

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC.,

Appellants,

vs.

DOMINIQUE ARNOULD,

Respondent.

Supreme Court Case No: 83641, 83869

APPELLANT'S APPENDIX

VOLUME I

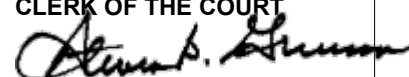
APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

Case No.:
Dept. No.:

vs.

Arbitration Exemption Requested:
(Declaratory Relief)

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

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

Defendants.

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 Munez (hereinafter Munez) 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. Munez and Chef Suppliers at all relevant times mentioned herein, were doing
business in Clark County, Nevada.

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

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

6 **JURISDICTION AND VENUE**

7 5. This Court possesses:

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

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

14 **BACKGROUND FACTS**

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

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

17 8. Chef Suppliers has no written operating agreement.

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

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

26 11. It has been impossible to get Munev to discuss his breach of fiduciary duties
27 including but not limited to forming a new entity and having payments for Chef Suppliers'
28

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

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

5 13. Arnould is a manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

Dated this 11th day of October, 2019.


MARQUIS AURBACH COFFING

By /s/ Phillip S. Aurbach
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Attorney(s) for Plaintiff

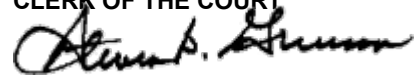
VERIFICATION

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**

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3 Nevada Bar Number 10104

4 **KERN LAW, Ltd.**

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10 Attorney for Defendants

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DOMINIQUE ARNOULD,

14 Plaintiff,

15 vs.

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

20 Defendants.

) Case Number: A-19-803488-B

) Dept. Number: 27

21 **ANSWER AND COUNTERCLAIMS**

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

24 Plaintiffs,

25 vs.

26 DOMINIQUE ARNOULD,

27 Defendant.

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

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

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

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

10
11 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

25 8. Plaintiff's damages are barred by its breach of fiduciary duties.
26
27
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1 9. Plaintiff has made allegations with knowledge of their actual falsity and therefore
2 said claim is violative of the rules of civil procedure and therefore the stated claims should
3 be dismissed.

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

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

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

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

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

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

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21 **COUNTER-CLAIM**

22 Against PLAINTIFF DOMINIQUE ARNOULD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 DATED this 7th day of November, 2019

KERN LAW

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

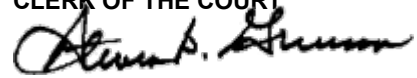
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CERTIFICATE OF SERVICE

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

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

/s/ Robert Kern
Employee of Kern Law



MSJ

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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

**DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

HEARING REQUESTED

COME NOW Defendants, CLEMENT MUNEY, (hereinafter "Muney"), and CHEF
EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC") by and through their undersigned
counsel Robert Kern, ESQ., of KERN LAW, Ltd. submit this Motion for Partial Summary
Judgment, regarding all of Plaintiff's claims, but excluding Defendants' counterclaims. This
motion is made pursuant to NRCP 56, and is based on the records and files of this case, the
attached memorandum and exhibits and any matters adduced at the hearing.

STATEMENT OF FACTS

The company Chef Exec LLC was formed by Clement Muney and Dominique
Arnould in 2007 for the purpose of selling imported and domestic goods to other businesses,
with Muney handling the securing of supply contracts and the Las Vegas portion of the

1 business, and Arnould handling the accounting and the Los Angeles side of the business.
2 Chefexec has no operating agreement in place. Chefexec operated smoothly and profitably
3 for its entire existence until Arnould announced that he wished to retire. The first significant
4 disputes between the partners did not occur until Arnould became frustrated that Muney
5 would not offer the buyout amount that he wanted, and was, upon information and belief,
6 unable to sell his interest in the company at a price he considered acceptable.
7

8 During the time that a buyout of Arnould was being discussed, the lease on the
9 company's Los Angeles warehouse came up for renewal, which required a personal
10 guarantee from both partners. Arnould renewed it in both of their names; Muney and
11 Arnould dispute whether Muney authorized Arnould to do so. Soon after, the lease on the
12 Las Vegas warehouse came up for renewal, and like the LA warehouse, the renewal
13 required a personal guarantee by both owners of the company. Muney asked for Arnould's
14 permission to renew the lease, and Arnould refused. Arnould, through his attorney at the
15 time, suggested that Muney lease the warehouse with a company that he owned entirely (so
16 that he would be the only owner required to guarantee the warehouse), and have that
17 company sub-lease the space to Chefexec (*See Exhibit 1*). Muney followed that advice, and
18 a separate company leased the space, and sub-leased it to Chefexec, at a rate that Muney
19 was advised was the standard rate for such storage in the area (*See Exhibit 2*). Muney has
20 not received any notice or allegations of having "taken money and diverted business
21 opportunities and customers" from Chefexec, beyond this warehouse lease.

22 Although the present dispute has arisen this year, a review of Chefexec business
23 records shows that its profits have increased this year over the previous year, and that it is
24 operating effectively, despite the dispute. Contrary to the sworn assertion in the verified
25 complaint, Arnould was fully aware of Muney's company CMJJ, as he was receiving checks
26 from CMJJ from 2006 onward (*See Exhibit 3*).

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **A. Summary Judgment Standard**

1 Summary judgment is appropriate when, as a matter of law, there is no
2 genuine issue as to any material fact. NRCP 56(c); *Prostack v. Songailo*, 97 Nev. 38, 40,
3 623 P.2d 978 (1981). In the case of *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026
4 (Oct. 20, 2005), the Nevada Supreme Court adopted the same standard employed by
5 the U.S. Supreme Court. The Court held:

7 Summary Judgment is appropriate under NRCP 56 when the
8 pleadings, deposition, answers to interrogatories, admissions, and
9 affidavits, if any, that are properly before the court demonstrate that
10 no genuine issue of material fact exists, and the moving party is
11 entitled to judgment as a matter of law. The substantive law controls
12 which factual disputes are material and will preclude summary
13 judgment; other factual disputes are irrelevant. A factual dispute is
14 genuine when the evidence is such that a rational trier of fact could
15 return a verdict for the nonmoving party.

16 *Id.* At 82-83. In so holding, the Court expressly rejected the “slightest doubt”
17 standard and reiterated that the nonmoving party “is not entitled to build a case on the
18 gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 84 (citations omitted).
19 Once the moving party has properly supported the motion, the burden shifts to the
20 nonmoving party to come forward with specific facts showing that a genuine issue for trial
21 exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct.
22 1348, 1356, 89 L.Ed.2d 538 (1986). “The mere existence of a scintilla of evidence in
23 support of the plaintiff’s position will be insufficient; there must be evidence on which the
24 jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252, 106 S.Ct. At 2512.
25 Muney wishes to make clear that this motion is for summary judgment on all claims raised
26 in the complaint, but not on Defendants’ counterclaims.

27 **B. Muney has not Breached any Fiduciary Duty.**

28 In Plaintiff’s complaint, the only acts alleged to be a breach of fiduciary duty are
Muney’s contracting with an outside entity (that he owns) for Las Vegas warehouse space,

1 and a vague allegation that “Arnould believes that Munev has taken money and diverted
2 business opportunities and customers from Defendant Chef Suppliers.” The complaint
3 contains no allegation that a fiduciary duty is owed to Arnould by Munev, and no statement
4 identifying what type of fiduciary duty is alleged to be violated. Based on context, Munev
5 will assume that Arnould is alleging the breach of a fiduciary duty owed between members
6 of an LLC.

7 The primary element that must be established for a breach of fiduciary duty claim is
8 the existence of a fiduciary duty. *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp.
9 2d 1152, 1162 (D. Nev. 2009). Unlike corporations or partnerships, LLCs involve very few
10 fiduciary duties absent those created by an operating agreement or other contract. They are
11 limited to the duty to make contributions to the LLC that the member agreed to pay, and to
12 hold as trustee any property that the member agreed to contribute to the company.
13 *JPMorgan Chase Bank, NA v. KB HOME*, 632 F. Supp. 2d 1013 (D. Nevada 2009); NRS
14 86.39. The Court in *JPMorgan Chase*, above, held that the presence of fiduciary duties in
15 the NRS chapters for partnerships and corporations, and the absence of such duties in
16 Chapter 86 for LLCs, was intentional, and clearly reflected a legislative intent not to apply
17 the same fiduciary duties to members of LLCs. “Generally, when the legislature has
18 employed a term or phrase in one place and excluded it in another, it should not be implied
19 where excluded.” *JPMorgan Chase Bank, NA v. KB HOME*, Id. In light of this, the
20 remaining question is whether either of the alleged acts constitute a violation of a duty to
21 make promised contributions to the LLC, or to hold in trust any property promised to the
22 LLC. Review of the allegations makes clear that they do not. The claim for breach of
23 fiduciary duty must therefore fail.

24 It seems likely that Arnould has confused the ‘corporate opportunity doctrine’ as
25 applying to LLCs. However, even if said doctrine did apply, Munev’s acts of offering the
26 opportunity to the LLC first, and charging a fair price for the space, make clear that the
27 doctrine would not have been violated even if it did apply. As discussed in the facts above,
28 Arnould had been a guarantor and signatory to the previous lease of the same space, and
was thus fully apprised of its terms and purpose. *See* Exhibit 4. Munev did not initially seek

1 to lease the space himself, but rather requested Arnould to continue the lease, as continuing
2 the lease required personal guarantees by both owners. Arnould explicitly refused to do so,
3 and through first one counsel, and then a second, advised Muney to sign a lease with a
4 different entity, and impliedly sub-lease the space to Chefexec. *See* Exhibit 1. It is thus
5 without question that Muney offered the opportunity to Chefexec, and that Arnould
6 explicitly rejected the opportunity.

7 The only other element of the opportunity doctrine that would apply (if the doctrine
8 applied to LLCs at all), is that the price charged be fair. The Nevada Supreme Court has
9 specifically held that a member of a corporation can lease a space and then sub-lease it to
10 the company, at a profit, absent “substantial profiteering.” *Pederson v. Owen*, 556 P. 2d
11 542, 543-544 (Nev: Supreme Court 1976); (“T-Car received just what it ordered, an
12 elaborate warehouse, for little more than the contractor's cost. Without more, in the
13 absence of a showing of substantial profiteering by Ready Mix, there is nothing in this
14 record to support the lower court's determination that the contract was unfair when it was
15 made.”). In the present case, Muney was required to personally guarantee a new lease, at an
16 increased rate due to the refusal to continue the previous lease. Muney asked a Las Vegas
17 commercial real estate professional what the market rate would be for such a sublease, and
18 he charged Chefexec less than the amount quoted. *See* Exhibit 2. It is thus clear that the rate
19 Muney charged is fair.

20 Finally, if this court were to apply corporate fiduciary duties (rather than those of an
21 LLC) to Muney, the business judgment rule would exempt him from liability, absent further
22 showing from Plaintiff. The business judgment rule “bars judicial inquiry into the actions of
23 corporate directors taken in good faith and in the exercise of honest judgment in lawful
24 furtherance of corporate purposes.” However misguided the business decision may be, the
25 rule protects directors from judicial review of the wisdom of that decision¹. *See Citron v.*

26 ¹ Most supporting law on this rule comes from Delaware courts, however this is in line
27 with Nevada precedent, as Nevada Courts typically look to these courts for guidance on
28 issues of corporate law, but the rule has been explicitly used in Nevada. (*Brown v.*
Kinross Gold USA, Inc., 531 F. Supp. 2d 1234 (D. Nevada 2008); (“Because the
Nevada Supreme Court frequently looks to the Delaware Supreme Court and the
Delaware Courts of Chancery as persuasive authorities on questions of corporation law,

1 *Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 64 (Del. 1989). The protections
2 afforded under the business judgment rule consist in part of the “presumption that the acts
3 of corporate directors are honest and in the best interests of the company.” *Horowitz*, 604 F.
4 Supp. at 1135 (citing *Foster v. Arata*, 74 Nev. 143, 325 P.2d 759,764 (1958)). According to
5 the Delaware Supreme Court, the business judgment rule operates as a procedural guide and
6 as a substantive rule of law. *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53,
7 64 (Del. 1989). “As a rule of evidence, it creates a ‘presumption that in making a business
8 decision, the directors of a corporation acted on an informed basis i.e., with due care, in
9 good faith and in the honest belief that the action taken was in the best interest of the
10 company.” *Id.* (quoting *Aronson v. Lewis, Del. Supr.*, 473 A.2d 805, 812 (1984)). By this
11 standard, Muney is entitled to a presumption that his decisions were proper, and in order to
12 survive summary judgment, Plaintiffs must overcome that presumption.

13 Ultimately, Chefexec is an LLC, not a partnership or corporation, and thus Muney is
14 not subject to any fiduciary duty that the allegations would support a violation of. Further,
15 Muney's actions were clearly fair, as he was blocked from leasing necessary warehouse
16 space by Arnould, and instructed to get the space with an entity he owned himself. Arnould
17 ca not now say it was a breach of duty to do what Arnould himself instructed Muney to do.
18 As to the allegation that “Muney has taken money and diverted business opportunities and
19 customers from Defendant Chef Suppliers,” in order to survive summary judgment, Arnould
20 must provide more than a boilerplate statement, and must specify exactly what other
21 breaches Muney is accused of. With no indication of improper acts, and no fiduciary duty
22 established, it is clear that there is no issue of fact necessary to find that the claim for breach
23 of fiduciary duty fails.

24
25
26 this Court often looks to those sources to predict how the Nevada Supreme Court would
27 decide the question.”); Nevada Courts: *Shoen v. SAC Holding Corp.*, 137 P. 3d 1171
28 (Nev: Supreme Court 2006) *Shoen v. AMERCO*, 885 F.Supp. 1332, 1341. n. 20
(D.Nev.1994); *see also Hilton Hotels Corp. v. ITT Corp.*, 978 F.Supp. 1342, 1347
(D.Nev,1997).

1 **C. The Circumstances do not Meet the Standard for Judicial Dissolution or**
2 **Appointment of a Receiver.**

3 A review of the evidence makes clear that dissolution of the company was Arnould's
4 goal even prior to any alleged wrongdoing by Muney. *See* Exhibit 1² (Letters demanding
5 dissolution sent on July 25 and August 7; Arnould stated he first became aware of the new
6 lease on October 1). As Arnould wants to be bought out at better terms than what he was
7 able to negotiate through proper channels, he is seeking to manufacture a dispute to allow
8 him to more profitably cash out. *See* Exhibit 5 (June 26 email from Arnould asking for
9 company to be split).

10 Nevada law only allows judicial dissolution and appointment of a receiver as an
11 extreme remedy of last resort, when there is no other remedy at law. Further, it is only
12 available when continued operation of the LLC's business is "no longer reasonably
13 practicable." NRS 86.495. While Nevada courts have not established a more thorough
14 definition of "reasonably practicable, looking to Delaware courts, as Nevada Courts
15 typically do for issues of corporate law³, we see that the business must be without any
16 reasonable ability to carry on. The Delaware Court of Chancery explained::

17 Dissolution of an entity chartered for a broad business purpose remains
18 possible upon a strong showing that a confluence of situationally specific
adverse financial, market, product, managerial, or corporate governance
circumstances make it nihilistic for the entity to continue"

19 *Matter of Arrow Inv. Advisors, LLC*, 2009 WL 1101682, *2 (Del. Ch. 2009). That court
20 went on to explain that as a remedy of last resort, judicial dissolution and receivership is not
21 appropriate as a response to allegations of breaches of fiduciary duty, and was so deficient
22 as to warrant dismissal:

23 ²Previous attorney Gershuni on July 25 "...the process which I previously proposed, which
24 is a dissolution of the LLC..."; Current attorneys on August 7: "The purpose of this letter is
25 to notify you that we have been retained to dissolve the Company. The dissolution will
26 occur in one of two ways: (1)the parties will either work together to obtain a speedy and
27 amicable dissolution internally, which will be much more cost efficient; or (2) we will
28 unilaterally seek to dissolve the Company by judicial action whereby the terms of such
dissolution will be decided under Nevada law." "If we do not receive a written response
from you by this date, we will initiate judicial action to dissolve the Company as set forth
herein.

³ *Brown v. Kinross Gold USA, Inc.*, 531 F. Supp. 2d 1234 (D. Nevada 2008).

1 Here, Hamman has failed to allege that Arrow is not operating in
2 accordance with the broad purposes set forth in its LLC agreement.
3 Moreover, I will not entertain a claim for dissolution premised on
4 unproven breaches of fiduciary duty. Dissolution is an extreme remedy to
5 be applied only when it is not longer reasonably practicable for the
6 company to operate in accordance with its founding documents, not as a
7 response to fiduciary or contractual violations for which more appropriate
8 and proportional relief is available.

9 Id. Just as in that case, Plaintiff has pled a pretextual breach of fiduciary duty (as shown
10 above), and demanded an extreme remedy of last resort from this Court. *Bedore v.*
11 *Familian*, 125 P. 3d 1168 (Nev. Supreme Court 2006); (Where taking excess salary and
12 usurping corporate opportunity was alleged, receivership and dissolution not warranted);
13 *Gottier's Furniture, LLC v. La Pointe*, No. CV040084606S, 2007 WL 1600021 (Conn.
14 Super. May 16, 2007); (declining defendant member's request to appoint receiver to wind
15 up affairs of LLC inasmuch as defendant member had misappropriated LLC funds and had
16 unclean hands, and, alternatively, because dissolution receivership is extraordinary remedy
17 that is not warranted merely based on dissension of members or financial difficulty).

18 It is clear from the law that in order to demand receivership and dissolution, Plaintiff
19 must plead and prove that the business is no longer able to effectively operate. Plaintiff has
20 not pled facts to support such an allegation, nor can he. Business records of the company
21 show that this year, the year of the present dispute, ChefExec is making 73% more profit
22 than it did the previous year. *See* Exhibit 6. This is possible despite disagreements because
23 Muney and Arnould have always each run their own city's branch of the company. Thus
24 while they may disagree, and such disagreements may cause issues, they do not prevent the
25 company from operating.

26 Regarding Plaintiff's demand for an accounting, this is a remedy rather than a claim,
27 and can not stand if the other claims fail. A claim for accounting must be "tethered to
28 relevant actionable claims." *Simon v. Bank of America, N.A.*, Case No. 10-cv-00300-GMN-
LRL, 2010 WL 2609436, *11 (D. Nev. 2010); *Hafiz v. GreenPoint Mortgage Funding, Inc.*,
652 F.Supp.2d 1039, 1043-44 (N.D.Cal.2009).

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III.

CONCLUSION

In its complaint, Plaintiff has raised two causes of action; Breach of Fiduciary Duty and Judicial Dissolution/Appointment of a Receiver. As shown above, there is no fiduciary duty Munez is in Breach of, and there are no alleged facts that would justify judicial dissolution or appointment of a receiver in this matter. None of these issues are subject to any dispute of material fact, and thus summary judgment should be granted as to the claims in Plaintiff's complaint.

DATED this 9th day of December, 2019

KERN LAW

By: /s/ Robert Kern /s/
Robert Kern, Esq.
601 S. 6th Street
Las Vegas, NV 89101
(702) 518-4529
Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December 2019, I served a true and correct copy of the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT**, pursuant to NRCF 56, by electronic service, addressed to the following:

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

/s/ Robert Kern
Employee of Kern Law

EXHIBIT 1



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 207-6086
DIRECT FAX: (702) 856-8986
EMAIL: JPEEL@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
MICAH S. ECHOLS
TYE S. HANSEEN
LIANE K. WAKAYAMA
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT
CHRISTIAN T. BALDUCCI

JARED M. MOSER
JONATHAN B. LEE
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL S. TYGRET
JORDAN B. PEEL
TOM W. STEWART
JAMES A. BECKSTROM
EMILY D. ANDERSON
COLLIN M. JAYNE

JOHN M. SACCO
LANCE C. EARL
WILLIAM P. WRIGHT
TROY R. DICKERSON
BRIAN R. HARDY
OF COUNSEL

August 7, 2019

Via Email and Regular Mail

Clement Muney
151 Augusta St.
Henderson, NV 89074
clement@chefexecsuppliers.com

Re: CHEF EXEC SUPPLIERS, LLC - Dissolution
Our File No. 15755-001

Dear Mr. Muney:

Our firm represents Dominique Arnould ("Dominique") with respect to CHEF EXEC SUPPLIERS, LLC, a Nevada limited liability company (the "Company"), in which you and Dominique are both Managing Members each owning fifty percent (50%) of the total membership interests in the Company. The purpose of this letter is to notify you that we have been retained to dissolve the Company. The dissolution will occur in one of two ways: (1) the parties will either work together to obtain a speedy and amicable dissolution internally, which will be much more cost efficient; or (2) we will unilaterally seek to dissolve the Company by judicial action whereby the terms of such dissolution will be decided under Nevada law. It is Dominique's desire to dissolve the Company internally and amicably; however, if that is not possible, we are prepared to initiate judicial action.

If judicial action is required, the district court will dissolve the Company in accordance with the requirements set forth in Nevada Revised Statutes ("NRS") Chapter 86, which are as follows: (1) the Company's liabilities will be paid in the following order (a) to the Company's creditors (accounts payable, leasehold interests, and other general Company debt), and (b) to the Company's members in the amount of their capital contributions; and (2) the Company's assets will be distributed to the members in accordance with the percentage of their respective ownership interest. Please note that a court-ordered dissolution, under Nevada law, will not require any member to be bound by obligations of non-competition, non-solicitation of suppliers or customers, or any other restrictive covenant. Instead, it will be a simple and straightforward payment of debts and division of assets.

As a result of the foregoing, Dominique will not agree to dissolution terms that require the parties to be bound by terms and conditions that are more restrictive than what the parties would otherwise obtain by court action (e.g., non-competition and non-solicitation covenants). In any event, distribution to Dominique of his respective share of the Company's assets would not even constitute separate consideration for any such covenants, thus rendering them unenforceable. Continuing to demand that the parties agree to such unnecessary restrictions will force us to seek a court-ordered dissolution under Nevada law, as set forth above, and only cause both parties to incur court costs and

legal fees unnecessarily. To that end, it is proposed that the parties agree to an amicable dissolution based on the following terms and conditions:

1. **Liabilities.** The Company's debts and creditors are to be paid in full.
2. **Las Vegas Lease.** The lease cannot be renewed and must expire in September 2019. If any party desires to enter into a new lease at this location, that party must do so on its own accord—meaning, that party must form a new entity to enter into a new lease and shall not use or purport to use the other party as a guarantor.
3. **Los Angeles Lease.** Either (a) terminate the lease and buy out the remaining term from the landlord using Company funds, or (b) if any party desires to enter into a new lease at this location, that party must do so on its own accord—meaning, that party must form a new entity to enter into a new lease and shall not use or purport to use the other party as a guarantor.
4. **Accounts Receivable.** Both parties shall actively pursue collection of all the Company's accounts receivable. The proceeds of such collection shall be divided equally, i.e., 50-50, between the parties.
5. **Sales Commissions.** The sales commissions earned by but not paid to the applicable sales representative shall be paid to such representative in the Company's ordinary course of calculating and paying such commissions.
6. **Assets.** The Company's remaining assets (cash, equipment and inventory) shall be divided equally, i.e., 50-50, between the parties either in cash or in kind. Formal appraisals will be obtained to determine the value of any asset that is not mutually agreed upon by the parties, the cost of which would necessarily reduce the amount of remaining assets available for distribution.

Please respond to this letter in writing no later than 3:00 p.m. Nevada time on August 14, 2019. If we do not receive a written response from you by this date, we will initiate judicial action to dissolve the Company as set forth herein. Please also note that our client reserves all of his rights with respect to the Company and his membership interest therein, none of which are waived. Thank you in advance for your prompt attention to this urgent matter.

Sincerely,

MARQUIS AURBACH COFFING



Jordan B. Peel, Esq.

JBP:jbp
cc: Client

MAC:15755-001 3807100 3 8/7/2019 2:53 PM

Re: Chef Exec Suppliers LLC

Robert Kern

Fri 12/6/2019 12:58 PM

From: Gregory Gershuni <ggershuni@aol.com>

Subject: Re: Chef Exec Suppliers LLC

Date: July 25, 2019 at 2:15:44 PM PDT

To: clement@chefexecsuppliers.com

Cc: dominique@chefexecsuppliers.com, domiarnould@yahoo.com

Dear Clement,

Thanks for your reply.

You ask about the effect of the operating agreement. Please provide me with a fully executed (i.e., signed by both you and Dominique) copy of the operating agreement and I can then review it and give you my comments in response to your questions.

I agree that selecting an appraiser should be a relatively simple process. I also believe that you and Dominique would be agreeable to your respective interests in the company being valued at 50% of the appraised value of all assets, tangible and intangible. However, to carry out the process which I previously proposed, which is a dissolution of the LLC and winding up of its affairs, with the physical assets being allocated between you both according to the appraiser's valuation after all liabilities are satisfied, going forward should be simple. It is my understanding that each of you would be entitled to 50% of the inventory in each location and each of you would be entitled to 50% of the equipment in each location. Ultimately the two of you might agree on some variations in this regard, but if we can memorialize the fundamental terms of this dissolution, we can then get on with the process of selecting an appraiser.

As for your concern regarding the Las Vegas lease renewal in September, I will recommend that you form a new entity to be the lessee to take over the Las Vegas lease when it comes up for renewal in September. You would be the sole member of that new entity (or perhaps partner with someone else?) and Dominique, not being a principal of your new entity, would not be required to sign the new Las Vegas lease.

Would you like me to draft the proposed dissolution agreement? Please let me know ASAP.

Kindest personal regards,

Gregory Gershuni

Gregory Gershuni

Attorney at Law

THE **GERSHUNI** LAW FIRM

0031

11377 West Olympic Blvd., Suite 521
Los Angeles, California 90064
(310) 474-6300 Office
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Integrity is Everything

This message is intended only for the use of the entity to which it is addressed, and may contain information that is privileged, confidential. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivery of the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

-----Original Message-----

From: Clement Muney <clement@chefexecsuppliers.com>
To: Gregory Gershuni <ggershuni@aol.com>
Cc: Clement Chef Exec <clement@chefexecsuppliers.com>; dominique <dominique@chefexecsuppliers.com>; domiarnould@yahoo.com <domiarnould@yahoo.com>
Sent: Wed, Jul 24, 2019 6:34 pm
Subject: Re: Chef Exec Suppliers LLC

Gregory,

Thank you for your email. To go forward, I think I need a better understanding of the situation.
Can you tell me, does the operating agreement allow for unilateral dissolution on Dominique's part? Does it allow him to sell his voting interest in the company to another party without my consent? I'm just wondering where the contracts stand on all this.

Regardless of those answers, I think if we can agree on a selection method for an appraiser, and Dominique will accept the appraised value of 50% (representing his half of the company) of the total cost value of all inventory and the appraised value of physical assets, then we will have an agreement.

I do have another concern however, which is that the Las Vegas lease comes up for renewal in September. They will likely not allow renewal without signature from all principals of the company. What do you propose we do there?

Sincerely yours

Clement

On Jul 24, 2019, at 3:40 PM, Gregory Gershuni <ggershuni@aol.com> wrote:

Dear Clement,

It's been a couple of days since I last wrote to you. Kindly afford me the courtesy of a reply.

Kindest personal regards,

Gregory Gershuni

Gregory Gershuni

Attorney at Law

THE **GERSHUNI** LAW FIRM

11377 West Olympic Blvd., Suite 521

Los Angeles, California 90064

0032

EXHIBIT 2

Fwd: PROPERTY LEASE RATES

clement MUNEY

Tue 10/15/2019 4:30 PM

To: Robert Kern <robert@kernlawoffices.com>

Cc: clement MUNEY <cmuney1@yahoo.com>; Jeremy Muney <jeremymuney@yahoo.com>

FYI

I took this quote

we have 7745 sqft ware house *1.25\$ = 9681.25

+ Cam=1210\$

So a total opf \$10,891.25 per month

I am billing \$10,790 per month with CMJJ Gourmet Inc. to Chef Exec Suppliers LLC

Begin forwarded message:

From: GENE PROCTOR <proctorsnogamble@gmail.com>

Subject: Re: PROPERTY LEASE RATES

Date: August 14, 2019 at 6:53:09 PM PDT

To: Clement Muney <clement@chefexecsuppliers.com>

The rate with cams would increase to \$11,280.

On Wed, Aug 14, 2019 at 3:50 PM Clement Muney <clement@chefexecsuppliers.com> wrote:

Hello Gene,

Thank you for your email

With the "cam" like we have right now with Chef Exec Suppliers LLC, on our warehouse on Quail that you know, what total price would we looking at please all included on a month to month?

Thank you for your help

Clement Muney

(702) 340 8697

Sent from my iPhone

On Aug 14, 2019, at 15:43, GENE PROCTOR <proctorsnogamble@gmail.com> wrote:

Clement,

The industrial property inventory is quite limited in Las Vegas right now. The per square foot rate increased 30% last year. The 8,000 square foot space you inquired about leases for \$1.00 psf but there is a 25% premium for a month to month lease bringing the rate to \$1.25 psf or a total of \$10,000 per month. Let me know if you have any other questions.

--

Gene Proctor Jr.
Licensed Since 1998
Commercial Leasing Specialist
"Proctor's No Gamble"
proctorsnogamble@gmail.com
Coldwell Banker Premier
[8290 W. Sahara Ave., Suite 100](#)
[Las Vegas, NV 89117](#)
Cell 702.762-0917

--

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EXHIBIT 3

CMJJ GOURMET Inc.
Vendor QuickReport
 All Transactions

Type	Date	Num	Memo	Account	Clr	Split
Dominique Arnoud						
Check	01/30/2006	1521		Citibank	X	Advertising
Check	08/19/2006	1603		Citibank	X	Advertising
Check	02/12/2007	1300		Citibank	X	Advertising
Check	07/06/2007	1383		Citibank	X	Advertising
Check	01/21/2008	1685		Citibank	X	Advertising
Check	07/08/2008	1778		Citibank	X	Advertising
Check	09/21/2009	1953		Citibank	X	Commissions P...
Bill	02/13/2012	02132...		Accounts Payable		Commissions P...
Bill Pmt -Check	02/13/2012	5270		Citibank	X	Accounts Paya...
Check	09/26/2012	5329		Citibank	X	Commissions P...
Bill	08/04/2013	08042...		Accounts Payable		Commissions P...
Bill Pmt -Check	08/15/2013	3347		Citibank	X	Accounts Paya...
Check	08/15/2014	5440		Citibank	X	Commissions P...
Check	09/10/2016	5662		Citibank	X	Commissions P...

12:07 PM

12/06/19

CMJJ GOURMET Inc.
Vendor QuickReport
All Transactions

Amount

-182.66
-252.68
-359.35
-1,033.93
-815.50
-484.40
-181.00
-269.16
-269.16
-558.96
-629.50
-629.50
-520.60
-660.60

EXHIBIT 4

LEASE AGREEMENT
(Net)

THIS LEASE AGREEMENT ("Lease") is made between Trustees Under the Testamentary Trust of Helen Director, Deceased ("Landlord"), and Chef Exec Suppliers, LLC, a Nevada limited liability company ("Tenant"), dated for reference purposes only, as September 18, 2014 (the "date of this Lease").

BASIC LEASE INFORMATION

DESCRIPTION OF PREMISES: 3655 West Quail Avenue, Suite C, Las Vegas, Nevada 89118, (the Premises as shown on Exhibit A), consisting of approximately 7,745 square feet within Building 3655 West Quail Avenue (the "Building") of Landlord's multi-tenant development known as 3655 West Quail Avenue (the "Project" as shown on Exhibit A1). "Tenant's Proportionate Share" of the Project is 18.449%.

PERMITTED USE: Warehouse for storage, and distribution of restaurant supplies and related uses, and for no other purpose.

INITIAL LEASE TERM: Sixty (60) months

EARLY OCCUPANCY DATE: September 22, 2014

COMMENCEMENT DATE (ANTICIPATED): October 1, 2014

EXPIRATION DATE: September 30, 2019

BASE RENT, OPERATING EXPENSES AND SECURITY DEPOSIT:

- | | |
|--|--|
| (a) Base Rent due pursuant to Paragraph 3: | (b) Tenant's Proportionate Share of First Year
Estimated Operating Expenses pursuant to
Paragraph 4.2: \$983.62 per month thereafter |
| October 1, 2014 through September 30, 2015 | \$2,250.00 per month* |
| October 1, 2015 through September 30, 2016 | \$2,350.00 per month |
| October 1, 2016 through September 30, 2017 | \$2,450.00 per month |
| October 1, 2017 through September 30, 2018 | \$2,550.00 per month |
| October 1, 2018 through September 30, 2019 | \$2,650.00 per month |
- *See Exhibit F for Concession

- (c) Security Deposit pursuant to Paragraph 6:
\$3,633.62.

NOTICE TO LANDLORD:
ADDRESSES: Trustees Under the Testamentary Trust
of Helen Director, Deceased
c/o Harsch Investment Properties
3111 South Valley View Blvd., Suite K-101
Las Vegas, Nevada 89102
Attn: Property Manager
Fax: (702) 368-2930

TO TENANT:
Chef Exec Suppliers, LLC
151 Augusta Street
Henderson, Nevada 89074
Attn: Clement Muncy
Phone: (702) 914-8442
Email: cmuncy@cox.com

BILLING AND TO LANDLORD:
PAYMENT 3655 W. Quail Avenue
ADDRESSES: Unit No. 99
P O Box 4900
Portland, Oregon 97208- 4900

TO TENANT:
Chef Exec Suppliers, LLC
151 Augusta Street
Henderson, Nevada 89074
Attn: Clement Muncy
Phone: (702) 914-8442
Email: cmuncy@cox.com

TENANT'S TAXPAYER ID #: 26-0729551

GUARANTOR: N/A (If any, see Exhibit G)

TENANT CONTACT: Name: Clement Muncy Telephone: (702) 914-8442 Email: cmuncy@cox.com

IN WITNESS WHEREOF, the parties have executed this Lease, effective the date first written above. The Lease consists of Paragraphs 1 through 30 (the "Standard Lease Provisions") and Exhibits A (Premises), A-1 (Project), B (Insurance), C (Sign Criteria), C-1 (Signage Specifications), D (Tenant Improvements - Intentionally Omitted), E (Rules & Regulations) F (Further Provisions), G (Guaranty of Lease - Intentionally Omitted) and Exhibit H (Hazardous Materials Questionnaire) (all of which are incorporated herein by this reference (collectively, this "Lease"). In the event of any conflict between the provisions of the Basic Lease Information and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control.

STANDARD LEASE PROVISIONS
(Net)

1. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to the following terms and conditions, the Premises located in the Project and described in the Basic Lease Information and shown on the attached **Exhibit A**. Landlord reserves the right to make such changes, additions and/or deletions to the Project and/or the common areas and parking or other facilities thereof as it shall determine from time to time. Tenant acknowledges that neither Landlord (nor any employee or agent of Landlord) has made any representation or warranty with respect to the suitability or use of the Premises or Project for Tenant's intended Permitted Use or operations. Landlord shall have no liability to Tenant whatsoever in the event Tenant cannot conduct its Permitted Use and/or intended operations in the Premises and in addition to any other requirements set forth in the Lease, Tenant shall be solely responsible for any and all costs that relate or pertain to alterations necessary or appropriate to make the Premises comply with any codes, regulations, laws or ordinances for such Permitted Use or operations.

2. **Term.**

2.1 Unless delayed or sooner terminated in accordance herewith, the term of this Lease (the "**Term**") shall be as set forth in the Basic Lease Information. If the Term Commencement Date is not the first day of a calendar month, there shall be added to the Term the partial month ("**Partial Lease Month**") from the Term Commencement Date through the last day of that calendar month containing the Term Commencement Date.

2.2 The Term shall commence as specified in the Basic Lease Information on the Scheduled Term Commencement Date unless the Landlord has not delivered the Premises to Tenant by that date. In the latter event, the Term Commencement Date shall be the earlier of the date Landlord delivers the Premises to Tenant or the date Tenant takes possession or commences use of any portion of the Premises for any business purpose. If this Lease contemplates the construction of tenant improvements in the Premises by Landlord, Landlord shall be deemed to have delivered the Premises to Tenant on the date set forth by **Exhibit D**. Tenant acknowledges that Tenant has inspected and accepts the Premises in their present condition, "AS-IS" (WITH ALL FAULTS), except for tenant improvements (if any) to be constructed by Landlord in the Premises.

2.3 This Lease shall be a binding contractual obligation upon mutual execution and delivery hereof by Landlord and Tenant, notwithstanding the later commencement of the Term. If the Term Commencement Date is delayed, this Lease shall not be void or voidable, the Term shall not be extended (except as provided in Paragraphs 2.1 & 2.2, and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom; provided that Tenant shall not be liable for any Rent for any period prior to the Term Commencement Date unless the delay is caused by Tenant.

2.4 Upon mutual execution and delivery of this Lease and receipt by Landlord of monies due, satisfactory evidence of Tenant's compliance with the insurance provisions of the Lease and Landlord's written approval, Tenant may be permitted to occupy the Premises prior to the Term Commencement Date to install furniture, fixtures and the like. Early occupancy shall not advance the expiration date of the Lease and no Base Rent shall be payable, but Tenant shall be responsible for any separately metered utility usage and bound by all other provisions of the Lease, including, without limitation, Additional Rent. During any early occupancy or other period in which Landlord and Tenant are simultaneously occupying and/or performing work in the Premises, Landlord shall resolve any conflicts as to scheduling, access or related issues.

3. **Rent; Payment of Additional Rent; Operating Expenses.**

3.1 Subject to the provisions of this Paragraph 3, Tenant shall pay during the Term as rent for the Premises the sums specified in the Basic Lease Information (as increased from time to time as provided in the Basic Lease Information or as may otherwise be provided in this Lease) (the "**Base Rent**"). Base Rent shall be payable in consecutive monthly installments, in advance, without prior notice, demand, deduction or offset, commencing on the Term Commencement Date and continuing on the first day of each calendar month thereafter, except that the first full monthly installment of Base Rent shall be payable upon Tenant's execution of this Lease. If the Term Commencement Date is not the first day of a calendar month, then the Base Rent for the Partial Lease Month shall be prorated based on the actual number of days of that month, and shall be payable on the first day of the calendar month following the Term Commencement Date.

3.2 All monies to be paid by Tenant hereunder, including Tenant's Proportionate Share of Operating Expenses as specified in Paragraph 4 (estimated and/or revised), and all other amounts, fees, payments or charges payable hereunder by Tenant (collectively, "**Additional Rent**"), together with Base Rent, shall (i) each constitute rent payable hereunder (and shall sometimes collectively be referred to herein as "**Rent**"), (ii) be payable to Landlord in lawful money of the United States when

due without any prior demand therefor, except as may be expressly provided to the contrary herein, (iii) be payable to Landlord at Landlord's Payment Address set forth in the Basic Lease Information or to such other person or to such other place as Landlord may from time to time designate in writing to Tenant, and (iv) if applicable, be prorated based upon the actual number of days for any partial month.

4. Operating Expenses.

4.1 **Operating Expenses.** In addition to the Base Rent required to be paid hereunder, Tenant shall pay as Additional Rent, Tenant's Proportionate Share of the Building and/or Project (as applicable), as defined in the Basic Lease Information, of Operating Expenses in the manner set forth below. Landlord and Tenant acknowledge that if the number of buildings which constitute the Project increases or decreases, or if physical changes are made to the Premises, Building and/or Project or the configuration of any thereof, Landlord may at its discretion adjust Tenant's Proportionate Share of the Building and/or Project to reflect the change. Landlord's determination of Tenant's Proportionate Share of the Building and/or Project shall be conclusive absent manifest error. "Operating Expenses" shall mean all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay, because of or in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Building and/or Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Building and/or Project other than those expenses and costs which are specifically attributable to Tenant or which are expressly made the financial responsibility of Landlord pursuant to this Lease. Operating Expenses shall also include, but are not limited to, the following:

4.1.1 **Taxes.** All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, and other impositions, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind (including fees "in-lieu" of any such tax or assessment) which are now or hereafter assessed, levied, charged, confirmed, or imposed by any public authority upon the Landlord, Building, or the Project, its operations or the Rent (or any portion or component thereof), or any tax, assessment or fee imposed in substitution, partially or totally, of any of the above. Operating Expenses shall also include any taxes, assessments, reassessments, or other fees or impositions with respect to the development, leasing, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, Building or Project or any portion thereof, including, without limitation, by or for Tenant, and all increases therein or reassessments thereof whether the increases or reassessments result from increased rate and/or valuation (whether upon a transfer of the Building or Project or any portion thereof or any interest therein or for any other reason). Operating Expenses shall not include inheritance or estate taxes imposed upon or assessed against the interest of any person in the Project, or taxes computed upon the basis of the net income of any owners of any interest in the Project. If it shall not be lawful for Tenant to reimburse Landlord for all or any part of such taxes, the monthly rental payable to Landlord under this Lease shall be revised to net Landlord the same net rental after imposition of any such taxes by Landlord as would have been payable to Landlord prior to the payment of any such taxes.

4.1.2 **Insurance.** All insurance premiums and costs, including, but not limited to, any deductible amounts, premiums and other costs of insurance incurred by Landlord, including for the insurance coverage required under Paragraph 11.1 below.

4.1.3 **Common Area Maintenance.**

4.1.3.1 Repairs, replacements, and general maintenance of and for the Building and Project and public and common areas and facilities of and comprising the Building and Project, including, but not limited to, the roof and roof membrane, elevators, mechanical rooms, alarm systems, pest extermination, landscaped areas, parking and service areas, driveways, sidewalks, truck staging areas, rail spur areas, fire sprinkler systems, sanitary and storm sewer lines, utility services, heating/ventilation/air conditioning systems, electrical, mechanical or other systems, telephone equipment and wiring servicing, plumbing, lighting, and any other items or areas which affect the operation or appearance of the Building or Project, which determination shall be at Landlord's discretion, except for: those items to the extent paid for by the proceeds of insurance; and those items attributable solely or jointly to specific tenants of the Building or Project.

4.1.3.2 Repairs, replacements, and general maintenance shall include the cost of any improvements made to or assets acquired for the Project or Building that in Landlord's discretion may reduce any other Operating Expenses, including present or future repair work, are necessary for the health and safety of the occupants of the Building or Project, or for the operation of the Building systems, services and equipment, or are required to comply with any Regulation, such costs or allocable portions thereof to be amortized over such reasonable period as Landlord shall determine, together with interest on the unamortized balance.

4.1.3.3 Payment under or for any easement, license, permit, operating agreement, declaration, restrictive covenant or instrument relating to the Building or Project.

4.1.3.4 All expenses and rental related to services and costs of supplies, materials and equipment used in operating, managing and maintaining the Premises, Building and Project, the equipment therein and the adjacent sidewalks, driveways, parking and service areas, including, without limitation, expenses related to service agreements regarding security, fire and other alarm systems, janitorial services to the extent not furnished by Tenant under Paragraph 7.2 hereof, window cleaning, elevator maintenance, Building exterior maintenance, landscaping and expenses related to the administration, management and operation of the Project.

4.1.3.5 The cost of supplying any services and utilities which benefit all or a portion of the Premises, Building or Project to the extent not furnished by Tenant under Paragraph 7.2 hereof.

4.1.3.6 Legal expenses and the cost of audits by certified public accountants; provided, however, that legal expenses chargeable as Operating Expenses shall not include the cost of negotiating leases, collecting rents, evicting tenants nor shall it include costs incurred in legal proceedings with or against any tenant or to enforce the provisions of any lease.

4.1.3.7 A management fee equal to five percent (5%) of the sum of the Landlord's effective gross income from the Project which consists of the gross rents charged the tenants of the Project plus expense reimbursements and other operating income.

If the rentable area of the Building and/or Project is not fully occupied during any calendar year of the Term as determined by Landlord, an adjustment shall be made in Landlord's discretion in computing the Operating Expenses for such year so that Tenant pays an equitable portion of all variable items (e.g., utilities, janitorial services and other component expenses that are affected by variations in occupancy levels) of Operating Expenses, as determined by Landlord; provided, however, that in no event shall Landlord be entitled to collect in excess of one hundred percent (100%) of the total variable Operating Expenses from all of the tenants in the Building or Project, as the case may be.

The above enumeration of services and facilities shall not be deemed to impose an obligation on Landlord to make available or provide such services or facilities except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to make the same available or provide the same. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that it shall be responsible for providing adequate security for its use of the Premises, the Building and the Project and that Landlord shall have no obligation or liability with respect thereto, except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to provide the same.

4.2 Payment of Estimated Operating Expenses. "Estimated Operating Expenses" for any particular year shall mean Landlord's estimate of the Operating Expenses for such calendar year. During the last month of each calendar year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Operating Expenses for the ensuing calendar year. Tenant shall pay Tenant's Proportionate Share of the Estimated Operating Expenses together with monthly installments of Base Rent for the calendar year to which the Estimated Operating Expenses applies on the first day of each calendar month during such year, in advance, prorated for any partial month, if applicable. If at any time during the course of the calendar year, Landlord determines that Operating Expenses are projected to vary from the then Estimated Operating Expenses by more than five percent (5%), Landlord may, by written notice to Tenant, revise the Estimated Operating Expenses for the balance of such calendar year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Operating Expenses for such year.

4.3 Computation of Operating Expense Reconciliation. "Operating Expense Reconciliation" shall mean the difference between Estimated Operating Expenses and actual Operating Expenses for any calendar year as determined below. Within one hundred twenty (120) days after the end of each calendar year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a statement of actual Operating Expenses for the calendar year just ended, accompanied by a computation of Operating Expense Reconciliation. If such statement shows that Tenant's monthly payment based upon Estimated Operating Expenses are less than Tenant's Proportionate Share of Operating Expenses, then Tenant shall pay to Landlord the difference within twenty (20) days after receipt of such statement. If such statement shows that Tenant's payments of Estimated Operating Expenses for the previous calendar year exceed Tenant's Proportionate Share of Operating Expenses, then (provided that Tenant is not in default under this Lease) Landlord shall pay to Tenant the difference within thirty (30) days after delivery of such statement to Tenant. If this Lease has been terminated or the Term hereof has expired prior to the date of such statement, then the Operating Expense Reconciliation shall be paid by the appropriate party within thirty (30) days after the date of delivery of the statement. Tenant's Proportionate Share of the Operating Expense Reconciliation shall be prorated based on the actual number of days and the number of calendar months during such calendar year that this Lease is in effect.

Notwithstanding anything to the contrary contained in Paragraph 4.1 or 4.2, Landlord's failure to provide any notices or statements within the time periods specified in those paragraphs shall in no way excuse Tenant from its obligation to pay Tenant's Proportionate Share of Operating Expenses.

4.4 Net Lease. This shall be a net Lease and Base Rent shall be paid to Landlord net of all costs and expenses, except as specifically provided to the contrary in this Lease. The provisions for payment of Operating Expenses and the Operating Expense Reconciliation are intended to pass on to Tenant and reimburse Landlord for all costs and expenses of the nature described in Paragraph 4.1, incurred in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Building and/or Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Building and/or Project.

4.5 Tenant Audit. If Tenant disputes the amount set forth in any statement provided by Landlord under Paragraph 4.3 above, Tenant shall have the right, not later than twenty (20) days following receipt of such statement and upon the condition that Tenant shall first deposit with Landlord the full amount in dispute, to cause Landlord's books and records with respect to Operating Expenses for such calendar year to be audited by a certified public accountant selected by Tenant and subject to Landlord's right of approval. The Operating Expense Reconciliation may be adjusted in accordance with the audit. If the audit discloses a discrepancy in Tenant's favor in excess of ten percent (10%) of Tenant's Proportionate Share of the Operating Expenses previously reported, the cost of the audit shall be borne by Landlord; otherwise the cost of the audit shall be paid by Tenant. If Tenant does not request an audit in accordance with the provisions of this Paragraph 4.5 within twenty (20) days after receipt of Landlord's statement provided pursuant to Paragraph 4.3, such statement shall be final and binding for all purposes hereof. Tenant acknowledges and agrees that any information revealed in the above described audit may contain proprietary and sensitive information and that significant damage could result to Landlord if such information were disclosed to any party other than Tenant's auditors. Tenant shall not in any manner disclose, provide or make available any information revealed by the audit to any person or entity without Landlord's prior written consent, which consent may be withheld by Landlord in its sole and absolute discretion. The information disclosed by the audit will be used by Tenant solely for the purpose of evaluating Landlord's books and records in connection with this Paragraph 4.5.

5. Delinquent Payment; Handling Charges.

5.1 Delinquent Payments.

If any sum payable by Tenant to Landlord under this Lease is not paid when due, Tenant shall also pay a late charge equal to one hundred dollars (\$100.00) or ten percent (10%) of the delinquent amount, whichever is greater. In addition, any amount due from Tenant to Landlord which is not paid when due shall bear interest at an annual rate of fifteen percent (15%). Any late charges and interest shall be deemed and constitute Additional Rent under the Lease and shall be paid by Tenant within five (5) calendar days from receipt of any statement or invoice from Landlord. Landlord reserves all other rights and remedies provided to Landlord at law and under this Lease.

5.2 Handling Charges.

In the event that any check, draft, or other instrument of payment given by Tenant to Landlord is dishonored or returned for any reason, Tenant shall pay to Landlord the sum of \$100 in addition to any Late Charge under the Lease and Landlord, at its option, may require all future Rent be paid by automatic direct deposit, cashier's check or certified funds. Payments will be applied first to accrued Late Charges and attorney's fees (if any), second to accrued interest, then to Base Rent and Operating Expenses, and any remaining amount to any other outstanding charges or costs. The acceptance of Late Charges and returned check charges by Landlord will not constitute a waiver of Default nor any other rights or remedies of Landlord.

6. Security Deposit. Upon execution of this Lease, Tenant shall pay to Landlord the amount of Security Deposit specified in the Basic Lease Information. If Tenant fails to comply with any provision of this Lease, Landlord may, but shall not be required to, use, apply or retain all or any part of the Security Deposit. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefor by Landlord, deposit with Landlord cash in an amount sufficient to restore the Security Deposit to the amount required to be maintained by Tenant. Within a reasonable period following expiration or the sooner termination of this Lease, provided that Tenant has performed all of its obligations hereunder, Landlord shall return to Tenant the remaining portion of the Security Deposit. The Security Deposit may be commingled by Landlord with Landlord's other funds, and no interest shall be paid thereon.

7. Repairs and Maintenance.

7.1 Landlord's Obligations.

7.1.1 Landlord shall, subject to reimbursement by Tenant under Paragraph 4, maintain in good repair, reasonable wear and tear excepted, the structural soundness of the roof, foundations, and exterior walls of the Building together

with the common areas and other equipment used in common by tenants in the Project. The term "exterior walls" as used herein shall not include windows, glass or plate glass, doors, dock bumpers or dock plates, special store fronts or office entries. Any damage caused by or repairs necessitated by any negligence or act of Tenant, including, without limitation, any contractor, employee, agent, invitee or visitor of Tenant (each, a "Tenant Party") may be repaired by Landlord at Landlord's option and Tenant's expense. Tenant shall immediately give Landlord written notice of any defect or need of repairs in such components of the Building for which Landlord is responsible, after which Landlord shall have a reasonable opportunity and the right to enter the Premises at all reasonable times to repair same. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance, and there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project or to fixtures, appurtenances or equipment in the Building, except as provided in Paragraph 15. By taking possession of the Premises, Tenant accepts them "as is," as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them.

7.1.2 At Tenant's expense, and included in "Common Area Maintenance", Landlord shall have responsibility for the performance of preventive maintenance, repair and replacement of the heating, ventilation and air conditioning (HVAC) systems serving the Premises. Alternatively, Landlord may, upon notice to Tenant, require Tenant to obtain a regularly scheduled preventative maintenance/service contract at Tenant's own expense and in such event both the maintenance contractor and the contract must be approved by Landlord. Any service contract obtained by Tenant must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective and a copy thereof delivered to Landlord no later than the date specified by Landlord.

7.2 Tenant's Obligations.

7.2.1 Tenant shall contract for and pay directly when due for all gas, heat, air conditioning, light, power, telephone and data, sprinkler charges, cleaning, waste disposal in excess of that provided by Landlord, and other utilities and services (the "Services") used on or from the Premises, penalties, surcharges or the like pertaining thereto. If any such Services are not separately billed or metered to Tenant, Tenant shall pay an equitable share, as determined in good faith by Landlord, of all charges jointly billed or metered with other premises in the Project. Tenant shall also be responsible and pay for any personal property, sales, use or income taxes associated with Tenant's use or occupancy of the Premises, insurance required to be carried by Tenant under the Lease, and Tenant's repair and maintenance duties under the Lease.

7.2.2 Tenant shall at all times during the Term at Tenant's expense maintain all parts of the Premises and such portions of the Building as are within the exclusive control of Tenant in a good, clean and secure condition and promptly make all necessary repairs and replacements, as determined by Landlord, including but not limited to, all windows, glass, doors, walls, including demising walls, and wall finishes, floors and floor covering, heating, ventilating and air conditioning systems, ceiling insulation, truck doors, hardware, dock bumpers, dock plates and levelers, plumbing work and fixtures, downspouts, entries, skylights, smoke hatches, roof vents, electrical and lighting systems, and fire sprinklers, with materials and workmanship of the same character, kind and quality of the Project. Tenant shall at Tenant's expense also perform regular removal of trash and debris. Notwithstanding anything to the contrary contained herein, Tenant shall, promptly reimburse Landlord for the repair to any damage to the Premises or the Building or Project resulting from or caused by any negligence or act of Tenant or a Tenant Party. Nothing herein shall expressly or by implication render Tenant Landlord's agent or contractor to effect any repairs or maintenance required of Tenant under Paragraph 7.2, as to all of which Tenant shall be solely responsible.

7.2.3 Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against its fixtures, furnishings, equipment, personal property or its Alterations, and on Tenant's interest pursuant to this Lease, or any increase in any of the foregoing. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

8. Improvements, Alterations & Mechanic's Liens.

8.1 Improvements; Alterations.

8.1.1 Tenant shall not make, or allow to be made, any alterations, physical additions, improvements or partitions, including without limitation the attachment of any fixtures or equipment, in, about or to the Premises ("Alterations") without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld with respect to proposed Alterations which: (1) comply with all applicable Regulations (defined below); (2) are, in Landlord's opinion, compatible with the Building or the Project and its mechanical, plumbing, electrical, heating/ventilation/air

conditioning systems, and will not cause the Building or Project or such systems to be required to be modified to comply with any Regulations (including, without limitation, the Americans With Disabilities Act); and (3) will not interfere with the use and occupancy of any other portion of the Building or Project by any other tenant or its invitees. Specifically, but without limiting the generality of the foregoing, Tenant must obtain Landlord's written consent for all plans and specifications for the proposed Alterations, construction means and methods, all appropriate permits and licenses, any contractor or subcontractor to be employed on the work of Alterations, and the time for performance of such work, and may impose rules and regulations for contractors and subcontractors performing such work. Tenant shall also supply to Landlord any documents and information requested by Landlord in connection with Landlord's consideration of a request for approval hereunder. Tenant shall cause all Alterations to be accomplished in a good and workmanlike manner, and to comply with all applicable Regulations. Tenant shall at Tenant's sole expense, perform any additional work required under applicable Regulations due to the Alterations hereunder. No review or consent by Landlord of or to any proposed Alteration or additional work shall constitute a waiver of Tenant's obligations under this Paragraph 8.1. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such Alterations, including any costs or expenses which Landlord may incur in electing to have outside architects and engineers review said plans and specifications. All such Alterations shall remain the property of Tenant until the expiration or earlier termination of this Lease, at which time they shall be and become the property of Landlord; provided, however, that Landlord may, at Landlord's option, require that Tenant, at Tenant's expense, remove any or all Alterations made by Tenant and restore the Premises by the expiration or earlier termination of this Lease, to their condition existing prior to the construction of any such Alterations. All such removals and restoration shall be accomplished in a first-class and good and workmanlike manner so as not to cause any damage to the Premises or Project whatsoever. If Tenant fails to remove such Alterations or Tenant's trade fixtures or furniture or other personal property, Landlord may keep and use them or remove any of them and cause them to be stored or disposed of in accordance with applicable law, at Tenant's sole expense.

8.1.2 Notwithstanding the foregoing, at Landlord's option (but without obligation), all or any portion of the Alterations shall be performed by Landlord for Tenant's account and Tenant shall pay Landlord's estimate of the cost thereof (including a reasonable charge for Landlord's overhead and profit) prior to commencement of the work. In addition, at Landlord's election and notwithstanding the foregoing, however, Tenant shall pay to Landlord the cost of removing any such Alterations and restoring the Premises to their original condition such cost to include a reasonable charge for Landlord's overhead and profit as provided above, and such amount may be deducted from the Security Deposit or any other sums or amounts held by Landlord under this Lease.

8.1.3 At least ten (10) business days before beginning construction of any Alteration, Tenant shall give Landlord written notice of the expected commencement date of that construction to permit Landlord to post and record a notice of non-responsibility. Upon substantial completion of construction, if the law so provides, Tenant shall cause a timely notice of completion to be recorded in the office of the recorder of the county in which the Building is located.

8.2 **Mechanic's Liens.** Tenant shall not cause, suffer or permit any mechanic's or materialman's lien or claim to be filed or asserted against the Premises or the Project for any work performed, materials furnished, or obligation incurred by or at the request of Tenant or any Tenant Party. In the event any lien is recorded against the Premises or the Project, Tenant shall immediately take all necessary steps to remove or bond around such lien.

9. **Use.**

9.1 **Permitted Use.** Tenant shall continuously occupy and use the Premises only for the Permitted Use stated in the Basic Lease Information (the "Permitted Use") and shall not create or permit any nuisance or unreasonable interference with or disturbance of any other tenants of Landlord. Tenant shall at its sole cost and expense strictly comply with all existing or future applicable governmental laws, rules, requirements and regulations, and covenants, easements and restrictions of record governing and relating to the use, occupancy or possession of the Premises, or to Tenant's use of the common areas together with all rules which may now or hereafter be adopted by Landlord affecting the Premises and/or the common areas (collectively "Regulations"). Should any Regulation now or hereafter be imposed on Tenant or Landlord by any governmental body relating to the use or occupancy of the Premises by Tenant or any Tenant Party, then Tenant agrees, at its sole cost and expense, to comply promptly with such Regulations.

9.2 **Hazardous Materials.** As used in this Lease, the term "Hazardous Material" means any flammable items, hazardous or toxic substances, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, pesticides, asbestos, PCBs and similar compounds, and including any materials subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises, the Building or the Project by Tenant or any Tenant Party without

the prior written consent of Landlord. Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent but in compliance with all applicable laws and Regulations, use legal amount of materials customarily used by occupants of commercial office space, so long as such use does not expose the Premises, the Building or the Project to any risk of contamination or damage or expose Landlord to any liability therefore.

10. Assignment and Subletting.

10.1 **Transfers; Consent.** Tenant shall not, without the prior written consent of Landlord, (a) assign, transfer, mortgage, hypothecate, or encumber this Lease or any estate or interest herein, whether directly, indirectly or by operation of law, (b) permit any other entity to become a Tenant hereunder by merger, consolidation, or other reorganization, (c) if Tenant is a corporation, partnership, limited liability company, limited liability partnership, trust, association or other business entity (other than a corporation whose stock is publicly traded), permit, directly or indirectly, the transfer of any ownership interest in Tenant so as to result in (i) a change in the current control of Tenant, (ii) a transfer of twenty-five percent (25%) or more in the aggregate in any twelve (12) month period in the beneficial ownership of such entity or (iii) a transfer of all or substantially all of the assets of Tenant, (d) sublet any portion of the Premises, or (e) grant any license, concession, or other right of occupancy of or with respect to any portion of the Premises, or (f) permit the use of the Premises by any party other than Tenant or a Tenant Party (each of the events listed in this Paragraph 9.1 being referred to herein as a "Transfer"). At least twenty (20) business days prior to the effective date of any proposed Transfer, Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer and all consideration therefor, copies of the proposed documentation, and such information as Landlord may request. Any Transfer made without Landlord's consent shall be void and shall constitute an Event of Default by Tenant. Tenant shall pay to Landlord \$500 as a review fee for each Transfer request, and reimburse Landlord for its reasonable attorneys' fees and all other costs incurred in connection with considering any request for consent to a proposed Transfer. Landlord's consent to a Transfer shall not release Tenant from its obligations under this Lease (or any guarantor of this Lease of its obligations with respect thereto). Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers.

10.2 **Cancellation and Recapture.** Notwithstanding Paragraph 10.1, Landlord may (but shall not be obligated to), within ten (10) business days after receipt of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or subject to an assignment of this Lease as of the date such proposed Transfer is proposed to be effective and, thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person or entity or not at all) without liability to Tenant

11. Insurance, Waivers, Subrogation and Indemnity.

11.1 **Insurance.** Tenant shall maintain throughout the Term insurance policies as required on Exhibit B attached hereto and shall otherwise comply with the obligations and requirements provided on Exhibit B. Landlord will secure and maintain insurance coverage in such limits as Landlord may deem reasonable in its sole judgment to afford Landlord adequate protection. Any proceeds of such insurance shall be the sole property of Landlord to use as Landlord determines. Landlord makes no representation that the insurance policies and coverage amounts specified to be carried by Tenant or Landlord under the terms of this Lease are adequate to protect Tenant. Tenant will not do or permit anything to be done within or about the Premises or the Project which will increase the existing rate of any insurance on any portion of the Project or cause the cancellation of any insurance policy covering any portion of the Project. Tenant will, at its sole cost and expense, comply with any requirements of any insurer of Landlord. Tenant will provide, at its own expense, all insurance as Tenant deems adequate to protect its interests.

11.2 **Waiver of Subrogation.** Without limiting the effect of any other waiver of or limitation on the liability of Landlord set forth herein, neither Landlord nor Tenant shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) for any loss of or damage to tangible property due to casualty, regardless of negligence, to the extent such loss or damage would be insured under a policy of insurance required hereunder (or, if greater coverage is actually maintained, then to the extent of such greater coverage).

11.3 **Indemnity.** Subject to Paragraph 11.2, Tenant shall indemnify, defend by counsel reasonably acceptable to Landlord, protect and hold harmless Landlord and its affiliates, and each of their respective directors, shareholders, partners, lenders, members, managers, contractors, affiliates and employees (collectively, "Landlord Indemnitees") from and against all claims, losses, liabilities, causes of suit or action, judgments, damages, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, consultant's fees, and court costs) arising from or asserted in connection with the use or occupancy of the Premises, the Building or the Project by Tenant or any Tenant Party, or any negligence or misconduct or omissions of Tenant or of any Tenant Party in or about the Premises or the Project, or Tenant's breach of any of its covenants under this Lease, except in each case to the extent arising from the gross negligence or willful misconduct of Landlord or any

Landlord Indemnitee. Except to the extent expressly provided in this Lease, Tenant hereby waives all claims against and releases Landlord and each Landlord Indemnitee for any injury to or death of persons, damage to property or business loss in any manner related to (i) Tenant's use and occupancy of the Premises, the Building or the Project by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct), (ii) acts of God, (iii) acts of third parties, or (iv) any matter outside of the reasonable control of Landlord. This Paragraph 11.3 shall survive termination or expiration of this Lease.

12. **Subordination; Attornment.**

12.1 **Subordination.** This Lease is subject and subordinate to all present and future ground or master leases of the Project and to the lien of all mortgages or deeds of trust (collectively, "Security Instruments") now or hereafter encumbering the Project, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of any such Security Instruments, unless the holders of any such mortgages or deeds of trust, or the lessors under such ground or master leases (such holders and lessors are sometimes collectively referred to herein as "Holders") require in writing that this Lease be superior thereto. Tenant shall, within fifteen (15) days of request to do so by Landlord, execute, acknowledge and deliver to Landlord such further instruments or assurances as Landlord may deem necessary or appropriate to evidence or confirm the subordination or superiority of this Lease to any such Security Instrument.

12.2 **Attornment.** Tenant covenants and agrees that in the event that any proceedings are brought for the foreclosure of any mortgage or deed of trust, or if any ground or master lease is terminated, it shall attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or master lease, as the case may be, if so requested to do so by such purchaser or lessor, and to recognize such purchaser or lessor as "Landlord" under this Lease. In the event that the holder of any such mortgage or deed of trust becomes the "Landlord" under this Lease, such holder shall not be liable for any act or omission of Landlord which occurred prior to such holder's acquisition of title.

13. **Rules and Regulations and Signage.** Tenant shall comply, and shall cause each Tenant Party to comply, with the Rules and Regulations of the Project which are attached hereto as **Exhibit E** and the Signage Criteria which are attached hereto as **Exhibit C**, and all such modifications, additions, deletions and amendments thereto as Landlord shall adopt in writing from time to time. In the event of a violation of any Rules and Regulations or Signage Criteria, Landlord may assess Tenant the sum of One Hundred Dollars and 00/100 (\$100.00) per day effective the third calendar day after Tenant's receipt of written notice from Landlord of any violation.

14. **Condemnation.** If the entire Project or Premises are taken by right of eminent domain or conveyed by Landlord in lieu thereof (a "Taking"), this Lease shall terminate as of the date of the Taking. If any material portion, but less than all of the Premises or the Building, become subject to a Taking and such Taking will render the Premises untenable for a period of more than one hundred eighty (180) days, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking, and all Rent paid or payable hereunder shall be apportioned between Landlord and Tenant as of the date of such Taking. If any material portion, but less than all, of the Project, Building or the Premises becomes subject to a Taking, or if Landlord is required to pay any of the proceeds received for a Taking to any Holder of any Security Instrument, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking, and all Rent paid or payable hereunder shall be apportioned between Landlord and Tenant as of the date of such Taking. If this Lease is not so terminated, then Base Rent thereafter payable hereunder shall be abated for the duration of the Taking in proportion to that portion of the Premises rendered untenable by such Taking. If any Taking occurs, then Landlord shall receive the entire award or other compensation for the land on which the Project is situated, the Project, and other improvements taken, and Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award).

15. **Fire or Other Casualty.**

15.1 **Repair Estimate; Right to Terminate.** If all or any portion of the Premises or the Project is damaged by fire or other casualty (a "Casualty"), Landlord shall, within ninety (90) days after Landlord's discovery of such damage, deliver to Tenant its good faith estimate (the "Damage Notice") of the time period following such notice needed to repair the damage caused by such Casualty. Landlord may elect to terminate this Lease in any case where (a) any portion of the Premises or any material portion of the Project are damaged and (b) either (i) Landlord estimates in good faith that the repair and restoration of such damage under Paragraph 15.2 ("Restoration") cannot reasonably be completed (without the payment of overtime) within two hundred (200) days of Landlord's actual discovery of such damage, (ii) the Holder of any Security Instrument requires the application of any insurance proceeds with respect to such Casualty to be applied to the outstanding balance of the obligation secured by such Security Instrument, (iii) the cost of such Restoration is not fully covered by

insurance proceeds available to Landlord and/or payments received by Landlord from tenants, or (iv) Tenant shall be entitled to an abatement of rent under this Paragraph 15 for any period of time in excess of thirty-three percent (33%) of the remainder of the Term.

15.2 Repair Obligation; Abatement of Rent. Subject to Paragraph 15.1, Landlord shall, within a reasonable time after the discovery by Landlord of any damage resulting from a Casualty, begin with reasonable diligence to restore the Premises to substantially the same condition as existed immediately before such Casualty, except for modifications required by Regulations, and modifications to the Project reasonably deemed desirable by Landlord; provided, however, that Landlord shall not be required as part of the Restoration to repair or replace any of the Alterations, furniture, equipment, fixtures, and other improvements which may have been placed by, or at the request of, Tenant or other occupants in the Premises. Landlord shall have no liability for any inconvenience or annoyance to Tenant or injury to Tenant's business as a result of any Casualty, regardless of the cause therefor. Base Rent shall abate only if and solely to the extent a Casualty damages the Premises and Tenant is unable to occupy and does not occupy the Premises for the Permitted Use.

16. Parking. Tenant shall have the right to the nonexclusive use of the parking facilities of the Project for the parking of motor vehicles used by Tenant and Tenant Parties only; such rights are not transferable without Landlord's approval. The use of such parking facilities shall be subject to any rules and regulations as may be adopted by Landlord from time to time.

17. Events of Default. Each of the following occurrences shall be an "Event of Default" and shall constitute a material default and breach of this Lease by Tenant: (a) any failure by Tenant to pay Rent or any other amount due and payable hereunder when due; (b) the abandonment or vacation of the Premises by Tenant regardless if whether Rent is paid or not; (c) any failure by Tenant to obtain and maintain insurance and/or deliver insurance certificates required under Paragraph 11; (d) any failure by Tenant to execute and deliver any estoppel certificate or other document described in Paragraphs 12 or 21 requested by Landlord, where such failure continues for five (5) days after delivery of written notice of such failure by Landlord to Tenant; (e) any failure by Tenant to fully perform any other obligation of Tenant under this Lease, including but not limited to any Rules or Regulations or Sign Criteria, where such failure continues for thirty (30) days after delivery of written notice of such failure by Landlord to Tenant; (f) the voluntary or involuntary filing of a petition by or against Tenant or any general partner of Tenant or any guarantor (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under any state or federal debtor relief law, or (iii) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease; (g) the default, repudiation or revocation of any guarantor of Tenant's obligations hereunder. Any notice of any failure of Tenant required under this Paragraph 17 shall be in lieu of, and not in addition to, any notice required under applicable law.

18. Remedies. Upon the occurrence of any Event of Default by Tenant, Landlord shall have, in addition to any other remedies available at law or in equity, the option to pursue any one (1) or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

18.1 Terminate this Lease, and Landlord may recover from Tenant all amounts permitted by law necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform its obligations under this Lease (specifically including, without limitation, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises, the Building, or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant);

18.2 If Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

18.3 Landlord shall at all times have the right to seek any declaratory, injunctive, or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

18.4 Following the occurrence of two instances of late payment of any sum due and owing under this Lease in any twelve (12) month period, Landlord may require that all future amounts payable under this Lease shall be payable by cashier's check or electronic funds transfer, and may require that Tenant increase the Security Deposit to an amount equal to two times the current month's Rent at the time of the most recent default.

18.5 Cure Tenant's default at the expense of Tenant (A) immediately and without notice in the case (1) of emergency, (2) where such default unreasonably interferes with any other tenant in the Project, or (3) where such default will result in the violation of any Regulation or the cancellation of any insurance policy maintained by Landlord, and (B) in any other case if such default continues for ten (10) days after notice of such default from Landlord and all costs incurred by

Landlord in curing such default(s), including, without limitation, attorneys' fees, shall be reimbursable by Tenant as Rent hereunder upon demand, together with interest thereon, from the date such costs were incurred by Landlord, at the Default Rate.

19. **Surrender of Premises.** No agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or earlier termination of this Lease, Tenant shall deliver to Landlord all keys to the Premises, and Tenant shall deliver to Landlord the Premises in the same condition as existed on the date Tenant took possession under any lease or with any landlord thereof, ordinary wear and tear excepted. In addition, prior to the expiration of the Term or any sooner termination thereof, (a) Tenant shall remove such Alterations as Landlord shall request (even if installed with Landlord's consent) and shall restore the portion of the Premises affected by such Alterations and such removal to its condition existing immediately prior to the making of such Alterations, (b) Tenant shall remove from the Premises all unattached trade fixtures, furniture, equipment and personal property located in the Premises, including, without limitation, phone equipment, wiring, cabling and all garbage, waste and debris, and (c) Tenant shall repair all damage to the Premises or the Project caused by any such removal including, without limitation, full restoration of all holes and gaps resulting from any such removal and repainting required thereby. All personal property and fixtures of Tenant not so removed shall, to the extent permitted under applicable Regulations, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items.

20. **Holding Over.** If Tenant holds over after the expiration or earlier termination of the Term hereof, Tenant shall be a month-to-month tenant and otherwise upon the terms, covenants and conditions herein specified and Tenant's Base Rent shall be at a rate equal to one hundred fifty percent (150%) of the monthly installment of Base Rent payable by Tenant immediately prior to such expiration or termination.

21. **Substitution or Demolition.**

21.1 **Substitution.** Upon at least sixty (60) days prior written notice, Landlord may relocate Tenant within the Project (or to any other facility owned by Landlord or an affiliate of Landlord within the vicinity of the Project) to substitute space. As used herein, "substitute space" means space containing square footage which is not more than 15 percent greater or lesser than the approximate square footage of the Premises set forth in the Basic Lease Information and which is comparable in utility and condition to the Premises. If Landlord exercises this right to relocate Tenant, Landlord shall reimburse Tenant for (a) Tenant's reasonable out-of-pocket expenses for moving Tenant's furniture, equipment and supplies from the Premises to the substitute space; (b) the cost of installing leasehold improvements in the substitute space comparable to those in the Premises; (c) reprinting Tenant's stationery of the same quality and quantity as Tenant's stationery supply on hand immediately before Landlord's exercise of this relocation right. In the event Tenant is relocated pursuant to this Paragraph 21, Tenant shall surrender the Premises to Landlord in accordance with all terms and conditions of this Lease prior to the termination of the 60-day period and shall promptly upon Landlord's request execute an amendment or new Lease which shall designate the substitute space as the "Premises" subject to this Lease and adjust the Base Rent and Additional Rent to reflect any increase or decrease in the floor area of the substitute space or, if Tenant is relocated outside the Project, to execute a new lease in substantially the same form as the existing Lease with the affiliate of Landlord.

21.2 **Demolition.** Landlord shall have the right to terminate this Lease in the event Landlord elects to demolish 75 percent or more of the total floor area in the building containing the Premises. In such event, Landlord shall give Tenant a notice of termination at least 180 days prior to the effective date of such termination and shall pay Tenant, on the termination date, the cost (less depreciation) of Tenant's fixtures (other than removable trade fixtures) and of leasehold improvements installed in the Premises at Tenant's expense. For the purposes of this provision, depreciation of Tenant's fixtures and leasehold improvements shall be calculated on a straight-line basis over the Term of this Lease (exclusive of any permitted extensions of the Term). Upon payment to Tenant of the amount specified in this paragraph and any prepaid Rent or security deposit, Landlord shall be relieved of all further liability to Tenant hereunder and the Lease shall terminate as of the effective date of such termination except for the rights and obligations accrued as of the date of such termination.

22. **Landlord Transfers and Liability.** Landlord may, without restriction, sell, assign or transfer in any manner all or any portion of the Project, any interest therein or any of Landlord's rights under this Lease and then Landlord shall automatically be released from any further obligations hereunder. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease or with respect to any obligation or liability related to the Premises or the Project shall be recoverable only from the interest of Landlord in the Project, and neither Landlord nor any affiliate thereof shall have any personal liability with respect thereto and in no case shall Landlord be liable to Tenant for any lost profits, damage to business, or any form of special, indirect or consequential damage on account of any breach of this Lease. In the event that the holder of a mortgage or deed of trust on the Premises becomes the "Landlord" under this Lease, such holder shall not be liable for any act or omission of Landlord which occurred prior to such holder's acquisition of title.

23. **Estoppel Certificates; Financial Statements.** At any time and from time to time during the Term, Tenant shall, without charge, execute, acknowledge and deliver to Landlord within ten (10) days after Landlord's request therefor, an estoppel certificate in recordable form containing such factual certifications and other provisions as are commonly found in the estoppel certificate forms requested by institutional lenders and purchasers.

24. **Notices.** All Notices, demands, consents, or other information desired or required to be given under this Lease shall be effective only if given in writing and sent by (a) certified United States mail, postage prepaid, return receipt requested, (b) nationally recognized express mail courier that provides written evidence of delivery, fees prepaid, (c) facsimile, (d) United States first-class mail, postage prepaid, or (e) personal delivery, and addressed to the Addresses For Notices as set forth in the Basic Lease Information, or at such other address as may be specified from time to time, in writing, or, if to Tenant, at the Premises. Any such notice, demand, consent, or other information shall be deemed given (i) if sent by certified mail, on the date of delivery shown on the receipt card, (ii) if sent by courier, on the date it is officially recorded by such courier, (iii) if delivered by facsimile, on the date the sender obtains written telephonic confirmation that the electronic transmission was received, (iv) if sent by United States first-class mail, three (3) business days from the date mailed, or (v) if delivered personally, upon delivery or, if refused by the intended recipient, upon attempted delivery.

25. **Payment by Tenant; Non-Waiver.** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such terms. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

26. **Certain Rights Reserved by Landlord.** Landlord hereby reserves and shall have the following rights with respect to the Premises and the Project: (a) to make inspections, repairs, or improvements, whether structural or otherwise, in and about the Premises or any part thereof; and (b) to enter the Premises at reasonable hours (or at any time in an emergency) to perform repairs, to take any action authorized hereunder, or to show the Premises to prospective purchasers or lenders, or, during the last six (6) months of the Term, prospective tenants.

27. **Miscellaneous.** If any clause or provision of this Lease is determined to be illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby. This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Tenant and the person or persons signing on behalf of Tenant represent and warrant that Tenant has full right, power, and authority to enter into this Lease, and that all persons signing this Lease on its behalf are authorized to do so. If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All exhibits and attachments attached hereto are incorporated herein by this reference. This Lease shall be governed by and construed in accordance with the laws of the jurisdiction where the Project is located. In any action which Landlord or Tenant brings to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including without limitation, reasonable attorneys' fees and court costs. Tenant shall not record this Lease or any memorandum hereof. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR WITH RESPECT TO THIS LEASE.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original. Time is of the essence as to the performance of each covenant hereunder in which time of performance is a factor.

28. **No Broker.** Landlord and Tenant each warrant that they have dealt with no real estate broker in connection with this transaction with the exception of the brokers, if any, named in Exhibit F. Landlord and Tenant each agree to hold each other harmless from and against any and all damages, costs and expenses resulting from any claim(s) for a brokerage commission or finder's fee that may be asserted against either of them by any broker or finder with whom the other has dealt.


29. **Confidentiality.** The Tenant and its employees, agents and brokers shall keep confidential all matters concerning the terms of this Lease Agreement and the negotiations which led to it and shall not disclose the fact or substance of the negotiations or the terms to anyone without the prior written consent of the Landlord. Notwithstanding the foregoing, the provisions and preceding negotiations may be revealed to the Tenant's accountants, attorneys and lenders so long as each such

recipient is advised of the necessity for them to also maintain the confidentiality of the information. If any third party demands entitlement to the benefit of similar terms or conditions on the basis that Tenant received such treatment, it will be deemed to be the result of a violation of this confidentiality requirement by Tenant and such violation shall constitute an event of Default under the Lease.

30. **Further provisions.** Any additional terms and conditions of the Lease, if any, are set forth in the attached Exhibit F.

Submission of this Lease to Tenant for examination and signature is not an option or offer to lease and does not create a reservation or option to lease. This Lease will not become effective or binding until execution and delivery by both Landlord and Tenant.

Landlord
Trustees Under the Testamentary Trust
of Helen Director, Deceased

By: 


Its: Authorized Representative

Tenant
Chef Exec Suppliers, LLC
a Nevada limited liability company

By: 

Print Name: DOMINIQUE ARNOULD

Title: MANAGING PARTNER



CLEMENT MUNE

MANAGING PARTNER

EXHIBIT 5

Re: Buy-out/assets division

Robert Kern

Fri 12/6/2019 1:58 PM

-----Original Message-----

From: Dominique Arnould <domiarnould@aol.com>

To: clement <clement@chefexecsuppliers.com>; ggershuni <ggershuni@aol.com>

Sent: Wed, Jun 26, 2019 5:05 pm

Subject: Buy-out/assets division

Hello Gregory and Clement,

I strongly disagree with Clement's characterization of the facts.

However, there is no good purpose to be served by picking at each point with which I disagree. That will only lead to more arguments.

Instead, I would like to move forward with a plan to arrange for Clement to buy-out of my interest in the Company at a fair value or a division of the assets of the Company in some fair and equitable way such that each of us has roughly equivalent value of assets and we can then each use those assets to pursue on our own respective business goals. I can go my own way and Clement can then go his own way.

That's what I would like to do.

Gregory, can you help us achieve this goal?

Sincerely

Dominique Arnould
Managing Partner
Chef Exec Suppliers, LLC
AAA Food Source, INC
Wines of the World.Com
702-683-2433

EXHIBIT 6

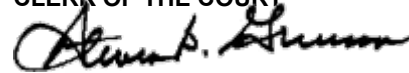
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12/04/19

Accrual Basis

CHEF EXEC SUPPLIERS, LLC
Profit & Loss Prev Year Comparison
January 1 through December 4, 2019

	Jan 1 - Dec 4, 19	Jan 1 - Dec 4, 18	\$ Change	% Change
Ordinary Income/Expense				
Income	1,088,025.66	985,138.84	102,886.82	10.4%
Cost of Goods Sold	422,067.21	455,053.29	-32,986.08	-7.3%
Gross Profit	665,958.45	530,085.55	135,872.90	25.6%
Expense	348,089.31	346,616.08	1,473.23	0.4%
Net Ordinary Income	317,869.14	183,469.47	134,399.67	73.3%
Other Income/Expense	3.31	0.00	3.31	100.0%
Net Income	317,872.45	183,469.47	134,402.98	73.3%



1 **AFF**

2 Robert Kern, Esq.
3 Nevada Bar Number 10104

4 **KERN LAW, Ltd.**

5 601 S. 6th Street

6 Las Vegas, NV 89101

7 (702) 518-4529 phone

8 (702) 825-5872 fax

9 Admin@KernLawOffices.com

10 Attorney for Defendants

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DOMINIQUE ARNOULD,

Case Number: A-19-803488-B

14 Plaintiff/Counter-Defendant,

Dept. Number: 27

15 vs.

16 CLEMENT MUNNEY; CHEF EXEC

17 SUPPLIERS, LLC; and DOES I through X,

18 inclusive, and ROE CORPORATIONS I

19 through X, inclusive,

20 Defendants/Counter-Claimants.)

21 **AFFIDAVIT IN SUPPORT OF**
22 **DEFENDANTS' MOTION FOR**
23 **PARTIAL SUMMARY JUDGMENT**

24 STATE OF NEVADA }

25 ss.: }

26 County of Clark }

27 I, Clement Muney, being first duly deposed states as follows:

- 28
1. I am an adult over the age of 18 and am competent to testify to the contents of this affidavit. I execute this affidavit in support of the foregoing motion. I have personal knowledge of the matters set forth herein, and all statements below are made from personal knowledge unless specifically indicated otherwise.
 2. I am a 50% partner in the business known as Chef Exec LLC (hereinafter, "Chefexec"), which is a company that I formed with Dominique Arnould (hereinafter, "Arnould.") in 2007 for the purpose of selling goods to other businesses.

KERN LAW, LTD.

601 S. 6th Street, Las Vegas, NV 89101

Phone: (702) 518-4529 Fax: (702) 825-5872

Admin@KernLawOffices.com

- 1 3. Throughout the existence of Chefexec LLC, I have managed the Las Vegas side of
2 the company, and Arnould has managed the Los Angeles side of the company.
- 3 4. Chefexec has been a consistently profitable company over the years of its existence.
4 This year (2019) has thus far been its most profitable year yet.
- 5 5. Other than occasional low-level disagreements, there were no disputes between the
6 partners of the company prior to Arnould announcing that he wished to retire, and
7 have his portion of the company bought out. I offered to purchase his portion of the
8 company, but he did not consider the terms of my offer acceptable. I also told him
9 that I would not support splitting the company unless there was a non-compete
10 involved. Arnould adamantly refused to have a non-compete as a condition of a split
11 of the company.
- 12 6. In April 2018 Arnould renewed the lease for the warehouse for the Los Angeles side
13 of the company. My name was signed as a guarantor; I do not remember authorizing
14 Arnould to sign for me, though he disagrees.
- 15 7. In October 2019 the lease for the warehouse for the Las Vegas side of the company,
16 which Chefexec had leased since 2014, was up for renewal. Like the Los Angeles
17 lease, this one required both owners of Chefexec to sign the lease as personal
18 guarantors. Because we had held the lease so long we had a very good deal on it, and
19 I requested Arnould to sign the lease renewal. Arnould refused because he did not
20 want to be a guarantor, and through his first attorney Greg Gershuni, and his Las
21 Vegas counsel, Marquis Aurbach Coffing, instructed me that he would not sign, and
22 that I should get a new lease through an entity in which I was the sole owner. As the
23 purpose of the space was so that Las Vegas could store its product, I considered it
24 directly implied that the entity I leased the space with, would then sublease the space
25 to Chefexec.
- 26 8. Throughout the summer of 2019, Arnould and his counsel continuously demanded
27 that Chefexec be split, and threatened to seek judicial dissolution if I did not consent.
28 Up until October 2019, Arnould and his counsel had made no allegations of
wrongdoing on my part, other than my refusal of their terms to divide the company.

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9. Per Arnould's instruction, I used CMJJ Gourmet, a company I was sole owner of, and with which Arnould had previously done business, to sign a new lease on the same warehouse space Chefexec had previously leased. I contacted a commercial real estate agent to determine the market rate for subleasing such a space, and I set the rate I would sub-lease to Chefexec slightly lower than the amount I was quoted.
10. When Arnould contacted me demanding that I stop using the warehouse space, I had already signed a personal guarantee on a long term lease of the space, based on Chefexec's need of the warehouse space, and Arnould's suggestion to do so. I informed him that this was something he had agreed to in writing, but he did not respond to that, and instead filed suit.
11. Although the dispute between myself and Arnould has caused some difficulties, it has not prevented the company from continuing to run, to serve its stated purpose, or from continuing to make a profit.
12. I have not improperly "taken money and diverted business opportunities and customers" from Chefexec. The business opportunity of the leased warehouse was specifically offered to Chefexec, and refused by Arnould. I have never heard from Arnould any allegations (outside the complaint) of having taken money or customers from Chefexec.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 FURTHER AFFIANT SAYETH NAUGHT.

21 DATED this 7th day of December, 2019

22 By: _____

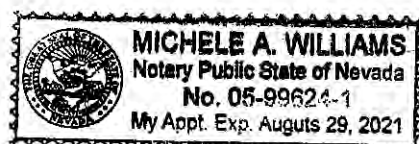
Clement Muney

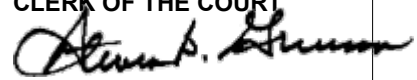
23 SUBSCRIBED AND SWORN to before
24 me this 7 day of December, 2019.

25 Michele A. Williams

26 NOTARY PUBLIC in and for
said County and State.

27 my commission expires on: 8/29/21





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

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff/ Counter-Defendant,

vs.

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

Defendants/Counterclaimant.

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

HEARING REQUESTED

**PLAINTIFF DOMINIQUE ARNOULD'S MOTION FOR APPOINTMENT OF
 TRUSTEE**

Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould") by and through his attorneys Marquis Aurbach Coffing, hereby Moves this Court for an Order Appointing Dominique Arnould as Trustee to wind down Chef Exec Suppliers, LLC (Chef Exec Suppliers). This Motion is based on the following Memorandum of Points and Authorities and any oral argument permitted at the time of the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves a two-person LLC with no operating agreement. This case is like a divorce where one 50% owner (Clement Muney) does not want to be divorced, but the other 50% owner (Dominique Arnould) wants a divorce.

1 **II. FACTUAL BACKGROUND. As shown by the Declaration, attached hereto as**
2 **Exhibit 1:**

3 1. Arnould and Munev are 50/50 owners of Chef Exec Suppliers.
4 2. Arnould and Munev are both managers of Chef Exec Suppliers.
5 3. Chef Suppliers has **no written operating agreement**.
6 4. Disputes between Arnould and Munev have arisen and are so deep that it is not
7 reasonably practicable to carry on the business of the Company.

8 5. One of the disputes is that Las Vegas rent for a warehouse for Chef Exec
9 Suppliers was approximately \$3,800/month. The lease expired and the landlord wanted
10 approximately \$5,800/month. Without any joint agreement, Munev may have rented the current
11 Chef Exec Suppliers warehouse under CMJJ Gourmet, Inc.¹, an entity believed to be solely
12 owned by Munev and Munev is billing Chef Exec Suppliers about almost \$11,000/month rent.
13 This rent is paid from sales of Chef Exec Suppliers inventory. Munev should have made a joint
14 decision. This is a breach of his fiduciary duty owed to Arnould and thus, Munev should be
15 personally responsible for the difference between \$5,800/month and \$11,000/ month.

16 6. Much of Arnould's business is for customers located in California so Arnould
17 (without talking to Munev first) took 69 pallets of merchandise out of Munev's warehouse and
18 moved them to a less expensive warehouse in California. Every pallet that was moved from Las
19 Vegas to California, was documented and accounted for, noted on the inventory and were only a
20 small portion of all of the pallets in the CMJJ Gourmet warehouse.

21 7. Arnould was accused of theft and locked out of a warehouse that should be under
22 both managing members control. This is part of an email relating to the pallets:

23 a. "it is difficult to see this as anything other than theft, or intentional
24 sabotage to pressure a buyout, as it is clearly not a simple changing of
25 warehouses. . . In light of this issue, we **have changed the locks** on the
26

27 ¹ An entity believed to be solely owned by Munev as shown by **Exhibit 2**, Nevada Secretary of State
28 Entity Information for CMJJ GOURMET, INC.

1 warehouse; Dominique will still be able to access inventory there, he will
2 just have to do so through the Las Vegas warehouse manager

3 8. The intention was to have this inventory closer to Van Nuys, in case of urgent
4 deliveries to our California clients. This is a practical issue for the benefit Chef Suppliers and
5 their clients. This inventory represented less than 35% of the total inventory the company.

6 9. It has been impossible to get Muney to discuss how to resolve a dissolution of the
7 business. In another email, Muney's response to dissolution was "I can't imagine any
8 circumstances where we'd agree to a dissolution."

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

11 11. Arnould is a manager.

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

16 **III. LEGAL ARGUMENT**

17 NRS 86.495(1) states that

18 Upon application by or for a member, the district court may decree dissolution of
19 a limited-liability company whenever it is not reasonably practicable to carry on
20 the business of the company in conformity with the articles of organization or
21 operating agreement.

22 There is no Operating Agreement and both Arnould and Muney are 50/50 owners and
23 equal managers with equal authority to run the Company.

24 Nevada Corporation law allows one person to be appointed to wind down the
25 corporation. NRS 78.600 states that:

26 When any corporation organized under this chapter shall be dissolved or cease to
27 exist in any manner whatever, **the district court, on application of any creditor**
28 **or stockholder of the corporation**, at any time, may either continue the directors

1 trustees as provided in NRS 78.590, or **appoint one or more persons to be**
2 **receivers of and for the corporation, to take charge of the estate and effects**
3 **thereof, and to collect the debts and property due and belonging to the**
4 **corporation, with power to prosecute and defend, in the name of the**
5 **corporation, or otherwise, all such suits as may be necessary or proper for**
6 **the purposes aforesaid, and to appoint an agent or agents under them, and to**
7 **do all other acts which might be done by the corporation, if in being, that**
8 **may be necessary for the final settlement of the unfinished business of the**
9 **corporation.** The powers of the trustees or receivers may be continued as long as
10 the district court shall think necessary for the purposes aforesaid.

11 The Nevada Limited Liability Company statutes do not have a counterpart to NRS
12 78.600, where one shareholder can be appointed to basically wind down a corporation.

13 The closest is NRS 86.541(2) which provides that BOTH managers wind down an LLC.

14 2. The manager **or managers in office at the time of dissolution**, or the
15 members, if there are no managers, or the personal representatives, **are thereafter**
16 **trustees of the dissolved company**, with full power to prosecute and defend
17 suits, actions, proceedings and claims of any kind or character by or against the
18 company, **to enable the company gradually to settle and close its business**, to
19 **collect its assets, to collect and discharge its obligations, to dispose of and**
20 **convey its property, to distribute its money and other property among the**
21 **members**, after paying or adequately providing for the payment of its liabilities
22 and obligations, and to do every other act to **wind up and liquidate its business**
23 and affairs, but not for the purpose of continuing the business for which the
24 company was established.

25 In this case, it is impractical and impossible for both managers to wind down the
26 Company. However, the cost of a 3rd party receiver may consume the Plaintiff and Defendant's
27 assets.
28

1 Therefore, Plaintiff Dominique Arnould requests that he be appointed as trustee to wind
2 down the Company. The Order should require consultation with Defendant, Muney, and if a
3 Stipulation and Order is not reached, then Arnould would seek Court authorization for his
4 actions which would preclude any unauthorized expenditures.

5 **IV. CONCLUSION**

6 This Court should enter an Order that Dominique Arnould has authority to wind down the
7 Company after first consulting with Clement Muney and if they cannot reach a stipulation and
8 order, then Dominique Arnould would need to file a Motion to request Court authorization to take
9 any further action.

10 Dated this 10th day of December, 2019.

11 MARQUIS AURBACH COFFING

12
13 By /s/ Phillip S. Aurbach
14 Phillip S. Aurbach, Esq.
15 Nevada Bar No. 1501
16 Attorneys for Plaintiff
17
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF DOMINIQUE ARNOULD'S**
MOTION FOR APPOINTMENT OF TRUSTEE was submitted electronically for filing
and/or service with the Eighth Judicial District Court on the 10th day of December, 2019.
Electronic service of the foregoing document shall be made in accordance with the E-Service
List as follows:²

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

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

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

Exhibit 1

1 **Marquis Aurbach Coffing**
Phillip S. Aurbach, Esq.
2 Nevada Bar No. 1501
Telephone: (702) 382-0711
3 Facsimile: (702) 382-5816
paurbach@maclaw.com
4 *Attorneys for Plaintiff*

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 DOMINIQUE ARNOULD,

8 Plaintiff/ Counter-Defendant,

9 vs.

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

13
14 Defendants/Counterclaimant.

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

HEARING REQUESTED

15 **DECLARATION IN SUPPORT OF MOTION FOR APPOINTMENT OF TRUSTEE**

16 I, Dominique Arnould, declare that I am over the age of 18 years, I have personal
17 knowledge of the facts stated herein, except for those stated upon information and belief, and as
18 to those, I believe them to be true. I further state that I am competent to testify as to the facts
19 stated herein and that this declaration is submitted on behalf of my Motion for Appointment of
20 Trustee.

- 21 1. Arnould and Muney are 50/50 owners of Chef Exec Suppliers.
22 2. Arnould and Muney are both managers of Chef Exec Suppliers.
23 3. Chef Suppliers has **no written operating agreement**.
24 4. Disputes between myself and Muney have arisen and are so deep that it is not
25 reasonably practicable to carry on the business of the Company.

- 26 5. One of the disputes is that Las Vegas rent for a warehouse for Chef Exec
27 Suppliers (sometimes "the Company") was approximately \$3,800/month. The lease expired and
28

1 the landlord wanted approximately \$5,800/month. Without any joint agreement, Muney may
2 have rented the current Chef Exec Suppliers warehouse a under CMJJ Gourmet, Inc.¹, an entity
3 believed to be solely owned by Muney and Muney is billing Chef Exec Suppliers about almost
4 \$11,000/month rent. This rent is paid from sales of Chef Exec Suppliers inventory. Muney
5 should have made a joint decision. This is a breach of his fiduciary duty owed to Arnould and
6 thus, Muney should be personally responsible for the difference between \$5,800/month and
7 \$11,000/ month.

8 6. Much of my business is for customers located in California so without talking to
9 Muney first, I took 69 pallets of merchandise out of Muney's warehouse and moved them to a
10 less expensive warehouse in California. Every pallet that was moved from Las Vegas to
11 California, was documented, noted on the inventory and were only a small portion of all of the
12 pallets in the CMJJ Gourmet warehouse.

13 7. I was accused of theft and locked out of a warehouse that should be under both
14 managing members control. This is part of an email relating to the pallets:

15 a. "it is difficult to see this as anything other than theft, or intentional
16 sabotage to pressure a buyout, as it is clearly not a simple changing of
17 warehouses. . . In light of this issue, we **have changed the locks** on the
18 warehouse; Dominique will still be able to access inventory there, he will
19 just have to do so through the Las Vegas warehouse manager

20 8. It was my intention to have this inventory closer to Van Nuys, in case of urgent
21 deliveries to our California clients. This is a practical issue for the benefit of Chef Suppliers and
22 their clients. This inventory represented less than 35% of the total inventory the company.

23 9. It has been impossible to get Muney to discuss how to resolve a dissolution of the
24 business. In another email, Muney's response to dissolution was "I can't imagine any
25 circumstances where we'd agree to a dissolution."
26
27

28 ¹ See **Exhibit 2** attached to Plaintiff Dominique Arnould's Motion for Appointment of Trustee

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

3 11. I am a manager.

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

8 Pursuant to NRS § 53.045 and 28 U.S.C. §1746, I declare under penalty of perjury under
9 the laws of the State of Nevada that the foregoing is true and correct.

10 Executed on this 9 day of December, 2019.

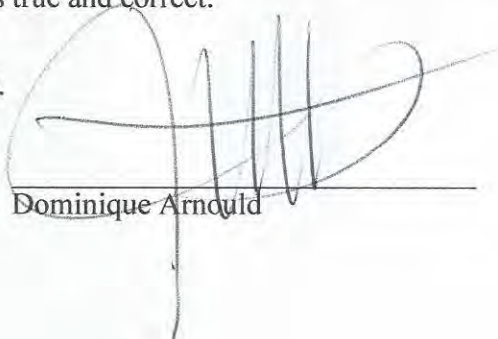
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13 Dominique Arnould
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Exhibit 2

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

CMJJ GOURMET, INC.

Entity Number:

C32300-2002

Entity Type:

Domestic Corporation (78)

Entity Status:

Active

Formation Date:

12/31/2002

NV Business ID:

NV20021515991

Termination Date:

Perpetual

Annual Report Due Date:

12/31/2020

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

CLEMENT MUNEY

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:**

151 AUGUSTA STREET, HENDERSON, NV, 89074, USA

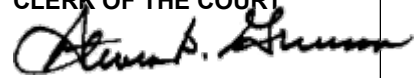
Email Address:**Mailing Address:****Individual with Authority to Act:****Contact Phone Number:****Fictitious Website or Domain Name:****PRINCIPAL OFFICE ADDRESS****Address:****Mailing Address:****OFFICER INFORMATION**

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	CLEMENT MUNNEY	151 AUGUSTA ST, HENDERSON, NV, 89074, USA	10/14/2018	Active
Secretary	CLEMENT MUNNEY	151 AUGUSTA ST, HENDERSON, NV, 89074, USA	10/14/2018	Active
Treasurer	CLEMENT MUNNEY	151 AUGUSTA ST, HENDERSON, NV, 89074, USA	10/14/2018	Active
Director	CLEMENT MUNNEY	151 AUGUSTA ST, HENDERSON, NV, 89074, USA	10/14/2018	Active
Page 1 of 1, records 1 to 4 of 4				
CURRENT SHARES				
Class/Series	Type	Share Number	Value	
	Authorized	1,000	0.010000000000	
Page 1 of 1, records 1 to 1 of 1				
Number of No Par Value Shares:				
0				
Total Authorized Capital:				
10				
Filing History		Name History	Mergers/Conversions	

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1 **Marquis Aurbach Coffing**
 2 Phillip S. Aurbach, Esq.
 3 Nevada Bar No. 1501
 4 Telephone: (702) 382-0711
 5 Facsimile: (702) 382-5816
 6 paurbach@maclaw.com
 7 *Attorneys for Plaintiff*

8 **DISTRICT COURT**
 9 **CLARK COUNTY, NEVADA**

10 DOMINIQUE ARNOULD,

11 Plaintiff/ Counter-Defendant,

12 vs.

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

17 Defendants/Counterclaimant.

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

Hearing Date: January 9, 2020
 Hearing Time: 10:30 a.m.

18 **PLAINTIFF DOMINIQUE ARNOULD'S OPPOSITION TO DEFENDANTS MOTION**
 19 **FOR PARTIAL SUMMARY JUDGMENT**

20 Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould") by and through his attorneys
 21 Marquis Aurbach Coffing, hereby files his Opposition to Defendants Motion for Partial Summary
 22 Judgment (the "Motion"). This Opposition is based upon papers and pleadings on file herein, the
 23 attached Memorandum of Points and Authorities, and any oral argument permitted at the time of
 24 the hearing on this matter.

25 Dated this 19th day of December, 2019.

26 MARQUIS AURBACH COFFING

27 By /s/ Phillip S. Aurbach
 28 Phillip S. Aurbach, Esq.
 Nevada Bar No. 1501
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This case involves a two-person LLC with no operating agreement, and one manager refuses to dissolve the LLC. In many ways, the LLC is like an airplane with a brawl occurring in the cockpit. Arnould simply wants to land and unload the cargo before disaster ensues. Muney Clement (“Muney”) wishes to keep flying no matter the consequences. Fortunately, the Nevada Revised Statutes that govern limited liability companies have contemplated such a deadlock scenario, and provided that an LLC may be dissolved judicially. As such, this Court should deny Defendants’ Motion for Partial Summary Judgment because there are numerous factual disputes between the Managers that make it unreasonable and unpracticable for them to carry on business together.

II. SUMMARY OF FACTS

Muney and Arnould (collectively the “Managers”) are 50/50 owners and managers of Chef Exec Suppliers, LLC (“Chef Exec” or the “Company”).¹ It is undisputed that Chef Exec was validly formed but has no written operating agreement.² When the Company was formed, the Managers were sent a letter from the law firm of Gershuni & Goldstein that provided “an overview of certain aspects of operating an LLC.”³ This letter explained that as managers of the LLC, Arnould and Muney owed fiduciary duties to each other and Chef Exec.⁴

¹ See Dec. of Dominique Arnould, at p. 1, ¶¶2-3, attached hereto as **Exhibit 1** (hereinafter cited as “**Arnould Dec.** at 1, ¶¶2-3”).

² *Id.* p 1, ¶3

³ See Letter from Chef Exec Counsel Gershuni & Goldstein, attached hereto as **Exhibit 2**, at p. 4, ¶3 (hereinafter cited “**Gershuni Letter** p. 4, ¶3”).

⁴ *Id.*

1 The Company engaged in business primarily in Las Vegas, Nevada and Los Angeles,
2 California; and the Managers equally oversaw both Chef Exec locations.⁵ The Managers agreed
3 that they would distribute profits of Chef Exec equally (50/50), and agreed they would also each
4 be paid a 10% commission on any sales generated for Chef.⁶ Eventually, the trust between the
5 Managers broken down.⁷ This erosion of trust began after it appeared to Arnould that Muney was
6 abandoning his loyalty to Arnould and the Company.⁸

7
8 Subsequently, disputes between the Managers have arisen that are so deep that it is not
9 reasonably practicable to carry on the business of the Company.⁹ These disagreements pertain to
10 almost every conceivable area of the business, including the operational, inventory, financial,
11 managerial, accounting, marketing, sales, and growth aspects of the Company.¹⁰

12 These disagreements culminated into a proposed dissolution by Arnould.¹¹ Arnould
13 retained counsel to begin an amicable dissolution of Chef Exec.¹² In an effort to reach a settlement,
14 Arnould's counsel sent Muney a letter that enumerated confidential settlement terms to an
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21 ⁵ Arnould Dec., at 1, ¶4.

22 ⁶ *Id.* at 1, ¶¶5-6.

23 ⁷ *Id.* at 1, ¶7.

24 ⁸ *Id.*

25 ⁹ *Id.* at 2, ¶8.

26 ¹⁰ *See id.*

27 ¹¹ *See* Dec. of Jordan B. Peel, at 1, ¶3, attached hereto as **Exhibit 3** (hereinafter cited "**Peel Dec.**").

28 ¹² *Id.*

1 amicable dissolution.¹³ The letter does not say and was in no way intended to serve as permission
2 to take one of the proposed terms and act on it.¹⁴

3 Regardless, Munev refused the terms and refused dissolution.¹⁵ In one email, Munev
4 responded to the dissolution negotiations by stating “I can’t imagine any circumstances where
5 we’d agree to a dissolution.”¹⁶ As such, Arnould began the process of obtaining a judicial
6 dissolution.¹⁷

7
8 One of the central disputes between the Managers was regarding a lease for Chef Exec’s
9 Las Vegas warehouse.¹⁸ Originally, Chef Exec paid approximately \$3,800/month for Las Vegas
10 warehouse space.¹⁹ Chef Exec’s Las Vegas warehouse lease expired and the landlord wanted
11 approximately \$5,857/month to renew the lease.²⁰ Without any joint agreement or communication,
12 Munev decided to renew the Las Vegas warehouse under CMJJ Gourmet, Inc., an entity solely
13 owned by Munev.²¹ Similarly, without any joint agreement or communication, Munev then sub-
14 leased the Las Vegas warehouse to Chef Exec at \$10,890/month rent.²² This rent was paid from
15 sales of Chef Exec inventory.²³

16 ¹³ Peel dec. *page 1*, ¶3.

17 ¹⁴ *Id.* at 1, ¶¶3-5.

18 ¹⁵ *Id.* at 1, ¶¶6-8.

19 ¹⁶ **Arnould Dec.**, at 3, ¶14.

20 ¹⁷ **Peel Dec.**, at 1, ¶8.

21 ¹⁸ **Arnould Dec.**, at 3, ¶9.

22 ¹⁹ *Id.*

23 ²⁰ *Id.*

24 ²¹ *Id.*

25 ²² *Id.* at 3, ¶10

26 ²³ *Id.*

1 Arnould was never consulted on the amount of rent and was astonished when he found out
2 that the rent was more than double what Chef Exec was paying previously.²⁴ Arnould never
3 consented to the price or term of the Las Vegas lease or the sublease to Chef Exec.²⁵ Instead,
4 Munev **secretly** charged Chef Exec \$5,033 more for rent and personally **pocketed the**
5 **difference**.²⁶ In other words, Munev was paying himself and extra \$5,033/month for rent in
6 compensation or distributions without the Managers consent.²⁷ To make matters worse, Munev
7 refuses to allow Arnould access to the Las Vegas warehouse.²⁸

9 Ultimately, Munev has refused to resolve the Managers' disagreement through an amicable
10 dissolution of the business.²⁹ Arnould believes and the facts indicate that dissolution is the only
11 viable option for Chef Exec, because the disputes and disagreements between the Managers are so
12 deep that it is reasonably practicable to carry on the business of the Company.³⁰ It would be a futile
13 effort to make a demand on Munev since Munev is not disinterested, Munev's judgment is
14 materially affected in favor of his actions and against the best interests of Chef Exec and nothing
15 can be accomplished when both disagree on the direction of the Company.³¹

20 ²⁴ Arnould Dec., at 3, ¶11.

21 ²⁵ *Id.*

22 ²⁶ *Id.* at 3, ¶12.

23 ²⁷ *Id.*

24 ²⁸ *Id.* at 3, ¶13.

25 ²⁹ *Id.* at 3-4, ¶14.

26 ³⁰ *Id.* at 4, ¶15.

27 ³¹ *Id.* at 4, ¶18.

III. LEGAL ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate where there are no genuine issues of material fact and the moving party demonstrates that it is entitled to judgment as a matter of law. NRCP 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The pleadings and other evidence must be construed in a light most favorable to the nonmoving party. *Wood*, 121 Nev. at 732, 121 P.3d at 1031. If the nonmoving party presents facts and evidence demonstrating the existence of a genuine issue of material fact, then summary judgment should be denied. *See id.* Genuine issues of material fact exist where the evidence is sufficient for a reasonable jury to return a verdict for the non-moving party. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, (2002).

B. DISPUTES BETWEEN THE MANAGERS MAKE IT UNREASONABLE AND UNPRACTICABLE TO CARRY ON THE COMPANY'S BUSINESS.

NRS 86.495 mandates dissolution when it is "not reasonably practicable to carry on the business of the company in conformity with the articles of organization or the operating agreement." It is undisputed that Chef Exec has no operating agreement, since NRS 86.101 requires operating agreements to be in writing.³² As such, there is no structure or direction that can govern the Managers in operating the Company. The only governing document is the Articles of Organization which does not provide detailed guidance on how to actually manage an LLC.

Under NRS 86.495, the analysis of whether it is reasonably practicable to carry on the business is replete with facts, which is why summary judgment is inappropriate here. That said, common sense dictates that a deadlock, born of feuding managers with equal ownership, is a recipe for either institutional failure or oppression. Here, Muney seeks oppression.³³ Muney has saddled the Company with a \$10,890/month sub-lease wherein he would personally profit \$5,033/month.³⁴

³² *See Arnould Dec.*, at 1, ¶3.

³³ *Id.* at 3, ¶¶12-13.

³⁴ *Id.*

1 Muney also refuses to provide Arnould access the Las Vegas warehouse and has refused to
2 dissolve the Company.³⁵ Muney wants to call the shots and keep Arnould in the dark as evidenced
3 by his clandestine Las Vegas warehouse lease.³⁶ With a fundamental disagreement by the
4 Managers on how the Company should be run, failure of the LLC is the most probable outcome.
5 As such, Arnould asks the Court to do the only practical and proper thing: dissolve Chef Exec and
6 divide the assets equitably.

7 As the Defendants' partial summary judgment motion observes, there are no cases
8 interpreting when it is "not reasonably practicable to carry on the business" under NRS 86.495.
9 There is, however, a Delaware case interpreting the same "reasonably practicable" language under
10 a similar LLC statute. *Haley v. Talcott*, 864 A2d 86 (Del. Ch. 2004). In *Haley*, the court granted a
11 summary judgment dissolving a deadlocked LLC under Delaware's LLC statutes, on grounds that
12 it was "not reasonably practicable for it to continue the business of the company" because there
13 existed no provision for breaking a tie in voting interests and the LLC could not take critical
14 actions, such as entering contracts or borrowing money, absent a majority vote of its members. *Id.*

15 Similarly here, Chef Exec has the exact deadlock because there are only two Managers and
16 both have polarized opinions on how the Company should proceed.³⁷ In his declaration, Arnould
17 lists over a dozen material items in which the Managers disagree.³⁸ The disagreements between the
18 Managers pertain to almost every conceivable managerial area of a business, including the
19 operational, inventory, financial, managerial, accounting, marketing, sales, and growth aspects of
20 the Company.³⁹

21
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23
24 ³⁵ *Id.*

25 ³⁶ *Id.*

26 ³⁷ See **Arnould Dec.**, at 1-2, ¶8.

27 ³⁸ *Id.*

28 ³⁹ See *id.*

1 Further, the rationale in *Haley* illustrates the futility in continuing an LLC when the
2 Managers are polarized. The LLC in *Haley* operated a restaurant known as the Redfin Grill. *See*
3 *Haley*, 864 A2d 86. As in this case, the defendant, Talcott, opposed dissolution, claiming no real
4 disagreement had arisen, and expressing the desire to continue the LLC's existence. The court said
5 the following:

6 Talcott suggests that Haley has merely voluntarily removed himself from the
7 management process and that no express disagreement has arisen. This court,
8 however, may consider the totality of the circumstances in determining whether the
9 parties disagree.

10 Moreover, there is no evidentiary support for Talcott's suggestion that the parties
11 are not at an impasse. The parties have not interacted since their falling out in
12 October, 2003. Clearly, Talcott understands that the end of Haley's managerial role
13 from the Redfin Grill profoundly altered their relationship as co-members of the
14 LLC. **After all, it has left Haley on the outside, looking in, with no power.** Of
15 course, Talcott insists that the LLC can and does continue to function for its
16 intended purpose and in conformity with the agreement, receiving payments from
17 the Redfin Grill and writing checks to meet its obligations under the mortgage on
18 Talcott's authority. But that reality does not mean that the LLC is operating in
19 accordance with the LLC Agreement. **Although the LLC is technically**
20 **functioning at this point, this operation is purely a residual, inertial *status quo***
21 **that just happens to exclusively benefit one of the 50% members, Talcott, as**
22 **illustrated by the hands-tied continuation of the expired lease with the Redfin**
23 **Grill. With strident disagreement** between the parties regarding the appropriate
24 deployment of the asset of the LLC, **and open hostility** as evidenced by the related
25 suit in this matter, **it is not credible that the LLC could, if necessary, take any**
26 **important action that required a vote of the members.** Abundant,
27 uncontradicted documents in the record demonstrate the inability of parties to
28 function together.

20 *Haley*, 864 A2d at 95-96 (emphasis added).

21 Here, just like *Haley*, Arnould is "on the 'outside, looking in with no power.'" *Id.* Indeed,
22 Arnould has literally been locked-out of his own Las Vegas warehouse by Muney.⁴⁰ Like the lease
23 in *Haley*, although Chef Exec is "technically functioning at this point," Muney has tied the hands
24 of Chef Exec by subleasing the Las Vegas warehouse back the Company for more than double the
25

26
27
28 ⁴⁰ See Arnould Dec., at 1-2, ¶8.

1 actual price.⁴¹ *Id.* Arnould has described over a dozen “strident disagreement[s] between the
2 parties” specifically with respect to the Las Vegas warehouse lease. *Id.*⁴² And between the lock-
3 out, eroded trust, Muney’s refusal to dissolve, and this litigation, it is clear that there is “open
4 hostility” between the Managers. *Id.*⁴³ Finally, just like *Haley*, “it is not credible that the LLC
5 could, if necessary, take any important action that required a vote of the members.” *Id.* With an
6 even split between the Managers, a deadlock in determining how the Company is to proceed is
7 inevitable. This stalemate forces Chef Exec to drift along like a ship with no one at the helm.

8 In sum, the very purpose of judicial dissolution under NRS 86.495 is to provide for
9 dissolution in situations such as these, and as such, judicial dissolution of Chef Exec is the only
10 viable option moving forward.

11 **C. MUNEY INCORRECTLY ASSERTS THAT HE OWES NO FIDUCIARY**
12 **DUTIES.**

13 In their Motion, Defendants argue that Muney owed no fiduciary duties to Arnould.⁴⁴
14 Muney also argues that Arnould’s counsel somehow approved of Muney charging Chef Exec more
15 than double the previous rent, and pocketing the difference.⁴⁵ Both of these claims are false.

16 The letter Defendants cite in their Motion was a settlement letter that proposed multiple
17 terms and conditions to an amicable dissolution.⁴⁶ The irony of Defendants’ reliance on the
18 settlement letter is that Muney *refused* to accept the terms of the proposed dissolution,⁴⁷ and then
19 cherry-picked a single term from a rejected settlement letter and in his pleadings, argues to this
20 Court that this somehow served as Arnould’s approval of Muney’s scheme.

21 _____
22 ⁴¹ *Id.* at 3, ¶¶9-12.

23 ⁴² *Id.* at 1, ¶8.

24 ⁴³ *See id.*

25 ⁴⁴ *See* Def.’s Mot. for Partial Summ. J., at 3-9.

26 ⁴⁵ *Id.* at 1, ¶2.

27 ⁴⁶ *See Peel Dec.*, at 1, ¶¶3-8.

28 ⁴⁷ *Id.*

1 The facts show that Arnould was unaware of Muney's scheme and never approved of him
2 receiving extra income from the Company.⁴⁸ This blatant profiteering flies in the face of the duties
3 and responsibilities set forth in Nevada Limited Liability Act. *See* NRS Chapter 84 *et seq.*

4 In Nevada, in the absence of an operating agreement, managing members of a limited
5 liability company generally have authority to prescribe the management of the company. *See* NRS
6 § 86.291. However, this does not vest in a manager the unfettered power to do whatever he or she
7 pleases with respect to LLC assets. *See id.* Under Nevada's limited liability company statutes, a
8 member or manager of an LLC can receive income from an LLC through fixed compensation
9 (NRS 86.281(9)), distributions upon a dissolution (NRS 86.521), or profit distributions (NRS
10 86.341).⁴⁹ Here, Chef Exec compensated its managers by fixing a commission on sales made by
11 the managers, and by distributing profits equally between the Managers.⁵⁰ Never did Chef Exec
12 nor Arnould agree to compensate Muney an addition \$5,088.00 for simply renewing a lease.⁵¹ As
13 such he violated the statutory fiduciary duties pertaining to member compensation in NRS Chapter
14 84 *et seq.*

15 Similarly, Muney had a duty created by statute to hold the manager's contributions in trust.
16 *See* NRS 86.391(2). Just as Defendants point out in their Motion, Muney's acts potentially
17 "constitute a violation of a duty to make promised contributions to the LLC, or to hold in trust any
18 property promised to the LLC."⁵² Indeed, the Nevada limited liability company statutes provide
19 that a member must hold as trustee any property that the member agreed to contribute to the
20 company. § 86.391(2); *see also, JPMorgan Chase Bank, N.A. v. KB Home*, 632 F. Supp. 2d 1013,
21 1025 (D. Nev. 2009). As such, a member "holds as trustee" the LLC property contributed by the
22

23 ⁴⁸ *Id.* at 3, ¶11.

24 ⁴⁹ Note that a "transferee" can also receive income through a member transferring his or her share of the
25 LLC profits to the transferee. *See* NRS 86.351.

26 ⁵⁰ *See Arnould Dec.*, at 1, ¶¶5-6.

27 ⁵¹ *Id.* at 3, ¶¶9-11.

28 ⁵² *See* Def.'s Mot. for Partial Summ. J., at 4, ¶2.

1 members. *Id.* Here, Muney's clandestine lease afforded him an extra \$5,033.00 per month of
2 additional compensation to be paid from the contributions made to Chef Exec.⁵³ Arnould never
3 approved of Muney's use of Company contributions, nor did Arnould approve of Muney's
4 decision to renew the Las Vegas lease and sublease it back to Chef Exec at more than double the
5 price.⁵⁴

6 Here, it is unclear whether Muney justified his sublease scheme as part of his commission
7 for his sales, or as manager profit distributions. But regardless, the additional income was never
8 disclosed or approved by Arnould.⁵⁵ If Muney believes the additional income is a **distribution**
9 under NRS 86.341, then he has violated the same by disproportionately giving himself a
10 \$5,088/month raise.⁵⁶ Under the Nevada Limited Liability Act, an LLC:

11 [M]ay, from time to time, divide the profits of its business and distribute them to
12 its members, and any transferee as his or her interest may appear, upon the basis
13 stipulated in the operating agreement. **If the operating agreement does not**
14 **otherwise provide, profits and losses must be allocated proportionately to the**
15 **value, as shown in the records of the company, of the contributions made by**
16 **each member and not returned.**

17 *Id.* (emphasis added).

18 Here, Muney's motivations were for hijacking the \$5,088 from Chef Exec are irrelevant.
19 His actions constitute either an unapproved compensation from the LLC (NRS 86.281(9)), a
20 disproportionate distribution (NRS 86.341), a misappropriation of Company contributions (NRS
21 86.391(2)), or all of the above. For the purposes of summary judgment, suffice it to say that the
22 facts show Muney paid himself Chef Exec profits without approval from Arnould and thereby
23 breached his fiduciary duties created by NRS Chapter 84 *et seq.*⁵⁷

24 ⁵³ See **Arnould Dec.**, at 3, ¶¶9-12.

25 ⁵⁴ *Id.*

26 ⁵⁵ *Id.*

27 ⁵⁶ *Id.* The amount that he "pocketed" from the sublease arrangement is \$5,088.00. The lease is paid on a
28 monthly basis by Chef Exec.

⁵⁷ *Id.*

1 Notably, Munev was well-aware of the fiduciary duties he owed to Arnould. Both
2 Managers were sent a letter from the law firm of Gershuni & Goldstein that provided “an overview
3 of certain aspects of operating an LLC.”⁵⁸ The letter states:

4 **Fiduciary Duties. Every LLC manager has fiduciary duties that are the same**
5 **as those of a general partner in a partnership.** Members who are not managers
6 are not subject to these duties, which include the **duty of loyalty, the duty of care**
7 **in performing managerial responsibilities, and the duty of good faith in dealing**
8 **with fellow members and the LLC.** Please contact us if you wish to discuss the
9 responsibilities imposed by these fiduciary duties.⁵⁹

10 Thus, the duties Munev owed as a manager of the Company were clearly presented to
11 him.⁶⁰ Nevertheless, Munev intentionally ignored his managerial duties altogether and chose to
12 line his pockets with proceeds from the Company’s Las Vegas warehouse lease.⁶¹ In sum, Munev
13 understood and intentionally breached his fiduciary duties under NRS Chapter 84 *et seq.*⁶²

14 **IV. CONCLUSION**

15 This Court should deny Defendants’ Motion for Partial Summary Judgment because there
16 are factual disputes between the Managers that make it unreasonable and unpracticable for them
17 to carry on business together. Further, This Court should deny Defendant’s Motion because Munev
18 has blatantly breached his fiduciary duties by profiting from the proceeds of the Company.

19 Dated this 19th day of December, 2019.

20 MARQUIS AURBACH COFFING

21 By /s/ Phillip S. Aurbach
22 Phillip S. Aurbach, Esq.
23 Nevada Bar No. 1501
24 *Attorneys for Plaintiff*

25 ⁵⁸ See **Gershuni Letter**, at 4, ¶3.

26 ⁵⁹ *Id.* (emphasis added).

27 ⁶⁰ See **Gershuni Letter**, at 4, ¶3.

28 ⁶¹ See **Arnould Dec.**, at 3, ¶¶9-12.


⁶² *Id.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF DOMINIQUE ARNOULD'S
OPPOSITION TO DEFENDANTS MOTION FOR PARTIAL SUMMARY JUDGMENT**
was submitted electronically for filing and/or service with the Eighth Judicial District Court on the
19th day of December, 2019. Electronic service of the foregoing document shall be made in
accordance with the E-Service List as follows:⁶³

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com


an employee of Marquis Aurbach Coffing

⁶³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1

**DECLARATION IN SUPPORT OF OPPOSITION TO DEFENDANTS MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I, Dominique Arnould, declare that I am over the age of 18 years, I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I further state that I am competent to testify as to the facts stated herein and that this declaration is submitted on behalf of my Opposition to Defendant's Motion for Summary Judgment.

1. Muney Clement ("Muney") and I are 50/50 owners of Chef Exec Suppliers, LLC ("Chef Exec" or the "Company").

2. Muney and I are both managers of Chef Exec.

3. Chef Exec has no written operating agreement.

4. Chef Exec engaged in business primarily in Las Vegas, Nevada and Los Angeles, California. However, Arnould and Muney equally managed both Chef Exec locations.

5. Muney and I agreed that we would distribute profits of Chef Exec equally (50/50). To the best of my knowledge, Muney has always been paid his 50% share of the Chef Exec profits.

6. Muney and I also agreed that we would each be compensated by Chef Exec for our sales. We specifically agreed that each manager would receive a 10% commission on our respective sales generated for Chef Exec. Since the beginning of Chef Exec, I have realized approximately 58% of the sales of the company with my customers while Muney realized only approximately 27%. To the best of my knowledge, Muney has always been paid his 10% commission for the sales he generated.

7. The trust between myself and Muney has completely broken down. This erosion of trust began after it appeared to me that Muney was abandoning his loyalty to me and the Company in favor of helping set up his son in the business.

8. Disputes between myself and Muney have arisen and are so deep that it is not reasonably practicable to carry on the business of the Company. In the course of managing Chef

1 Exec, Muney and I disagreed as to how Chef Exec would carry out business. Among others,
2 these disagreements include:

3 a. How much time, money, and expense to be devoted to the company
4 website and how much time, money, and expense should be devoted to the Company's trade
5 show exhibits and other marketing efforts;

6 b. How the business should be managed and its day to day operations and
7 how involved the managers should be in the day to day business operations, such as when the
8 managers should come to work, and how often the managers should work;

9 c. How the managers should be compensated for administrative tasks,
10 operational duties, marketing efforts, and other tasks not related to direct sales efforts;

11 d. How the managers would divide time and resources with other businesses
12 they may be involved in and whether those other businesses presented a conflict with the
13 Company's business opportunities;

14 e. How much inventory the Company should carry at any given time, and
15 whether the Company should carry 12-13 months of inventory instead carry smaller inventory
16 reserves and benefit from increased cash flow;

17 f. How Muney would be compensated given his poor sales performance;

18 g. Whether certain clients should be considered Muneys' clients for
19 commission purposes;

20 h. How Muney expenses entertainment and food expenses for his friends,
21 and whether those expenses are appropriate to be charged to Company and paid by the
22 Company;

23 i. Whether the business in California is viable and whether it should be
24 continued;

25 j. Whether more money should be invested into the business or should be
26 dispersed to the managers;

27 k. Whether the business should dissolve or continue; and

28 l. What a fair distribution of Chef Exec's assets would be upon dissolution.

1 9. One of the central disputes between Muney and I arose out of a lease for a Las
2 Vegas warehouse for Chef Exec. Originally, Chef Exec paid approximately \$3,800/month for
3 Las Vegas warehouse space. Chef Exec's Las Vegas warehouse lease expired and the landlord
4 wanted approximately \$5,857/month to renew the lease. Without any joint agreement or
5 communication, Muney decided to renew the Las Vegas warehouse under CMJJ Gourmet, Inc.,¹
6 an entity believed to be solely owned by Muney.

7 10. Without any joint agreement or communication, Muney subsequently sub-leased
8 the Las Vegas warehouse to Chef Exec at \$10,890/month rent. This rent was paid from sales of
9 Chef Exec inventory.

10 11. I was never consulted on the amount of rent and was astonished when I found out
11 that the rent was more than double what we were paying previously. I never consented to the
12 price or term of the Las Vegas lease or the sublease to Chef Exec.

13 12. Muney should have made a joint decision, but instead, secretly charged the
14 Company an additional \$5,033 for rent and personally pocketed the difference. In other words,
15 Muney was paying himself and extra \$5,033/month for rent without my consent. This is a breach
16 of his fiduciary duty owed to me and thus, Muney should be personally responsible for
17 \$5,033/month difference and/or stop charging Chef Exec the extra \$5,033/month for rent.

18 13. Furthermore, Muney refuses to allow me access to the Las Vegas warehouse or
19 treat me like an owner of the Company. Via email, Muney wrote me stating: "we **have changed**
20 **the locks** on the warehouse; Dominique will still be able to access inventory there, he will just
21 have to do so through the Las Vegas warehouse manager." In other words, Muney insisted I
22 work through my own employee to have access to the Las Vegas warehouse that my Company is
23 paying rent on.

24 14. All of these disagreements culminated into me expressing to Muney that I would
25 like to dissolve the Company or have him buy me out of my share. However, it has been
26 impossible to get Muney to discuss how to resolve a dissolution of the business. In another

27 _____
28 ¹ See **Exhibit 2** attached to Plaintiff Dominique Arnould's Motion for Appointment of Trustee

1 email, Muney's response to dissolution was "I can't imagine any circumstances where we'd
2 agree to a dissolution."

3 15. I believe dissolution is the only viable option for Chef Exec, because the disputes
4 and disagreements between Muney and I are so deep that it is not reasonably practicable to carry
5 on the business of the Company.

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

8 17. I am a manager of Chef Exec.

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

13 Pursuant to NRS § 53.045 and 28 U.S.C. §1746, I declare under penalty of perjury under
14 the laws of the State of Nevada that the foregoing is true and correct.

15 Executed on this 19 day of December, 2019.

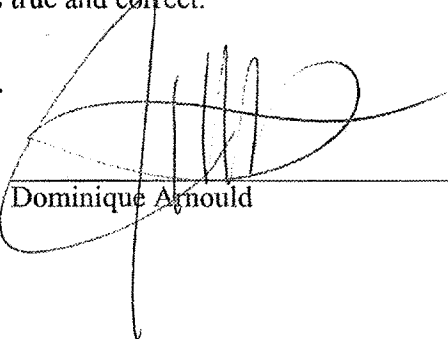
16
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18 Dominique Arnould
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Exhibit 2

GERSHUNI & GOLDSTEIN LLP

GREGORY B. GERSHUNI
NEAL M. GOLDSTEIN

OF COUNSEL
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Reply to: Los Angeles

Friday, September 14, 2007

Dominique Arnould
P.O. Box 1800
Studio City, California 91604

Clement Muney
1960 Eagle Street
Henderson, Nevada 89074

Reference: Formation of CHEF EXEC SUPPLIERS, LLC

Dear Dominique and Clement:

The legal requirements concerning the initial formation of Chef Exec Suppliers, LLC, a Nevada Limited Liability Company ("the LLC"), have been satisfied, and our services with regard to its formation are concluded. The purpose of this memorandum is to discuss some of the legal requirements that will apply to the LLC's operation. This memorandum does not address the specific operational requirements in your operating agreement; it is intended only to provide an overview of certain aspects of operating an LLC. If you wish further information on any matter discussed in this memorandum or any other matters regarding the operation of an LLC, please contact us.

1. Operational Formalities.

The members and managers, if any, of your LLC must carefully observe any operational formalities specified in the operating agreement or articles of organization, such as meetings and voting requirements to take various actions. Observing those formalities will reduce the risk that a governmental authority such as the IRS, or a creditor, can claim that your LLC is a mere sham created to provide tax benefits and improperly protect its members from personal liability. One indication that you are conducting your business in an appropriate manner will be the maintenance of proper books and records for the LLC, with properly executed minutes or written consents for actions taken with or without a meeting. The minutes should reflect that the LLC has complied with all necessary requirements for obtaining the approval of a course of action by the LLC's members or managers.

In addition to complying with specific operational formalities:

* The LLC should be adequately capitalized to carry on the business activities in which it is engaged or proposes to engage, including anticipated liabilities of operation. Appropriate books and records should be maintained that show the adequacy of capitalization. The LLC should also obtain insurance for unanticipated liabilities.

LAW OFFICES OF
GERSHUNI & GOLDSTEIN LLP

Dominique Arnould and Clement Muney
Friday, September 14, 2007
Page 2

* The LLC's financial affairs should be kept separate from those of its members and managers because it is a separate legal entity. Its funds should not be commingled with those of any third party or of its members or managers. In addition, separate records for the LLC should be maintained, distinct from those of any other entity, member, or manager. It is important for the LLC to establish a bank account in its own name. Typically, a bank will allow a depository account to be opened when it is presented with a copy of the articles of organization. Banks also usually require a taxpayer identification number for opening an account.

* The LLC should be sure to conduct all business in its own name and not in the individual name of any manager or member. All transactions between the LLC and its owners should be fully disclosed to all members and should be fair to the LLC. To ensure that there is no confusion on the part of outsiders dealing with the LLC, the following steps should be taken:

(a) All letterhead, bills, invoices, and other business forms used by the LLC should show its full legal name and its current address and telephone number;

(b) The LLC's telephone numbers should be listed under its name in all directories;

(c) The LLC's full legal or fictitious business name should appear on all LLC signs or advertisements, including any signs at its principal place of business. Employee business cards should show the LLC's name as well as their own; and

(d) All contracts should be entered into in the name of the LLC and executed with signature blocks that clearly identify the signing party as an agent of the LLC.

* The LLC should avoid improper distributions, as discussed in paragraph 7 below, and should properly withhold and pay over to the proper taxing authorities all tax payments required by applicable tax laws.

* The LLC should be properly qualified to do business in each state requiring registration. The LLC may wish to avoid conducting business in a state that does not yet have LLC legislation and does not recognize foreign LLCs.

Dominique Arnould and Clement Muney
Friday, September 14, 2007
Page 3

2. Articles of Organization.

The law states that an LLC begins when it files its articles of organization and enters into an agreement for its operation. A copy of the articles of organization of Chef Exec Suppliers, LLC has been provided to you. The articles of organization may be amended at any time.

3. Operating Agreement.

All members must be parties to the operating agreement. It is the primary document that defines the characteristics of the LLC (which will be used in determining its tax treatment), the relationship of its members, and the duties of its members and managers. Although an operating agreement may be either oral or written, it is far preferable to put it into writing to reduce the risk of a dispute over the rights of members, the limitations on managers, and the rules of operation. Various rights and obligations under law may be enforced only if they are mentioned in a written instrument. Accordingly, we have supplied you with a proposed Operating Agreement for your review, approval, and signature.

The operating agreement may be amended by the vote of the members as provided in the operating agreement.

4. Management of the LLC.

An LLC may be managed either by managers or, if the articles of organization do not provide for managers, by the members as a group. The articles of organization must specify whether the LLC is managed by its members or by one or more managers. If the LLC does not provide for managers, all members will be considered managers. The operating agreement will provide for the manner in which managers' decisions must be made. If the operating agreement is silent on this subject, managers' decisions are made by majority vote at a meeting or by unanimous written consent. No manager or officer is personally liable for LLC debts, obligations, or liabilities solely because of his or her status as manager or member of the LLC.

If the operating agreement provides for the appointment of an officer or officers, you should carefully review the agreement to determine their duties. If the agreement does not provide for officers, the managers, at their discretion, may appoint and remove officers. The officers carry out the day-to-day functions of the LLC under directions and policies established by the managers.

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All members must have certain voting rights, which to varying degrees may be modified by the operating agreement. You should carefully review the operating agreement to become familiar with voting rights and requirements. These rights include the members' right to approve a decision to continue the LLC after its dissolution, to transfer membership interests or admit an assignee of an interest as a member, or to amend the articles or the agreement.

Unless the operating agreement provides otherwise, the LLC must give members advance written notice of any meeting at which members must vote, and the notice must specify the matters to be voted on. If an action is taken by written consent, the LLC may have to give notice to all members before it completes the action. The LLC Act does not require that the members hold formal meetings to vote and take action. Please contact us if you have any questions regarding the voting and notice requirements.

5. Fiduciary Duties.

Every LLC manager has fiduciary duties that are the same as those of a general partner in a partnership. Members who are not managers are not subject to these duties, which include the duty of loyalty, the duty of care in performing managerial responsibilities, and the duty of good faith in dealing with fellow members and the LLC. Please contact us if you wish to discuss the responsibilities imposed by these fiduciary duties.

6. Obligation To Contribute Capital.

The articles or operating agreement will provide for initial capital contributions by the members and may provide for additional contributions. Contributions may be in money, property, services, or a note to contribute the same. Additional capital contributions will not be required of members unless the articles or agreement so provide. A member's obligation to make a contribution may be compromised only by the members' unanimous vote, unless the articles or agreement provide otherwise.

Your operating agreement may provide for certain remedies if a member fails to make a required contribution. The remedies specified are enforceable unless they are shown to have been unreasonable under the circumstances existing at the time the agreement was made.

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Creditors of an LLC have a limited right to enforce a member's obligation to contribute additional capital. A conditional obligation to contribute is not enforceable unless the condition has been satisfied or waived.

7. Limitations on Distributions.

You should be aware that your LLC may not distribute cash to its members if, after making the distribution (a) the LLC would be unable to pay its debts as they become due in the usual course of business or (b) the LLC's total assets would be less than its total liabilities (plus the amount that would be needed if the LLC were dissolved, to pay other members whose rights on dissolution are superior to the rights of the member receiving the distribution). Managers or members may be held personally liable for improper distributions.

8. Securities Regulation.

Membership interests in the LLC are securities unless all members are actively engaged in the management of the LLC. In addition, an LLC may be a security under federal law.

The securities laws regulate the offering, issuance, and sale of securities (such as stock in a corporation). These laws may also apply to any LLC reorganization that changes the rights, preferences, or privileges available to a class of membership interests. Any issuance or offers to sell or the sale of a membership interest in the LLC must be done in accordance with Nevada and federal securities laws.

The initial membership interests in your LLC were issued under an exemption that is available under the securities laws. Before any future issuances, offers, or sales are made, you must contact us to ensure that you are complying with these laws.

9. Books and Records.

A Nevada LLC must maintain an office in Nevada in which the records described below are kept. This requirement may not be varied by the operating agreement or articles of organization. The following information must be maintained at that office:

* A current alphabetical list of each member, manager, and holder of an economic interest, including the full name and address of each. The list must set forth the

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contributions and share in profits and losses of each member and holder of an economic interest.

* A copy of the articles of organization and operating agreement and all amendments to either, plus any powers of attorney under which the articles, agreement, or amendments were executed.

* Copies of federal, state, and local income tax or information returns and reports and financial statements for the LLC's last six taxable years.

* All books and records of the LLC that relate to its internal affairs for the current and preceding four fiscal years.

An LLC that does not maintain the above records is subject to a penalties.

If certificates of interest are to be issued to members, a membership interest register should be kept to record the certificate numbers and the cancelled or reissued shares.

10. Voting Rights.

Members have the voting rights granted to them by the LLC's articles of organization or operating agreement. If neither document provides for voting rights, the Act's voting provisions will apply. Voting may be on a per capita, financial interest, class, group, or any other basis. Members vote in proportion to their interests in current profits or, for a member who has assigned his or her entire "economic interest" in the LLC but remains a member, in proportion to the interest in current profits he or she had immediately before the assignment.

Unless otherwise provided in the articles or operating agreement, the following matters require a unanimous vote of all the members: (a) a decision to continue the business of the LLC after a nonjudicial dissolution; (b) approval of the transfer of a membership interest and admission of an assignee as a member of the LLC; and (c) amendment of the articles of organization or operating agreement.

Members may vary these voting requirements, but in no event may the following actions be accomplished by a vote of less than a majority in interest of the members: (a) an amendment to the articles of organization; (b) dissolution of the LLC; or (c) a merger of the LLC.

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Members are free to agree in the operating agreement on all procedures by which managers make decisions, including whether meetings are required; the holding of meetings; the authority of any manager or officer to call a meeting; the time required for the notice of the meeting; the method of delivery of the notice; whether the notice must specify the purpose of the meeting; the ability of managers to waive notice and consent to holding the meeting; quorum requirements; the number of managers required to adjourn a meeting; whether notice of adjournment must be given to managers who are not present at the time of adjournment; the location of the meeting; the ability of managers to participate in a meeting by using conference telephone equipment; and the ability of managers to appoint committees and the actions those committees may take.

11. Reports, Information, and Inspection Rights.

Each member or holder of an economic interest (i.e., someone who has paid for an interest in the LLC but is not a full-fledged member with voting rights) can require a manager to promptly deliver a copy of any written operating agreement of the LLC and copies of (a) a current list of the members' names and addresses, together with their share of the LLC's profits and losses; (b) the full name and business or residence address of each manager; and (c) copies of the LLC's federal, state, and local income tax or information returns and reports. This right is limited to purposes reasonably related to the member's or interest holder's ownership interest. The LLC must pay for copying expenses.

An LLC is also required to send to each member or holder of an economic interest, within 90 days after the end of each taxable year, the information necessary to complete each member's or holder's federal income tax return.

Each member, manager, and holder of an economic interest has the right, on reasonable request, to inspect and copy during normal business hours any of the records required to be maintained at the principal office of the LLC and to obtain from the manager a copy of the LLC's federal, state, and local income or information returns for each year. Any such request must be for a purpose reasonably related to the interest of that person as a member, manager, or holder of an economic interest.

If the LLC has more than 35 members, its manager(s) must send each member an annual report within 120 days after the close of the fiscal year. The annual report must contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year.

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12. Employer Identification Number.

An application for a federal Employer Identification Number (EIN) was filed on your behalf and an EIN was issued for the LLC. This EIN was provided to you in a separate writing.

13. Annual Information Statement.

Newly formed LLCs must file an annual informational statement with the state. The required form must contain (a) the name of the LLC, the Secretary of State's file number and, if the LLC is a foreign LLC, the state in which it is organized; (b) the name and address of the LLC's agent for service of process; (c) the street address of its principal executive office and the office at which records are being maintained, if it is a domestic LLC; (d) the name and address of any managers and the chief executive officer, if any, or if no manager has been elected or appointed, the name and address of each member; and (e) the general type of business comprising the LLC's principal business activities.

14. Licenses.

Various licenses are required to operate the business of the LLC, which may include federal licenses, such as licenses for export activities, and state and local licenses, including business licenses. If you are not sure which licenses you might need, please contact us to discuss those that are required for your particular business.

15. Fictitious Business Names.

If the LLC plans to transact business under a name other than that listed on its articles of organization, it must file a fictitious business name statement with the clerk of the county in which it has its principal place of business. It must also file a statement in the other counties where it will transact business. Once a statement is on file with the county clerk, it must be published in a newspaper of general circulation and an affidavit of publication must be filed with the county clerk's office. Fictitious business name forms may be obtained from the county clerk's office of the county in which you intend to file or from the newspaper that will publish the statement. We will be happy to assist you in filing any necessary fictitious business name statements.

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16. Payroll and Withholding Taxes.

Various procedures apply to withholding taxes for employees. It is essential that you become familiar with these practices and comply with their requirements. The federal procedures are detailed in IRS publication circular E, "Employer Tax Guide" along with its current supplement. We urge you to also become familiar with the requirements in this regard which are applicable in the State of Nevada.

Willful failure to collect, account for, and pay withholding taxes subjects the employer and the individuals responsible for paying the taxes to a 100-percent monetary penalty and personal liability.

17. Insurance.

Generally, it is advisable to obtain insurance for the LLC's operations. You should promptly review the LLC's potential insurance requirements with its insurance agents.

18. Trademarks, Trade Names, and Trade Secrets.

If the LLC has developed a unique name or symbol that has or will become associated with its services or products, the LLC may wish to register the name or symbol as a trademark or trade name. Registration with the U.S. Patent and Trademark Office will help protect the trademark or trade name against infringement or loss. Product designs, or processes involved in making the LLC's products, may require patent protection. Customer lists and other trade secrets may need to be protected by requiring employees to sign trade secret and confidentiality agreements. Please seriously consider these issues, because you may lose important ownership rights if you fail to take proper precautions.

19. Business in Other States.

The LLC may be required to be qualified to do business or register in other states in which it does business. Please contact us to discuss this if you suspect you need to qualify in any other state. Also, in the few states that do not yet have LLC legislation, the limited liability of members and managers may not be observed.

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20. Conclusion.

The foregoing is a generalized summary of some of the legal and accounting issues to consider as the LLC begins operating. Laws and regulations applicable to LLCs are changing rapidly and are much more detailed than specified above.

Although we cannot undertake the responsibility of providing updates to this memorandum, we are always available to discuss your legal concerns and to assist you with any aspect of the LLC's business or operations.

Thank you for your attention. Please contact me at your convenience if you have any questions or comments.

Very truly yours,

Gregory B. Gershuni

GBG:21LLC-Exp

Exhibit 3

1 **DECLARATION OF JORDAN B. PEEL IN SUPPORT OF OPPOSITION TO**
2 **DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

3 I, Jordan B. Peel, declare that I am over the age of 18 years, I have personal knowledge of
4 the facts stated herein, except for those stated upon information and belief, and as to those, I believe
5 them to be true. I further state that I am competent to testify as to the facts stated herein and that
6 this declaration is submitted on behalf of Plaintiff's Opposition to Defendant's Motion for
7 Summary Judgment.

8 1. I am an attorney representing Dominique Arnould ("Arnould").

9 2. Arnould is a manager and 50% owner of Chef Exec Suppliers, LLC ("Chef Exec").

10 3. I assisted Arnould to negotiate a potential dissolution of Chef Exec. To that end, on
11 August 7, 2019, I wrote a confidential settlement letter to Clement Muney ("Muney") who was
12 the other 50% owner and manager of Chef Exec.¹

13 4. The purpose of my confidential settlement letter was to propose settlement terms
14 regarding dissolution of Chef Exec.

15 5. In the settlement and compromise letter, I proposed six (6) enumerated terms. One
16 of the proposed settlement terms dealt with the Las Vegas warehouse lease. The settlement letter
17 did not say and was not intended to give Muney permission or authority to renew, lease, or
18 otherwise modify any of the existing Chef Exec leases.

19 6. Muney did not accept the settlement and compromise terms that I proposed in my
20 confidential settlement letter.

21 7. Arnould and Muney were not able to reach an agreement on terms of a dissolution
22 and Muney refused to dissolve Chef Exec

23 8. Arnould proceeded with judicial dissolution.


24 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of
25 Nevada that the foregoing is true and correct.

26 //

27 //

28 ¹ See **Exhibit 1**, attached to Defendant's Motion for Partial Summary Judgment, on file herein.

1 Dated this 19 day of December, 2019.

2
3 
4 _____
5 Jordan B. Peel
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Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff/Counter-Defendant,

vs.

CLEMENT MUNNEY; 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

**DEFENDANTS' REPLY IN SUPPORT
OF SUMMARY JUDGMENT**

COME NOW Defendants, CLEMENT MUNNEY, (hereinafter "Muney"), and CHEF
EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC") by and through their undersigned
counsel Robert Kern, ESQ., of KERN LAW, Ltd. submit this DEFENDANTS' REPLY IN
SUPPORT OF SUMMARY JUDGMENT. This opposition is based on the records and
files of this case, the attached memorandum and exhibits and any matters adduced at the
hearing.

///

///

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **INTRODUCTION**

4 Plaintiff Arnould's opposition to the motion for summary judgment appears to be
5 based upon the hope that enough allegations by affidavit can muddy the waters sufficiently
6 to distract from the overwhelming absence of legal authority for their position.

7 Arnould agrees that the summary judgment standard is that a reasonable issue of fact
8 does not exist if a reasonable jury could not return a verdict for the non-moving party.
9 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713 (2002). Thus although Arnould raises
10 many issues by affidavit, any such allegations that are directly contradicted by written
11 evidence, or by reasonable interpretation of such evidence, must be disregarded, as it would
12 be by any reasonable jury. The fact that Arnould has made provably false statements¹ under
13 penalty of perjury in this matter also reduces the likelihood of any reasonable jury giving his
14 allegations credence.

15 Ultimately, Summary judgment must be granted, because even if all Arnould's
16 allegations were taken as true, none constitute a violation of any fiduciary duty of a member
17 of an LLC that is recognized in Nevada. Further, judicial dissolution and appointment of a
18 receiver are treated as extreme remedies of last resort that are not available if there are other
19 remedies at law available. As there are clearly other remedies at law, and Arnould has failed
20 to argue why such remedies would not be reasonable in the circumstances, judicial
21 dissolution and appointment of a receiver are unavailable to Arnould as a matter of law.

22 **ARGUMENT**

23 **A. None of the Alleged Conduct Constitutes a Breach of Fiduciary Duty.**

24
25 ¹ In the verified complaint Arnould stated the company CMJJ was formed without his
26 knowledge, yet Munev provided business records showing Arnould has been receiving
27 checks from CMJJ for 16 years (MSJ Exhibit 3)
28 In both the verified complaint and the affidavit supporting the motion for appointment of
trustee, Arnould claimed that the Las Vegas warehouse was leased "without any joint
agreement or communication" despite Exhibit 1 of the MSJ showing two writings from
Arnould directly stating that Munev should lease the space with his own separate entity.

1 Whether credible or not, Arnould has alleged that Muney disagrees with him about
2 dissolving the company, that Muney leased a rental space with his own company and sub-
3 leased it to Chef Exec, and that he changed locks on the Las Vegas warehouse, so that
4 Arnould would inconveniently be required to go through the normal process for taking
5 inventory in the future. None of these constitute a violation of any fiduciary duty owed by
6 an LLC member under Nevada law. As explained in the original motion, under Nevada law,
7 unless specifically created in the operating agreement, fiduciary duties owed between
8 members of an LLC are limited to the duty to make contributions to the LLC that the
9 member agreed to pay, and to hold as trustee any property that the member agreed to
10 contribute to the company. *JPMorgan Chase Bank, NA v. KB HOME*, 632 F. Supp. 2d 1013
11 (D. Nevada 2009); NRS 86.39. Arnould made two novel arguments in response. The first
12 was that a letter sent to Muney and Arnould by an attorney who was not licensed to practice
13 in Nevada, which said they owed a duty of loyalty, somehow created such a duty (or is
14 sufficient legal authority to outweigh the cited decisions of Nevada Courts) (See Opp p.12).
15 The Second argument was that by making a profit from the sub-lease to Chefexec, that this
16 profit somehow constitutes a “contribution” that Muney had promised to pay Chefexec (See
17 Opp p.10-11).

18 As to the first argument, it should go without saying that a simple letter written by a
19 non-Nevada licensed attorney does not by itself create such a duty (absent some affirmative
20 explicit acceptance of such duty by the parties, none of which is alleged). Nor does such a
21 letter provide sufficient legal authority on Nevada LLC law as to outweigh both Chapter 86
22 and the decision in *JPMorgan Chase*, above, which both indicate an absence of such duties
23 among members of an LLC, absent express statements within the Operating Agreement.
(Id.).

24 The second argument is equally unavailing. Without any significant explanation,
25 Arnould argues that by profiting through a third party company (after being expressly
26 authorized to do so by Arnould – See MSJ Exhibit 1), Muney is withholding a contribution
27 promised to be made to the LLC. The Nevada Revised Statutes provide a definition of
28 contribution as:

1 **NRS 87A.020 “Contribution” defined.** “Contribution,” except in the
2 phrase “right of contribution,” means any benefit provided by a person to a
3 limited partnership in order to become a partner or in the person’s capacity as
a partner.

4 It would be difficult to interpret profit from a third party lease as a benefit to the company
5 for the purpose of Muney becoming a member of the company. Muney had been a member
6 since 2007, and nothing provided by Arnould suggests that there was some unsatisfied
7 requirement for Muney to pay future funds in order to acquire his ownership. The second
8 part of the definition, in a person's capacity as partner, is clearly referring to a member or
9 partner adding capital to the company pursuant to some agreement among members.

10 However Arnould has failed to allege any agreement or the basis of any obligation by which
11 Muney owed any further capital contribution to Chefexec. Instead, Arnould appears to hope
12 he can convince the Court that “contribution” really just means “money that we claim he
13 should pay back to the company.” This is not what contribution means. Arnould has not
14 shown Muney to be in violation of any obligation to provide any contribution to further
capitalize the company, and thus the argument fails.

15 As it is clear under Nevada law that the burden of establishing the existence of a
16 fiduciary duty rests upon the Plaintiff, and as Plaintiff has failed to establish the existence of
17 any fiduciary duty for which the alleged facts show a violation, summary judgment must be
18 granted with regard to the claim for breach of fiduciary duty.

19
20 **B. Arnould's Allegations Fail to Justify Invoking the Extreme Remedies of**
21 **Judicial Dissolution or Appointment of a Receiver.**

22 Under both Nevada and Delaware LLC law, judicial dissolution and receivership are
23 remedies of last resort, and only available in the absence of any other legal remedy. *Bedore*
24 *v. Familian*, 125 P. 3d 1168 (Nev. Supreme Court 2006) (“We have noted that the
25 appointment of a receiver or the dissolution of a corporation is "a harsh and extreme remedy
26 which should be used sparingly and only when the securing of ultimate justice requires
27 it." . . . Thus, if another remedy is available to achieve the same outcome, the district court
28 should not resort to dissolution or the appointment of a receiver.”); *Matter of Arrow Inv.*

1 *Advisors, LLC*, 2009 WL 1101682, *2 (Del. Ch. 2009). Plaintiffs have cited no law to
2 dispute this rule, yet it is clear that the issues complained of (usurping a company
3 opportunity, refusal to dissolve company) have other available remedies. Assuming
4 usurping a company opportunity for an LLC were in fact a recognized civil wrong in
5 Nevada, Plaintiff has shown no reason why a monetary judgment, or some form of
6 injunction would be insufficient to remedy the issue. As for the refusal to dissolve the
7 company, NRS Chapter 86 provides Arnould the ability to sell his interest to a third party,
8 and equity would even allow for a court-ordered buyout of his interest if such a thing were
9 deemed necessary. (*Bedore*, Id. At 1172).

10 Further, in the same decision, the Nevada Supreme Court directly stated that claims
11 of usurpation of company opportunity, breach of fiduciary duty, and dissension among the
12 shareholders, do not justify dissolution and receivership. (*Bedore*, Id. At 1172-1173). The
13 only law cited by Plaintiff's opposition is the Delaware case *Haley v. Talcott*, in which one
14 of the two partners had become rendered completely powerless in management of the
15 company, but was also prevented from simply selling his interest or getting a buy-out
16 because he was a guarantor on the company's property. 864 A. 2d 86, 88 (Del. Court of
17 Chancery 2004) ("...the exit mechanism provides no method to relieve Haley of his
18 obligation as a personal guarantor for the LLC's mortgage."). Arnould makes no allegation
19 whatsoever that there are no other remedies at law beyond dissolution, and none of his
20 allegations explain why remedies such as a monetary judgment, or selling his interest to a
21 third party would be insufficient. Arnould does allege that he is "on the outside looking in
22 with no power," just as in *Haley*, however the only example of this he provides is the fact
23 that the locks on the Las Vegas Warehouse were changed. (See Opp p.8). Affidavits of both
24 Muney and the warehouse manager make clear that Arnould has had no difficulty getting
25 access to the warehouse, or taking product from the warehouse, since the change, and that
26 Arnould has never given Muney access to the Los Angeles warehouse at all. See Exhibits
27 7&8). There is a vast difference between being shut out from managing the company, as in
28 *Haley*, and encountering a mild inconvenience, as Arnould has.

1 As the entirety of legal authority establishes that the claims alleged do not warrant
2 dissolution or receivership, and that such remedies are not appropriate when any other
3 remedy at law exists, and Plaintiff has not disputes the existence of other remedies at law,
4 the grant of summary judgment is warranted for the claim for judicial dissolution and
5 receivership.

6
7 **C. Plaintiffs Claims Were Brought in Bad Faith.**

8 Chefexec was operated by Muney and Arnould under the existing framework for
9 fifteen (15) years, without any significant issues, and to significant profit. (See Exhibits
10 6&7). When Arnould announced his desire to retire and sell his side of the company earlier
11 this year, he did not cite any disputes or issues with Muney, only his desire to retire. (See
12 Exhibit 5). Only after Arnould was unhappy with the buy-out offers did any dispute arise,
13 and even then, only as to the terms of either buying out Arnould, or of dissolving the
14 company. (Id.). Even when dissolution was being discussed, no disputes were alleged
15 justifying the dissolution other than Arnould's desire to retire and sell his interest for more
16 than Muney was offering. (Id.). Not until October 2019, almost two months after Arnould's
17 counsel had threatened to seek judicial dissolution for no cause other than disagreeing about
18 judicial dissolution, did Arnould allege any cause for dissolution against Muney (the Las
19 Vegas sub-lease). Despite the fact that Muney immediately provided explanation that the
20 sub-lease was exactly as instructed by Arnould, Arnould did not even respond and instead
21 filed suit, clearly using the issue as a pretext for the dissolution he had long been seeking.
(See Exhibit 9).

22 Arnould's argument about the Las Vegas sub-lease is especially disingenuous
23 because it was Arnould who created the circumstances preventing Muney from being able
24 to continue leasing the space under the previous terms. As shown by written
25 communications, Muney advised that the lease was expiring and would need to be renewed,
26 and that renewal would require both Muney and Arnould to guarantee the lease. In response
27 Muney was told twice, by Arnould's California counsel and his Nevada counsel, that
28 Arnould would not be signing the lease, and that Muney should lease the property with his

1 own company and sublease to Chefexec. (See Exhibit 1). Arnould argues that the instruction
2 to lease with his own company was part of a rejected settlement offer, and review of the
3 August 7 letter, if read alone, could be interpreted that way. However, the context was that
4 this was the second time Arnould's counsel had advised Muney to do so, and the first was
5 not as any sort of settlement offer. (Id.). Further, the lease was required to be signed in
6 September, a month away from the August 7 letter, and was thus an urgent issue that all
7 parties were aware required resolution independently of any discussions of dissolution or
8 buy-out. No amount of dodging can change the fact that Arnould clearly and directly
9 instructed Muney that Arnould would not sign, and to lease the space with Muney's own
10 company, and then (implicitly) to sublease it to Chefexec, followed by pretending outrage
11 when Muney did exactly that.

12 What Arnould ignores in the discussion of the Las Vegas sublease, is that because
13 Arnould refused to sign for the renewal, the earlier lease rate was not an option for
14 Chefexec. That rate would have required Chefexec to renew the existing lease, which
15 Arnould directly prevented. This left only two choices for Muney; to take no action, and
16 then sub-lease space from a third party at market rate (higher than what CMJJ is charging
17 Chefexec, (See Exhibit 2), or to lease it with a company that he could sign for without
18 Arnould, and then sublease it to Chefexec. Arnould is unclear as to whether he claims
19 Muney's leasing and sub-leasing of the property as the problem, or whether it is that
20 Muney's other company, a legally distinct entity, did not sub-lease the space back at cost.
21 CMJJ, Muney's company, entered into a long-term lease for which Muney was required to
22 sign a personal guarantee. He did this for the benefit of Chefexec, despite not knowing
23 whether Chefexec would be dissolved or cease using the space in the near future, since
24 Chefexec was not bound in any long-term obligation to sub-lease long-term. (See Exhibit
25 7). Muney took personal risk to secure the space, and was thus entitled to charge a premium
26 on the sub-lease to Chefexec to compensate his risk. Especially as the amount charged was
27 still below the rate Chefexec would have had to pay a third party for a sub-lease under the
28 same circumstances. (See Exhibit 2).

1 Delaware courts have recognized that a bad faith, or 'phony' deadlock, in which the
2 party seeking dissolution intentionally creates dissension to support their claim for
3 dissolution, does not justify a judicial dissolution. *Vila v. BVWebTies LLC*, 2010 WL
4 3866098 (Del. Ch. 2010). Although courts have not given a clear test as to identifying a bad
5 faith deadlock, it is hard to imagine a case that is more clear than this one, where the
6 dissolution was sought for months before the alleged disputes, and even threatened to seek
7 judicial dissolution and receivership, in writing, long prior to alleging any disputes other
8 than the disagreement over whether to dissolve the company. Any examination of the
9 alleged wrong, the sub-lease in Las Vegas, in which Muney took the action only after being
10 told to do so by Arnould, not once, but twice, makes clear that Arnould's issue with
11 Chefexec is not any dispute, but rather the fact that he is seeking a better buy-out deal, and
12 is in bad faith, using the courts as a leverage tool. For the solid legal bases described above,
13 and because the circumstances lack a legitimate dispute, summary judgment should be
14 granted.

15 16 **III.**

17 **CONCLUSION**

18 Summary judgment must be granted, because even if all Arnould's allegations were
19 taken as true, none constitute a violation of any fiduciary duty of a member of an LLC that
20 is recognized in Nevada. Further, judicial dissolution and appointment of a receiver are
21 treated as extreme remedies of last resort that are not available if there are other remedies at
22 law available. As there are clearly other remedies at law, and Arnould has failed to argue
23 why such remedies would not be reasonable in the circumstances, judicial dissolution and
24 appointment of a receiver are unavailable to Arnould as a matter of law, and summary
25 judgment is thus warranted.

26
27 DATED this 27th day of December, 2019

28 **KERN LAW**

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By: /s/ Robert Kern /s/
Robert Kern, Esq.
601 S. 6th Street
Las Vegas, NV 89101
(702) 518-4529
Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December 2019, I served a true and correct copy of the foregoing DEFENDANTS' REPLY IN SUPPORT OF SUMMARY JUDGMENT, by electronic service, addressed to the following:

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

/s/ Robert Kern
Employee of Kern Law

EXHIBIT 7

AFFIDAVIT OF CLEMENT MUNEY

STATE OF NEVADA }

ss.: }

County of Clark }

I, Clement Muney, being first duly deposed states as follows:

1. I am an adult over the age of 18 and am competent to testify to the contents of this affidavit. I execute this affidavit in support of the foregoing motion. I have personal knowledge of the matters set forth herein, and all statements below are made from personal knowledge unless specifically indicated otherwise.
2. I am a 50% partner in the business known as Chef Exec LLC (hereinafter, "Chefexec"), which is a company that I formed with Dominique Arnould (hereinafter, "Arnould").
3. Throughout the existence of Chefexec, other than accounting and invoicing, I have managed the Las Vegas side of the company independently, and Arnould has managed the Los Angeles side of the company independently. This is why I managed from Las Vegas and he managed from Los Angeles, and also evidenced by the fact that I do inventory ordering for Las Vegas and Arnould handles ordering for LA, by my handling renewal of the Las Vegas lease (and why Arnould was uninterested in its renewal), Arnould's handling of the Los Angeles lease (and his adding me to the renewal despite my not wanting to be kept on the Los Angeles side). This is further evidenced by the fact that I had the ability to change locks on the Las Vegas warehouse, and the fact that I have never had a key to the Los Angeles warehouse (or even visited it).
4. Sales commissions at Chef Exec are primarily for the benefit of our sales staff, however Arnould made a habit of assigning himself commissions rather than giving them to his sales staff. Handling sales has never been a significant part of manager duties in this company, and most commissions for sales from my side of the company are given to the sales staff rather than being claimed by myself personally.
5. I have reviewed the long list of alleged disputes in Arnould's affidavit. Many are complete fabrications, the rest are issues that were discussed in the regular course of business, however other than the question of whether to dissolve, none were ever real disputes, they were simply things business managers discuss. This is evidenced by the fact that Arnould was unable to show any emails arguing about any of these things other than the dissolution.
6. Discussions in July and August about needing to renew the Las Vegas lease were never part of a

dissolution negotiation; it was a matter that had to be urgently resolved so that the lease could be renewed at the extremely advantageous rate we currently had. Every time I brought it up I was told to lease it independently and sub-lease it to Chef Exec Suppliers. At no time did Arnould or his counsel ever state or imply that they wanted any additional information about the Las Vegas lease, or terms of its renewal.

7. The fact that Arnould has contracted with Chef Exec Suppliers with companies he owns, Wines of the World and AAA Food Source, Inc., makes me surprised that he now suggests that doing exactly that is some sort of act of bad faith.
8. As Arnould refused to sign for extension of the Las Vegas lease, it was impossible for me to renew that lease (as the landlord required a personal guarantee from all owners), so the only options were for Chef Exec to let the lease lapse, and sub-lease from another company at standard commercial rates (See exhibit 2 of MSJ – email describing commercial lease rates), which would have been more expensive than what CMJJ (my company) is charging, or to have my company lease it, as instructed by Arnould's LA counsel, and his Las Vegas counsel, and sub-lease it to Chef Exec at a reduced rate, which I did. With Arnould's refusal to renew the lease, there was no option available to keep the existing lease rate.
9. As I had to personally guarantee the CMJJ lease, and the value of that was 100% dependent upon Chef Exec continuing to sub-lease (which it likely would not if it dissolved), it was appropriate to lease at close to a market rate to compensate my risk of being left in the lease with no lessor if Chef Exec were dissolved.
10. When Arnould first complained about the new lease in Las Vegas, I offered to discuss, and showed him the emails where his own counsel suggested it. I received no response other than the filing of litigation. (See Attached Email).
11. The purpose of changing locks on the Las Vegas warehouse was in response to Arnould moving a large portion of inventory into his own personal possession (rather than that of Chef Exec), and he was still provided access, it simply prevented secret access. I have never had keys to the LA warehouse. Arnould has removed inventory from the Las Vegas warehouse without difficulty since the change.
12. In Spring 2019 Arnould renewed the lease for the warehouse for the Los Angeles side of the company. My name was signed as a guarantor; I do not remember authorizing Arnould to sign for me, though he disagrees. He handled the LA warehouse because that was his side of the business.
13. Although the dispute between myself and Arnould has caused some difficulties, it has not

prevented the company from continuing to run, to serve its stated purpose, or from continuing to increase profits.


I declare under penalty of perjury that the foregoing is true and correct.
FURTHER AFFIANT SAYETH NAUGHT.

DATED this 27th day of December, 2019

By: 

Clement Mune

SUBSCRIBED AND SWORN to before
me this 27th day of December, 2019.


NOTARY PUBLIC in and for

said County and State.

my commission expires on: 02/02/2021

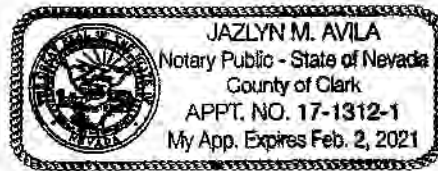


EXHIBIT 8

STATE OF NEVADA }
ss.: }
County of Clark }

I, Sergio Rosales, being first duly deposed states as follows:

1. I am an adult over the age of 18 and am competent to testify to the contents of this affidavit. I execute this affidavit in support of the foregoing motion. I have personal knowledge of the matters set forth herein, and all statements below are made from personal knowledge unless specifically indicated otherwise.
2. I am an independent contractor employed by Chef Exec Suppliers to manage the Las Vegas warehouse.
3. Due to the ceiling height and floor space of the Las Vegas warehouse, this warehouse is capable of storing 340 pallets of product in the current space.
4. The Las Vegas warehouse has the additional advantage of a high loading dock, making loading and unloading significantly faster and more efficient than a warehouse without a proper loading dock.
5. On or about September 24, 2019, Dominique Arnould, one of the owners of Chef Exec, came to the Las Vegas warehouse and arranged to remove 2 full truckloads of product (46 pallets), which had never happened before, and represented about 50% of the total inventory in the Las Vegas warehouse.
6. Mr. Arnould instructed me not to tell the other owner, Clement Muney about his taking of product, because he said was planning to discuss it with Mr. Muney himself.
7. When Mr. Arnould took the product from the warehouse, it was not done in the normal course of our business, and was done without filing any records that would notify Mr. Muney.
8. I since discovered that my name was written on the signature box under "Shipper Name" on the bill of lading for the product Arnould took that day, on B/L # 292480. However I did not sign that document, nor did I give anyone permission to add my signature to that document. (I have attached this document).
9. Mr. Muney recently changed the locks on the Las Vegas warehouse, however he instructed me to cooperate with Mr. Arnould on anything he needs from the warehouse, but to make sure everything was properly recorded. Mr Arnould has since arranged for other inventory from the Las Vegas Warehouse to be delivered to him without a problem.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 19 day of December, 2019

By: _____

Sergio Rosales

EXHIBIT 9

From: Robert Kern
Sent: Thursday, October 10, 2019 12:21 PM
To: Phillip Aurbach
Subject: RE: Chef Exec Suppliers, LLC (15755-1) [IWOV-iManage.FID1085969]

Hello Phillip,

I will forward you the email in a moment. Please be aware that your client has been involved in significant self-dealing with regard to this company, which will be part of our counterclaim if litigation is filed. We are willing to provide evidence and explanation if you would like to see it before filing suit. As Nevada law does not allow for unilateral dissolution, and because paying the market rate for storage after being advised that your client would not allow us to continue to lease it ourselves is not self-dealing, we will be seeking sanctions if the suit does go forward. Since you have made no indication of what you consider to be 'resolving' the matter, we are not going to try to guess. If you have a specific, reasonable request, we are open to hearing it. I am willing to accept service on this matter if you choose to go forward.

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

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From: Phillip Aurbach <PSA@maclaw.com>
Sent: Tuesday, October 8, 2019 1:27:06 PM
To: Robert Kern <robert@kernlawoffices.com>
Subject: FW: Chef Exec Suppliers, LLC (15755-1) [IWOV-iManage.FID1085969]

Robert
My client does not recall and cannot find such an email.

1—Please send any such communication to me by Thursday 10/10 at noon. We are filing the complaint on Thursday to push this forward since your client is benefitting by paying himself the higher rent. Do you have a suggestion as to a receiver?

And

2—Please advise me if you will you accept service (I am assuming by your response that your client would rather litigate this than resolve it)?

I await your response

phil

From: Robert Kern <robert@kernlawoffices.com>

Sent: Friday, October 4, 2019 4:43 PM

To: Javie-Anne Bauer <jbauer@maclaw.com>

Cc: Phillip Aurbach <PSA@maclaw.com>

Subject: RE: Chef Exec Suppliers, LLC (15755-1) [IWOV-iManage.FID1085969]

Are you aware that Dominique specifically instructed Clement to pay for the Las Vegas warehouse space from a third party rather than continue the cheaper lease? In writing?

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

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From: Javie-Anne Bauer <jbauer@maclaw.com>

Sent: Friday, October 4, 2019 3:08:28 PM

To: Robert Kern <robert@kernlawoffices.com>

Cc: Phillip Aurbach <PSA@maclaw.com>

Subject: Chef Exec Suppliers, LLC (15755-1) [IWOV-iManage.FID1085969]

Dear Mr. Kern,

Attached please find correspondence from Mr. Aurbach.

Thank you,
Javie-Anne



Javie-Anne Bauer | Legal Assistant to

Phillip S. Aurbach, Esq.
Liane K. Wakayama, Esq.

10001 Park Run Drive
Las Vegas, NV 89145

t | 702.942.2124

f | 702.382.5816

jbauer@maclaw.com

maclaw.com



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EXHIBIT 10

From: Clement Muney <clement@chefexecsuppliers.com>
To: Gregory Gershuni <ggershuni@aol.com>
Cc: Clement Chef Exec <clement@chefexecsuppliers.com>; Dominique Arnould
<dominique@chefexecsuppliers.com>; domiarnould@yahoo.com <domiarnould@yahoo.com>
Sent: Mon, Jul 22, 2019 5:11 pm
Subject: Re: Chef Exec Suppliers LLC

Dear Gregory,

I think I must disagree with your statement that customers and suppliers are not assets of the company, as those are things that are frequently part of contracts for the sale of a business.

However, that said, we may be able to reach agreement if You and Dominique wish to take that approach. If we are considering the physical equipment and inventory as the sole assets of the company, then I think I would agree to a buyout, with the price established as the cost price of inventory and the value of physical equipment by an appraiser. As it sounds like we are perhaps finally on the same page, let's set up an appraisal, and hopefully get this issue resolved.

Separately, it appears that the lease in LA was recently renewed; I do not remember signing for this – how did this happen?

Sincerely yours

Clement

EXHIBIT 11

AFFIDAVIT OF ATTORNEY ROBERT KERN

I, Robert Kern, make this Declaration of my own personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

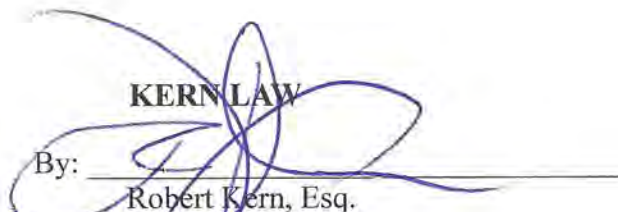
1. I am a duly licensed practising attorney in the State of Nevada, County of Clark, maintaining offices at 601 S. 6th Street, Las Vegas, Nevada 89101, and represent Defendants in the above-entitled matter.

2. I personally contacted Northstar Moving, the company that Plaintiff Arnould used as the new warehouse to store the property moved from the Las Vegas warehouse, on December 10, 2019.

3. On the phone call to Northstar, I spoke to Ana Coy, and asked her about the property stored for ChefExec. She indicated that they did not have any accounts in the name of Chef Exec Suppliers, and that I was not authorized to receive information about the account because it was in the name of Dominique Arnould personally. After the phone call I sent Ms. Coy an email to confirm the conversation, however she never responded.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge.

DATED this 23rd day of December, 2019.

KERN LAW
By: 
Robert Kern, Esq.
NV Bar #10104
601 S. 6th Street
Las Vegas, NV 89101
(702) 518-4529
Attorney for Defendants

Attn: Ana Coy

Robert Kern <robert@kernlawoffices.com>

Tue 12/10/2019 2:24 PM

To: info@NorthStarMoving.com <info@NorthStarMoving.com>

Hi Ana,

This email is just to confirm our conversaon earlier t oday, in which you indicated that the storage with Northstar is in the name of Dominique Arnould, and not in the name of Chef Exec Suppliers, LLC.

Can you confirm that? Sorry to bother you again.

Robert Kern, Esq.

Attorney

Kern Law, Ltd.

601 S. 6th Street

Las Vegas, NV 89101

(702) 518-4529 - phone

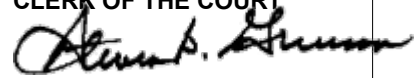
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Marquis Aurbach Coffing
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
10001 Park Run Dr.
Las Vegas, NV 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
paurbach@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff/ Counter-Defendant,

vs.

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

Defendants/Counterclaimant.

Case No.: A-19-803488-B
Dept. No.: 27**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Denying Defendant's Motion for Summary Judgment was entered in the above-captioned matter on the 17th day of January, 2020, a copy of which is attached hereto.

Dated this 17th day of January, 2020.

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

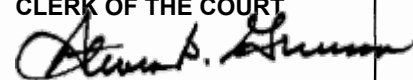
I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

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

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



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

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff/ Counter-Defendant,

vs.

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

Defendants/Counterclaimant.

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

Hearing Date: January 9, 2020
Hearing Time: 10:30 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Defendant, Clement Munney's Motion for Summary Judgment having come on for hearing on the 9th day of January, 2020 at the hour of 10:30 a.m. with Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould"), appearing through Phillip S. Aurbach of the law firm of Marquis Aurbach Coffing, and the Defendant, Clement Munney, appearing through Robert Kern of the Kern Law Ltd. and after reviewing the briefs and the Parties' oral argument and the Court being fully advised, it is

HEREBY ORDERED that Defendants Motion for Summary Judgment on the issue of whether Defendant Munney breached fiduciary duties is denied because there are genuine issues of material fact.

IT IS FURTHER ORDERED that Defendants Motion for Summary Judgment is denied on the issue of judicial dissolution because NRS 86.495 allows for dissolution if it is "not reasonably

1 practicable to carry on the business” and Plaintiff presented a prima facie case that this standard
2 has been met.

3 IT IS FURTHER ORDERED that the NRCP Rule 16.1 hearing is hereby continued to
4 January 15, 2020 at 9:30 a.m. and is consolidated with the Plaintiff’s Motion to appoint a trustee
5 to liquidate the company.

6 IT IS FURTHER ORDERED that in the interim, the attorneys agreed to have a settlement
7 conference with Judge Williams or Judge Denton. The attorneys and their clients shall meet to
8 determine several dates of availability of their clients and notify this Court of the dates of their
9 availability by the end of the day January 13, 2020. The Court will take steps to determine whether
10 Judge Williams or Judge Denton has time to hold a settlement conference on those dates. If the
11 Parties can schedule a settlement conference before the January 13th continued Rule 16.1 hearing
12 date, they only need to notify this Court and the January 13, 2020 date shall be continued until
13 after the settlement conference.

14 DATED this 10 day of January, 2020.

15
16 Nancy Alf
DISTRICT COURT JUDGE
JP

17 Respectfully Submitted by:

Approved as to Form:

18 **MARQUIS AURBACH COFFING**

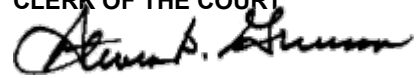
KERN LAW, LTD.

19 By: /s/ Phillip S. Aurbach, Esq.

20 By: /s/ Robert Kern, Esq.

21 Phillip S. Aurbach, Esq.
22 Nevada Bar No. 1501
23 10001 Park Run Drive
24 Las Vegas, Nevada 89145
25 Attorneys for Plaintiff

26 Robert Kern, Esq.
27 Nevada Bar No. 10104
28 601 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant



1 **CMOT**

2 Robert Kern, Esq.
3 Nevada Bar Number 10104

4 **KERN LAW, Ltd.**

5 601 S. 6th Street
6 Las Vegas, NV 89101
7 (702) 518-4529 phone
8 (702) 825-5872 fax
9 Admin@KernLawOffices.com
10 Attorney for Defendants

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DOMINIQUE ARNOULD,

14 Plaintiff/Counter-Defendant,

15 vs.

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

20 Defendants/Counter-Claimants.

) Case Number: A-19-803488-B

) Dept. Number: 27

21 **DEFENDANTS' OPPOSITION TO**
22 **MOTION FOR PARTIAL SUMMARY**
23 **JUDGMENT AND COUNTER-MOTION**
24 **FOR ENFORCEMENT OF**
25 **SETTLEMENT AGREEMENT**

26 Hearing Requested

27 COME NOW Defendants, CLEMENT MUNNEY, (hereinafter "Muney"), and CHEF
28 EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC") by and through their undersigned
counsel Robert Kern, ESQ., of KERN LAW, Ltd. submit this Opposition to Motion for
Partial Summary Judgment and Counter-Motion for Enforcement of Settlement Agreement.
This motion is made pursuant to NRCP 56, and is based on the signed material terms of the
settlement agreement, the records and files of this case, the attached memorandum and
exhibits and any matters adduced at the hearing.

29 **STATEMENT OF FACTS**

30 The company Chef Exec LLC was formed by Clement Muney and Dominique
31 Arnould in 2007 for the purpose of selling imported and domestic goods to other businesses,

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

1 with Muney handling the securing of supply contracts and the Las Vegas portion of the
2 business, and Arnould handling the accounting and the Los Angeles side of the business.
3 Chefexec has no operating agreement in place. Chefexec operated smoothly and profitably
4 for its entire existence until Arnould announced that he wished to retire. The first significant
5 disputes between the partners did not occur until Arnould became frustrated that Muney
6 would not offer the buyout amount that he wanted, and was, upon information and belief,
7 unable to sell his interest in the company at a price he considered acceptable.
8

9 During the time that a buyout of Arnould was being discussed, the lease on the
10 company's Los Angeles warehouse came up for renewal, which required a personal
11 guarantee from both partners. Arnould renewed it in both of their names; Muney and
12 Arnould dispute whether Muney authorized Arnould to do so. Soon after, the lease on the
13 Las Vegas warehouse came up for renewal, and like the LA warehouse, the renewal
14 required a personal guarantee by both owners of the company. Muney asked for Arnould's
15 permission to renew the lease, and Arnould refused. Arnould, through his attorney at the
16 time, suggested that Muney lease the warehouse with a company that he owned entirely (so
17 that he would be the only owner required to guarantee the warehouse), and have that
18 company sub-lease the space to Chefexec (*See Exhibit 1*). Muney followed that advice, and
19 a separate company leased the space, and sub-leased it to Chefexec, at a rate that Muney
20 was advised was the standard rate for such storage in the area (*See Exhibit 2*). Muney has
21 not received any notice or allegations of having "taken money and diverted business
22 opportunities and customers" from Chefexec, beyond this warehouse lease.

23 Although the present dispute has arisen over the last year, a review of Chefexec
24 business records shows that its profits drastically increased in 2019 over the previous year,
25 and that it is operating effectively, despite the dispute (*See Exhibit 3*).

26 On February 7, 2020, the Parties met for a settlement conference mediated by Judge
27 Williams, in which Arnould proposed terms of settlement which were accepted by Muney
28 (*See Exhibit 4*). The Parties spent additional hours at that conference to establish an

1 agreement of all material terms to ensure that the settlement agreement would be
2 enforceable (See Exhibit 5). In the agreement, it was agreed that Arnould would purchase
3 Muney's portion of the business for \$700,000 plus half the value of Company inventory,
4 half the bank accounts, and half of the accounts receivable. It was agreed that prior to
5 completion of the sale, parties would not take inventory out of the Las Vegas Warehouse,
6 and would go about their normal course of business. The agreement was contingent upon
7 Arnould securing financing, which he agreed to seek financing in "good faith" "from all
8 reasonable sources." It was also agreed that Arnould would be given a key to the Las Vegas
9 Warehouse, which Muney agreed to because of the terms blocking the taking of inventory.
10

11 At the meeting to count inventory, Arnould brought a truck driver from LA to take
12 inventory out of the Las Vegas warehouse. Muney objected, but in the spirit of
13 consummating the transaction, did not declare a breach at that time. However a few days
14 later, Arnould secretly used his access to take additional inventory, far in excess of the
15 normal course of business, and did not disclose this to Muney. This is known only because
16 of video surveillance (See Exhibit 6). Muney protested and demanded that such actions halt.
17 On February 26, 2020, Arnould's counsel informed Muney's counsel by phone that Arnould
18 was having difficulty obtaining financing, and asked if Muney would be amenable to
19 changing the terms to allow for financing to be more likely. Muney responded that he would
20 be flexible in timing and method, but not as to amount, and also asked to see what efforts
21 were being made to seek financing. Arnould's counsel agreed to send evidence of the efforts
22 made the next day, but did not. Two weeks later on March 11, having received no further
23 communication, Muney requested an update. Arnould's counsel apologized for the delay
24 and asked what information was requested, and Muney indicated that we wanted evidence
25 of what efforts were being made, and what terms/collateral were being offered. Two days
26 later, without any further communication, Arnould filed the present motion for summary
27 judgment. At no time did Arnould follow up on what modifications that Muney would be
28 open to to allow obtaining financing to be easier. At no time prior to filing for summary

1 judgment did Arnould provide any information on what efforts were being made. After
2 demand by Muney, once the motion had been served, Arnould provided his evidence of
3 efforts to secure financing (See Exhibit 7¹). The 'evidence' showed emails regarding four
4 potential transactions. None indicated a flat denial, one stated that the loan would be
5 possible if broken up over time, while another stated that the loan would be possible with
6 real estate collateral such as a home lien. On March 16, Muney formally declared Arnould
7 in breach of the settlement agreement terms.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9
10 The primary reason that summary judgment can not be granted is because of the
11 presence of a settlement agreement that is dispositive of all claims. The enforcement of the
12 agreement itself will be fully discussed in the attached counter-motion to enforce settlement.
13 The secondary issue is that there are multiple issues of fact precluding summary judgment.
14 Plaintiff calls the motion one for partial summary judgment, yet seeks the entire remedy
15 from the whole case (dissolution and distribution). However no distribution and dissolution
16 can occur without first adjudicating the counterclaims, and Plaintiff's sole cause of action
17 for Breach of Fiduciary Duty. As this court has already ruled the breach claim to have
18 genuine issues of material fact, and the allegations of the counterclaims have not even been
19 addressed, Plaintiff can not satisfy Rule 56.

20 **A. Summary Judgment Standard**

21
22 ¹ Four items were provided:

23 1 - "CITI BANK" - A short email chain asking about financing. The lender initially
24 indicates he would have to fill out a formal application (Feb 21), after which the email
25 shows Arnould requesting to make such an application on March 6. There are no
26 communications indicating the result of that application.

27 2 - "CITY NATIONAL BANK" - A single email in which the lender requests more
28 information.

3 - "WELLS FARGO" - An email chain where the lender indicates that they can offer
financing, but they will want real estate collateral, to which Arnould responds asking if
that means they wont lend to him. There is no answer provided.

4 - "WESTRIDGE" - A single email that states they are not approved for the full amount,
but could offer the loan if Muney is willing to accept incremental payments.

1 Summary judgment is appropriate when, as a matter of law, there is no
2 genuine issue as to any material fact. NRCP 56(c); *Prostack v. Songailo*, 97 Nev. 38, 40,
3 623 P.2d 978 (1981). Summary judgment is particularly inappropriate at this time, as there
4 is an enforceable settlement agreement in place, precluding any action to move forward with
5 the case, and as this Court has already ruled, the issues surrounding the breach of fiduciary
6 duty claim could not be resolved on summary judgment because they involve questions of
7 material fact.²

9
10 **B. There is an Enforceable Settlement Agreement in Place.**

11 A motion for summary judgment is not appropriate when a case has been settled.
12 NRCP Rule 56 requires a showing that the movant is entitled to judgment as a matter of
13 law. Although the final agreement had not yet been signed, the material terms that was
14 signed is fully enforceable under Nevada law. In *May v. Anderson*, the Nevada Supreme
15 Court made clear that "because a settlement contract is formed when the parties have agreed
16 to its material terms, even though the exact language is finalized later, a party's refusal to
17 later execute a release document after agreeing upon the release's essential terms does not
18 render the settlement agreement invalid." *May v. Anderson*, 119 P. 3d 1254 (NV S.Ct.
19 2005). As the settlement agreement called for mutual waiver of all claims, and both parties
20 signed the agreement and agreed it would be binding, there are no claims that Arnould can
21 claim entitlement to judgment upon.

22 Arnould's motion gives no explanation as to why the settlement agreement should not be
23 binding upon him, nor requests this Court to make such a finding. As such a finding is
24 required prior to any consideration of a motion for summary judgment, and Arnould has not
25 requested such a finding, the motion must be denied.

26
27
28

² 01/10/2020 Order Denying Summary Judgment, p.1.

1 **C. The Circumstances do not Meet the Standard for Judicial Dissolution or**
2 **Appointment of a Receiver.**

3 A review of the evidence makes clear that dissolution of the company was Arnould's
4 goal even prior to any alleged wrongdoing by Muney. *See* Exhibit 1³ (Letters demanding
5 dissolution sent on July 25 and August 7; Arnould stated he first became aware of the new
6 lease on October 1). As Arnould wants to be bought out at better terms than what he was
7 able to negotiate through proper channels, he is seeking to manufacture a dispute to allow
8 him to more profitably cash out. *See* Exhibit 8 (June 26 email from Arnould asking for
9 company to be split).

10 Nevada law only allows judicial dissolution and appointment of a receiver as an
11 extreme remedy of last resort, when there is no other remedy at law. Further, it is only
12 available when continued operation of the LLC's business is "no longer reasonably
13 practicable." NRS 86.495. The fact that settlement was agreed to by both parties makes
14 clear that there are other remedies available other than dissolution. While Nevada courts
15 have not established a more thorough definition of "reasonably practicable, looking to
16 Delaware courts, as Nevada Courts typically do for issues of corporate law⁴, we see that the
17 business must be without any reasonable ability to carry on. The Delaware Court of
18 Chancery explained::

19 Dissolution of an entity chartered for a broad business purpose remains
20 possible upon a strong showing that a confluence of situationally specific
adverse financial, market, product, managerial, or corporate governance
circumstances make it nihilistic for the entity to continue"

21 *Matter of Arrow Inv. Advisors, LLC*, 2009 WL 1101682, *2 (Del. Ch. 2009). That court
22 went on to explain that as a remedy of last resort, judicial dissolution and receivership is not

23 ³Previous attorney Gershuni on July 25 "...the process which I previously proposed, which
24 is a dissolution of the LLC..."; Current attorneys on August 7: "The purpose of this letter is
25 to notify you that we have been retained to dissolve the Company. The dissolution will
26 occur in one of two ways: (1)the parties will either work together to obtain a speedy and
27 amicable dissolution internally, which will be much more cost efficient; or (2) we will
28 unilaterally seek to dissolve the Company by judicial action whereby the terms of such
dissolution will be decided under Nevada law." "If we do not receive a written response
from you by this date, we will initiate judicial action to dissolve the Company as set forth
herein.

⁴ *Brown v. Kinross Gold USA, Inc.*, 531 F. Supp. 2d 1234 (D. Nevada 2008).

1 appropriate as a response to allegations of breaches of fiduciary duty, and was so deficient
2 as to warrant dismissal:

3 Here, Hamman has failed to allege that Arrow is not operating in
4 accordance with the broad purposes set forth in its LLC agreement.
5 Moreover, I will not entertain a claim for dissolution premised on
6 unproven breaches of fiduciary duty. Dissolution is an extreme remedy to
7 be applied only when it is not longer reasonably practicable for the
8 company to operate in accordance with its founding documents, not as a
9 response to fiduciary or contractual violations for which more appropriate
10 and proportional relief is available.

11 Id. Just as in that case, Plaintiff has pled a pretextual breach of fiduciary duty (as shown
12 above), and demanded an extreme remedy of last resort from this Court. *Bedore v.*
13 *Familian*, 125 P. 3d 1168 (Nev: Supreme Court 2006); (Where taking excess salary and
14 usurping corporate opportunity was alleged, receivership and dissolution not warranted);
15 *Gottier's Furniture, LLC v. La Pointe*, No. CV040084606S, 2007 WL 1600021 (Conn.
16 Super. May 16, 2007); (declining defendant member's request to appoint receiver to wind
17 up affairs of LLC inasmuch as defendant member had misappropriated LLC funds and had
18 unclean hands, and, alternatively, because dissolution receivership is extraordinary remedy
19 that is not warranted merely based on dissension of members or financial difficulty).

20 It is clear from the law that in order to demand receivership and dissolution, Plaintiff
21 must plead and prove that the business is no longer able to effectively operate. Plaintiff has
22 not pled facts to support such an allegation, nor can he. Business records of the company
23 show that this year, the year of the present dispute, ChefExec is making 73% more profit
24 than it did the previous year. *See* Exhibit 3. This is possible despite disagreements because
25 Muney and Arnould have always each run their own city's branch of the company. Thus
26 while they may disagree, and such disagreements may cause issues, they do not prevent the
27 company from operating.

28 **D. Significant Issues of Fact Still Remain**

Even beyond the fact that summary judgment is unavailable when an enforceable
settlement is in place, there are significant issues of fact remaining in the litigation. First and

1 most obviously, this Court declared in its order of January 10, that summary judgment is
2 unavailable for the claim of breach of fiduciary duty because there are genuine issues of
3 fact⁵.

4 Further, Arnould's motion does not even address Muney's counterclaims. Although
5 Arnould indicates that it is a motion for *partial* summary judgment, the fact remains that a
6 proper division of the company and settlement of Arnould's claims can not be done without
7 also resolving Muney's claims. A review of the evidence and affidavits attached to the
8 motion make clear that there is not a single statement alleging to resolve the matters of
9 Muney's counterclaims. Under Rule 56, the moving party bears the burden of initially
10 showing that there is no issue of fact remaining. Arnould is not capable of doing so without
11 so much as mentioning any of the counterclaims, or the facts they rely upon. This is yet
12 another reason summary judgment must be denied.

13
14 **E. Arnould's Perjury Should Disqualify his Entire Declaration.**

15 In Muney's motion for summary judgment, he pointed out provably false statements
16 in Arnould's affidavit. Despite that, Arnould has again made a sworn affidavit to this Court,
17 with knowingly, provably false statements. Arnould should not be allowed to lie to this
18 Court under oath heedlessly and without consequence.

19 Review of the declaration shows the following clear falsehoods:

20 -Paragraph 4 – Despite Arnould's counsel directly stating in open court at the
21 previous motion hearing that Arnould and Muney operate Los Angeles and Las Vegas
22 separately, Arnould here testifies to the opposite.

23 -Paragraphs 9 & 10 – Arnould states that Muney leased the warehouse with his own
24 company, and sub-leased it to Chef Exec without any “communication”. This is explicitly
25 false. Muney has shown two separate emails from two separate attorneys for Arnould
26 specifically suggesting this course of action. Arnould may dispute whether this constitutes
27

28 ⁵ “Summary Judgment on the issue of whether Defendant Muney breached fiduciary duties
is denied because there are genuine issues of material fact.”

1 consent, but they can not argue that it does not constitute “communication”. This is a
2 knowing and explicit falsehood.

3 -Paragraph 13 – Arnould stated: “Muney refuses to allow me access to the Las Vegas
4 warehouse or treat me like an owner of the Company.” Pursuant to the Settlement Agreement,
5 Muney provided Arnould with a key to the new locks on Feb 20, 2020. Exhibit 6 shows
6 Arnould's agent entering the warehouse on his own, clearly with his own key. This
7 declaration was dated March 12. This is an explicit fabrication.

8
9 **III.**

10 **CONCLUSION**

11 The present motion was filed while an enforceable settlement agreement, which was
12 dispositive of all claims, was still in place, and did so without moving for any action
13 regarding the settlement agreement. Further, the request to dissolve the company and
14 distribute can not occur without resolving the breach of fiduciary duty claim and the
15 counterclaims, all of which have undisputed genuine issues of fact that preclude summary
16 judgment. For these reasons summary judgment can not be granted.

17
18 DATED this 20th day of March, 2020

19 **KERN LAW**

20 By: /s/ Robert Kern /s/
21 Robert Kern, Esq.
22 601 S. 6th Street
23 Las Vegas, NV 89101
24 (702) 518-4529
25 Attorney for Defendants
26
27
28

1
2 **COUNTER-MOTION TO ENFORCE SETTLEMENT AGREEMENT**

3 As discussed above, on February 7, 2020, at a settlement conference, the Parties
4 signed a document titled “Memorandum of Material Terms of Agreement” (Exhibit 4).
5 Muney hereby moves this Court for an order enforcing the terms of the agreement, and
6 reducing the agreement to judgment.

7 1 In Nevada Preliminary Settlement Agreements are Enforceable.

8 The trial court has inherent power to enter a judgment enforcing a settlement:

9 The power of a trial court to enter a judgment enforcing a settlement
10 agreement has its basis in the policy favoring the settlement of disputes and
11 the avoidance of costly and time consuming litigation. (Citations omitted.) To
12 effectuate this policy, the power of a trial court to enforce a settlement
13 agreement has been upheld even where the agreement has not been arrived at
14 in the presence of the court nor reduced in writing. (Citations omitted.)

15 *Kukla v. National Distillers Products Company*, 43 F. 2d 619 at 621 (6th Cir. 1973). That
16 Court also clarified that summary enforcement is proper when there is no dispute as to the
17 material terms of the agreement. The Nevada Supreme Court confirmed this in *May v.*
18 *Anderson*, where they made clear that "because a settlement contract is formed when the
19 parties have agreed to its material terms, even though the exact language is finalized later, a
20 party's refusal to later execute a release document after agreeing upon the release's essential
21 terms does not render the settlement agreement invalid." *May v. Anderson*, 119 P. 3d 1254
22 (NV S.Ct. 2005). The Court explained: “Because a settlement agreement is a contract, its
23 construction and enforcement are governed by principles of contract law. . . . A contract
24 can be formed, however, when the parties have agreed to the material terms, even though
25 the contract's exact language is not finalized until later.” (Id. At 1257). Further, DCR 16 and
26 EDCR 7.50 directly state that a settlement agreement in writing that is signed by both
27 parties is enforceable⁶.

28 **2. The Signed Agreement in This Matter Satisfies Requirements to be
Enforceable.**

29 ⁶ “No agreement or stipulation between the parties or their attorneys will be effective
30 unless the same shall, by consent, be entered in the minutes in the form of an order, or
31 unless the same is in writing subscribed by the party against whom the same shall be
32 alleged”

1 In order to be enforceable, the agreement must contain all material terms, must be in
2 writing, and must be signed by the party it is to be enforced against. Review of the
3 agreement shows that, in signing it, the Parties specifically agreed that it would be
4 enforceable (“It is understood that this agreement shall be binding upon the parties until the
5 final agreement is signed.”), and that it contained all material terms (“The parties agree that
6 this agreement contains all terms that are material to the agreement.”). The agreement
7 specified the parties, specifically identified what assets were being transferred, and what
8 price was being paid, a timeframe, a mutual release, a non-compete and non-disparagement
9 agreement, agreements to maintain the status quo prior to final sale, and the mechanism for
10 dispute resolution within the agreement. The agreement is unquestionably in writing, and it
11 is clearly signed by both parties. There is no real question as to whether the agreement is
12 enforceable, but only whether a bank's refusal to grant Arnould a loan without any collateral
13 offered somehow satisfies Arnould's duty use best efforts to seek financing in good faith.

14 **3 Arnould Failed his Duty to use Good Faith and Best Efforts to Seek Financing.**

15 The sole contingency of the agreement was that it was conditional upon Arnould
16 obtaining financing, which he would be “required to use good faith towards seeking to
17 obtain financing from all reasonable sources.” It is this contingency Arnould now hopes to
18 use to get out of the agreement. The requirement to use good faith in seeking financing was
19 specifically negotiated, and Muney specifically rejected language proposed by Arnould that
20 the determination of what “good faith” entailed would be “In Arnould's sole discretion.”
21 (See Exhibit 9, Early Draft). Such negotiations make clear that the requirement to seek
22 financing in good faith from all available sources was intended to be a substantive
23 requirement of the agreement.

24 Although Nevada courts have not provided significant guidance on the subject of
25 what the standard of “good faith” requires in such context, Nevada courts frequently look to
26 Delaware courts, who have analyzed this issue. The Court of Chancery in *Hexion* reviewed
27 this question, first finding that the terms “good faith” and “reasonable best efforts” to be
28 equivalent in a contract. *HEXION SPEC. CHEMICALS, INC. v. Huntsman Corp.*, 965 A. 2d
715 at 721 (Del. Ct of Chancery 2008). That Court analyzed what was required of a party
who agreed to make “best efforts” at obtaining financing, and concluded that “to the extent
that an act was both commercially reasonable and advisable to enhance the likelihood of

1 consummation of the financing, the onus was on Hexion to take that act.” *Id.* At 749. The
2 Court explained that in order to justify failure to obtain financing, the party would have to;
3 “show that there were no viable options it could exercise to allow it to perform without
4 disastrous financial consequences.” *Id.* At 755. The Court went on to state that the bound
5 party, of finding difficulty complying with the requirement to seek financing, was required
6 to communicate with the opposing party to attempt to seek resolution, and that failure to do
7 so was likewise a breach. *Id.* At 750 (“But Hexion did nothing to approach Huntsman
8 management, either to discuss ways the solvency problems might be addressed, or even to
9 put Huntsman on notice of its concerns. This choice alone would be sufficient to find that
Hexion had knowingly and intentionally breached its covenants.”).

10 Holding Arnould's efforts against this standard, it is clear that they are insufficient.
11 First, and most obviously, none of the four communications showed a flat denial (Exhibit
12 7), the worst stated that a formal application would need to be filled out, and others either
13 requested more information (which there is no evidence was ever provided), requested
14 collateral, or requested that the loan be broken up over time. Talking to four lenders without
15 getting a definite answer from any does not indicate that he sought financing from “all
16 reasonable sources”. More importantly, no reasonable person expects to borrow
17 \$700,000.00 without providing any collateral. Arnould owns multiple homes; he may not
18 wish to encumber them, but absent a showing of disastrous financial consequences to
19 providing such collateral, he must take such reasonable steps.

20 Further, by the standards of the *Hexion* Court above, Arnould's failure to
21 communicate with Muney to seek resolution of his 'difficulties' with financing is itself prima
22 facie evidence of bad faith. This is shown by the fact that Muney offered flexibility in terms,
23 including such terms as requested by one of the lenders, and instead of investigating such
24 options, and Arnould filed a motion for summary judgment prior to making any effort at all
25 to pursue them. In fact, as far as Arnould has shown, he has not even made the effort to
26 reply to emails from lenders asking for more information. It is thus clear that Arnould failed
27 his duty of good faith under the agreement, and can not be excused from the contract by his
28 own malfeasance.

4 **Arnould Used Muney's Compliance to Wrongfully Take Merchandise.**

1 As part of the settlement agreement, Arnould insisted upon being given the key to
2 the Las Vegas warehouse. Muney agreed only because of the inclusion of the language
3 stating that he was not to take inventory from the warehouse during the agreement⁷. Despite
4 this agreement, at the meeting to count inventory, Arnould brought a truck driver from LA
5 to take inventory out of the Las Vegas warehouse. Muney objected, but in the spirit of
6 consummating the transaction, did not declare a breach at that time. However a few days
7 later, Arnould secretly used his access to take additional inventory, far in excess of the
8 normal course of business, and did not disclose this to Muney. This is known only because
9 of video surveillance (Exhibit 6). This inventory had significant monetary value and
10 contained inventory essential for the Las Vegas operation. In this way Arnould used Muney
11 providing him the key, according to the agreement, to enrich his side of the business while
breaching the same agreement.

12 5 The Settlement Agreement Should be Enforced and Reduced to Judgment.

13 The entire goal of the present litigation was for Arnould to seek division of company
14 assets between the Parties. The terms of the settlement agreement are fully enforceable, and
15 as they are the terms the parties themselves agreed to, are an objectively equitable method
16 of dividing interests and resolving the present matter. No third party analysis could divide
17 interests more appropriately than the agreement of the parties themselves, and there is no
18 reason to waste judicial resources, expert fees, and attorneys fees litigating this matter when
an enforceable and agreed-to resolution is already in place.

19 Muney therefore requests that this court reduce the settlement agreement to
20 judgment by its existing terms, and conclude the present litigation.

21 DATED this 20th day of March, 2020

22 **KERN LAW**

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

27 ⁷ “Both parties agree that neither will incur any extraordinary expenses or take any items
28 out of the warehouse between February 7, 2020, and the completion of the final Sale of
the Company.”

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March 2020, I served a true and correct copy of the foregoing **OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTER-MOTION FOR ENFORCEMENT OF SETTLEMENT AGREEMENT**, pursuant to NRCP 56, 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

EXHIBIT 1



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 207-6086
DIRECT FAX: (702) 856-8986
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PHILLIP S. AURBACH
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LANCE C. EARL
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TROY R. DICKERSON
BRIAN R. HARDY
OF COUNSEL

August 7, 2019

Via Email and Regular Mail

Clement Muney
151 Augusta St.
Henderson, NV 89074
clement@chefexecsuppliers.com

Re: CHEF EXEC SUPPLIERS, LLC - Dissolution
Our File No. 15755-001

Dear Mr. Muney:

Our firm represents Dominique Arnould ("Dominique") with respect to CHEF EXEC SUPPLIERS, LLC, a Nevada limited liability company (the "Company"), in which you and Dominique are both Managing Members each owning fifty percent (50%) of the total membership interests in the Company. **The purpose of this letter is to notify you that we have been retained to dissolve the Company. The dissolution will occur in one of two ways: (1) the parties will either work together to obtain a speedy and amicable dissolution internally, which will be much more cost efficient; or (2) we will unilaterally seek to dissolve the Company by judicial action whereby the terms of such dissolution will be decided under Nevada law.** It is Dominique's desire to dissolve the Company internally and amicably; however, if that is not possible, we are prepared to initiate judicial action.

If judicial action is required, the district court will dissolve the Company in accordance with the requirements set forth in Nevada Revised Statutes ("NRS") Chapter 86, which are as follows: (1) the Company's liabilities will be paid in the following order (a) to the Company's creditors (accounts payable, leasehold interests, and other general Company debt), and (b) to the Company's members in the amount of their capital contributions; and (2) the Company's assets will be distributed to the members in accordance with the percentage of their respective ownership interest. Please note that a court-ordered dissolution, under Nevada law, will not require any member to be bound by obligations of non-competition, non-solicitation of suppliers or customers, or any other restrictive covenant. Instead, it will be a simple and straightforward payment of debts and division of assets.

As a result of the foregoing, Dominique will not agree to dissolution terms that require the parties to be bound by terms and conditions that are more restrictive than what the parties would otherwise obtain by court action (e.g., non-competition and non-solicitation covenants). In any event, distribution to Dominique of his respective share of the Company's assets would not even constitute separate consideration for any such covenants, thus rendering them unenforceable. Continuing to demand that the parties agree to such unnecessary restrictions will force us to seek a court-ordered dissolution under Nevada law, as set forth above, and only cause both parties to incur court costs and

legal fees unnecessarily. To that end, it is proposed that the parties agree to an amicable dissolution based on the following terms and conditions:

1. **Liabilities.** The Company's debts and creditors are to be paid in full.
2. **Las Vegas Lease.** The lease cannot be renewed and must expire in September 2019. If any party desires to enter into a new lease at this location, that party must do so on its own accord—meaning, that party must form a new entity to enter into a new lease and shall not use or purport to use the other party as a guarantor.
3. **Los Angeles Lease.** Either (a) terminate the lease and buy out the remaining term from the landlord using Company funds, or (b) if any party desires to enter into a new lease at this location, that party must do so on its own accord—meaning, that party must form a new entity to enter into a new lease and shall not use or purport to use the other party as a guarantor.
4. **Accounts Receivable.** Both parties shall actively pursue collection of all the Company's accounts receivable. The proceeds of such collection shall be divided equally, i.e., 50-50, between the parties.
5. **Sales Commissions.** The sales commissions earned by but not paid to the applicable sales representative shall be paid to such representative in the Company's ordinary course of calculating and paying such commissions.
6. **Assets.** The Company's remaining assets (cash, equipment and inventory) shall be divided equally, i.e., 50-50, between the parties either in cash or in kind. Formal appraisals will be obtained to determine the value of any asset that is not mutually agreed upon by the parties, the cost of which would necessarily reduce the amount of remaining assets available for distribution.

Please respond to this letter in writing no later than 3:00 p.m. Nevada time on August 14, 2019. If we do not receive a written response from you by this date, we will initiate judicial action to dissolve the Company as set forth herein. Please also note that our client reserves all of his rights with respect to the Company and his membership interest therein, none of which are waived. Thank you in advance for your prompt attention to this urgent matter.

Sincerely,

MARQUIS AURBACH COFFING



Jordan B. Peel, Esq.

JBP:jbp
cc: Client

MAC:15755-001 3807100 3 8/7/2019 2:53 PM

Re: Chef Exec Suppliers LLC

Robert Kern

Fri 12/6/2019 12:58 PM

From: Gregory Gershuni <ggershuni@aol.com>

Subject: Re: Chef Exec Suppliers LLC

Date: July 25, 2019 at 2:15:44 PM PDT

To: clement@chefexecsuppliers.com

Cc: dominique@chefexecsuppliers.com, domiarnould@yahoo.com

Dear Clement,

Thanks for your reply.

You ask about the effect of the operating agreement. Please provide me with a fully executed (i.e., signed by both you and Dominique) copy of the operating agreement and I can then review it and give you my comments in response to your questions.

I agree that selecting an appraiser should be a relatively simple process. I also believe that you and Dominique would be agreeable to your respective interests in the company being valued at 50% of the appraised value of all assets, tangible and intangible. However, to carry out the process which I previously proposed, which is a dissolution of the LLC and winding up of its affairs, with the physical assets being allocated between you both according to the appraiser's valuation after all liabilities are satisfied, going forward should be simple. It is my understanding that each of you would be entitled to 50% of the inventory in each location and each of you would be entitled to 50% of the equipment in each location. Ultimately the two of you might agree on some variations in this regard, but if we can memorialize the fundamental terms of this dissolution, we can then get on with the process of selecting an appraiser.

As for your concern regarding the Las Vegas lease renewal in September, I will recommend that you form a new entity to be the lessee to take over the Las Vegas lease when it comes up for renewal in September. You would be the sole member of that new entity (or perhaps partner with someone else?) and Dominique, not being a principal of your new entity, would not be required to sign the new Las Vegas lease.

Would you like me to draft the proposed dissolution agreement? Please let me know ASAP.

Kindest personal regards,

Gregory Gershuni

Gregory Gershuni

Attorney at Law

THE **GERSHUNI** LAW FIRM

0152

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Integrity is Everything

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-----Original Message-----

From: Clement Muney <clement@chefexecsuppliers.com>
To: Gregory Gershuni <ggershuni@aol.com>
Cc: Clement Chef Exec <clement@chefexecsuppliers.com>; dominique <dominique@chefexecsuppliers.com>; domiarnould@yahoo.com <domiarnould@yahoo.com>
Sent: Wed, Jul 24, 2019 6:34 pm
Subject: Re: Chef Exec Suppliers LLC

Gregory,

Thank you for your email. To go forward, I think I need a better understanding of the situation.
Can you tell me, does the operating agreement allow for unilateral dissolution on Dominique's part? Does it allow him to sell his voting interest in the company to another party without my consent? I'm just wondering where the contracts stand on all this.

Regardless of those answers, I think if we can agree on a selection method for an appraiser, and Dominique will accept the appraised value of 50% (representing his half of the company) of the total cost value of all inventory and the appraised value of physical assets, then we will have an agreement.

I do have another concern however, which is that the Las Vegas lease comes up for renewal in September. They will likely not allow renewal without signature from all principals of the company. What do you propose we do there?

Sincerely yours

Clement

On Jul 24, 2019, at 3:40 PM, Gregory Gershuni <ggershuni@aol.com> wrote:

Dear Clement,

It's been a couple of days since I last wrote to you. Kindly afford me the courtesy of a reply.

Kindest personal regards,

Gregory Gershuni

Gregory Gershuni

Attorney at Law

THE **GERSHUNI** LAW FIRM

11377 West Olympic Blvd., Suite 521

Los Angeles, California 90064

EXHIBIT 2

Fwd: PROPERTY LEASE RATES

clement MUNEY

Tue 10/15/2019 4:30 PM

To: Robert Kern <robert@kernlawoffices.com>

Cc: clement MUNEY <cmuney1@yahoo.com>; Jeremy Muney <jeremymuney@yahoo.com>

FYI

I took this quote

we have 7745 sqft ware house *1.25\$ = 9681.25

+ Cam=1210\$

So a total opf \$10,891.25 per month

I am billing \$10,790 per month with CMJJ Gourmet Inc. to Chef Exec Suppliers LLC

Begin forwarded message:

From: GENE PROCTOR <proctorsnogamble@gmail.com>

Subject: Re: PROPERTY LEASE RATES

Date: August 14, 2019 at 6:53:09 PM PDT

To: Clement Muney <clement@chefexecsuppliers.com>

The rate with cams would increase to \$11,280.

On Wed, Aug 14, 2019 at 3:50 PM Clement Muney <clement@chefexecsuppliers.com> wrote:

Hello Gene,

Thank you for your email

With the "cam" like we have right now with Chef Exec Suppliers LLC, on our warehouse on Quail that you know, what total price would we looking at please all included on a month to month?

Thank you for your help

Clement Muney

(702) 340 8697

Sent from my iPhone

On Aug 14, 2019, at 15:43, GENE PROCTOR <proctorsnogamble@gmail.com> wrote:

Clement,

The industrial property inventory is quite limited in Las Vegas right now. The per square foot rate increased 30% last year. The 8,000 square foot space you inquired about leases for \$1.00 psf but there is a 25% premium for a month to month lease bringing the rate to \$1.25 psf or a total of \$10,000 per month. Let me know if you have any other questions.

--

Gene Proctor Jr.
Licensed Since 1998
Commercial Leasing Specialist
"Proctor's No Gamble"
proctorsnogamble@gmail.com
Coldwell Banker Premier
[8290 W. Sahara Ave., Suite 100](#)
[Las Vegas, NV 89117](#)
Cell 702.762-0917

--

Gene Proctor Jr.
Licensed Since 1998
Commercial Leasing Specialist
"Proctor's No Gamble"
proctorsnogamble@gmail.com
Coldwell Banker Premier
8290 W. Sahara Ave., Suite 100
Las Vegas, NV 89117
Cell 702.762-0917

EXHIBIT 3

1:20 PM

12/04/19

Accrual Basis

CHEF EXEC SUPPLIERS, LLC
Profit & Loss Prev Year Comparison
January 1 through December 4, 2019

	Jan 1 - Dec 4, 19	Jan 1 - Dec 4, 18	\$ Change	% Change
Ordinary Income/Expense				
Income	1,088,025.66	985,138.84	102,886.82	10.4%
Cost of Goods Sold	422,067.21	455,053.29	-32,986.08	-7.3%
Gross Profit	665,958.45	530,085.55	135,872.90	25.6%
Expense	348,089.31	346,616.08	1,473.23	0.4%
Net Ordinary Income	317,869.14	183,469.47	134,399.67	73.3%
Other Income/Expense	3.31	0.00	3.31	100.0%
Net Income	317,872.45	183,469.47	134,402.98	73.3%

EXHIBIT 4

Memorandum of Material Terms of Agreement

February 7, 2020

This agreement puts forth the material terms of the settlement agreement reached between the parties at Judicial Settlement Conference held on this date. The final written agreement to be drafted at a later time.

The parties agree that this agreement contains all terms that are material to the agreement.

This agreement is between Dominique Arnould and Clement Muney, (the parties) currently each a 50% owner in the company Chef Exec Suppliers, LLC (the Company). It is understood that this agreement shall be binding upon the parties until the final agreement is signed.

The Parties agree that Dominique Arnould will buy out the interest of Clement Muney in the Company, for the amount of \$700,000.00, to be paid within 45 days from the execution of the final agreement (the Sale).

In addition to the Sale price, Clement Muney will be paid $\frac{1}{2}$ of the bank account on the date of closing of the sale, $\frac{1}{2}$ of the inventory at cost value on the closing date of the sale, and $\frac{1}{2}$ of the accounts receivable as they are owed to the Company.

Assets being sold are:

- All names and logos including but not limited to trademarks, logo of Chef Exec, LLC,, and all intellectual property

- All website domain names and codes including but not limited to, chefexecsuppliers.com or any other similar names or affiliates

- All equipment including, but not limited to forklifts, pallet jacks, Mercedes truck, manufacturing molds, manufacturing tooling, racks, shelving, tools, delivery systems, computers including employee computers, employee phones, monitors, hardware, docking systems, ladders, step-ladders, packaging materials, rolling carts, scales, software, and copy-machines. Clement Muney and Jeremy Muney's personal mobile phones and computers are excluded but both will pay back the value at an agreed upon price.

- All accounts including but not limited to UPS, Paypal, checking, savings, Tempus, Commonwealth, and all usernames and passwords required for sign-in

- All insurance policies

- All company EIN numbers

- All UPC Codes

-All phone and fax numbers including but not limited to employee numbers, and fax numbers, and Clement Muney shall cooperate in providing Arnould with Arnould's cell Phone Number within 7 days of the settlement conference 702-683-2433. However, Clement Muney and his son may retain their current cell phone and home phone numbers.

-All CES Price lists, catalogs, logos, and all sales materials

-All Customer lists

-All Supplier and vendor lists

Paris Saveur logo may be used by Arnould until current and already ordered inventory is used up.

Once the Sale is completed, Clement Muney will be bound by a non-compete agreement prohibiting him from doing any business directly or indirectly that competes with the business of the Company, within Nevada, California, Hawaii, New York, Missouri, and Illinois for three and a half (3.5) years following the date of the agreement. This non-compete also includes non-solicitation of any current or potential customers of the Company. No party may disparage the Company, Employees, or either party. All sales inquiries will be forwarded to Dominique Arnould as soon as they are received. However, the non-compete does not include CMJJ Gourmet's current lines of products which will be specified later in a final agreement.

This agreement shall be contingent upon:

--Dominique Arnould being able to obtain financing sufficient to allow him to pay the purchase price of the Sale, with the understanding that he will be required to use good faith towards seeking to obtain such financing from all reasonable sources

-- Dominique Arnould agrees to assume the lease of the Las Vegas warehouse that is currently held by CMJJ Gourmet, Inc., subject to approval by the landlord and subject to Dominique Arnould's approval of the lease terms, which will not unreasonably be withheld.

-- All parties mutually waive all claims upon execution of the final agreement

It is further agreed that the sale price of \$700,000.00 shall be discounted by the amount of profits (amount received minus cost of the leased space) that the company CMJJ Gourmet, Inc. has received from Chef Exec, LLC for storage in the Las Vegas Warehouse

Both parties agree that neither will incur any extraordinary expenses or take any items out of the warehouse between February 7, 2020, and the completion of the final Sale of the Company. Inventory shall be set for a date as soon as Arnould finds available, and Muney will give Arnould the key to the Las Vegas warehouse at that time. Sergio, Clement Muney, and Dominique Arnould shall conduct an inventory in the next 10 days. Both parties shall have full access to all

Company financial records in order to be aware of such expenditures, and each shall have the right to bring the dispute to the settlement judge if the Parties do not agree whether an expense was extraordinary or not in the ordinary course. If a settlement conference does not resolve this issue, the Parties shall have the issue decided by Judge Allf.

All business will be conducted as usual without interference by the other party.

The parties further agree that Dominique Arnould shall indemnify Clement Muney for any liability Muney may have under the Los Angeles warehouse lease between the present and the end of that lease.



Dominique Arnould



date



Clement Muney



Date

Clement Muney

date

EXHIBIT 5

AFFIDAVIT OF ATTORNEY ROBERT KERN

I, Robert Kern, make this Declaration of my own personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

1. I am a duly licensed practising attorney in the State of Nevada, County of Clark, maintaining offices at 601 S. 6th Street, Las Vegas, Nevada 89101, and represent Defendants in the above-entitled matter.

2. I attended a settlement conference of the Parties on February 7, 2020.

3. At the conference, the parties reached agreement before noon, but stayed hours later in order to put together an agreement with sufficient terms so as to be enforceable on its own.

4. During negotiation, Arnould proposed language allowing him to have sole discretion as to whether he has taken sufficient efforts to get financing. To support this, he assured us that the financing would essentially be automatic, and getting it wouldn't be in question. We nonetheless refused the language, as it was our intention that Arnould be held to a definite good faith standard and not be allowed to slip out of the agreement if he changed his mind, simply by alleging he didn't find financing.

5. When I spoke to Arnould's counsel on the phone, I explicitly indicated that we were open to adjusting payment terms for more time, or essentially anything other than the amount of payment. They never initiated communication again on the subject prior to filing for summary judgment.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge.

DATED this 20th day of March, 2020.

KERN LAW

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

EXHIBIT 6



EXHIBIT 7

From: fabian.prado@citi.com,
To: domiarnould@yahoo.com,
Cc: domiarnould@aol.com,
Subject: Re: Loan Request
Date: Fri, Feb 21, 2020 12:45 pm

Sent from my BlackBerry 10 smartphone.

From: Prado, Fabian [GCB-RTLB]
Sent: Friday, February 21, 2020 12:44 PM
To: dominarnuld@yahoo.com
Subject: Fw: Loan Request

Sent from my BlackBerry 10 smartphone.

From: Prado, Fabian [GCB-RTLB] <fp68083@imcnam.ssmb.com>
Sent: Friday, February 21, 2020 12:31 PM
To: domiarnuld@aol.com
Subject: Loan Request

Hi Dominic,

At this moment based on the preliminary review it appears there is not enough cash flow to support your requested loan amount. We can always submit to our underwriters for a formal review if you'd like.

Sent from my BlackBerry 10 smartphone.

From: domiarnould@aol.com,
To: fabian.prado@citi.com,
Subject: Re: Loan Request
Date: Fri, Mar 6, 2020 11:52 am

sounds good

-----Original Message-----

From: Prado, Fabian <fabian.prado@citi.com>
To: 'domiarnould@aol.com' <domiarnould@aol.com>
Sent: Fri, Mar 6, 2020 11:42 am
Subject: RE: Loan Request

Studio City Branch at 1 PM on Monday?

From: [aol.com] domiarnould@aol.com [mailto:domiarnould@aol.com]
Sent: Friday, March 06, 2020 11:40 AM
To: Prado, Fabian [GCB-RTLB]
Subject: Re: Loan Request

Hello Fabian

Where should we meet???,

Please let me know

Dominique

-----Original Message-----

From: Prado, Fabian <fabian.prado@citi.com>
To: 'domiarnould@aol.com' <domiarnould@aol.com>
Sent: Fri, Mar 6, 2020 11:00 am
Subject: RE: Loan Request

Hi Dominique,

We can meet next week for you to sign the application. I am available Monday or Tuesday.

From: [aol.com] domiarnould@aol.com [mailto:domiarnould@aol.com]
Sent: Thursday, March 05, 2020 12:47 PM
To: Prado, Fabian [GCB-RTLB]
Subject: Re: Loan Request

Hello Fabian

Could you ask your underwriters to do a formal review of my requested loan.

thank you very much

Dominique

-----Original Message-----

From: Prado, Fabian <fabian.prado@citi.com>
To: domiarnould@yahoo.com <domiarnould@yahoo.com>
Cc: domiarnould@aol.com <domiarnould@aol.com>
Sent: Fri, Feb 21, 2020 12:45 pm
Subject: Re: Loan Request

Sent from my BlackBerry 10 smartphone.

From: Prado, Fabian [GCB-RTL]B]
Sent: Friday, February 21, 2020 12:44 PM
To: dominarnuld@yahoo.com
Subject: Fw: Loan Request

Sent from my BlackBerry 10 smartphone.

From: Prado, Fabian [GCB-RTL]B] <fp68083@imcnam.ssmb.com>
Sent: Friday, February 21, 2020 12:31 PM
To: domiarnuld@aol.com
Subject: Loan Request

Hi Dominic,

At this moment based on the preliminary review it appears there is not enough cash flow to support your requested loan amount. We can always submit to our underwriters for a formal review if you'd like.

Sent from my BlackBerry 10 smartphone.

From: Corrie.Burks@cnb.com,

To: domiarnould@aol.com,

Subject: Loan Request

Date: Thu, Mar 12, 2020 4:32 pm

Attachments:

Hi Dominique,

I reviewed the financials and the information you provided and consulted with a few underwriters. I just have a few items to clarify:

- 1- Can you clarify how the price of buyout of your partner was determined?
- 2- Would you have a list of concentration of vendors that you purchase?
- 3- Could I take a look at your Accounts Receivables and any Aging?

I am trying to see how to support the request at 700k without any collateral. The valuation that I saw was putting the business worth at 840k. Typically we would lend about 40% of that for a working capital loan and for a buy out it would be based on percentage of ownership which for you is 50% which would be 420k which is \$4.23/share. Ultimately, the business would first need to be valued high enough to support the request then the business would need to cashflow at a level to support the request and then we would look at additional guarantees as necessary. Once you provide the above I can provide a recommendation on the structure and term of the loan.

Kind Regards,

Corrie Burks

Vice President, Senior Relationship Manager

11500 Olympic Blvd Ste #100

Los Angeles, Ca 90064

Tel: 310-445-3685

corrie.burks@cnb.com

NMLS#: 537708

Visit us at www.cnb.com

From: domiarnould@aol.com,
To: trey.t.black@wellsfargo.com,
Subject: Fwd: Wells Fargo SBA Financing
Date: Thu, Mar 5, 2020 12:44 pm

Hello Trey

I sent you the mail below on February 25Th, but I did not get an answer.

could you please respond?

Thanks a lot

Dominique

-----Original Message-----

From: Dominique Arnould <domiarnould@aol.com>
To: Trey.T.Black@wellsfargo.com <Trey.T.Black@wellsfargo.com>
Sent: Tue, Feb 25, 2020 3:21 pm
Subject: Re: Wells Fargo SBA Financing

Hello Trey

After reviewing your mail below, I think I understand.

At this time does this means that the amount of \$700 000.00 for the buy out of my partner cannot be offered from Wells Farg to me at this time?

Please confirm"thank you

Dominique

Dominique Arnould
Managing Partner
Chef Exec Suppliers, LLC
AAA Food Source, INC
Wines of the World.Com
702-683-2433

-----Original Message-----

To: domiarnould@aol.com
Sent: Wed, Feb 19, 2020 4:17 pm
Subject: FW: Wells Fargo SBA Financing

Please see below.

Trey T. Black

Business Development Officer
Wells Fargo Bank

14144 Ventura Blvd, Suite 200 | Sherman Oaks, CA 91423
Cell 310-848-5321

Trey.T.Black@wellsfargo.com

From: Black, Trey T.
Sent: Wednesday, February 19, 2020 2:45 PM
To: 'domiarnold@aol.com' <domiarnold@aol.com>
Cc: Angela Lee (Angela.Lee3@wellsfargo.com) <Angela.Lee3@wellsfargo.com>; Mkrtchyan, Angela <Angela.Mkrtchyan@wellsfargo.com>; Boetjer, Nicholas G. <Nicholas.G.Boetjer@wellsfargo.com>
Subject: Wells Fargo SBA Financing

Hi Dominique,

Thank you for the details over the last few days related to your upcoming partner buyout, and we're looking forward to being able to help. As I mentioned, our underwriters will require real estate collateral if it's available, so we would need to put a lien on your home to secure the buyout loan. In order for us to get started, here's what we'll need:

BUSINESS ACQUISITION- Chef Exec Suppliers, LLC

- Current Interim as of 1/31 (Bal Sheet/P&L) **Month End.** (Same accounting method of the Tax Returns - **ACCRUAL**)
- Accts/Payable Aging to match Current Interim OR statement that the Business carries no A/P
- Accts/Receivable Aging to match Current Interim OR statement that the Business carries no A/R
- Debt Schedule as of Current Interim- If a stock purchase
- IRS/SBA form 4506T –Business
- Borrower Questions- Business Acquisition
- Fully Executed Purchase Agreement or Letter of Intent signed by Buyer and Seller
- P&L projections – month by month for the first year. A template is attached for the projections.

BORROWER/APPLICANTS/GUARANTORS: (Needed for all owners with 20% or more ownership):

- **Last three years Personal Tax Returns**
- **W2's**-Last 3 years of **W-2's** for principal and spouse (even if spouse is not a guarantor/owner or applicant)
- **Management Resume** - for each guarantor to complete (Form attached)
- Personal Financial Statement- SBA Form 413 **signed by Applicant and Spouse** (Form attached)
- IRS/SBA form 4506T – Personal
- **Paystubs**-Most recent paycheck stub showing year-to-date earnings for principal and spouse or statement if you do not receive one
- **Bank Statements**-Source of Injection/down payment- Copy of (2) months **most recent** bank statements, all pages even if blank from any bank account that is non-Wells Fargo, for either personal or business showing proof of down payment.
- **Trust** – Copy of the first few and last couple pages of Trust (***If one exists***)

ADDITIONAL APPLICATION FORMS

- WF-SBA Application-(Form attached). To be filled out however the real estate is owned/or to be purchased.
Note: Signature(s) required on page 3.
- WF-SBA Co Application-(Form attached). To be filled out by the business occupying the real estate. **Note: Signature(s) required on page 3.**
- Authorization to Release Information

- 1919 - Borrower Information -SBA Form (7a) **NOTE: Signatures required on page 3 and 5. Initials needed on Question 17, 18, 19, 22**
- UCC Individual statement- (only if business and/or real estate is/or to be owned individually)

Please take a day or two to review these items and compile any non-Wells Fargo documents that relate to our checklist, and we can schedule some time to assist you with our forms. I've copied my team who will be assisting me with your project, and I'll introduce them more formally as we progress.

Best regards,

Trey T. Black

Business Development Officer
Wells Fargo Bank

14144 Ventura Blvd, Suite 200 | Sherman Oaks, CA 91423
Cell 310-848-5321

Trey.T.Black@wellsfargo.com

From: domiarnould@aol.com,

To: jtran@viewridgefunding.com,

Subject: Re: ViewRidge Funding: Business Loan Application Update

Date: Tue, Feb 25, 2020 3:18 pm

Attachments:

thank you John

Dominique Arnould
Managing Partner
Chef Exec Suppliers, LLC
AAA Food Source, INC
Wines of the World.Com
702-683-2433

-----Original Message-----

From: John Tran <jtran@viewridgefunding.com>

To: domiarnould@aol.com <domiarnould@aol.com>

Sent: Tue, Feb 25, 2020 3:13 pm

Subject: ViewRidge Funding: Business Loan Application Update

Hi Dominique,

Per our conversation, we will only have an approval between \$100,000 and \$150,000 for your business at this time. Once you are halfway paid down through the loan, you are eligible to come back for additional capital. With business credit and payment history with us, we can start lending \$200,000+ then eventually \$500,000+.

If your partner will accept incremental payments, then we can get this done for you within a few transactions over a 24 to 36-month span.

Let me know if you have any questions.

Thanks,

John Tran | Loan Specialist



P: (888) 315-1409 | F: (888) 315-1409

jtran@viewridgefunding.com | www.viewridgefunding.com

4719 Viewridge Avenue suite 170 San Diego, California 92123



EXHIBIT 8

Re: Buy-out/assets division

Robert Kern

Fri 12/6/2019 1:58 PM

-----Original Message-----

From: Dominique Arnould <domiarnould@aol.com>

To: clement <clement@chefexecsuppliers.com>; ggershuni <ggershuni@aol.com>

Sent: Wed, Jun 26, 2019 5:05 pm

Subject: Buy-out/assets division

Hello Gregory and Clement,

I strongly disagree with Clement's characterization of the facts.

However, there is no good purpose to be served by picking at each point with which I disagree. That will only lead to more arguments.

Instead, I would like to move forward with a plan to arrange for Clement to buy-out of my interest in the Company at a fair value or a division of the assets of the Company in some fair and equitable way such that each of us has roughly equivalent value of assets and we can then each use those assets to pursue on our own respective business goals. I can go my own way and Clement can then go his own way.

That's what I would like to do.

Gregory, can you help us achieve this goal?

Sincerely

Dominique Arnould
Managing Partner
Chef Exec Suppliers, LLC
AAA Food Source, INC
Wines of the World.Com
702-683-2433

EXHIBIT 9

Memorandum of Material Terms of Agreement

February 7, 2020

This agreement puts forth the material terms of the settlement agreement reached between the parties at Judicial Settlement Conference held on this date. The final written agreement to be drafted at a later time.

The parties agree that this agreement contains all terms that are material to the agreement.

This agreement is between Dominique Arnould and Clement Muney, (the parties) currently each a 50% owner in the company Chef Exec Suppliers, LLC (the Company). It is understood that this agreement shall be binding upon the parties until the final agreement is signed.

The Parties agree that Dominique Arnould will buy out the interest of Clement Muney in the Company, for the amount of \$700,000.00, to be paid within 45 days from the execution of the final agreement (the Sale).

In addition to the Sale price, Clement Muney will be paid ~~the appraised value of 50% of Company receivables, inventory, bank accounts, and equipment (including molds), after the Sale~~ ½ of the bank account on the date of closing of the sale, ½ of the inventory at cost value on the closing date of the sale, and ½ of the accounts receivable as they are owed to the Company.

Assets being sold are:

~~-All names and logos including but not limited to Name,~~ trademarks, ~~and~~ logo of Chef Exec, LLC, logo of Paris Saveur, and all intellectual property

~~-All w~~Website domain names and codes including but not limited to, chefexecsuppliers.com or any other similar names or affiliates~~and code~~

-All equipment including, but not limited to forklifts, pallet jacks, Mercedes truck, manufacturing molds, manufacturing tooling, racks, shelving, tools, delivery systems, computers including employee computers, employee phones, monitors, hardware, docking systems, ladders, step-ladders, packaging materials, rolling carts, scales, software, and copy-machines

-All accounts including but not limited to UPS, Fedex, Paypal, checking, savings, Tempus, Commonwealth, -and all usernames and passwords required for sign-in~~account~~

-All insurance policies~~Paypal account and password~~

-All company EIN numbers

- All UPC Codes

-All pPhone and fax nNumbers including but not limited to employee numbers, and fax numbers, and Clement Muney shall cooperate in providing Arnould with Arnould's cell Phone Number within 7 days of the settlement conference 702-683-2433. However, Clement Muney and his son may retain their current cell phone numbers.

-All CES Price lists, catalogs, logos, and all sales materials and logos

-All Customer lists

-All SupplierSupplier r and vendor lists

Once the Sale is completed, Clement Muney will be bound by a non-compete agreement prohibiting him from doing any business directly or indirectly that competes with the business of the Company, within ~~Las Vegas, Nevada, or Los Angeles, California,~~ Hawaii, New York and Illinois for three and a half (3.5) years following the date of the agreement. This non-compete also includes non-solicitation of any current or potential customers of the Company. No party may disparage the Company, Employees, or either party. All sales inquiries will be forwarded to Dominique Arnould as soon as they are received.

This agreement shall be contingent upon:-

--Dominique Arnould being able to obtain financing sufficient to allow him to pay the purchase price of the Sale, with the understanding that he will be required to use good faith and all efforts towards seeking to obtain such financing from all reasonable sources in Arnould's sole discretion.

-- Dominique Arnould agrees to assume the lease of the Las Vegas warehouse that is currently held by CMJJ Gourmet, Inc., subject to approval by the landlord and subject to Dominique Arnould's approval of the lease terms.

It is further agreed that the sale price of \$700,000.00 shall be discounted by the amount of profits (amount received minus cost of the leased space) that the company CMJJ Gourmet, Inc. has received from Chef Exec, LLC for storage in the Las Vegas Warehouse.

~~Dominique Arnould agrees to assume the lease of the Las Vegas warehouse that is currently held by CMJJ Gourmet, Inc., subject to approval by the landlord. If the landlord does not approve the assumption, Arnould will pay CMJJ Gourmet funds sufficient to buy out the lease.~~

Both parties agree that neither will incur any extraordinary expenses or take any items out of the warehouse between ~~the present~~ February 7, 2020, and the completion of the final Sale of the Company. Sergio and Dominique Arnould shall conduct an inventory in the next 10 days. Both

parties shall have full access to all Company financial records in order to be aware of such expenditures, and each shall have the right to bring the dispute to ~~mediation~~ the settlement judge if ~~either the party~~ Parties do not ~~does~~ agree whether an expense was extraordinary or not in the ordinary course ~~incur such an expense and does not correct it upon demand~~. If a settlement conference does not resolve this issue, the Parties shall have the issue decided by Judge Alf.

The parties further agree that Dominique Arnould shall indemnify Clement Muney for any liability Muney may have under the Los Angeles warehouse lease between the present and the end of that lease.

Dominique Arnould date

Clement Muney date