.     Mr. Arnould's first cause of action fairly and adequately represented the  
11 interests of the members similarly situated in enforcing the rights of CES.

12          39.     The Court finds that Mr. Arnould's first cause of action was derivative because  
13 the appointment of a receiver and dissolution benefited CES by:

- 14          a.     Reducing the effect that the dispute between CES's managers had on  
15 CES's business and its articles by dissolving CES under NRS 86.495(1);
- 16          b.     Securing and monitoring the CES Las Vegas warehouse and thereby  
17 preventing waste by Mr. Muney;
- 18          c.     Providing CES's manager, Mr. Arnould, with access to the Las Vegas  
19 warehouse, so that Mr. Arnould could continue operations of CES and fulfill the needs of  
20 customers without interference by Mr. Muney;
- 21          d.     Providing a comprehensive accounting of CES which required both Mr.  
22 Muney and Mr. Arnould each pay CES to settle their respective capital accounts which benefited  
23 CES; and
- 24          e.     Discharging and providing for CES's outstanding obligations and debts by  
25 settling capital accounts; and
- 26          f.     Filing a final tax return for CES.

27          40.     Finally, NRS 86.489 provides:

28               If a derivative action is successful, in whole or in part, or if anything is received

1 by the plaintiff as a result of a judgment, compromise or settlement of an action or  
2 claim, the court may award the plaintiff reasonable expenses, including  
3 reasonable attorney's fees, and shall direct the plaintiff to remit to the limited-  
4 liability company the remainder of those proceeds received by the plaintiff.

5 41. The Court finds that Mr. Arnould prevailed derivatively on his first cause of  
6 action and is therefore entitled to seek his reasonable attorney's fees and expenses pursuant to  
7 NRS 86.489.<sup>12</sup>

8 42. Mr. Muney's Opposition failed to support his defenses to this particular claim.<sup>13</sup>

9 **D. MR. ARNOULD PREVAILED ON HIS SECOND CAUSE OF ACTION**

10 43. Mr. Arnould's second claim for relief was for accounting of CES and breach of  
11 fiduciary duty.

12 44. An equitable accounting "is a restitutionary remedy based upon avoiding unjust  
13 enrichment." *See* D. Dobbs, Remedies § 4.3 at 415 (1973). Nevada recognizes the action of  
14 equitable accounting. *Botsford v. Van Riper*, 33 Nev. 158, 110 P. 705 (1910); *Young v. Johnny*  
15 *Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle USA, Inc. v. Rimini Street, Inc.*,  
16 No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev. Aug. 13, 2010); *Mobius*  
17 *Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434  
18 (D. Nev. Jan. 23, 2012).

19 45. Courts have generally defined an action for an accounting as "a proceeding in  
20 equity for the purpose of obtaining a judicial settlement of the accounts of the parties in which  
21 proceeding the court will adjudicate the amount due, administer full relief and render complete  
22 justice." *Verdier v. Superior Court*, 88 Cal.App.2d 527, 530, 199 P.2d 325 (Cal.1948); *Teselle v.*  
23 *McLoughlin*, 173 Cal. App. 4th 158, 92 Cal. Rptr. 3d 696 (Cal. App. 2009).

24 46. NRS 86.5419 provides for accounting for profits of an LLC by a receiver:

25 The receiver... shall lay before the district court a full and complete inventory of  
26 all the estate, property and effects of the limited-liability company, its nature and  
27 probable value, and an account of all debts due from and to it, as nearly as the  
28 same can be ascertained, and make a report to the court of his or her proceedings  
at least every 3 months thereafter during the continuance of the trust, and

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12 *See* Order re: Dissolution, on file herein; *see also* Order appointing receiver, on file herein.

13 *See* Opposition.

1 whenever the receiver shall be so ordered.

2 47. An equitable accounting is proper where “the accounts are so complicated that an  
3 ordinary legal action demanding a fixed sum is impracticable.” *See e.g. Civic Western Corp. v.*  
4 *Zila Industries, Inc.*, 66 Cal.App.3d 1, 14, 135 Cal. Rptr. 915 (Cal.1977) (citation and quotes  
5 omitted).

6 48. Although courts typically grant an accounting where a fiduciary relationship  
7 exists between the parties, courts have extended the remedy of accounting to nonfiduciaries  
8 where “dealings between the parties are so complex that an equitable master, and not a jury, is  
9 required to sort out the various dealings between the parties.” *See e.g. Leonard v. Optimal*  
10 *Payments Ltd. (In re Nat'l Audit Def. Network)*, 332 B.R. 896, 918–19 (Bankr. D. Nev. 2005).

11 49. The complexity of CES’s accounts make an equitable accounting necessary in this  
12 case because the disagreements between the parties, the lack of communication, and necessary  
13 adjustments to the books and records, the dealings between Mr. Arnould and Mr. Muney were  
14 complex.

15 50. The breadth of the Receiver’s report itself illustrates the complexity involved in  
16 accounting for CES.

17 51. Thus, the Court finds that the Receiver was properly appointed to account for the  
18 assets of CES, which was completed on December 7, 2020.

19 52. The Receiver’s Final Report was a complete and full accounting of CES that  
20 satisfies the requirements for an accounting under Nevada law and NRS Chapter 86.

21 53. Therefore, the Court finds that Mr. Arnould prevailed on his second cause of  
22 action for accounting.

23 54. Mr. Muney’s Opposition failed to support his defenses in this case <sup>14</sup>

24 55. Mr. Muney failed to provide any material disputed fact that might dispute or rebut  
25 the Receiver’s accounting of CES pursuant to NRCP 56(c)-(e).<sup>15</sup>

26  
27 <sup>14</sup> *See* Opposition.

28 <sup>15</sup> *Id.*

1           56. Mr. Muney cannot defeat Mr. Arnould's motion for summary judgment because  
2 he failed to "set out facts that would be admissible in evidence." NRCP 56(c)(4).

3           57. While Mr. Muney objected to the Receiver's accounting, his objections are not  
4 admissible evidence at trial.<sup>16</sup>

5           58. Each of the issues Mr. Muney raised in his written objection on the record require  
6 specialized and technical knowledge in accounting, which are subjects reserved for experts  
7 pursuant to NRS 50.275.

8           59. In Nevada, to present expert testimony, the proffering party must provide a  
9 written disclosure of their experts and the contents of those experts' testimonies, including the  
10 information each expert considered in forming an opinion, well in advance of trial. *Sanders v.*  
11 *Sears-Page*, 131 Nev. 500, 517, 354 P.3d 201, 212 (Nev. App. 2015) (citing NRCP 16.1(a)(2)).

12           60. This policy underlying NRCP 16.1 "serves to place all parties on an even playing  
13 field and to prevent trial by ambush or unfair surprise." *Id.*; *see also Roberts v. Libby*, 132 Nev.  
14 1023 (Nev. App. 2016).

15           61. The Receiver's Final Report and his accounting therein are undisputed because  
16 Mr. Muney failed to produce an expert report or any other admissible accounting of profits for  
17 CES.

18           62. Because Mr. Muney failed to produce an expert report, he is barred from  
19 attempting to proffer expert testimony at trial. Since Mr. Muney cannot present expert testimony  
20 at trial, the Final Report and Receiver's accounting of profits are undisputed. The amounts due  
21 under the Receiver's accounting were also partially stipulated to on or about February 26, 2021,  
22 since Mr. Muney and Mr. Arnould each stipulated and agreed to pay \$22,712.56 to the Receiver  
23 to close out the receivership estate and thereafter, accepted their respective distributions of  
24 CES's assets.<sup>17</sup>

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25  
26  
27           16 *See* Defendants' Objection to Final Report, on file herein.

28           17 February 26, 2021 Stipulation and Order, on file herein.



63. The only unsettled amounts due under the Receiver's undisputed accounting is the \$6,303.93 due from Mr. Muney to be paid to Mr. Arnould.

64. Therefore, the Court finds that judgment Mr. Arnould is entitled to judgment in his favor of and that judgment may be entered against Mr. Muney in the amount of \$6,303.93.

65. Mr. Muney's Opposition failed to support his defenses to this particular claim.<sup>18</sup>

66. The Court further finds that any diversion of funds by Mr. Muney alleged by Mr. Arnould under any breach of fiduciary duty theory was addressed in the Receiver's equitable accounting and capital account adjustment set forth above.

67. As such, the Court finds that since Mr. Arnould prevailed on his accounting claim, his breach of fiduciary duty claim is moot.

**E. MR. MUNEY'S FIRST, FIFTH AND SIXTH CAUSES OF ACTION FAIL AS A MATTER OF LAW**

**1. Mr. Muney's First Cause of Action for Breach of Fiduciary Duty Fails**

68. Mr. Muney's first cause of action states that Mr. Arnould as co-owner and co-manager of an LLC, owed a fiduciary duty to Counter-Plaintiffs CES and Mr. Muney.

69. In Nevada, a claim for breach of a fiduciary duty requires, as a threshold, the existence of a fiduciary duty. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (listing the three elements of the claim) (citing *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 880-81 (9th Cir. 2007) (applying Nevada law)).

70. Under NRS Chapter 86, the only duties owed by a member or manager to the LLC or to any other member of the LLC are: (1) the implied contractual covenant of good faith and fair dealing; and (2) duties prescribed by the "articles of organization or the operating agreement." NRS 86.298.

71. Unlike Nevada's statutes covering corporations and partnerships, NRS Chapter 86 does not set out fiduciary duties owed by and between its members. *Cf.* NRS 78.138; NRS 87.210; *see also Ela v. Destefano*, 869 F.3d 1198, 1202 (11th Cir. 2017) (finding "persuasive the argument that '[w]here [a legislature] knows how to say something but chooses not to, its silence

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<sup>18</sup> See Opposition.

1 is controlling”) (quoting *Animal Legal Def. Fund v. U.S. Dep’t of Agriculture*, 789 F.3d 1206,  
2 1217 (11th Cir. 2015)).

3 72. NRS 86.286(5) provides:

4 If, and to the extent that, a member or manager or other person has duties to a  
5 limited-liability company, to another member or manager, or to another person  
6 that is a party to or is otherwise bound by the operating agreement, such duties  
7 may be expanded, restricted or eliminated by provisions in the operating  
8 agreement, except that an operating agreement may not eliminate the implied  
9 contractual covenant of good faith and fair dealing.

10 73. While members of an LLC can contract to fiduciary duties, such duties do not  
11 necessarily exist otherwise, aside from the implied contractual covenant of good faith and fair  
12 dealing. *See e.g. Israyelyan v. Chavez*, 466 P.3d 939 (Nev. 2020) (unpublished).<sup>19</sup>

13 74. Mr. Arnould owed no fiduciary duties to Muney and CES, because there was no  
14 operating agreement between the members of CES imposing fiduciary duties.

15 75. Therefore, Mr. Muney’s first cause of action fails as a matter of law and judgment  
16 is hereby entered against Mr. Muney and in favor of Mr. Arnould on this claim.

17 76. Mr. Muney’s Opposition failed to support this particular claim.<sup>20</sup>

18 **2. Mr. Muney’s Fifth Cause of Action for Constructive Fraud**

19 77. Mr. Muney states in his fifth cause of action for constructive fraud that Mr.  
20 Arnould owed a duty to Muney and CES to lawfully manage and disburse funds and assets  
21 belonging to CES.

22 78. “Constructive fraud is the breach of some legal or equitable duty which,  
23 irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others  
24 or to violate confidence.” *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982); *See*

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25 19 *See e.g. HP Tuners, LLC v. Cannata*, No. 318CV00527LRHWGC, 2019 WL 3848792, at \*4  
26 (D. Nev. Aug. 15, 2019) (holding that “unlike many states, Nevada does not impose any  
27 statutory fiduciary duties on members of LLCs”) (internal quotations omitted); *see e.g. In re*  
28 *Plyam*, 530 B.R. 456, 472 (9th Cir. B.A.P. 2015) (“Unlike California, Nevada does not have a  
statute equating the fiduciary duties of a manager in a limited liability company context to those  
of a partner in a partnership.”); *see e.g. JPMorgan Chase Bank, N.A. v. KB Home*, 632 F.Supp.2d  
1013, 1025–26 (D. Nev. 2009) (holding that Nevada allows the members of LLCs to decide  
whether to impose fiduciary duties on themselves through their operating agreement).

20 *See* Opposition, on file herein.

1 also, *Perry v. Jordan*, 111 Nev. 943, 946–47, 900 P.2d 335, 337 (1995). To legally maintain a  
2 claim, a plaintiff must establish that the defendant owed a legal duty “arising out of a fiduciary or  
3 confidential relationship.” *Perry*, 111 Nev. at 946–47, 900 P.2d at 337 (quoting *Long*, 98 Nev. at  
4 13, 639 P.2d at 529–30) (internal quotations omitted).

5 79. “A “confidential or fiduciary relationship” exists when one reposes a special  
6 confidence in another so that the latter, in equity and good conscience, is bound to act in good  
7 faith and with due regard to the interests of the one reposing the confidence.” *Id.* Thus, a legal or  
8 equitable duty is only imposed “where one party imposes confidence in the other because of that  
9 person's position, and the other party knows of this confidence.” *Mackintosh v. Jack Matthews &*  
10 *Co.*, 109 Nev. 628, 635, 855 P.2d 549, 553 (1993) (internal quotations and citations omitted).

11 80. As noted above, NRS Chapter 86 restricts the duties owed by a member and  
12 manager of an LLC to only the implied contractual covenant of good faith and fair dealing. *See*  
13 NRS 86.298 and 86.286(5); *see e.g. Israyelyan*, 466 P.3d at \*4. The Legislature intended for  
14 managers and members of an LLC to either opt-out of fiduciary duties, or to contractually agree  
15 to fiduciary duties by way of an operating agreement. *Id.*

16 81. The only relationship between Mr. Muney and Mr. Arnould was their relationship  
17 as equal co-owners and co-managers of CES.

18 82. Mr. Muney’s Counter-Complaint states that Mr. Arnould allegedly breached his  
19 duty as a business partner of Mr. Muney in his constructive fraud claim.

20 83. The only duties as to Mr. Arnould in Mr. Muney’s Counter-Complaint are the  
21 duties arising out of Mr. Arnould’s status as a member and co-manager CES.

22 84. But as noted above, Mr. Muney and Mr. Arnould owed no fiduciary duties to one  
23 another pursuant to NRS Chapter 86.

24 85. Therefore, Mr. Muney fifth cause of action fails as a matter of law and judgment  
25 is hereby entered against Mr. Muney and in favor of Mr. Arnould on this claim.

26 86. Mr. Muney’s Opposition failed to support this particular claim.<sup>21</sup>

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27  
28 21 *See* Opposition, on file herein.

1                   **3.     Mr. Muney's Sixth Cause Of Action For Fraudulent Concealment.**

2           87.     Mr. Muney's sixth cause of action is fraudulent concealment, and Mr. Muney  
3     alleged that Mr. Arnould had a duty to disclose all dealings to his partner, but instead  
4     intentionally concealed his acts.

5           88.     One of the essential elements in a fraudulent concealment case is that the  
6     defendant actually owed a duty to disclose a fact to the plaintiff. *Dow Chemical Co. v. Mahlum*,  
7     114 Nev. 1468, 1485 (1998), overruled in part on other grounds in *GES, Inc. v. Corbitt*, 117 Nev.  
8     265 (2001) (using the conjunction "and" in listing each element in listing all five elements of  
9     fraudulent concealment); *see also Couturier v. Am. Invsco Corp.*, 10 F.Supp.3d 1143, 1157 (D.  
10    Nev. 2014) (same); *Aliya Medcare Fin., LLC v. Nickell*, No. CV 14-07806 MMM (EX), 2015  
11    WL 11072180, at \*9 (C.D. Cal. Sept. 25, 2015) (same) (applying Nevada law).

12          89.     Mr. Muney and Mr. Arnould were the only members of CES, and CES and had no  
13    operating agreement that imposed duties on Mr. Muney.

14          90.     As explained above, NRS Chapter 86 restricts the duties owed by a member and  
15    manager of an LLC to only the implied contractual covenant of good faith and fair dealing. *See*  
16    NRS 86.298 and 86.286(5); *see e.g. Israyelyan*, 466 P.3d at \*4.

17          91.     Thus, Mr. Muney and Mr. Arnould owed no fiduciary duties to one another  
18    pursuant to NRS Chapter 86.

19          92.     Therefore, the Court finds that Mr. Arnould prevails against Mr. Muney on Mr.  
20    Muney's sixth cause of action.

21          93.     Mr. Muney's Opposition failed to support this particular claim.<sup>22</sup>

22           **F.     MR. MUNEY LACKS STANDING TO BRING HIS FIRST, SECOND,**  
23           **THIRD AND FOURTH CAUSES OF ACTION ON BEHALF OF CES**

24          94.     The substantive allegation undergirding Muney's first, second, third, and fourth  
25    causes of action is that Mr. Arnould made payments to himself that Muney deems improper, and  
26    that, accordingly, Mr. Arnould should return all of the funds to CES.

27     \_\_\_\_\_  
28    22 *Id.*

1           95.     There are no allegations by Mr. Muney that funds should be returned to Mr.  
2 Muney personally, but rather, Mr. Muney asks the Court for an order that Mr. Arnould repay  
3 CES.

4           96.     In general, standing “consists of both a case or controversy requirement stemming  
5 from Article III, Section 2 of the Constitution, and a subconstitutional prudential element.” *In re*  
6 *AMERCO Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations  
7 omitted).

8           97.     While “state courts do not have constitutional Article III standing, Nevada has a  
9 long history of requiring an actual justiciable controversy as a predicate to judicial relief.” *Id.*  
10 (internal quotation omitted). Thus, to pursue a legal claim, an “injury in fact” must exist. *Bennett*  
11 *v. Spear*, 520 U.S. 154, 167 (1997).

12           98.     The “injury-in-fact” analysis requires the claimant to show that the action caused  
13 or threatened to cause the claimant's injury-in-fact, and that the relief sought will remedy the  
14 injury. *See generally Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38-39 (1976). A person  
15 acting in their individual capacity is legally distinct from the same person acting in their  
16 representative capacity. *See Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 728, 380 P.3d  
17 836, 842 (2016).

18           99.     Mr. Muney’s Counter-Complaint requests that Mr. Arnould repay to CES all of  
19 the funds which Mr. Muney alleges were stolen, embezzled or in any other way wrongfully taken  
20 by Mr. Arnould. But all of the funds Mr. Muney refers to in each of his causes of action are CES  
21 funds.

22           100.    The Court finds that Mr. Muney lacks standing to recover CES’s funds requested  
23 by Mr. Muney in his second, third, and fourth claims and each are summarily dismissed as a  
24 matter of law.

25           101.    The Final Report by the Receiver also accounted for any funds that may have  
26 been owed to CES by Mr. Muney.

27           102.    Therefore, the Court finds that Mr. Arnould prevails against Mr. Muney on Mr.  
28 Muney’s second, third, and fourth Counter-Claims.

1 103. Mr. Muney's Opposition failed to support these particular claims.<sup>23</sup>

2 **G. MR. MUNEY LACKS STANDING TO BRING HIS CAUSES OF ACTION**  
3 **DERIVATIVELY ON BEHALF CES**

4 104. For each of Mr. Muney's counterclaims, he also included CES as a counter-  
5 plaintiff and purportedly brought those claims on behalf of CES.

6 105. Mr. Muney's counterclaims cannot be construed as a type of derivative suit on  
7 behalf of CES, because his Counter-Complaint fails to meet any of the requirements of a  
8 derivative suit under NRCP 23.1.

9 106. For cases concerning LLCs, a member or manager is only authorized to bring an  
10 action to enforce the rights of a limited-liability company "if the managers or members with  
11 authority to do so have refused to bring the action [i.e. demand] or if an effort to cause those  
12 managers or members to bring the action is not likely to succeed [i.e. futility]." NRS 86.483; *see*  
13 *also* NRS 86.587 (requiring this to plead with particularity).

14 107. In addition, the complaint must be verified and must allege that the plaintiff was a  
15 member at the time of the transaction of which the plaintiff complains or that the plaintiff's share  
16 or membership thereafter devolved on the plaintiff by operation of law. *See* NRCP 23.1. Unless  
17 the plaintiff fairly and adequately represents the interests of company, "[t]he derivative action  
18 may not be maintained..." *Id.* (emphasis added).

19 108. Mr. Muney's Counter-Complaint provides no allegations that would support a  
20 derivative claim.

21 109. Mr. Muney failed to verify his Counter-Complaint, failed to allege a demand or  
22 futility, and failed to allege how Mr. Muney fairly and adequately represents the interests of the  
23 company.

24 110. Accordingly, Mr. Muney lacks standing to derivatively bring his first, second,  
25 third, fourth, fifth, and sixth causes of action on behalf CES.

26 111. The Final Report by the Receiver also accounted for any funds that may have  
27 been owed to CES by Mr. Muney.

28 

---

23 *See* Opposition.

112. Therefore, Mr. Arnould prevails against Mr. Muney on all of his Counter-Claims allegedly brought by Mr. Muney on behalf of CES.

113. Mr. Muney's Opposition failed to support these particular claims.<sup>24</sup>

#### H. MR. MUNEY'S MOTION TO COMPEL IS UNTIMELY

114. A motion to compel, absent unusual circumstances, should be filed before the scheduled date for dispositive motions. *See e.g. Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999); *see e.g. Thurston v. City of North Las Vegas*, 2011 U.S. Dist. LEXIS 96619, 2011 WL 3841110 (D. Nev. 2011); *see e.g. Hall v. Schumacher*, 2011 U.S. Dist. LEXIS 108896, 2011 WL 4458845 (D. Nev. 2011); *see e.g. Rios v. Dollar General*, No. 2:15-cv-2056, 2017 U.S. Dist. LEXIS 3385 (D. Nev. Jan. 10, 2017).

115. "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quotation and citation omitted).

116. The Court finds that Mr. Muney's Motion to Compel was brought well after the close of discovery and after dispositive motions.

117. Therefore, the Court finds that Mr. Muney's Motion to Compel was untimely and is therefore denied.

September 10, 2021

Dated this 10th day of September, 2021

By: \_\_\_\_\_

*Nancy L. Alf*

DISTRICT COURT JUDGE

TW

459 1D1 404D FAD8

Approved as to form:  
Nancy Alf  
District Court Judge  
KERN LAW LTD.

Respectfully Submitted by:  
**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

By: /s/ Robert Kern

Robert Kern, Esq.  
Nevada Bar No. 10104  
601 S. 6th St.  
Las Vegas, Nevada 89101  
Attorneys for Defendants/Counter-Plaintiffs

24 See Opposition.

## Cally Hatfield

---

**From:** Robert Kern <robert@kernlawoffices.com>  
**Sent:** Friday, September 10, 2021 12:06 PM  
**To:** Cally Hatfield  
**Cc:** Alexander K. Calaway  
**Subject:** RE: [External] Arnould v. Munev - Findings of Fact and Conclusions of Law v.9.DOCX [IWOV-iManage.FID1085969]

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Robert Kern, Esq.  
Attorney  
Kern Law, Ltd.  
601 S. 6th Street  
Las Vegas, NV 89101  
(702) 518-4529 - phone  
(702) 825-5872 - fax  
[www.kernlawoffices.com](http://www.kernlawoffices.com)



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**To:** Robert Kern  
**Cc:** Alexander K. Calaway  
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Good morning Mr. Kern,

I have made the change. Please review the attached and let me know if I may attach your e-signature.

Thank you,



**Cally Hatfield** | Legal Assistant  
to Alexander K. Calaway, Esq.  
10001 Park Run Drive  
Las Vegas, NV 89145



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**From:** Robert Kern <[robert@kernlawoffices.com](mailto:robert@kernlawoffices.com)>  
**Sent:** Friday, September 10, 2021 9:56 AM  
**To:** Cally Hatfield <[chatfield@maclaw.com](mailto:chatfield@maclaw.com)>  
**Cc:** Alexander K. Calaway <[acalaway@maclaw.com](mailto:acalaway@maclaw.com)>  
**Subject:** RE: [External] Arnould v. Munev - Findings of Fact and Conclusions of Law v.9.DOCX [IWOV-iManage.FID1085969]

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Robert Kern, Esq.  
Attorney  
Kern Law, Ltd.  
601 S. 6th Street  
Las Vegas, NV 89101  
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(702) 825-5872 - fax  
[www.KernLawOffices.com](http://www.KernLawOffices.com)



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**Sent:** Thursday, September 9, 2021 4:19 PM  
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**Cc:** [Alexander K. Calaway](#)  
**Subject:** Arnould v. Munev - Findings of Fact and Conclusions of Law v.9.DOCX [IWOV-iManage.FID1085969]

Good afternoon Mr. Kern,

Please review the attached Findings of Fact and Conclusions of Law and let us know if we may use your e-signature.

Thank you,



**Cally Hatfield** | Legal Assistant  
to Alexander K. Calaway, Esq.

10001 Park Run Drive  
Las Vegas, NV 89145  
t | 702.202.1171  
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1 **CSERV**

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3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Dominique Arnould, Plaintiff(s) | CASE NO: A-19-803488-B  
7 vs. | DEPT. NO. Department 27  
8 Clement Muney, Defendant(s)

9  
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12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
14 case as listed below:

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18 Melissa Milroy	Admin@KernLawOffices.com
19 Candace Carlyon	ccarlyon@carlyoncica.com
20 Tracy O'Steen	tosteen@carlyoncica.com
21 Nancy Rodriguez	nrodriguez@carlyoncica.com
22 Cristina Robertson	crobertson@carlyoncica.com
23 Phillip Aurbach	PSA@maclaw.com
24 Javie-Anne Bauer	jbauer@maclaw.com
25 Alexander Calaway	acalaway@maclaw.com

26  
27  
28  
**RESP. APP056**

**Marquis Aurbach Coffing**  
Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Alexander K. Calaway, Esq.  
Nevada Bar No. 15188  
10001 Park Run Drive,  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
[paurbach@maclaw.com](mailto:paurbach@maclaw.com)  
[acalaway@maclaw.com](mailto:acalaway@maclaw.com)  
*Attorneys for Plaintiff/Counter-Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD, individually,

Plaintiff,

vs.

CLEMENT MUNEY; 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

**\$6,303.93 JUDGMENT IN FAVOR OF**  
**DOMINIQUE ARNOULD AND AGAINST**  
**CLEMENT MUNEY**

**MARQUIS AURBACH COFFING**  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**\$6,303.93 JUDGMENT IN FAVOR OF DOMINIQUE ARNOULD AND AGAINST  
CLEMENT MUNY**

Based upon the Findings of Fact and Conclusions of Law filed on September 10, 2021,  
and other good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED**  
that Judgment in the sum of \$6,303.93 in favor of Mr. Dominique Arnould and against Mr.  
Clement Muney be and hereby is entered.

September 14, 2021

Dated this 14th day of September, 2021

*Nancy L Alif*

TW

1B9 B36 6066 BF8F  
Nancy Alif  
District Court Judge

Respectfully Submitted by:  
**MARQUIS AURBACH COFFING**

Approved as to form:  
**KERN LAW LTD.**

By: /s/ Alexander 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*

By: /s/ Robert Kern  
Robert Kern, Esq.  
Nevada Bar No. 10104  
601 S. 6th St.  
Las Vegas, Nevada 89101  
*Attorneys for Defendants/Counter-  
Plaintiffs*

## Cally Hatfield

---

**From:** Robert Kern <[robert@kernlawoffices.com](mailto:robert@kernlawoffices.com)>  
**Sent:** Monday, September 13, 2021 6:45 PM  
**To:** Alexander K. Calaway <[acalaway@maclaw.com](mailto:acalaway@maclaw.com)>  
**Subject:** RE: [External] Judgment for \$6,303.93.DOCX [IWOV-iManage.FID1085969]

yes

Robert Kern, Esq.  
Attorney  
Kern Law, Ltd.  
601 S. 6th Street  
Las Vegas, NV 89101  
(702) 518-4529 - phone  
(702) 825-5872 - fax  
[www.Kernlawoffices.com](http://www.Kernlawoffices.com)



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**Sent:** Monday, September 13, 2021 6:38 PM  
**To:** [Robert Kern](#)  
**Cc:** [Phillip Aurbach](#); [Cally Hatfield](#); [Javie-Anne Bauer](#)  
**Subject:** Judgment for \$6,303.93.DOCX [IWOV-iManage.FID1085969]  
**Importance:** High

Good evening Mr. Kern,

Please advise if we may submit with you e-signature the attached judgment for \$6,303.93 pursuant to the FFCL filed on 9/10.

Regards,



**Alexander K. Calaway, Esq.**  
10001 Park Run Drive  
Las Vegas, NV 89145  
t | 702.207.6069  
f | 702.382.5816

[acalaway@maclaw.com](mailto:acalaway@maclaw.com)

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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Dominique Arnould, Plaintiff(s) | CASE NO: A-19-803488-B  
7 vs. | DEPT. NO. Department 27  
8 Clement Muney, Defendant(s)  
9

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18 Candace Carlyon	ccarlyon@carlyoncica.com
19 Tracy O'Steen	tosteen@carlyoncica.com
20 Nancy Rodriguez	nrodriguez@carlyoncica.com
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24 Alexander Calaway	acalaway@maclaw.com

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RESP. APP061