

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEMENT MUNEY; CHEF EXEC
SUPPLIERS, LLC.,

Appellants,

vs.

DOMINIQUE ARNOULD,

Respondent.

Supreme Court Case No. 85641, 85869

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APPELLANT'S APPENDIX

VOLUME VIII

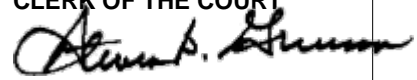
APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT

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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 FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND ORDER

Please take notice that Findings of Fact, Conclusions of Law, and Order was entered in the above-captioned matter on the 10th day of September, 2021, a true and correct copy of which is attached hereto.

Dated this 13th day of September, 2021.

MARQUIS AURBACH COFFING

By /s/ Alexander K. Calaway
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CERTIFICATE OF SERVICE

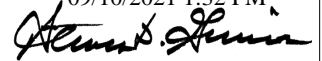
I hereby certify that the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 13th day of September, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants,

And related counterclaims.

Case No.: A-19-803488-B

Dept. No.: 27

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

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

1 **I. FINDINGS OF FACT**

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

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

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

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

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

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

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

16 **B. APPOINTMENT OF A RECEIVER**

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

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

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

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

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

Both Parties don't dispute and stipulated that it is not reasonably practicable to carry on the business of [CES] in conformance with the operating agreement since there is no operating agreement and since the owners of [CES] cannot get along and disagree about the operation of [CES]. Therefore, [CES] must be dissolved... [and] the date of dissolution should be September 30, 2020.³

C. RECEIVER'S ACCOUNTING AND FINAL REPORT

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

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

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

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

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

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

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

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

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

³ Order of Dissolution, at ¶¶1-2, on file herein.

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

⁵ *See* Opposition.

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

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

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

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

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

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

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

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

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

21 24. The Receiver:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. FACTS PERTAINING TO DISCOVERY AND THE MOTION TO COMPEL

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

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

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

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

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

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

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

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

II. CONCLUSIONS OF LAW

A. JURISDICTION IS PROPER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Both Parties don't dispute and stipulated that it is not reasonably practicable to
21 carry on the business of the Company in conformance with the operating
22 agreement since there is no operating agreement and since the owners of the
Company cannot get along and disagree about the operation of the Company.
Therefore, the Company must be dissolved.... [and] the date of dissolution should
be September 30, 2020.⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ⁸ See Opposition,

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

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

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

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

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

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

11 37. The pleading standards for derivative claims brought on behalf of a Nevada LLC
12 are set forth in NRCP 23.1¹⁰ and NRS 86.487.¹¹

13
14 ⁹ See Opposition, on file herein.

15 ¹⁰ NRCP 23.1 provides:

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

11 NRS 86.487 provides:

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

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

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

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

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

27 40. Finally, NRS 86.489 provides:

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

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

5 41. The Court finds that Mr. Arnould prevailed derivatively on his first cause of
6 action and is therefore entitled to seek his reasonable attorney's fees and expenses pursuant to
7 NRS 86.489.¹²

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

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

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

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

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

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

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

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

13 *See* Opposition.

1 whenever the receiver shall be so ordered.

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

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

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

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

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

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

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

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

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

26
27 ¹⁴ See Opposition.

28 ¹⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁸ See Opposition.

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

3 72. NRS 86.286(5) provides:

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

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

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

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

17 76. Mr. Muney’s Opposition failed to support this particular claim.²⁰

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

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

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

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

20 *See* Opposition, on file herein.

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

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

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

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

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

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

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

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

26 86. Mr. Muney’s Opposition failed to support this particular claim.²¹

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

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

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

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

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

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

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

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

21 93. Mr. Muney's Opposition failed to support this particular claim.²²

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

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

27 _____
28 22 *Id.*

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

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

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

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

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

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

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

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

1 103. Mr. Muney's Opposition failed to support these particular claims.²³

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

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

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

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

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

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

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

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

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

28 ²³ *See* Opposition.

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

113. Mr. Muney's Opposition failed to support these particular claims.²⁴

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

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

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

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

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

Dated this 10th day of September, 2021

September 10, 2021

By: Nancy L. Alf

DISTRICT COURT JUDGE

TW

459 1D1 404D FAD8

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

Respectfully Submitted by:
MARQUIS AURBACH COFFING

By: /s/ Alexander K. Calaway

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

By: /s/ Robert Kern

Robert Kern, Esq.
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601 S. 6th St.
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Attorneys for Defendants/Counter-Plaintiffs

24 See Opposition.

Cally Hatfield

From: Robert Kern <robert@kernlawoffices.com>
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Robert Kern, Esq.
Attorney
Kern Law, Ltd.
601 S. 6th Street
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(702) 825-5872 - fax
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Thank you,



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

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

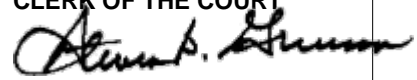
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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
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Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

Case No.: A-19-803488-B

Dept. No.: 27

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

Defendants,

And related counterclaims.

**PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES****HEARING REQUESTED**

Plaintiff, Dominique Arnould ("Arnould"), by and through his attorneys, Marquis Aurbach Coffing, moves this Court for an Order Awarding Judgment against Clement Muney ("Muney") for Attorneys' Fees ("Motion") based upon papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument if there is a hearing on this matter.

Dated this 28th day of September, 2021.

MARQUIS AURBACH COFFING

By /s/ Alexander K. Calaway

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

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

Mr. Arnould is the prevailing party in this matter. Under Nevada law, Mr. Arnould is entitled to his attorneys' fees on at least three grounds: (1) he is entitled to his attorneys' fees because he is the prevailing party and recovered less than \$20,000; (2) he is entitled to attorneys' fees since Mr. Muney's counterclaims and defenses were frivolous and groundless; and (3) he is entitled to his attorneys' fees because he was successful on his derivative claims under NRS 86.489. Therefore, this Court should grant Mr. Arnould's Motion for Attorneys' Fees in the sum of **\$199,985.00** in attorney's fees which, as shown below, are reasonable under the *Brunzell* factors.

II. PROCEDURAL BACKGROUND

1. Mr. Muney and Mr. Arnould were equal co-owners and co-managers of Chef Exec Suppliers, LLC ("Chef Exec" or the "Company").¹ Chef Exec was a Nevada limited liability company, validly formed under Nevada law, with no operating agreement. Chef Exec has since been dissolved.

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

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

4. On June 8, 2020, the Court found the requirements to appoint a receiver over Chef Exec had been met and ordered the appointment of a receiver with limited powers to prepare a report about the viability of Chef Exec.

¹ Findings of Fact, at ¶¶1-2.

² *Id.* at ¶¶5-6.

³ *Id.*

1 5. On June 12, 2020, this Court appointed a receiver to take control of the Nevada
2 warehouse and inventory (hereinafter the “Receiver”).

3 6. On August 21, 2020, this Court found that:

4 Both Parties don’t dispute and stipulated that it is not reasonably practicable to
5 carry on the business of [Chef Exec] in conformance with the operating
6 agreement since there is no operating agreement and since the owners of [Chef
7 Exec] cannot get along and disagree about the operation of [Chef Exec].
Therefore, [Chef Exec] must be dissolved.... [and] the date of dissolution should
be September 30, 2020.

8 7. On September 10, 2021, the Court entered its order granting summary judgment
9 in favor of Mr. Arnould and against Mr. Muney.⁴

10 8. On September 10, 2021, this Court entered Findings of Fact and Conclusions of
11 Law (the “Findings”) which reflected the Court’s disposition of this case.⁵

12 9. These Findings concluded that Mr. Arnould prevailed on all claims for relief in
13 his Complaint, and that Mr. Muney’s defenses and six counterclaims against Mr. Arnould lacked
14 merit.⁶

15 10. On September 14, 2021, Judgment was entered in favor of Mr. Arnould and
16 against Mr. Muney in the amount of \$6,303.93.⁷

17 11. Mr. Arnould now seeks an award of his attorneys’ fees incurred in this matter in
18 the amount of \$199,985.00.⁸

19 **III. ARGUMENT.**

20 **A. MR. ARNOULD IS ENTITLED TO ATTORNEYS’ FEES ON SEVERAL
21 GROUNDS.**

22 Mr. Arnould is entitled to an award of attorneys’ fees on several grounds. In Nevada,
23 prevailing party attorneys’ fees are generally available if authorized by statute, rule, or agreement

24 ⁴ See Findings of Fact and Conclusions of Law, on file herein.

25 ⁵ Conclusions of law, at ¶¶17, 18, 29, 35, 42, 54, 65, 76, 86, 93, 103, 108, and 113.

26 ⁶ See *id.*

27 ⁷ September 14, 2021 Judgment, on file herein.

28 ⁸ See Declaration of Alexander Calaway, Esq. in Support of Motion for Attorneys’ Fees and Costs,
attached hereto.

1 between the parties. *See* NRS 18.010. Here, Mr. Arnould is entitled to his attorney's fees on at
2 least three grounds: (1) he is entitled to his attorneys' fees because he is the prevailing party and
3 recovered less than \$20,000 pursuant to NRS 18.010(2)(a); (2) he is entitled to attorneys' fees
4 since Mr. Muney's counterclaims and defenses were brought without reasonable grounds; and
5 (3) he is entitled to his attorneys' fees because he was successful on his derivative claims under
6 NRS 86.489. Therefore, Mr. Arnould respectfully requests an award of **\$199,985.00** in attorney's
7 fees.

8 **1. Mr. Arnould is Entitled to his Attorneys' Fees Under NRS**
9 **18.010(2)(a) Since Recovered Less than \$20,000.**

10 Mr. Arnould is entitled to attorneys' fees under NRS 18.010(2)(a), which allows an
11 award of attorney's fees when the prevailing party has not recovered more than \$20,000. Under
12 NRS 18.010(2)(a), a "court may make an allowance of attorney's fees to a prevailing party ...
13 [w]hen the prevailing party has not recovered more than \$20,000."

14 Here, the Findings state that "Mr. Arnould is entitled to judgment in his favor of and that
15 judgment may be entered against Mr. Muney in the amount of \$6,303.93."⁹ On September 14,
16 2021, Judgment was entered in favor of Mr. Arnould and against Mr. Muney in the amount of
17 \$6,303.93.¹⁰ As such, attorneys' fees are proper under NRS 18.010(2)(a).

18 **2. Mr. Arnould is Entitled to his Attorneys' Fees Under NRS**
19 **18.010(2)(b) Since Mr. Muney's Counterclaims and Defenses Were**
20 **Frivolous and Groundless.**

21 Mr. Arnould is entitled to attorneys' fees under NRS 18.010(2)(b) which allows the
22 district court to award attorney fees to a prevailing party "when the court finds that the claim,
23 counterclaim ... or defense of the opposing party was brought or maintained without reasonable
24 ground or to harass the prevailing party." The Nevada Supreme Court has held that "[f]or
25 purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is ***no credible evidence***
26 ***to support it.***" *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (quoting

27 ⁹ Findings, at ¶64.

28 ¹⁰ September 14, 2021 Judgment, on file herein.

1 *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009)) (emphasis
2 added).¹¹

3 Here, Mr. Muney failed to provide **any** evidence in support of his counterclaims and
4 defenses – let alone **credible** evidence.¹² The Court granted Mr. Arnould’s motion for summary
5 judgment because Mr. Muney failed to provide **any** fact to support of his counterclaims and
6 defenses by way of exhibit, affidavit or otherwise.¹³ The Court expressly stated in its Findings
7 that: “Mr. Muney failed to cite to **any** material facts that support his defenses and counterclaims
8 in this matter.”¹⁴

9 Moreover, Mr. Muney putatively maintained counterclaims on behalf of Chef Exec, even
10 after a receiver was appointed over Chef Exec and the company was dissolved. Once a receiver
11 is appointed, NRS 86.5418 requires the receiver to take possession of all company assets. This
12 includes all claims for relief. The (liquidating) receiver under NRS 86.5423 could have
13 substituted into the litigation, but he chose not to enter the litigation. Mr. Muney could have
14 asked the Court if they could pursue these claims on behalf of the receiver, but both chose not to
15 do so. Therefore, Mr. Muney did not even have authority or standing to maintain any
16 counterclaims on behalf of Chef Exec, yet he continued to do so until they were summarily
17

18 ¹¹ NRS 18.010(2)(b) in full provides:

19 Without regard to the recovery sought, when the court finds that the claim,
20 counterclaim, cross-claim or third-party complaint or defense of the opposing
21 party was brought or maintained without reasonable ground or to harass the
22 prevailing party. The court shall liberally construe the provisions of this paragraph
23 in favor of awarding attorney’s fees in all appropriate situations. It is the intent of
24 the Legislature that the court award attorney’s fees pursuant to this paragraph and
25 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in
all appropriate situations to punish for and deter frivolous or vexatious claims and
defenses because such claims and defenses overburden limited judicial resources,
hinder the timely resolution of meritorious claims and increase the costs of
engaging in business and providing professional services to the public. [emphasis
added].

26 ¹² Findings, at ¶¶17, 18, 29, 35, 42, 54, 65, 76, 86, 93, 103, 108, and 113.

27 ¹³ *Id.* at ¶¶17, 18, 29, 35, 42, 54, 65, 76, 86, 93, 103, 108, and 113.

28 ¹⁴ *Id.* at ¶¶17-18 (emphasis added).

1 dismissed by the Court.¹⁵ Mr. Muney's frivolous and vexatious counterclaims and defenses are
2 precisely the sort that NRS 18.010(2)(b) was intended to prevent.

3 In a word, Mr. Arnould is entitled to his attorneys' fees under both NRS 18.010(2)(a) and
4 (2)(b). There can be legitimate dispute that Mr. Arnould prevailed and recovered less than
5 \$20,000 which entitles him to attorneys' fees under NRS 18.010(2)(a). Also, since Mr. Muney's
6 counterclaims and defenses were frivolous and groundless, Mr. Arnould is entitled to his
7 attorneys' fees under NRS 18.010(2)(b).

8 **3. Mr. Arnould is Entitled to his Attorneys' Fees Under NRS 86.489**
9 **Because He Prevailed Derivatively for Chef Exec.**

10 Mr. Arnould is entitled to attorney's fees under NRS 86.489 which allows recovery of
11 attorney's fees for successful derivative claims i.e., recovering money for Chef Exec. NRS
12 86.489 provides:

13 If a derivative action is successful, **in whole or in part, or if anything is received**
14 **by the plaintiff as a result of a judgment**, compromise or settlement of an action
or claim, the court may award the plaintiff reasonable expenses, including
reasonable attorney's fees . . .

15 Thus, a plaintiff who has successfully brought a derivative claim (in whole or in part) on behalf
16 of a Nevada LLC is entitled an award of her reasonable expenses and attorney's fees. NRS
17 86.489. Here, Mr. Arnould prevailed on each of his derivative claims against Mr. Muney.

18 **a. Mr. Arnould prevailed derivatively on behalf of Chef Exec on**
19 **his first cause of action.**

20 First, Mr. Arnould prevailed on his first cause of action which sought declaratory relief
21 from the Court that it is not reasonably practicable to carry on Chef Exec and an order granting
22 judicial dissolution pursuant to NRS 86.495 and 86.505. ¹⁶ Mr. Arnould's first cause of action
23 also sought a declaration that the requirements for appointment of a receiver to run the Las
24 Vegas operations of Chef Exec and potentially dissolve the company.¹⁷ Here, the Court

25
26 ¹⁵ *Id.* at ¶¶94-113.

27 ¹⁶ Findings, at ¶¶21-28.

28 ¹⁷ *Id.* at ¶30.

1 appointed a receiver for this very purpose of controlling the Las Vegas warehouse and
2 accounting for the operations of Chef Exec. Then, on August 21, 2020, the Court found that:

3 Both Parties don't dispute and stipulated that it is not reasonably practicable to
4 carry on the business of the Company in conformance with the operating
5 agreement since there is no operating agreement and since the owners of the
6 Company cannot get along and disagree about the operation of the Company.
Therefore, the Company must be dissolved.... [and] the date of dissolution should
be September 30, 2020.¹⁸

7 Then, on November 3, 2020, the Receiver filed articles of dissolution for Chef Exec.¹⁹ Therefore,
8 Mr. Arnould prevailed on his first cause of action.

9 Moreover, Mr. Arnould prevailed *derivatively* on his first cause of action.²⁰ The Court in
10 its Findings stated that Mr. Arnould met the derivative pleading requirements for his first cause
11 of action.²¹ The Court also made Findings that Mr. Arnould's first cause of action was derivative
12 because the appointment of a receiver and dissolution benefited Chef Exec.²² As such, the Court
13 expressly found that Mr. Arnould prevailed derivatively on his first cause of action and is
14 therefore entitled to seek his reasonable attorney's fees and expenses pursuant to NRS 86.489.
15 The attorney's fees judgment should be in favor of Mr. Arnould and against Mr. Muney.

16 **b. Mr. Arnould prevailed derivatively on behalf of Chef Exec on
his second cause of action.**

17 Second, Mr. Arnould prevailed derivatively on his second claim for relief for accounting
18 of Chef Exec.²³ Here, the receiver was appointed as a liquidating receiver and part of his duties
19 were to perform an accounting, adjust the capital accounts of the parties and file a tax return for
20 Chef Exec.²⁴ This derivative claim for an accounting revealed that Mr. Muney paid himself from

21 ¹⁸ See Order of Dissolution, at ¶¶1-2, on file herein.

22 ¹⁹ *Id.*

23 ²⁰ Findings, at ¶36.

24 ²¹ *Id.* at ¶38.

25 ²² *Id.* at ¶39.

26 ²³ *Id.* at ¶¶43-67.

27 ²⁴ *Id.* at ¶39.

1 Chef Exec \$22,712.56.²⁵ This resulted in a stipulation for Mr. Muney repay Chef Exec
2 \$22,712.56 and pay his partner \$6,303.93 in order to settle his capital account with Chef Exec²⁶
3 Notably, Mr. Arnould obtained at least \$22,712.56 for Chef Exec in order to settle its
4 outstanding debts with the receiver.²⁷

5 Thus, Mr. Arnould's derivative accounting action was successful and allowed Chef Exec
6 to dissolve and settle its obligations. As such, Mr. Muney is liable for Mr. Arnould's attorney's
7 fees and costs to file this derivative action on behalf of Chef Exec. The attorney's fees judgment
8 should be in favor of Mr. Arnould and against Mr. Muney.

9 **B. THE ATTORNEYS' FEES SOUGHT BY MR. ARNOULD ARE**
10 **REASONABLE AND JUSTIFIED UNDER THE *BRUNZELL* FACTORS.**

11 Mr. Arnould requests that this Court enter an award of attorneys' fees in the amount of
12 **\$199,985.00**, which represents the reasonable attorney's fees associated with Mr. Arnould's
13 causes of action. A copy of the itemized billing for this case from October 2019 to the present
14 date is attached hereto as **Exhibit 1**. These fees represent the reasonable amounts incurred by
15 Mr. Arnould in obtaining a successful judgment in favor of Mr. Arnould and Chef Exec.

16 In determining the reasonable value of an attorney's service, Nevada consider the factors
17 set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). These
18 factors consider: (1) the qualities of the advocate: his ability, his training, education, experience,
19 professional standing and skill; (2) the character of the work to be done: its difficulty, its
20 intricacy, its importance, time and skill required, the responsibility imposed and the prominence
21 and character of the parties where they affect the importance of the litigation; (3) the work
22 actually performed by the lawyer: the skill, time and attention given to the work; (4) the result:
23 whether the attorney was successful and what benefits were derived. *Id.*

24 Here, as set forth in the Declaration of Alexander K. Calaway, Esq. (the "Declaration")
25 filed herewith, the fees were reasonable and necessarily incurred. Additionally, an award of

26 ²⁵ February 26, 2021 Stipulation and Order, on file herein.

27 ²⁶ *Id.*

28 ²⁷ *Id.*

1 attorney's fees is supported by the factors outlined in *Brunzell*, which are addressed in the
2 Declaration. Therefore, based on the foregoing, Mr. Arnould respectfully requests the Court
3 grant his Motion for attorney's fees and award **\$199,985.00** in attorney's fees.

4 **IV. CONCLUSION**

5 Based on the foregoing, Mr. Arnould respectfully requests the Court grants his instant
6 Motion and award **\$199,985.00** in attorney's fees.

7 Dated this 28th day of September, 2021.

8
9 MARQUIS AURBACH COFFING

10
11 By /s/ Alexander K. Calaway

12 Phillip S. Aurbach, Esq.
13 Nevada Bar No. 1501
14 Alexander K. Calaway, Esq.
15 Nevada Bar No. 15188
16 10001 Park Run Drive
17 Las Vegas, Nevada, 89145
18 *Attorneys for Plaintiff*

**DECLARATION OF ALEXANDER K. CALAWAY, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES**

Alexander K. Calaway, Esq., declares as follows:

1. I am over the age of 18 years and 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 am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am an associate with the law firm of Marquis Aurbach Coffing ("MAC"), counsel for Dominique Arnould ("Arnould"), in the above-entitled matter. I make this declaration in support of Mr. Arnould's instant Motion for Attorney Fees ("Motion").

3. Attached as **Exhibit 1** to the Motion are true, accurate, and authentic copies of MAC billing records and invoices for this case.

4. From inception to present, MAC's hourly fees allocated to Mr. Arnould's case against Defendants are **\$199,985.00**. From July 23, 2019 through September 13, 2021, MAC's hourly fees allocated to Mr. Arnould's case against Defendants were **\$189,985**. See **Exhibit 1**. The additional amounts incurred after September 13, 2021, are the anticipated amounts needed for drafting the Judgment, Verified Memorandum of Costs, the Motion, and addressing any opposition to the Motion is expected to be **\$10,000**.

5. From MAC, Phillip S. Aurbach, Esq., Alexander K. Calaway, Esq., Jordan B. Peel, Esq. and David G. Alleman, Esq. advocated on behalf of Mr. Arnould throughout the litigation. Mr. Aurbach is a partner at MAC and charged an hourly rate in this case in the amount of \$400/hr. Mr. Alleman is a partner at MAC and charged an hourly rate in this case in the amount of \$425/hr. Mr. Peel is a partner at MAC and charged an hourly rate in this case in the amount of \$305/hr. Mr. Calaway is an associate at MAC and charged an hourly rate of \$230/hr. The other legal professionals working on the matter from MAC were Taylor Fong, a paralegal, and Amelia Mallette, a law clerk, who both charged an hourly rate of \$175/hr.

7. Based upon the factors set forth in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31, the above attorneys' fees are reasonable, and should be awarded to Mr. Arnould. The enumerated *Brunzell* factors are as follows:

8. The quality of MAC as an advocate is well known within the Las Vegas legal community. MAC is AV rated by Martindale-Hubbell and is listed in Martindale-Hubbell's registry of Preeminent Lawyers. The counsel and supervising attorneys in this matter are shareholders and associates at MAC.

9. Phillip S. Aurbach, Esq. is a partner at MAC. As an experienced litigator, Mr. Aurbach has an excellent reputation in this community for competency in civil litigation and quality legal work. Mr. Aurbach is an AV Preeminent rated attorney by Martindale-Hubbell and has been named to the Best Lawyers in America List. In addition, Mr. Aurbach has consistently been named a Mountain States Super Lawyer. Mr. Aurbach has extensive experience trying cases to verdict and is a highly sought-after litigator in Las Vegas. During this case, Mr. Aurbach took a hands-on approach, advised on strategy, participated in drafting, and appeared and argued at numerous hearings.

10. Alexander K. Calaway, Esq. is an associate attorney at MAC and has been honored with awards such as legal elite and best up and coming attorney in Nevada. Mr. Calaway obtained his Juris Doctorate degree from the University of Idaho College of Law with distinction. Mr. Calaway has been barred in Nevada since 2019, has practiced law in the community since 2019. Within this case, Mr. Calaway was second chair and participated extensively in motion drafting, discovery, and appeared and argued at numerous hearings. Mr. Calaway has a reputation for competency in commercial litigation matters.

11. David G. Alleman, Esq. is a partner at MAC, practicing in real estate, corporate and commercial transactions. Mr. Alleman is the chair of MAC's transactional department. Mr.

1 Alleman received his Juris Doctorate degree from the Brigham Young University, *cum laude*.
2 Mr. Alleman was admitted to practice in Nevada in 2002. Mr. Alleman engaged in work related
3 to the initial demand, dissolution, and membership related work for Mr. Arnould with respect to
4 Mr. Arnould's interest in Chef Exec. This work was critical to the allegations and claims alleged
5 by Mr. Arnould in his verified complaint. Mr. Alleman has a reputation for competency and skill
6 in transactional issues that arose in this matter.

7 12. Jordan B. Peel, Esq. is a partner at MAC, practicing in real estate, corporate and
8 commercial transactions. Mr. Peel practices primarily in MAC's transactional department. Mr.
9 Peel received his Juris Doctorate degree from the University of Nevada. Mr. Peel was admitted
10 to practice in Nevada in 2009. Mr. Peel engaged in work related to the initial demand,
11 dissolution, and membership related work for Mr. Arnould with respect to Mr. Arnould's interest
12 in Chef Exec. This work was critical to the allegations and claims alleged by Mr. Arnould in his
13 verified complaint. Mr. Peel has a reputation for competency and skill in transactional issues that
14 were arose in this matter.

15 13. All attorneys who provided services on behalf of Mr. Arnould are skilled
16 litigators with years of experience and have an excellent reputation in this community for
17 competency in civil litigation and quality legal work. All legal professionals who provided
18 services on behalf of Mr. Arnould are skilled professionals with competency in civil litigation
19 and quality legal work.

20 14. The sum being sought is reasonable in light of the legal experience and the fees
21 generally charged in this community.

22 **CHARACTER OF THE WORK DONE**

23 15. The efforts in successfully litigating this matter included researching, drafting,
24 and revising briefs, client communications, preparing for and attending hearings, drafting
25 motions, pretrial motion practice, and extensive written discovery. All of this work was
26 necessary to achieve the ultimate result of Mr. Arnould being the prevailing party.

27
28

1 16. None of the work performed by MAC on behalf of Mr. Arnould has been done in
2 a cursory manner. Instead, all work was thoroughly researched, supported by applicable law and
3 evidence, and finalized after multiple drafts and iterations to reach a final product.

4 17. Moreover, each task performed by counsel was essential and was of the highest
5 character and caliber necessary for handling such a case.

6 **ACTUAL WORK PERFORMED**

7 18. The time recorded by MAC is reflected in the attached allocated invoice
8 maintained by the firm, which are provided in support of Mr. Arnould's request for attorney fees
9 and costs. *See Exhibit 1.*

10 19. The billing statements establish that all legal services rendered were reasonable
11 and necessary in litigating the action.

12 **THE RESULT**

13 20. It is apparent by the Court's decision obtained in this case that Mr. Arnould,
14 through MAC, obtained a great result.

15 21. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the
16 State of Nevada that the foregoing is true and correct.

17 Dated this 28th day of September, 2021.

18
19 /s/ Alexander K. Calaway
ALEXANDER K. CALAWAY

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR ATTORNEYS' FEES** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 28th day of September, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²⁸

Robert Kern
Melissa Milroy

Robert@KernLawOffices.com
Admin@KernLawOffices.com

/s/ Cally Hatfield
An employee of Marquis Aurbach Coffing

²⁸ 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

**MARQUIS AURBACH
COFFING**

ATTORNEYS AT LAW

10001 PARK RUN DRIVE
LAS VEGAS, NEVADA 89145
Telephone 702-382-0711
Fax 702-382-5816

Dominique Arnould
All Chefs Supplies Inc.
P.O. Box 1800
Studio City, CA 91614

Invoice 355688 - 381722
September 14, 2021

ID: 15755-001 - DGA

Re: Chef Exec Suppliers, LLC

For Services Rendered Through September 14, 2021

Current Fees	189,985.00
Current Disbursements	6,108.24
Current Interest	29.45
Total Current Charges	196,122.69

MARQUIS AURBACH COFFING P.C.

Dominique Arnould
Re: Chef Exec Suppliers, LLC
I.D. 15755-001 - DGA

September 14, 2021
Invoice 355688 -
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Fees				
Date	Atty	Description	Hours	Amount
07/23/19	JBP	Telephone conference with potential new client Dominique Arnould and [REDACTED] regarding [REDACTED]	0.70	213.50
08/05/19	DGA	Discuss possible withdrawal or dissolution with Jordan Peel; legal research on withdrawal without an operating agreement and requirements for dissolution; discuss scope of demand letter with Jordan Peel and set follow-up.	0.40	170.00
08/06/19	JBP	Review and evaluate numerous correspondence between the parties, company documents and related documents; draft demand letter; submit same to DGA for review; correspond with client regarding [REDACTED]	3.20	976.00
08/06/19	DGA	Review and revise demand letter to other owner regarding dissolution of the company.	0.40	170.00
08/07/19	JBP	Finalize demand letter; submit same to client [REDACTED]; correspond with client regarding [REDACTED]; telephone conference with client regarding [REDACTED]; revise letter and submit same to client [REDACTED]; finalize letter; instruct AG to mail and email same.	1.30	396.50
08/07/19	DGA	Attention to changes to the dissolution notice and various related correspondence, plus set follow-up.	0.20	85.00
08/08/19	JBP	Receive and evaluate letter from Robert Kern regarding dissolution; research Nevada statutes regarding same; conference with DGA regarding same.	0.40	122.00
08/08/19	DGA	Attention to correspondence from counsel and related discussion with Jordan Peel to assess viability of seeking judicial dissolution.	0.20	85.00
08/13/19	JBP	Correspond with client regarding [REDACTED]; telephone conference with client regarding [REDACTED]; correspond with Mr. Kerns regarding same; follow-up correspondence with client regarding [REDACTED]	0.80	244.00
08/13/19	DGA	Attention to various correspondence with client and response to partner's counsel for purposes of facilitating non-judicial dissolution, plus related follow-up with Jordan Peel.	0.20	85.00
08/15/19	DGA	Attention to various emails from client and detailed history of partnership, plus possible parameters of buy-out proposal and discuss strategy with Jordan Peel.	0.50	212.50
08/15/19	JBP	Telephone conference with client regarding [REDACTED], email communications between parties, and related matters; correspond with client regarding [REDACTED]	0.50	152.50
08/20/19	JBP	Review and evaluate client's [REDACTED]; conference with PSA regarding litigation strategy, negotiation strategy, and related matters; telephone conference with client regarding [REDACTED]; correspond with client regarding [REDACTED]; correspond with Robert Kern regarding settlement discussions.	2.00	610.00
08/20/19	DGA	Attention to various correspondence and discuss strategy of moving	0.30	127.50

MARQUIS AURBACH COFFING P.C.

Dominique Arnould

September 14, 2021
Invoice 355688
Page 3

Date	Atty	Description	Hours	Amount
		forward with potential buy-out or dissolution with Jordan Peel.		
08/21/19	PSA	Legal research re alternatives to litigation including accounting opinion, mediation etc.	0.50	200.00
08/27/19	JBP	Telephone conference with client regarding [REDACTED]; correspond with Robert Kern regarding same.	0.20	61.00
08/30/19	DGA	Review and discuss proposed buy-out offer with Jordan Peel.	0.50	212.50
08/30/19	JBP	Receive and evaluate proposed buyout offer from Clement; conference with DGA regarding same; correspond with client regarding [REDACTED]	0.50	152.50
09/03/19	JBP	Correspond with client regarding [REDACTED]; telephone conference with client regarding [REDACTED]; conference with DGA regarding strategy; correspond with client regarding [REDACTED]	1.20	366.00
09/03/19	DGA	Attention to client's disposition toward's counsel's purchase offer and discuss related strategy with Jordan Peel; attention to various related correspondence with client to restructure counteroffer.	1.00	425.00
09/04/19	JBP	Correspond with client regarding [REDACTED] finalize offer; submit offer to Robert Kern for review; correspond with client regarding [REDACTED]; telephone conference with client regarding [REDACTED]	0.60	183.00
09/04/19	DGA	Review correspondence to counsel and related follow-up with Jordan Peel concerning equity as collateral to secure repayment; review counsel's rejection of offer and related follow-up.	0.30	127.50
09/10/19	DGA	Review correspondence to client regarding [REDACTED].	0.20	85.00
09/10/19	JBP	Conference with Phil Aurbach regarding status of matter, strategy moving forward and related matters; follow-up telephone conference with client regarding [REDACTED]; correspond with client regarding [REDACTED]	1.10	335.50
09/11/19	DGA	Attention to possibility of mediation and discuss same with Jordan Peel.	0.30	127.50
09/11/19	JBP	Telephone conference with client regarding [REDACTED] correspond with PSA regarding same; follow-up telephone conference with client regarding [REDACTED].	0.50	152.50
09/12/19	JBP	Telephone conference with client regarding [REDACTED]	0.20	61.00
09/18/19	JBP	Review and evaluate statement of facts regarding recent events; telephone conference with client regarding [REDACTED] correspond with PSA regarding same.	0.50	152.50
09/23/19	JBP	Telephone conference with client regarding [REDACTED]; correspond with PSA regarding same.	0.40	122.00
09/27/19	PSA	Draft demand letter and complaint and send to client for [REDACTED]	3.10	1,240.00
09/30/19	DGA	Status conference with Jordan Peel and discuss next steps to prepare for dissolution filing; set follow-up.	0.20	85.00
09/30/19	JBP	Telephone conference with client regarding [REDACTED] conference with PSA regarding same; follow-up	0.40	122.00

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Date	Atty	Description	Hours	Amount
10/01/19	JBP	telephone conference with client regarding [REDACTED] Attention to correspondence from client regarding [REDACTED] [REDACTED] telephone conference with client regarding [REDACTED]	0.30	91.50
10/02/19	JBP	Meeting with PSA regarding [REDACTED] [REDACTED]	0.20	61.00
10/04/19	PSA	Telephone Call with Dominique [REDACTED] [REDACTED] Send to Robert Kern.	1.30	520.00
10/09/19	PSA	Telephone call to Dominique re [REDACTED]	0.50	200.00
10/10/19	PSA	Telephone call with Dominique regarding [REDACTED] [REDACTED] Review and revise complaint.	1.90	760.00
10/10/19	JBP	Attention to correspondence from Robert Kern regarding terms of dissolution; correspond with PSA regarding same and overall strategy.	0.20	61.00
11/04/19	JBP	Correspond with PSA regarding status of matter and overall strategy; attention to correspondence from client regarding [REDACTED]	0.30	91.50
11/26/19	PSA	Review Dominique's email to Muney. Telephone call with Dominique re [REDACTED].	0.30	120.00
11/27/19	PSA	Telephone call with Dominique re [REDACTED] [REDACTED].	0.20	80.00
12/04/19	PSA	Review Dominique's email and reply with [REDACTED].	0.60	240.00
12/06/19	PSA	Review and revise motion for trustee and Dominique's declaration. Review order from court re mandatory Rule 16 conference. Email Dominique re [REDACTED].	3.60	1,440.00
12/06/19	PSA	Telephone call from Dominique re [REDACTED].	0.20	80.00
12/16/19	PSA	Begin opposition to Muney's motion for summary judgment.	1.80	720.00
12/16/19	AKC	Assess, analyze and review documents and pleadings; attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible with PSA and JBP; email client regarding [REDACTED]	2.40	552.00
12/17/19	AKC	Attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible with PSA regarding exhibits in the motion to dismiss; phone conference with client regarding [REDACTED] [REDACTED] begin drafting opposition to motion; verify defendant motion's authorities and citations for accuracy; conduct legal research regarding judicial dissolution and breach of fiduciary duties.	4.60	1,058.00
12/18/19	AKC	Legal research regarding breach of fiduciary duty by a member of a Nevada LLC; continue drafting opposition to summary judgment; draft declarations; revise and edit motion; provide pin-point citations for the court; submit the same to PSA.	11.90	2,737.00
12/19/19	JBP	Receive and evaluate affidavit in support of opposition to summary judgment motion; conference with AKC regarding same.	0.20	61.00
12/19/19	AKC	Assess, analyze and review email from client; finalize and verify edits;	2.10	483.00

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Date	Atty	Description	Hours	Amount
		discuss the same with PSA; [REDACTED] discussion with client.		
12/19/19	PSA	Review and revise opposition, declaration of Jordan and Dominique.	0.80	320.00
12/20/19	AKC	Attention to filing matters; review client email; prepare errata for PSA review; update client regarding [REDACTED]	1.00	230.00
12/26/19	AKC	Assess, analyze and review filings regarding motion to appoint trustee; calendar the same; assess, analyze and review email regarding [REDACTED]	0.50	115.00
12/30/19	AKC	Legal research regarding breach of fiduciary duties issue; discuss the same with PSA; assess, analyze and review reply to summary judgment.	1.70	391.00
12/31/19	AKC	Assess, analyze and review potential for derivative claim theory in retaining fiduciary duty arguments; draft supplemental briefing; attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible regarding discovery with PSA; draft and send email to client regarding [REDACTED]	5.10	1,173.00
01/02/20	AKC	Document review; draft NRCP 16.1 initial disclosures; discuss [REDACTED] with client; discuss [REDACTED] with client; assess, analyze and review additional documents supplied by client, discuss the same with PSA.	5.30	1,325.00
01/03/20	PSA	Review the 16.1 disclosures and develop the strategy for the hearing.	0.40	160.00
01/03/20	AKC	Additional document review; discuss the same regarding expenses and disclosure with PSA; call to client regarding [REDACTED] prepare for call with opposing counsel; email correspondence with opposing counsel regarding a call.	3.40	850.00
01/06/20	PSA	Email Dominique re [REDACTED]	0.30	120.00
01/06/20	AKC	Assess, analyze and review offer from clement; assess, analyze and review emails from client; reply to the same; discuss [REDACTED] proposal with PSA; review client's [REDACTED]; phone call with opposing counsel regarding potential resolution of this case.	2.30	575.00
01/07/20	AKC	Reach out to JEA regarding scheduling for hearing; begin drafting reply to appointment of trustee motion; finalize drafting of reply brief, and send the same to PSA for final review.	4.20	1,050.00
01/08/20	PSA	Email Dominique re [REDACTED]	0.60	240.00
01/08/20	AKC	Incorporate PSA's edits to reply brief; send to staff for finalization and filing; phone call with client regarding [REDACTED] prepare argument outlines for tomorrow's hearing.	3.00	750.00
01/09/20	AKC	Verify details regarding lease for PSA at hearing; discuss [REDACTED] with PSA and client; advise on next steps.	1.30	325.00
01/09/20	PSA	Prepare for and appear at Muney's motion for summary judgment. Meet with Muney's attorney re how things could be divided. Draft order from today's hearing. Email exchange with Muney's attorney re order.	3.30	1,320.00
01/10/20	AKC	Assess, analyze and review PSA's objectives in obtaining an accountant; discuss [REDACTED] with client via phone call; draft email for	1.30	325.00

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		accountant's review; set up settlement conference with court via email.		
01/11/20	AKC	Email correspondence with co-counsel, court, and client regarding conference dates.	0.30	75.00
01/13/20	AKC	Email with court and opposing counsel; correspondence regarding stipulation to continue the appointment of trustee hearing.	0.50	125.00
01/14/20	AKC	Assess, analyze and review court letter regarding settlement conference; send copy to client regarding [REDACTED]	0.10	25.00
01/16/20	AKC	Discuss [REDACTED] with client and [REDACTED].	0.80	200.00
01/17/20	AKC	Phone call with client regarding [REDACTED]	0.70	175.00
01/20/20	AKC	Attention to matter.	0.30	75.00
01/21/20	AKC	Begin drafting initial disclosures and notice of compliance.	0.70	175.00
01/21/20	AKC	Review emails from client; reply to the same.	0.30	75.00
01/22/20	AKC	Assess, analyze and review [REDACTED] from client.	0.20	50.00
01/24/20	AKC	Attention to matter.	0.10	25.00
01/27/20	AKC	Assess, analyze and review proposal for private mediator; review client questions; discuss the same with PSA; phone call with client regarding [REDACTED].	0.90	225.00
01/28/20	AKC	Assess, analyze and review analysis of income and expenses by territory.	0.30	75.00
01/29/20	AKC	Assess, analyze and review corrected accountant file and client emails; reply to the same.	0.50	125.00
01/30/20	AKC	Review client email; follow up with opposing counsel regarding phone account information; forward same to client.	0.30	75.00
01/31/20	AKC	Phone call to client regarding [REDACTED]	0.40	100.00
02/03/20	PSA	Work on settlement brief.	1.80	720.00
02/05/20	PSA	Review and revise settlement brief. Telephone call with Dominique re [REDACTED] Finalize brief and send to the judge.	5.60	2,240.00
02/06/20	AKC	Assess, analyze and review defendants' supplemental disclosures; assess, analyze and review confidential settlement statement; review emails from client; discuss the same with PSA.	1.00	250.00
02/06/20	AKC	Meeting with client in preparation of settlement conference; dictate notes regarding the same for file.	2.70	675.00
02/07/20	JBP	Attention to correspondence regarding terms of settlement, overall strategy and related matters; conference with AKC and PSA regarding settlement conference, terms of agreement, overall strategy and related matters; review and evaluate memorandum of material terms executed at settlement conference; conference with DGA regarding same; begin drafting settlement agreement.	2.00	650.00
02/07/20	DGA	Discuss and assess scope of settlement terms with Jordan Peel, as well as applicable documents to preserve rights under the equity purchase component.	0.50	212.50
02/07/20	AKC	Discuss settlement terms with JBP and PSA.	0.60	150.00

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Date	Atty	Description	Hours	Amount
02/07/20	AKC	Travel and attend settlement conference.	7.20	1,800.00
02/07/20	AKC	Prepare for settlement conference.	0.30	75.00
02/08/20	JBP	Draft settlement agreement; submit same to DGA for review; correspond with DGA regarding same.	2.40	780.00
02/10/20	PSA	Telephone call with Dominique regarding [REDACTED] [REDACTED]	0.30	120.00
02/10/20	DGA	Review and discuss [REDACTED] with Jordan Peel and Alex Calaway; assess and discuss [REDACTED] [REDACTED].	0.50	212.50
02/10/20	AKC	Assess, analyze and review joint case conference report; discuss the same with PSA; request extension from opposing counsel regarding the same; discuss purchase sale agreement with DGA.	1.00	250.00
02/10/20	JBP	Draft membership interest purchase agreement, assignment of membership interest, and resignation of manager; revise draft of settlement agreement; submit documents to DGA for review.	4.40	1,430.00
02/11/20	JBP	Conference with AC regarding status of matter, Clement's recent actions, overall strategy and related matters; conference with DGA regarding same.	0.20	65.00
02/11/20	AKC	Review settlement agreement draft; discuss the same with JBP; phone call with client; email to client.	1.00	250.00
02/12/20	AKC	Assess status of case.	0.10	25.00
02/14/20	AKC	Update client on [REDACTED] update JBP regarding the same.	0.60	150.00
02/18/20	AKC	Call with client; call to opposing counsel regarding inventory at warehouse and stipulate to move date for hearing; email to court regarding the same.	0.40	100.00
02/20/20	AKC	Review and respond to emails from client and opposing counsel; call client to discuss inventory; email opposing counsel regarding the same; text message client [REDACTED]	0.70	175.00
02/25/20	AKC	Review client email; reply to same; phone call with client; discuss the same with PSA.	0.90	225.00
02/26/20	AKC	Phone call with Robert Kern; update client regarding [REDACTED].	0.70	175.00
02/27/20	AKC	Prepare stipulation for continuance; file the same with the court.	0.50	125.00
03/02/20	AKC	Review correspondence with opposing counsel; discuss the same with PSA; follow up with opposing counsel regarding stipulation to postpone hearing; email correspondence with client.	0.30	75.00
03/02/20	AKC	Phone call with client.	0.10	25.00
03/03/20	AKC	Get signed stipulation from opposing counsel and file the same; email correspondence with client.	0.10	25.00
03/04/20	AKC	Review correspondence from client; reply to the same; attend strategic planning meeting with PSA to fulfill client's goals and objectives in the most economical manner possible in light of client's email.	1.10	275.00
03/04/20	PSA	Discussion re [REDACTED] Email to Dominique re [REDACTED]	2.10	840.00

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Date	Atty	Description	Hours	Amount
03/05/20	AKC	Begin drafting partial motion for summary judgment; discuss the same with PSA; exchange emails with client regarding [REDACTED]	0.70	175.00
03/05/20	AKC	Review lease documents; exchange emails with client regarding [REDACTED]	0.30	75.00
03/09/20	AKC	Continue drafting partial motion for summary judgment on judicial dissolution.	0.80	200.00
03/10/20	AKC	Continue draft of partial summary judgment.	2.30	575.00
03/11/20	AKC	Continue drafting motion for summary judgment.	3.10	775.00
03/12/20	AKC	Phone call with client regarding [REDACTED] phone call with client regarding [REDACTED]	0.60	150.00
03/12/20	AKC	Incorporate PSA motion draft changes; send [REDACTED] to client; prepare same for filing.	1.10	275.00
03/13/20	DGA	Attention to status of possible sale and litigation and related follow-up with responsible associates.	0.20	85.00
03/13/20	AKC	Exchange emails with client regarding denials; draft status update on case to DGA and JBP regarding transaction of final agreement; forward denial information to opposing attorney; exchange emails with opposing attorney.	0.90	225.00
03/13/20	AKC	Exchange emails with client regarding [REDACTED]	0.20	50.00
03/16/20	AKC	Attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible with PSA.	0.50	125.00
03/16/20	AKC	Discuss [REDACTED] with client; draft email to Judge Williams regarding settlement; discuss final draft with PSA.	1.40	350.00
03/18/20	AKC	Exchange emails with client regarding [REDACTED]; reply to opposing attorney regarding the same.	0.10	25.00
03/23/20	AKC	Assess, analyze and review filing by the court; discuss [REDACTED] with client; schedule time to discuss the same.	0.40	100.00
03/24/20	AKC	Assess, analyze and review opposing attorney opposition brief and counter motion in preparation for client meeting; conference call with client, PSA, and Victor Green.	1.70	425.00
03/24/20	PSA	Telephone call with Dominique and Victor Green and Alex re [REDACTED]	1.10	440.00
03/25/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
03/25/20	AKC	Exchange emails with client regarding [REDACTED]	0.40	100.00
03/26/20	AKC	Exchange emails with client regarding [REDACTED] discuss the same with PSA.	0.70	175.00
03/27/20	AKC	Assess, analyze and review minute order from judge; discuss same with PSA.	0.30	75.00
03/27/20	PSA	Meet with Ken and Mike Lynch at the project to discuss what is on the list to fix. Prepare the list and send it to Ken to discuss re negotiations.	1.50	600.00
03/27/20	PSA	Review order taking dissolution off calendar. Discuss strategy re same.	0.60	240.00

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Date	Atty	Description	Hours	Amount
03/30/20	AKC	Exchange emails with client regarding [REDACTED] discuss the same with PSA.	0.20	50.00
04/01/20	AKC	Exchange emails with client regarding [REDACTED] prepare motion to reset hearing; discuss the same with PSA.	0.90	225.00
04/02/20	AKC	Draft opposition to counter-motion; exchange emails with PSA regarding same.	0.20	50.00
04/02/20	AKC	Continue draft of opposition to counter motion.	0.40	100.00
04/03/20	AKC	Continue drafting opposition to counter motion; phone call with client; draft declaration; exchange emails with client regarding [REDACTED]	4.50	1,125.00
04/04/20	AKC	Continue drafting opposition and counter motion; finalize same for PSA review.	5.50	1,375.00
04/06/20	AKC	Exchange emails with PSA regarding brief; incorporate PSA changes; file the same; exchange emails with client regarding [REDACTED]	1.80	450.00
04/06/20	AKC	Continue drafting reply brief on motion for summary judgment; draft expert declaration; phone call with client.	3.00	750.00
04/07/20	PSA	Review, reply and discuss strategy re holding funds from Muney.	1.20	480.00
04/07/20	AKC	Continue drafting reply brief; phone call with client regarding [REDACTED] discuss the same with PSA; phone call with client regarding [REDACTED]; finalize reply brief and prepare the same for PSA review.	8.60	2,150.00
04/08/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
04/08/20	AKC	Finalize and incorporate PSA edits of reply brief; file the same.	1.60	400.00
04/08/20	AKC	Exchange emails with Victor Green and client regarding [REDACTED]	0.20	50.00
04/08/20	AKC	Phone call to client regarding [REDACTED]	0.30	75.00
04/09/20	AKC	Finalize letter for client; discuss the same with PSA; send to client via email for final review; phone call with client regarding [REDACTED] phone call with client regarding [REDACTED]	1.00	250.00
04/10/20	AKC	Exchange emails with client regarding [REDACTED] phone call with client.	0.40	100.00
04/10/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
04/14/20	AKC	Phone call with client re [REDACTED]	0.80	200.00
04/14/20	AKC	Assess, analyze and review reply brief; forward the same to client.	0.40	100.00
04/20/20	AKC	Check docket for status hearing.	0.20	50.00
04/21/20	AKC	Phone call with Dominique Arnould [REDACTED]	0.30	75.00
04/22/20	AKC	Exchange emails with client regarding [REDACTED] finalize letter and sent to opposing attorney; exchange emails with client regarding [REDACTED]	0.50	125.00
04/23/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
04/28/20	AKC	Exchange texts with client regarding [REDACTED]	0.30	75.00

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Date	Atty	Description	Hours	Amount
04/29/20	AKC	Phone conference with client; exchange emails with client regarding [REDACTED] phone call with client regarding [REDACTED]	2.40	600.00
04/30/20	AKC	Phone call with client.	0.20	50.00
05/04/20	AKC	Exchange emails with client regarding [REDACTED] phone call with PSA regarding same; finalize proposed email and send to opposing attorney.	0.80	200.00
05/07/20	AKC	Phone call with client.	0.30	75.00
05/08/20	AKC	Phone call with client.	0.10	25.00
05/09/20	AKC	Phone call with client.	0.10	25.00
05/12/20	AKC	Draft reply to motion to strike.	2.30	575.00
05/12/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
05/12/20	AKC	Phone call with client; discuss [REDACTED] with client; update PSA regarding same.	0.40	100.00
05/13/20	AKC	Phone call with PSA regarding email response to opposing attorney; exchange emails with opposing attorney; phone call with client regarding [REDACTED] exchange emails with regarding invoice; phone call with client regarding same.	1.00	250.00
05/13/20	AKC	Continue reply brief to opposition to motion to strike; finalize and file the same.	1.90	475.00
05/13/20	AKC	Review email from opposing counsel regarding funds.	0.20	50.00
05/13/20	AKC	Exchange emails with client [REDACTED]	0.20	50.00
05/14/20	AKC	Phone call with client.	0.20	50.00
05/14/20	AKC	Attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible with PSA regarding supplementation on settlement agreement.	0.30	75.00
05/15/20	AKC	Review emails from client regarding [REDACTED] exchange emails with opposing attorney regarding same; prepare draft response to opposing attorney demand letter; discuss the same with PSA.	1.30	325.00
05/18/20	AKC	Exchange emails with opposing attorney regarding demands.	0.40	100.00
05/18/20	AKC	Phone call with client; exchange emails with client regarding [REDACTED]	0.10	25.00
05/19/20	AKC	Exchange emails/texts with client regarding [REDACTED]	0.20	50.00
05/19/20	AKC	Phone call with client regarding [REDACTED] discuss the same with PSA.	0.60	150.00
05/19/20	AKC	Phone call with client regarding [REDACTED]	0.40	100.00
05/20/20	PSA	Revise Dom's email to [REDACTED]	0.40	160.00
05/20/20	AKC	Assess, analyze and review TRO and injunction filed in the matter; discuss the same with PSA; phone call to client.	1.30	325.00
05/20/20	PSA	Discussion with Alex re temporary restraining order and motion for preliminary injunction. Review motions filed by Muney. Email to Dom re [REDACTED]	0.80	320.00

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Date	Atty	Description	Hours	Amount
05/21/20	PSA	Telephone call with Dom, Victor, & Alex re [REDACTED] [REDACTED]	1.00	400.00
05/21/20	AKC	Draft opposition motion brief; discuss [REDACTED] with client; prepare [REDACTED] for client review; continue drafting brief; discuss [REDACTED] with client in phone conference; continue drafting brief; prepare brief for PSA review.	9.10	2,275.00
05/21/20	AKC	Phone call with PSA regarding strategy on opposition and motion to vacate.	0.20	50.00
05/22/20	PSA	Review and revise opposition and prepare for oral argument of Muney's temporary restraining order request.	5.20	2,080.00
05/22/20	AKC	Begin drafting proposed order; legal research regarding order to withstand appeal.	1.10	275.00
05/22/20	AKC	Finalize opposition brief and counter motion; incorporate PSA changes; finalize exhibits and declaration; file the same; prepare for hearing; attend hearing; discuss [REDACTED] with client.	6.90	1,725.00
05/24/20	AKC	Exchange emails with potential receiver.	0.10	25.00
05/24/20	AKC	Exchange emails with PSA regarding receiver.	0.10	25.00
05/26/20	PSA	Review and revise findings conclusions and order.	1.20	480.00
05/26/20	AKC	Assess, analyze and review [REDACTED] from client and opposing party; prepare for phone conference regarding the same.	0.40	100.00
05/26/20	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
05/26/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with opposing attorney regarding receiver; draft proposed order; prepare for PSA review.	4.70	1,175.00
05/27/20	AKC	Adjust draft of proposed order; discuss receiver options with PSA; exchange emails with opposing attorney regarding receiver; exchange emails with client regarding [REDACTED]	0.80	200.00
05/27/20	AKC	Assess, analyze and review receiver provided by opposing attorney; exchange emails with client regarding [REDACTED]	0.30	75.00
05/28/20	PSA	Review Dom [REDACTED] Zoom call with Dom [REDACTED]	1.80	720.00
05/28/20	AKC	Assess, analyze and review Dominique's [REDACTED] [REDACTED] phone conference with client regarding [REDACTED]	2.80	700.00
05/29/20	AKC	Exchange emails with opposing attorney.	0.10	25.00
05/31/20	PSA	Revise [REDACTED] per feedback from Dom [REDACTED] [REDACTED].	0.80	320.00
05/31/20	PSA	Revise the new settlement agreement and revise the spreadsheet to match the agreement.	2.60	1,040.00
06/01/20	AKC	Exchange emails with PSA regarding order and settlement; exchange emails with client regarding [REDACTED]	1.20	300.00
06/01/20	AKC	Exchange emails with opposing attorney regarding China shipment.	0.10	25.00

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Date	Atty	Description	Hours	Amount
06/02/20	AKC	Exchange emails with opposing attorney regarding settlement documents; exchange emails with client regarding [REDACTED]	1.50	375.00
06/03/20	AKC	Send proposed order to opposing attorney; exchange emails with client [REDACTED]	0.60	150.00
06/03/20	AKC	Exchange emails with opposing attorney regarding settlement; exchange emails with client regarding [REDACTED] discuss the same with PSA.	0.80	200.00
06/04/20	AKC	Teleconference with client.	1.10	275.00
06/04/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with opposing attorney regarding same.	0.30	75.00
06/04/20	AKC	Assess, analyze and review edits by opposing attorney on proposed order; exchange emails with opposing attorney regarding same; prepare for conference call with client.	1.50	375.00
06/04/20	PSA	Emails to client. Zoom call re [REDACTED] Emails with Kern re payment of the Chinese mfr. Review and revise order re receiver.	2.60	1,040.00
06/04/20	AKC	Draft plaintiff's proposal for receiver; edit opposing attorney's responses on proposed order and limited powers of receiver; exchange emails with court regarding same; phone call with opposing attorney regarding same.	2.80	700.00
06/05/20	AKC	Exchange emails with court regarding receiver.	0.20	50.00
06/05/20	PSA	Emails with Victor, Dom, Kern and Alex. Review and revise motion to select receiver, assist Alex with Kern strategy.	1.60	640.00
06/05/20	AKC	Phone call with opposing attorney.	1.10	275.00
06/05/20	AKC	Phone call with client; exchange emails with PSA regarding same; exchange emails with opposing attorney regarding final inventory.	0.60	150.00
06/05/20	AKC	Exchange emails with client regarding [REDACTED] continue draft of receiver suggestion.	2.20	550.00
06/06/20	AKC	Exchange emails with opposing attorney regarding settlement draft.	0.10	25.00
06/08/20	PSA	Review sales records and analyze a division based on dollar sales. Email with Dom [REDACTED].	1.50	600.00
06/08/20	AKC	Assess, analyze and review opposing attorney response to settlement; exchange emails with client regarding [REDACTED] answers to request for admissions sales report.	2.30	575.00
06/08/20	AKC	Phone call with client; exchange emails with regarding same; discuss same with PSA.	1.70	425.00
06/09/20	AKC	Exchange emails with opposing attorney regarding shipment wire.	0.10	25.00
06/09/20	AKC	Phone call with client; phone call with PSA; address warehouse issue.	0.30	75.00
06/10/20	AKC	Exchange emails with clients regarding [REDACTED] phone call with client regarding [REDACTED] discuss hearing with Phil; phone call with Dominique; phone call with Victor; hearing with court regarding warehouse entry.	2.10	525.00
06/10/20	PSA	Emails with client re [REDACTED]. Draft motion for receiver or access to the warehouse. Review Kern's opposition. Review emails re strategy. Telephone call from Dom re [REDACTED] Draft reply to	6.40	2,560.00

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Date	Atty	Description	Hours	Amount
		Kern's opposition. Prepare for and appear at BlueJeans video hearing re access. Telephone call with Dom re [REDACTED] [REDACTED]		
06/11/20	AKC	Exchange emails with opposing attorney; exchange emails with court regarding hearing; assess, analyze and review minute order; exchange emails with client regarding [REDACTED]	0.60	150.00
06/11/20	AKC	Exchange emails with client regarding [REDACTED]	0.20	50.00
06/12/20	PSA	Prepare for and appear at video hearing re access to the warehouse. Review and revise order appoint Bertsch as receiver.	1.80	720.00
06/12/20	AKC	Prepare for hearing with PSA; attend and argue at hearing; conduct video conference with client; finalize and submit prevailing proposed order to court.	3.00	750.00
06/14/20	AKC	Phone call with client; exchange emails with opposing attorney regarding same.	0.20	50.00
06/15/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with opposing attorney regarding same; exchange emails with receiver; phone call with receiver.	2.70	675.00
06/15/20	AKC	Phone call with client regarding [REDACTED]	0.20	50.00
06/17/20	AKC	Discuss notice of appeal with PSA.	0.50	125.00
06/17/20	AKC	Exchange emails/texts with client regarding [REDACTED]	0.20	50.00
06/18/20	AKC	Exchange emails with PSA regarding usurpation and additional claims arising out of email issue; exchange emails with opposing attorney regarding camera system and preservation of evidence; phone call with receiver regarding same; exchange emails with opposing attorney regarding discovery of warehouse footage; phone call with client regarding [REDACTED] phone call with PSA regarding same.	3.60	900.00
06/23/20	AKC	Brief attend strategic planning meeting to fulfill client's goals and objectives in the most economical manner possible with PSA regarding conference call; legal research regarding stay on appeal; conference call with client regarding [REDACTED]	1.70	425.00
06/23/20	AKC	Phone call with client regarding [REDACTED] assess, analyze and review docketing of appeal; assess, analyze and review receiver's list; phone call; exchange emails with client regarding [REDACTED] [REDACTED] exchange emails with opposing attorney.	0.40	100.00
06/23/20	PSA	Prepare for and conduct Zoom meeting with Dom, [REDACTED] [REDACTED].	1.30	520.00
06/24/20	AKC	Prepare for hearing; attend hearing; zoom meeting regarding the same.	1.70	425.00
06/24/20	AKC	Attend telephonic hearing; discuss [REDACTED] with client.	1.40	350.00
06/26/20	AKC	Assess, analyze and review proposed order; discuss the same with opposing attorney; phone call with opposing attorney regarding same; exchange emails with opposing attorney regarding the objections we have to the order; finalize order with objections and send the same to opposing attorney.	2.60	650.00

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Date	Atty	Description	Hours	Amount
06/29/20	AKC	Assess, analyze and review documents provided to receiver; exchange emails with in accordance with regarding proposed order; phone call with receiver; phone call with client regarding [REDACTED]	0.80	200.00
06/30/20	AKC	Assess, analyze and review case statement; exchange emails with client regarding [REDACTED] phone call with client regarding [REDACTED] phone call with receiver.	1.00	250.00
07/01/20	AKC	Phone call with client regarding [REDACTED] and other matters; exchange emails with PSA regarding [REDACTED]	0.70	175.00
07/02/20	AKC	Exchange emails with client regarding [REDACTED] assess, analyze and review [REDACTED] provide by client; exchange emails with client regarding [REDACTED] exchange emails with client regarding [REDACTED] phone call with client.	1.60	400.00
07/03/20	AKC	Assess, analyze and review [REDACTED] from client to receiver; discuss the same with PSA; re-write land draft letter; provide [REDACTED] to client for [REDACTED]	4.10	1,025.00
07/06/20	AKC	Incorporate client comments to [REDACTED] call back client regarding [REDACTED] incorporate PSA changes; finalize letter for client to [REDACTED] exchange emails with client regarding [REDACTED] phone call with client and email regarding [REDACTED]	1.60	400.00
07/07/20	AKC	Phone call with client; call to receiver; finalize joint case conference report; exchange emails with opposing attorney regarding same; incorporate JCCR changes by opposing attorney.	1.60	400.00
07/08/20	AKC	Assess, analyze and review appeal filings; discuss the same with PSA; phone call to receiver and leave message; schedule time for meeting; discuss time issues with client and receiver; finalize agenda for meeting.	2.70	675.00
07/09/20	AKC	Phone call with receiver regarding [REDACTED] phone call with Victor Green regarding [REDACTED] exchange emails with opposing attorney regarding JCCR.	0.60	150.00
07/09/20	AKC	Prepare for meeting with receiver; attend meeting with receiver and client; discuss [REDACTED] with client.	1.60	400.00
07/09/20	AKC	Exchange emails with client regarding appeal and motion to dismiss appeal; discuss the same with PSA; exchange emails with client regarding [REDACTED]	0.80	200.00
07/09/20	PSA	Meet and prepare for meeting with receiver and client.	1.50	600.00
07/10/20	AKC	Exchange emails with client regarding [REDACTED]	0.30	75.00
07/11/20	AKC	Review client letter regarding [REDACTED] exchange emails with client regarding [REDACTED]	0.20	50.00
07/13/20	AKC	Exchange emails with opposing attorney regarding JCCR; exchange emails with client regarding [REDACTED] finalize letter for receiver regarding same.	0.80	200.00
07/13/20	AKC	Exchange emails with appellate court regarding settlement conference dates; incorporate opposing attorney changes.	0.70	175.00
07/14/20	AKC	Exchange emails with settlement judge regarding appeal.	0.10	25.00

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Date	Atty	Description	Hours	Amount
07/14/20	AKC	Finalize and prepare letter to receiver re: CA warehouse.	0.60	150.00
07/15/20	AKC	Exchange emails with client regarding [REDACTED] phone call with client regarding [REDACTED]	0.80	200.00
07/16/20	AKC	Phone call with Victor Green; phone call with receiver regarding time-frame for report; phone call with client regarding [REDACTED]	1.10	275.00
07/20/20	AKC	Exchange emails with client; discuss meditation briefs with PSA; discuss motion to dismiss regarding [REDACTED]	0.40	100.00
07/21/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with appeal mediator; assess, analyze and review order and stipulation filed by receiver; assess, analyze and review minute order.	1.10	275.00
07/22/20	AKC	Legal research regarding court-appointed expert witnesses; phone call with client regarding [REDACTED] exchange emails with PSA regarding jury trial.	0.70	175.00
07/22/20	AKC	Prepare for status hearing; attend the same.	0.80	200.00
07/22/20	AMM	Legal research regarding Nevada precedent for a court appointed receiver and the evidentiary rules and discuss with counsel.	0.60	105.00
07/23/20	AKC	Begin draft of motion to dismiss appeal.	1.00	250.00
07/23/20	AKC	Exchange emails with client regarding [REDACTED]	0.30	75.00
07/24/20	AMM	Finish legal research regarding Nevada precedent for a court appointed receiver and the evidentiary rules, draft memo, and send to counsel.	1.10	192.50
07/24/20	AKC	Continue draft of motion to dismiss; legal research regarding [REDACTED] send email and analysis to PSA.	2.30	575.00
07/27/20	AKC	Assess, analyze and review Mia's research; forward the same to PSA; assess, analyze and review docketing demand by appellate court.	0.30	75.00
07/28/20	AKC	Assess, analyze and review emails from client to receiver.	0.30	75.00
07/28/20	AKC	Exchange emails with PSA regarding appeal motions to dismiss.	0.10	25.00
07/28/20	AKC	Phone conference with client.	1.00	250.00
07/29/20	AKC	Exchange emails with client.	0.10	25.00
07/29/20	AKC	Legal research regarding potential resignation from the LLC; exchange emails with PSA regarding same.	1.50	375.00
07/30/20	AKC	Continue motion to dismiss draft; finalize the same.	6.00	1,500.00
07/30/20	AKC	Phone call with receiver.	0.50	125.00
07/31/20	LAD	Make technical revisions to motion to dismiss appeal and finalize same in Case No. 81355.	0.80	140.00
07/31/20	LAD	Prepare indexed exhibits to motion to dismiss appeal in Case No. 81355.	1.40	245.00
07/31/20	LAD	Prepare electronic copy on disk of exhibits to motions to dismiss appeal in Case Nos. 81355 and 81356 for settlement judge.	0.30	52.50
07/31/20	LAD	Make technical revisions to motion to dismiss appeal and finalize same in Case No. 81356.	0.40	70.00
07/31/20	LAD	Prepare indexed exhibits to motion to dismiss appeal in Case No. 81356.	0.30	52.50
07/31/20	AKC	Draft confidential settlement statement.	2.30	575.00

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Date	Atty	Description	Hours	Amount
07/31/20	AKC	Draft and finalize appeal regarding sanction.	1.00	250.00
07/31/20	AKC	Finalize and incorporate PSA changes to appellate dismissal.	2.50	625.00
08/03/20	LAD	Revise formatting of confidential settlement statement to conform to requirements of NRAP 32.	0.40	70.00
08/03/20	AKC	Continue drafting mediation statement; incorporate PSA changes.	2.70	675.00
08/05/20	PSA	Prepare for and attend pre-mediation conference with the Supreme Court Settlement Judge.	0.80	320.00
08/05/20	AKC	Attend pre-mediation teleconference with mediator.	0.50	125.00
08/06/20	AKC	Phone call with client; exchange emails with client and Victor Green.	0.70	175.00
08/06/20	AKC	Phone call with client; exchange emails with client regarding [REDACTED] [REDACTED] draft proposed email for client to receiver; phone call to receiver; assess, analyze and review oppositions to motions to dismiss filed by Muney; discuss appellate issues with PSA.	3.20	800.00
08/10/20	AKC	Exchange emails with PSA; phone call with client.	0.20	50.00
08/10/20	AKC	Legal research regarding injunction appeal; continue drafting reply brief.	3.00	750.00
08/11/20	AKC	Assess, analyze and review receiver's report; exchange emails with client regarding [REDACTED] exchange emails with PSA regarding same.	0.90	225.00
08/11/20	PSA	Review receiver's report and telephone call with Dominique [REDACTED] [REDACTED]	1.50	600.00
08/11/20	AKC	Exchange emails with court regarding hearing; exchange emails with PSA ref receiver report.	0.20	50.00
08/12/20	AKC	Prepare for and attend status hearing regarding report.	2.10	525.00
08/12/20	AKC	Conference call with Dominique [REDACTED]	1.00	250.00
08/12/20	PSA	Prepare for and appear at receiver's status hearing. Begin draft or order.	1.20	480.00
08/13/20	AKC	Exchange emails with client; exchange emails with opposing attorney regarding proposed order; phone call with PSA regarding same; exchange emails with PSA regarding proposed order.	0.70	175.00
08/17/20	AKC	Assess, analyze and review proposed order; exchange emails with PSA regarding same; assess, analyze and review order by receiver; exchange emails with client; phone call with receiver; exchange emails with client; finalize proposed order per PSA changes.	1.00	250.00
08/18/20	AKC	Exchange emails with opposing attorney regarding proposed order; exchange emails with receiver regarding same; exchange emails regarding signed order.	0.30	75.00
08/19/20	AKC	Exchange emails with Victor Green and client.	0.10	25.00
08/19/20	AKC	Exchange emails with opposing attorney regarding proposed dissolution date.	0.20	50.00
08/19/20	AKC	Exchange emails with opposing attorney regarding proposed order.	0.20	50.00
08/19/20	AKC	Assess, analyze and review ECAR for settlement program.	0.30	75.00
08/20/20	AKC	Phone call with the receiver regarding order; phone call with client regarding [REDACTED]	0.90	225.00

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Date	Atty	Description	Hours	Amount
08/20/20	AKC	Exchange emails with receiver's counsel; incorporate opposing attorney proposed order drafts; finalize drafts and send to OK counsel.	0.60	150.00
08/20/20	AKC	Finalize and file proposed order.	0.10	25.00
08/20/20	AKC	Exchange emails with opposing attorney regarding dissolution stipulation.	0.10	25.00
08/20/20	AKC	Exchange emails with client and Victor.	0.10	25.00
08/21/20	AKC	Exchange emails with client and opposing attorney regarding settlement and non-compete; brief legal research enforceable non-competes.	0.40	100.00
08/21/20	AKC	Assess, analyze and review accounts receivables with client; exchange emails with client regarding [REDACTED] exchange emails with receiver regarding same.	1.10	275.00
08/21/20	AKC	Exchange emails with Victor; exchange emails with opposing attorney.	0.20	50.00
08/24/20	AKC	Verify docket with staff; begin draft of response to receiver's report.	0.30	75.00
08/25/20	AKC	Discuss mediation with PSA.	0.50	125.00
08/27/20	AKC	Exchange emails with client.	0.10	25.00
08/27/20	AKC	Exchange emails with client; exchange emails with receiver; exchange emails with opposing attorney.	1.00	250.00
08/27/20	AKC	Phone call with receiver regarding dissolution and other issues.	0.30	75.00
08/28/20	AKC	Exchange emails with client.	0.10	25.00
09/01/20	DGA	Status conference with Alex Calaway and set follow-up.	0.20	85.00
09/01/20	AKC	Exchange emails with the receiver regarding client items.	0.90	225.00
09/01/20	AKC	Phone call with client answering his questions.	1.70	425.00
09/02/20	AKC	Exchange emails with client.	0.10	25.00
09/02/20	AKC	Exchange emails with receiver regarding client concern.	0.30	75.00
09/04/20	AKC	Draft response to receiver's report.	3.10	775.00
09/07/20	AKC	Exchange emails with PSA regarding receiver recommendations; exchange emails with receiver regarding Muneys new allegations.	0.60	150.00
09/08/20	AKC	Exchange emails with opposing attorney regarding disputed rents; phone call with receiver; discuss mediation with PSA; provide mediation pros and cons letter to client.	3.40	850.00
09/08/20	AKC	Exchange emails with client regarding [REDACTED]; phone call regarding [REDACTED]	0.50	125.00
09/08/20	AKC	Exchange emails with Victor Green regarding mediation.	0.10	25.00
09/08/20	AKC	Exchange emails with PSA regarding new allegations raised by opposing attorney; brief legal research regarding applicable duty of loyalty in Nevada under newly amended revised statutes.	0.40	100.00
09/09/20	AKC	Call back client; exchange emails with PSA regarding telephonic hearing; phone call with the receiver regarding same.	0.70	175.00
09/09/20	AKC	Assess, analyze and review defendant's request for telephonic hearing.	0.90	225.00
09/09/20	AKC	Exchange emails with opposing attorney regarding mediation.	0.60	150.00
09/10/20	AKC	Prepare for and attend emergency hearing; discuss hearing with PSA	2.00	500.00

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Date	Atty	Description	Hours	Amount
		and receiver; phone call with client updating on the hearing.		
09/10/20	AKC	Exchange emails with opposing attorney regarding telephonic hearing; discuss hearing with PSA; discuss hearing with receiver.	0.90	225.00
09/11/20	AKC	Assess, analyze and review inventory split; exchange emails with receiver regarding same.	0.20	50.00
09/14/20	AKC	Discuss report with receiver.	0.40	100.00
09/14/20	AKC	Exchange emails with client regarding [REDACTED] [REDACTED] exchange emails with opposing attorney regarding same.	0.70	175.00
09/15/20	AKC	Exchange emails with Victor Green; exchange emails with opposing attorney.	0.30	75.00
09/16/20	AKC	Phone call with Victor Green regarding mediation documents.	1.10	275.00
09/17/20	AKC	Begin drafting subpoena duces tecum and discovery requests; phone call with receiver; phone call with client regarding [REDACTED]	1.10	275.00
09/17/20	AKC	Attend mediation; discuss mediation with clients.	5.90	1,475.00
09/17/20	AKC	Prepare for mediation; pre-mediation meeting with client.	0.80	200.00
09/18/20	AKC	Assess, analyze and review minute order from court.	0.10	25.00
09/18/20	AKC	Discuss partial motion for summary judgment; phone call with client.	1.60	400.00
09/23/20	AKC	Phone call with receiver to work on interim solution for filling orders; legal research regarding same; update client on strategy moving forward.	1.60	400.00
09/23/20	AKC	Phone call with client; phone call to opposing attorney.	0.20	50.00
09/23/20	AKC	Attend status hearing; discuss the same with client, PSA, and Victor Green.	1.70	425.00
09/23/20	AKC	Exchange emails with client regarding [REDACTED].	0.20	50.00
09/23/20	AKC	Phone call with receiver regarding hearing.	0.30	75.00
09/23/20	AKC	Prepare for hearing.	0.40	100.00
09/24/20	AKC	Phone call with client; exchange emails with opposing attorney regarding phone number of client.	0.30	75.00
09/25/20	AKC	Emergency call with client.	0.30	75.00
09/25/20	AKC	Assess, analyze and review motion for PSA; return to finalize and file.	1.10	275.00
09/25/20	AKC	Exchange emails with opposing attorney and client; phone call with the receiver regarding same.	2.10	525.00
09/25/20	AKC	Exchange emails with client and Victor.	1.10	275.00
09/27/20	PSA	Begin draft of motion for partial summary judgment re winding up chief executive.	3.20	1,280.00
09/28/20	AKC	Exchange emails with client.	0.20	50.00
09/28/20	PSA	Work on draft of motion for partial summary judgment and give to Alex to review and draft declaration and order shortening time.	1.70	680.00
09/29/20	AKC	Exchange emails with receiver; assess, analyze and review opp to dissolution.	0.20	50.00

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Date	Atty	Description	Hours	Amount
09/29/20	AKC	Assess, analyze and review receiver's response to motion for partial summary judgment; phone call to receiver; phone call to client; exchange emails with receiver and client.	0.70	175.00
09/30/20	AKC	Exchange emails with opposing attorney; exchange emails with receiver's counsel.	0.30	75.00
09/30/20	AKC	Attend hearing regarding dissolution; call with client; call with receiver; assess, analyze and review proposed order.	1.10	275.00
09/30/20	AKC	Prepare for hearing.	0.70	175.00
09/30/20	PSA	Draft emails re our motion and Muney's opposition and separate what we agree upon and what we do not. Draft order to send to Kern.	3.10	1,240.00
09/30/20	PSA	Prepare for and appear at hearing of motion.	2.70	1,080.00
10/01/20	AKC	Finalize customer letter; finalize articles of dissolution; exchange emails with receiver's counsel; phone call.	2.10	525.00
10/01/20	AKC	Phone call with Victor regarding customer letter.	0.20	50.00
10/01/20	AKC	Exchange emails with client regarding [REDACTED].	0.30	75.00
10/02/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with client regarding [REDACTED] exchange emails with receiver regarding [REDACTED]	0.80	200.00
10/02/20	AKC	Phone call with client regarding [REDACTED]	0.10	25.00
10/05/20	AKC	Exchange emails with PSA regarding dissolution items; exchange emails with client; phone call with client.	0.60	150.00
10/06/20	AKC	Exchange emails with client; exchange emails regarding [REDACTED] exchange emails with regarding [REDACTED] phone call with client regarding [REDACTED] exchange emails with receiver and receiver's counsel.	1.50	375.00
10/07/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with client regarding [REDACTED] discuss discovery issues with PSA.	0.70	175.00
10/08/20	AKC	Begin drafting discovery order of proof.	2.20	550.00
10/09/20	AKC	Phone call with receiver regarding invoices and new accounts; phone call with client regarding [REDACTED] exchange emails with receiver.	1.50	375.00
10/09/20	AKC	Assess, analyze and review orders entered by settlement mediator.	0.30	75.00
10/12/20	AKC	Continue draft of discovery requests.	2.00	500.00
10/12/20	AKC	Exchange emails with opposing attorney regarding copyright issues; legal research regarding same; exchange emails with PSA.	0.60	150.00
10/13/20	AKC	Exchange emails with receiver's counsel.	0.10	25.00
10/13/20	AKC	Exchange emails with client regarding [REDACTED] discuss the same with PSA.	0.20	50.00
10/13/20	AKC	Discuss copyright issues with PSA; exchange emails with client regarding [REDACTED]	1.20	300.00
10/15/20	AKC	Exchange emails with client's CA landlord.	0.10	25.00
10/16/20	AKC	Call the receiver's counsel.	0.10	25.00
10/16/20	AKC	Phone call with receiver; draft memorandum regarding copyright issues.	0.40	100.00

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Date	Atty	Description	Hours	Amount
10/16/20	AKC	Assess, analyze and review minute order filings.	0.20	50.00
10/16/20	AKC	Exchange emails with opposing attorney.	0.20	50.00
10/19/20	AKC	Continue drafting propound discovery on Clement Munez.	5.10	1,275.00
10/19/20	AKC	Exchange emails with PSA regarding hearing; exchange emails with opposing attorney regarding the same.	0.30	75.00
10/20/20	AKC	Incorporate client changes to propound discovery.	1.60	400.00
10/20/20	AKC	Exchange emails with opposing attorney; exchange emails with court regarding status hearing.	0.40	100.00
10/21/20	AKC	Exchange emails with opposing attorney; assess, analyze and review order to show cause from appellate court.	0.50	125.00
10/22/20	AKC	Continue draft discovery.	1.00	250.00
10/26/20	AKC	Continue drafting PMK subpoena; phone call with client; exchange emails with client.	4.00	1,000.00
10/27/20	AKC	Draft stipulation to remote depositions; incorporate changes to discovery from client; circulate final drafts; call with Dominique regarding [REDACTED]	1.70	425.00
10/28/20	TF	Meeting with AKC regarding case background and ESI preservation.	0.30	52.50
10/28/20	TF	Conference call with Holo Discovery regarding ESI preservation options.	0.20	35.00
10/28/20	AKC	Assess, analyze and review discovery requests from defendant; discuss with client.	1.00	250.00
10/28/20	AKC	Assess, analyze and review DMCA complaint.	0.80	200.00
10/28/20	AKC	Exchange emails with client; exchange emails with opposing attorney and receiver regarding preservation of information; exchange emails with TF regarding ESI preservation; phone call with client and IT specialist; phone call with receiver.	2.30	575.00
10/28/20	AKC	Draft response Go Daddy; phone call with client.	0.60	150.00
10/29/20	AKC	Assess, analyze and review DMCA violations and copyright issues; legal research regarding same; discuss the same with client and PSA; begin drafting demand letter; draft letter apprising receiver.	2.90	725.00
10/29/20	AKC	Finalize subpoenas and issue subpoenas; draft subpoena to Michelle Giffen.	1.50	375.00
10/29/20	AKC	Exchange emails with client regarding [REDACTED] exchange emails with opposing attorney.	0.50	125.00
10/30/20	AKC	Phone call with client.	0.10	25.00
10/30/20	AKC	Phone call with receiver regarding copyright issue to be included in report.	0.60	150.00
11/02/20	AKC	Exchange emails with court regarding rescheduled hearing.	0.10	25.00
11/02/20	AKC	Exchange emails with opposing attorney and receiver regarding status report.	0.10	25.00
11/03/20	AKC	Exchange emails with client; phone call client regarding [REDACTED]	0.30	75.00
11/03/20	AKC	Phone call with receiver regarding rent balance and receiver's report;	0.60	150.00

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Date	Atty	Description	Hours	Amount
		phone call with client regarding [REDACTED]		
11/06/20	AKC	Phone call with client.	0.20	50.00
11/09/20	AKC	Phone call with client regarding [REDACTED] exchange emails with client.	0.50	125.00
11/12/20	AKC	Exchange emails with opposing attorney regarding depositions.	1.00	250.00
11/12/20	AKC	Exchange emails with opposing attorney regarding discovery deadlines and depositions.	0.50	125.00
11/16/20	AKC	Phone call with the receiver.	0.20	50.00
11/16/20	AKC	Exchange emails with opposing attorney regarding subpoenaed documents.	0.30	75.00
11/16/20	AKC	Assess, analyze and review non-party's objection to subpoena duces decum; exchange emails with opposing attorney regarding the same; exchange emails with PSA regarding same.	1.00	250.00
11/17/20	AKC	Assess, analyze and review discovery issues; call client regarding [REDACTED]	1.30	325.00
11/18/20	AKC	EDCR 2.34 meeting with opposing attorney.	1.40	350.00
11/19/20	AKC	Amend and draft discovery pleadings; discuss discovery pleading with client; discuss receiver issues with client.	2.80	700.00
11/24/20	AKC	Phone call with receiver; call with client; discuss objections with PSA.	1.10	275.00
11/30/20	AKC	Discuss receiver's report with client; send response email to receiver.	1.30	325.00
11/30/20	AKC	Discuss receiver report with client.	0.10	25.00
11/30/20	AKC	Meet with receiver.	2.90	725.00
11/30/20	AKC	Continue drafting discovery responses.	2.70	675.00
12/01/20	AKC	Assess, analyze and review final report; phone call with receiver regarding same.	3.60	900.00
12/02/20	AKC	Call with receiver; exchange emails with client regarding [REDACTED] phone call with client regarding [REDACTED]	5.30	1,325.00
12/03/20	AKC	Assess, analyze and review documents provided by client; continue drafting discovery responses.	2.20	550.00
12/03/20	AKC	Phone call with receiver regarding revisions on report.	0.60	150.00
12/03/20	AKC	Assess, analyze and review documents provided by client; continue drafting discovery responses.	2.20	550.00
12/04/20	AKC	Phone call with client; call with receiver.	0.30	75.00
12/06/20	AKC	Assess, analyze and review documents provided by client; continue drafting discovery responses and objections.	6.10	1,525.00
12/07/20	AKC	Verify inventory issue for client; discuss report and inventory issue with receiver.	0.60	150.00
12/07/20	AKC	Continue draft production of documents answer and objections.	1.60	400.00
12/07/20	AKC	Assess, analyze and review receiver's report.	0.80	200.00
12/08/20	PSA	Review receiver's final report. Zoom call with Dom, [REDACTED] [REDACTED]	1.60	640.00
12/08/20	AKC	Exchange emails with client regarding [REDACTED] discuss report with PSA;	0.60	150.00

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Date	Atty	Description	Hours	Amount
		exchange emails with client regarding [REDACTED]		
12/08/20	AKC	Phone call with receiver.	0.20	50.00
12/08/20	AKC	Phone conference with client regarding [REDACTED]	1.90	475.00
12/13/20	AKC	Exchange emails with opposing attorney regarding discovery.	0.10	25.00
12/16/20	AKC	Begin drafting motion to discharge receiver on order shortening time; phone call with receiver regarding same.	0.70	175.00
12/16/20	AKC	Call with client regarding [REDACTED].	0.60	150.00
12/17/20	AKC	Assess, analyze and review email from client; provide brief legal analysis regarding sales issue.	0.20	50.00
12/17/20	AKC	Phone call with client regarding [REDACTED]	0.20	50.00
12/18/20	AKC	Draft stipulation and order to continue discovery dates and continue trial.	0.30	75.00
12/18/20	AKC	Exchange emails with opposing attorney regarding stipulation.	0.20	50.00
12/21/20	AKC	Continue drafting motion; call with receiver's counsel regarding same; exchange emails with opposing attorney regarding next steps on report.	0.70	175.00
12/22/20	AKC	Exchange emails with opposing attorney regarding final report.	0.40	100.00
12/22/20	AKC	Continue drafting motion to accept receiver's report;	0.60	150.00
12/22/20	AKC	Phone call with receiver regarding hearing.	0.30	75.00
12/23/20	AKC	Call with client regarding [REDACTED]; exchange emails with opposing attorney.	1.50	375.00
12/23/20	AKC	Prepare for hearing; attend hearing.	1.50	375.00
12/28/20	AKC	Exchange emails with opposing attorney; exchange emails with receiver's counsel.	0.50	125.00
12/29/20	AKC	Exchange emails with opposing attorney regarding order regarding bank account.	0.60	150.00
12/30/20	AKC	Exchange emails with book-keeper.	0.10	25.00
12/30/20	AKC	Call with client; call with receiver.	0.40	100.00
12/30/20	AKC	Call with client.	0.10	25.00
01/05/21	AKC	Assess, analyze and review filing regarding appeal.	0.10	25.00
01/06/21	AKC	Call with client; assess, analyze and review opposition; exchange emails with PSA regarding same.	0.50	125.00
01/06/21	AKC	Exchange emails with opposing attorney; draft stipulation regarding discovery dates.	0.30	75.00
01/07/21	AKC	Exchange emails with receiver and opposing attorney.	0.10	25.00
01/07/21	AKC	Exchange emails with receiver's counsel.	0.20	50.00
01/07/21	AKC	Finalize stipulation to extend discovery.	0.20	50.00
01/11/21	AKC	Call the receiver.	0.10	25.00
01/19/21	AKC	Call with receiver regarding closing bank account.	0.10	25.00
01/20/21	AKC	Exchange emails with PSA regarding reply; assess, analyze and review docket related to same; finalize reply and file the same.	1.10	275.00

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Date	Atty	Description	Hours	Amount
01/20/21	AKC	Exchange emails with opposing attorney.	0.30	75.00
01/20/21	AKC	Call with client regarding [REDACTED]	0.20	50.00
01/21/21	AKC	Exchange emails with receiver and PSA; assess, analyze and review notice from court.	0.20	50.00
01/21/21	AKC	Exchange emails with receiver's counsel regarding bank account issues.	0.10	25.00
01/27/21	AKC	Exchange emails with opposing attorney.	0.20	50.00
01/29/21	AKC	Call with the receiver.	0.20	50.00
02/01/21	AKC	Call with client regarding [REDACTED] begin drafting response to the [REDACTED]	1.00	250.00
02/01/21	AKC	Assess, analyze and review court minute order.	0.20	50.00
02/04/21	AKC	Call with receiver; assess, analyze and review receiver's reply to opposition.	0.40	100.00
02/05/21	AKC	Assess, analyze and review receiver response to the objection.	0.80	200.00
02/08/21	AKC	Exchange emails with PSA; call with receiver.	0.50	125.00
02/09/21	AKC	Prepare for hearing.	0.50	125.00
02/10/21	AKC	Call with client.	0.20	50.00
02/10/21	AKC	Attend hearing; call with receiver.	1.50	375.00
02/11/21	AKC	Exchange emails with receiver and counsel; draft order granting motion.	1.90	475.00
02/12/21	AKC	Assess, analyze and review disclosed documents in file; assess, analyze and review discovery pleadings; draft status letter to client.	3.00	750.00
02/12/21	AKC	Exchange emails with opposing attorney regarding discovery issues.	0.20	50.00
02/12/21	AKC	Exchange emails with opposing attorney.	0.30	75.00
02/15/21	AKC	Exchange emails with PSA; call with receiver.	0.30	75.00
02/16/21	AKC	Exchange emails with client; exchange emails with opposing attorney; assess, analyze and review minute order from court.	0.60	150.00
02/17/21	AKC	Revise proposed order; exchange emails with client; call with receiver; call with opposing attorney; call with client.	1.70	425.00
02/18/21	AKC	Prepare for EDCR 2.34 meeting; update client on the same.	2.50	625.00
02/18/21	AKC	Exchange emails with client; exchange emails with receiver; exchange emails with PSA.	0.60	150.00
02/19/21	AKC	Exchange emails with opposing attorney; assess, analyze and review documents in file; prepare supplemental disclosure.	0.50	125.00
02/23/21	TF	Draft and prepare second supplement to initial disclosure of witnesses and documents pursuant to NRCP 16.1.	0.50	87.50
02/23/21	TF	Format and prepare documents to be produced in second supplemental discovery disclosures.	0.40	70.00
02/23/21	AKC	Exchange emails with opposing attorney regarding depositions and discovery issues.	0.10	25.00
02/23/21	AKC	Assess, analyze and review second supplement to initial disclosures; finalize and serve the same.	0.20	50.00
02/24/21	AKC	Call to client; call to receiver.	0.10	25.00

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Date	Atty	Description	Hours	Amount
02/24/21	AKC	Prepare for status hearing; attend status hearing; call with Tracy O'Steen regarding stipulation and order to liquidate.	0.80	200.00
02/25/21	AKC	{NO CHARGE} Telephone call with client.	0.10	
02/26/21	AKC	Assess, analyze and review stipulation from receiver.	0.20	50.00
02/26/21	AKC	Exchange emails with opposing attorney regarding order to pay receiver.	0.40	100.00
03/01/21	AKC	Phone call with client.	0.30	75.00
03/02/21	AKC	Call with receiver.	0.50	125.00
03/05/21	TF	Assess, analyze and review native files produced in second supplemental discovery disclosures referenced in voice mail received from Robert Kern's office.	0.30	52.50
03/05/21	TF	Conference call with Robert Kern regarding native QuickBook files disclosed in second supplemental discovery disclosures.	0.20	35.00
03/08/21	AKC	Call with client; exchange emails with receiver.	0.10	25.00
03/09/21	AKC	Assess, analyze and review discovery requests. Call with client regarding [REDACTED]	0.60	150.00
03/11/21	AKC	Assess, analyze and review documents provided by client; draft discovery responses; finalize supplement and discovery responses; serve the same.	1.30	325.00
03/18/21	AKC	Exchange emails with Victor Green.	0.10	25.00
03/31/21	AKC	Exchange emails with client.	0.60	150.00
04/01/21	AKC	Call with client.	0.60	150.00
04/12/21	AKC	Brief call with client.	0.10	25.00
04/16/21	AKC	Exchange emails with opposing attorney regarding discovery requests.	0.20	50.00
04/21/21	AKC	Call with receiver.	0.50	125.00
04/23/21	AKC	Begin drafting answering brief; discuss the same with KAW.	1.00	250.00
04/23/21	KAW	Strategize with AKC regarding answering brief.	0.20	55.00
04/26/21	KAW	Follow-up with AKC regarding potential answering brief.	0.10	27.50
04/28/21	LAD	Prepare motion for extension of time to file answering brief in combined appeals.	0.60	105.00
04/28/21	AKC	Exchange emails with opposing attorney; draft status letter to client; assess, analyze and review notices of subpoena; call with client.	1.90	475.00
04/29/21	LAD	Finalize motion for extension of time to file answering brief.	0.30	52.50
04/29/21	AKC	Draft motion for extension of time to file respondent's brief.	0.20	50.00
05/06/21	AKC	Exchange emails with opposing attorney regarding subpoenas.	0.60	150.00
05/13/21	AKC	Call with client regarding [REDACTED]	0.10	25.00
05/13/21	AKC	Assess, analyze and review discovery documents and assess propound discovery requirements outstanding.	1.00	250.00
05/13/21	AKC	Assess, analyze and review discovery requests; assess, analyze and review documents in folder.	1.20	300.00
05/19/21	AKC	Exchange emails with opposing attorney; call with CA counsel.	0.30	75.00

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Date	Atty	Description	Hours	Amount
05/20/21	AKC	Continue drafting opposition to stay; incorporate maximum bond requirement; legal research regarding same.	2.80	700.00
05/20/21	AKC	Draft opposition to stay; discuss the same with PSA.	2.00	500.00
05/21/21	AKC	Call with client; exchange emails with CA counsel.	0.60	150.00
05/24/21	AKC	Continue drafting answering brief.	0.40	100.00
05/24/21	AKC	Exchange emails with client.	0.00	
05/24/21	KAW	Strategize with AKC regarding motion to dismiss on basis of mootness versus argument within brief regarding mootness and justiciability; send AKC case law regarding the same.	0.30	82.50
05/26/21	AKC	Continue drafting respondents brief.	0.50	125.00
05/27/21	AKC	Continue drafting appeal brief.	0.80	200.00
05/27/21	AKC	Assess, analyze and review reply brief.	0.40	100.00
05/27/21	AKC	Call with client.	0.50	125.00
05/28/21	AKC	Exchange emails with client regarding [REDACTED] research regarding same.	0.70	175.00
05/31/21	AKC	Continue drafting appeal brief.	2.60	650.00
06/01/21	AKC	Continue drafting appellate brief.	12.00	3,000.00
06/01/21	AKC	Assess, analyze and review motion for summary judgment and motions in limine; discuss with PSA.	0.80	200.00
06/02/21	LAD	Gather documents for respondent's appendix in consolidated appeals and prepare initial index for review by attorney.	0.80	140.00
06/02/21	LAD	Compile documents into respondent's appendix, bates stamp documents, and update index.	1.50	262.50
06/02/21	LAD	Prepare cover and certificate for respondent's appendix.	0.10	17.50
06/02/21	LAD	Finalize respondent's appendix.	0.50	87.50
06/02/21	AKC	Continue drafting respondent's brief; finalize and file the same.	9.00	2,250.00
06/02/21	AKC	Update client on status.	0.50	125.00
06/02/21	LAD	Make technical revisions to respondent's answering brief.	2.30	402.50
06/02/21	LAD	Mark all cited authority throughout respondent's answering brief and prepare table of authorities and table of contents.	1.10	192.50
06/02/21	LAD	Finalize respondent's answering brief.	0.30	52.50
06/03/21	AKC	File errata to brief.	0.40	100.00
06/03/21	LAD	Prepare errata to respondent's answering brief; finalize same.	0.60	105.00
06/04/21	AKC	Begin drafting motion for summary judgment.	2.70	675.00
06/08/21	TM	Meeting with AKC to discuss hearing on motion for stay and related briefing; assess, analyze and review briefing for motion for stay.	0.70	175.00
06/08/21	AKC	Prepare for hearing; call with client.	1.00	250.00
06/09/21	TM	Continue preparing for hearing on motion to stay; attend hearing on motion for stay; email to AKC and PSA regarding outcome of motion to stay; discussion with AKC regarding status of discovery; review proposed order denying motion for stay.	1.50	375.00

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Date	Atty	Description	Hours	Amount
06/09/21	AKC	Continue drafting motion for summary judgment.	1.90	475.00
06/09/21	AKC	Call with client; assess, analyze and review motion for stay in Supreme Court.	0.30	75.00
06/09/21	AKC	Draft proposed order denying Muney's motion; circulate to PSA/TM for final review.	0.80	200.00
06/09/21	AKC	Exchange emails with client regarding [REDACTED]	0.10	25.00
06/10/21	AKC	Continue drafting motion for summary judgment.	7.50	1,875.00
06/11/21	AKC	Continue drafting motion for summary judgment.	7.00	1,750.00
06/12/21	AKC	Continue drafting motion for summary judgment.	7.60	1,900.00
06/13/21	AKC	Continue drafting motion for summary judgment; send draft to client for final review.	7.60	1,900.00
06/14/21	AKC	Finalize and file motion for summary judgment.	1.40	350.00
06/16/21	AKC	Draft opposition to stay; finalize and file the same.	2.90	725.00
06/18/21	AKC	Assess, analyze and review filing.	0.20	50.00
06/23/21	AKC	Exchange emails with opposing attorney regarding untimely discovery; exchange emails with client regarding [REDACTED] [REDACTED] exchange emails with client regarding [REDACTED]	1.80	450.00
06/24/21	AKC	Assess, analyze and review opposition; begin drafting reply.	0.90	225.00
06/25/21	AKC	Telephone call with receiver.	0.60	150.00
06/25/21	AKC	Exchange emails with opposing attorney regarding discovery issues; brief legal research regarding same.	0.60	150.00
06/28/21	AKC	Assess, analyze and review filings with Supreme Court.	0.10	25.00
06/29/21	AKC	Exchange emails with opposing attorney regarding meet and confer; brief legal research regarding same.	0.90	225.00
07/01/21	AKC	Assess, analyze and review order from supreme court; exchange emails with client regarding [REDACTED]	0.30	75.00
07/02/21	AKC	Assess, analyze and review reply brief; exchange emails with opposing attorney; draft and prepare pre-trial disclosures in accordance with 16.1; file the same.	2.80	700.00
07/02/21	AKC	Update client via call.	0.20	50.00
07/05/21	AKC	Assess, analyze and review reply brief.	0.90	225.00
07/06/21	AKC	Call with client regarding [REDACTED]	0.60	150.00
07/06/21	KAW	Address potential for sur-reply and relevant rules/legal standards pertaining to the same.	0.30	82.50
07/08/21	AKC	Exchange emails with opposing attorney and court regarding hearing.	0.20	50.00
07/08/21	AKC	Continue drafting reply brief.	1.60	400.00
07/08/21	AKC	Continue drafting the reply brief.	6.00	1,500.00
07/09/21	AKC	Assess, analyze and review motion to compel; discuss the same with client.	0.70	175.00
07/09/21	AKC	Finalize reply brief.	0.90	225.00
07/12/21	AKC	Exchange emails with opposing attorney.	0.20	50.00

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Date	Atty	Description	Hours	Amount
07/12/21	AKC	Draft stipulation and order regarding motion for summary judgment; exchange emails with opposing attorney regarding stipulation and order to continue hearing date.	0.30	75.00
07/13/21	AKC	Continue drafting opposition to motion to compel.	2.00	500.00
07/13/21	AKC	Review stipulation and order before submission to court.	0.10	25.00
07/21/21	AKC	Call with client; call JEA to verify status hearing still on calendar.	0.40	100.00
07/22/21	AKC	Prepare for trial readiness conference; assess, analyze and review potential jury instructions in preparation for trial readiness hearing; attend trial readiness hearing; call with client regarding [REDACTED]	3.00	750.00
07/23/21	AKC	Draft opposition to defendants motion to compel; legal research regarding motion to compel; draft counter motion for sanctions; finalize motion and file the same.	6.50	1,625.00
07/26/21	AKC	Assess, analyze and review documents material to accounting for trial preparation.	0.20	50.00
07/27/21	AKC	Draft proposed order regarding hearing; call with client regarding [REDACTED]	1.10	275.00
07/27/21	AKC	Assess, analyze and review documents relative to trial disclosures.	0.50	125.00
07/28/21	AKC	Exchange emails with opposing attorney regarding motion to compel and summary judgment motion; prepare for hearing.	0.30	75.00
07/29/21	AKC	Prepare for hearing; attend hearing; argue at hearing for summary judgment; discuss [REDACTED] with client.	3.10	775.00
07/30/21	AKC	Begin drafting findings of fact and conclusions of law.	1.00	250.00
08/02/21	AKC	Call with client regarding [REDACTED]	0.30	75.00
08/16/21	AKC	Continue drafting findings of fact and conclusions of law.	0.20	50.00
08/18/21	AKC	Continue drafting findings of fact and conclusions of law.	4.30	1,075.00
08/19/21	AKC	Continue drafting findings of fact and conclusions of law.	3.00	750.00
08/24/21	AKC	Continue drafting findings of fact and conclusions of law.	1.90	475.00
08/25/21	AKC	Continue drafting findings of fact and conclusions of law; finalize findings of fact and conclusions of law and submit to PSA for review.	6.70	1,675.00
08/26/21	PSA	Review and revise findings and conclusions re summary judgment.	1.20	480.00
08/27/21	AKC	Continue drafting findings of fact and conclusions of law.	0.80	200.00
08/30/21	AKC	Incorporate PSA changes to findings of fact and conclusions of law; finalize and submit findings of fact and conclusions of law to client and opposing attorney for signature; draft subpoenas duces tecum to Kern.	4.00	1,000.00
08/31/21	AKC	Adjust findings of fact and conclusions of law per client email.	0.20	50.00
09/02/21	AKC	Incorporate opposing attorney comments and send revisions back.	0.50	125.00
09/07/21	AKC	Assess, analyze and review changes from opposing attorney to findings of fact and conclusions of law; exchange emails with opposing attorney regarding subpoena and findings of fact and conclusions of law.	1.10	275.00
09/08/21	AKC	Finalize findings of fact and conclusions of law with opposing attorney changes; prepare to submit to court.	1.50	375.00

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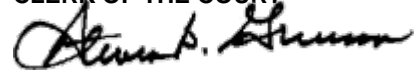
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Date	Atty	Description	Hours	Amount
09/10/21	AKC	Exchange emails with opposing attorney regarding findings of fact and conclusions of law; submit the same to court.	0.50	125.00
09/13/21	AKC	Draft judgment in favor of Dominique Arnould.	0.50	125.00
Total Fees			707.80	189,985.00

Disbursements

Date	Description	Amount
08/31/19	Check Issued; Conference call 07/23/19; Premiere Global Services	9.48
	Copies	1,254.75
	Scanning Charges	152.75
	Postage	10.05
10/11/19	Clark County Clerk; Filing fee	1,530.00
	Online Filing Fees	119.00
	Westlaw Research	2,254.49
02/07/20	Parking Fee	24.00
03/13/20	Clark County Clerk; Filing fee	200.00
03/15/20	Messenger Service	5.00
04/08/20	Check Issued; Conference call 03/24/2020; Premiere Global Services	17.02
06/05/20	Check Issued; Conference call 05/21/2020; Premiere Global Services	15.20
07/07/20	Check Issued; Conference call 06/05/2020; Premiere Global Services	2.20
09/05/20	Check Issued; Conference call 08/12/2020; Premiere Global Services	9.52
09/17/20	Miscellaneous Expenses; Settlement Conference Lunch	69.78
11/06/20	Check Issued; Witness fee; CMJJ Gourtmet, Inc.	50.00
11/06/20	Check Issued; Witness fee; Jeremy Muney	50.00
11/06/20	Check Issued; Witness fee; Michelle Giffen	50.00
11/25/20	Check Issued; Attempted service to CMJJ Gourmet, Jeremy Muney and Michelle Giffon; Report to Court	105.00
02/26/21	Check Issued; Witness fee; Michelle Giffen	-50.00
06/14/21	Clark County Clerk; Filing fee	200.00
09/01/21	Check Issued; Subpoena witness fee; Robert Kern Law, Ltd	30.00
Total Disbursements		6,108.24



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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' OPPOSITION TO
PLAINTIFF'S MOTION FOR
ATTORNEYS FEES**

Defendants Clement Muney ("Muney") and Chef Exec Suppliers, LLC ("Chef
Exec") (collectively "Defendants"), by an through their counsel of record, Kern Law, Ltd,
hereby Opposes Plaintiff Dominique Arnould's ("Arnould") Motion for Attorneys Fees.

DATED this 8th day of October, 2021.

KERN LAW

By: /s/ Robert Kern /s/

Robert Kern, Esq.

601 S. 6th Street

Las Vegas, NV 89101

(702) 518-4529

Attorney for Clement Muney and
Chef Exec Suppliers.

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Defendants submit this Opposition in response to Plaintiff's Motion for Attorneys
6 Fees. In his motion, Arnould alleges three bases to justify award of attorneys fees; two of
7 them explicitly do not apply, and the third could apply, but not for the entire case.
8

9 **II. LEGAL ARGUMENT**

10 The clearly established rule in Nevada is that attorneys fees may not be awarded
11 unless authorized by statute. *STATE, DEPT. OF HUMAN RESOURCES v. Fowler*, 858 P.
12 2d 375 (NV S.Ct. 1993); *Nevada Bd. Osteopathic Med. v. Graham*, 98 Nev. 174, 175, 643
13 P.2d 1222, 1223 (1982); *State ex rel. List v. Courtesy Motors*, 95 Nev. 103, 108, 590 P.2d
14 163, 166 (1979). Arnould alleges justification for an award of fees based upon three
15 statutes; 1) as a prevailing party recovering less than \$20,000 under NRS 18.010(2)(a), 2)
16 that Muney's claims and defenses were frivolous under NRS 18.010(2)(b), and 3) because
17 of a successful derivative claim under NRS 86.489. He can not meet the standard for the
18 first two, and can only seek limited fees through the third.

19 **A. Arnould Can Not Claim Fees under NRS 18.010(2)(a) Because He**
20 **Didn't Win a Money Judgment.**

21 Plaintiff's claim to fees through NRS 18.010(2)(a) is based upon being the
22 prevailing party and being awarded less than \$20,000. However Nevada courts have been
23 consistent and clear that this does not apply when the party does not win a money
24 judgment. *Smith v. CROWN FINANCIAL SERV. OF AMERICA*, 890 P. 2d 769 (NV S. Ct.
25 1995); ("[T]his court has held that a party may recover attorney fees pursuant to NRS
26 18.010(2)(a) only if that party received a money judgment at trial."); *Key Bank of Alaska v.*
27 *Donnels*, 787 P. 2d 382 (NV S. Ct. 1990); ("When attorney's fees are based on the
28 provisions in subsection (a), we have held that an award of a money judgment is a
prerequisite to an award of attorney's fees "); *STATE, DEPT. OF HUMAN RESOURCES v.*

1 *Fowler*, 858 P. 2d 375 (NV S. Ct. 1993). In this context, simply receiving funds as part of
2 the judgment does not qualify a judgment as a 'money judgment'. *STATE, DEPT. OF*
3 *HUMAN RESOURCES v. Fowler*, Id. (“The instant case involved reinstatement and full
4 back pay and benefits. Therefore, because Fowler did not request money damages in the
5 judicial review proceedings below, the district court did not have any authority to award
6 attorney's fees under NRS 18.010”). In the present case, Arnould prevailed on claims for
7 dissolution of the company, and an equitable accounting for the purpose of dividing the
8 company. (See FFCL p.13, 16). The only funds awarded was the \$6,303.93 awarded as
9 part of the “Receiver’s equitable accounting and capital account adjustment” (FFCL
10 paragraph 66). The FFCL made clear that the claim for breach of fiduciary duty was
11 determined to be moot. (FFCL paragraph 67). As the funds awarded were solely a capital
12 adjustment for the division of the company, there was no money judgment, and Arnould is
13 not entitled to fees under NRS 18.010(2)(a).

14 **B. Arnould Can Not Claim Fees under NRS 18.010(2)(b) Because None of**
15 **the Claims or Defenses were Frivolous.**

16 This portion of the attorneys fees statute is meant to compensate an opposing party
17 from the additional cost and burden of fighting frivolous claims or defenses, however in
18 the present case, essentially the entire case was decided without even reaching Muney's
19 counterclaims (other than the final motion for summary judgment). For a judicial
20 dissolution and an equitable accounting to occur, both parties would still be required to be
21 involved and litigate the matter, and would have required a receiver to do the equitable
22 accounting. Continuing to represent his own interests in the dissolution and accounting can
23 not by any standards be considered to have been done without reasonable ground, or for
24 the purpose of harassment.

25 Arnould claims that Muney maintaining his claims was frivolous because he lost
26 standing to pursue them as soon as the Receiver was put in place. However while a
27 Receiver is generally given control of all company assets under NRS 86.5418, in the
28 present case, this was a limited power receiver, whose powers were explicitly limited by
Court Order, and who was never given control of all company assets. *See Order*

1 06/08/2020, p.5-6. As the Receiver was never given authority to take control of all
2 company assets, Defendants did not lost their standing to pursue those claims upon
3 appointment of the receiver.

4 Muney's counterclaims were entirely for issues relating to allocation of funds that
5 was accomplished in the division of the company. Each of the counterclaims was
6 supported by evidence provided in discovery, and each allegation, if true, would have
7 supported Muney in those claims. The majority of the claims in question were excluded by
8 the Receiver solely based upon their occurring prior to the one-year cut-off that he imposed
9 on his review. *See* Receiver's Response to Objection, p.3 ("The Receiver only considered
10 transactions made during the current period. The Receiver was not instructed to audit all
11 the accounting records going back to the inception of the Company and did not do so.").

12 13 1. Breach of Fiduciary Duty

14 This claim alleged that Arnould misused his position as company accountant to give
15 himself extra commissions among other things. Muney had disclosed a witness (Michelle
16 Giffen) to testify on this issue, as well as written company records. *See* MUN00060-61, &
17 MUN00071-92. While Muney did not prevail, it was a legitimate claim.

18 19 2. Conversion

20 This claim alleged that Arnould took company property into his own exclusive
21 possession. As Arnould has admitted to doing so in discovery¹, the claim was clearly not
22 frivolous, even if Muney did not ultimately prevail. *See* Arnould's Responses to
23 Interrogatory #s 10, 13, 17, &18.

24 25 3. Money Had and Received

26
27
28 ¹ He admitted to taking company funds and putting them into bank account only he had access to.
He admitted to taking inventory from Chef Exec Warehouse and putting it into warehouse (Northstar) that
only he had access to.

1 This claim essentially alleged the same as above, only restricted to funds. As
2 Arnould admitted to taking funds that belonged to Chef Exec, and putting them into his
3 own sole possession, he admitted the prima facia elements of this claim, and thus the claim
4 was clearly not frivolous, even if Muney did not ultimately prevail. *See* Arnould's
5 Responses to Interrogatory #s 10, 17, &18.
6

7 4. Unjust Enrichment

8 This claim covered issues addressed in the other claims related to Arnould taking
9 funds and commissions for which he was not entitled. Just as the claims above were not
10 frivolous, this one was likewise not frivolous.
11

12 5. Constructive Fraud

13 This claim alleged that Arnould misused his position as company accountant to give
14 himself extra commissions and funds, among other things. Muney had disclosed a witness
15 (Michelle Giffen) to testify on this issue, as well as written company records. *See*
16 MUN00060-61, & MUN00071-92.
17

18 6. Fraudulent Concealment

19 This claim had essentially the same elements as Constructive Fraud above.
20

21 As each of the claims had a clear basis, even if they did not win, and each defense
22 was necessary regardless, none of the claims or defenses meet the standard of NRS
23 18.010(2)(b).
24

25 **C. If the Court Awards Fees Under NRS 86.489, Fees Must Be Limited to 26 Pursuit of the Derivative Claim only.**

27 NRS 86.489 does allow for the award of fees and costs at the Court's discretion,
28 however only for derivative claims.

1 i. The derivative claim required litigation regardless of any defenses, so the
2 Court should not award fees for participating in the litigation.

3 According to the Court's Findings, only the claim for dissolution was derivative.

4 See FFCL p.9. As judicial dissolution requires a litigation and a judge to occur, Muney's
5 participation in the matter did not cause litigation that would not otherwise have happened.
6 Muney ultimately cooperated with Arnould and the Court to complete the dissolution; as it
7 acted in good faith, and the matter had to occur in front of the Court regardless, and Muney
8 acted in good faith, Muney would respectfully ask the Court not to award attorneys fees for
9 being the non-prevailing party in the dissolution claim.

10 ii. NRS 86.489 does not allow for attorneys fees for non-derivative claims.

11 As only the dissolution claim was determined to be derivative, and NRS 86.489 only
12 allows for award of attorneys fees in a derivative action, the Court should not award
13 Plaintiff attorneys fees for any elements of the litigation that were not part of the derivative
14 claim. In addition to striking any claimed fees for work that was not for dissolution, the
15 Court should adjust the overall amount of fees for work on the case in general, to match the
16 proportion of the case for which fees are available. As Plaintiff had three claims, and
17 Defendants had six counterclaims, only 1/9 of the relevant fees should be allocated for the
18 derivative claim, and in no event any fees occurring after the dissolution completed in
19 August 2020.

20 **D. The Amount Claimed Included Significant Improper Amounts, and**
21 **Should Be Adjusted.**

22 Plaintiffs' Memorandum of Fees contains significant numbers of categories of fees
23 that are not appropriate as "reasonable" attorneys fees in this matter. These improper fees
24 should be excluded from any amount awarded to Plaintiff. The improper categories are as
25 follows:

- 26 -Pre-litigation work, which was not a necessary part of the litigation;
- 27 -Vast amounts of calls, emails and conferences with the client (Talking to the client
28 is not necessary for pursuing the litigation);

- Extensive conferences between attorneys representing Plaintiff (Plaintiffs attorneys talking amongst themselves is not necessary for the litigation);
- Settlement conference expenses (settlement conferences are for resolving claims, not pursuing them);
- Multiple entries that just say “attention to [redacted] matter” (Impossible to determine if related or necessary, or even what was done);
- A significant number of entries appear to be from at least one other litigation, as there are references to mediations that did not occur in this case (see 9/16/20, 9/17/20), and meeting with clients plural, despite Plaintiff being a singular client (See 6/10/20, 9/17/20). Plaintiff's counsel must purge all entries from other cases, as it is otherwise impossible to know how many entries are related to the wrong case;
- Issues regarding Arnould's copyright and DMCA issues were not a part of this litigation at all;
- No subpoenas were issued for the purpose of advancing the dissolution claim, thus work on subpoenas must be excluded;
- All amounts incurred after the date of dissolution must be excluded, as it is not part of the derivative claim.
- Disbursements are costs not fees, and must be excluded; and
- Appeals are not part of the dissolution claim.

Beyond entries that are entirely improper, there are many entries that may involve proper charges, but are for far more time than would be justified for such work, or entries that are block billed for both appropriate and inappropriate charges, with no way to determine what portion of the charge is from the appropriate portion, and which is from the inappropriate section.

In going through each portion of the fee records, all but \$41,639.50 is excluded as part of the disallowed categories above, with an underterminable amount contained in block billing that may or may not be justified, but simply contains insufficient information to determine what amount of the billing is attributable to allowable categories. This amount

1 should be further reduced to reflect the proportion of the work that was attributable to the
2 sole derivative claim. This would bring it to either \$4,626.61 (1/9 – reflecting that it is one
3 of 9 claims overall) or \$13,741.04 (1/3 – reflecting that it is one of Arnould's 3 claims),
4 depending which calculation the Court deems appropriate.
5

6 **CONCLUSION**

7 For the foregoing reasons, Defendants respectfully request this Court to deny fees
8 based upon NRS 18.010(2)(a)&(b), as they are inapplicable, and also requests the Court to
9 deny fees pursuant to NRS 86.489, as the sole derivative claim of judicial dissolution would
10 have required action by the Court regardless of Defendants' participation. If the Court does
11 grant fees for the derivative claim, fees should be limited to those attributable to the
12 derivative claim, and should exclude all fees that were not necessary for pursuit of the
13 claim, as discussed above.

14 DATED this 8th day of October, 2021.
15

16 **KERN LAW**

17 By: /s/ Robert Kern /s/
18 Robert Kern, Esq.
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22 Attorney for Clement Muney and
23 Chef Exec Suppliers.
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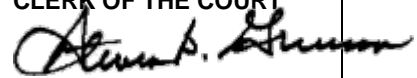
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2021, I served a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEYS FEES**, by electronic service, addressed to the following:

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/s/ Robert Kern
Employee of Kern Law



1 **TRAN**

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4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 DOMINIQUE ARNOULD,)
8 Plaintiff,) CASE NO: A-19-803488-B
9 vs.)
10 CLEMENT MUNY,) DEPT. XXVII
11 Defendant.)
12

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14 THURSDAY, NOVEMBER 04, 2021

15
16 **TRANSCRIPT OF PROCEEDINGS**

17 **RE: MOTIONS**

18
19
20 FOR PLAINTIFF:
21 ALEXANDER KIP CALAWAY, ESQ. (Blue Jeans)

22 FOR DEFENDANT:
23 ROBERT J. KERN, ESQ. (Blue Jeans)

24 RECORDED BY: BRYNN WHITE, COURT RECORDER
25 TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 THURSDAY, NOVEMBER 04, 2021 10:31 a.m.

3 * * * * *

4
5 THE COURT: Staying on the 10 o'clock calendar, but
6 it's right at 10:30, and we have calendar calls. Are the
7 parties here on Arnould versus Muney?

8 MR. CALAWAY: Yes, Your Honor.

9 MR. KERN: Yes, Your Honor.

10 THE COURT: Let me have appearances.

11 MR. CALAWAY: Alex Calaway, appearing on behalf of
12 plaintiff.

13 MR. KERN: Robert Kern, appearing on behalf of
14 defendants.

15 THE COURT: Thank you.

16 I have calendar calls at 10:30. I wondered if you
17 guys could trail to 11 a.m.?

18 MR. CALAWAY: That's fine with plaintiffs, Your Honor.

19 MR. KERN: Yeah. We can do that, Your Honor.

20 THE COURT: Thank you both for your professional
21 courtesy.

22 [Recess taken from 10:32 a.m., until 11:03 a.m.]

23 THE COURT: It's 11:03. Let me circle back now to
24 Arnould versus Muney. And I had the appearance of Mr. Calaway
25 and Mr. Kern previously. Are you both there?

1 MR. CALAWAY: Yes, Your Honor.

2 MR. KERN: Yes, Your Honor.

3 THE COURT: Okay. So we have motions on today to
4 retax and for attorney's fees.

5 Let's take the motion to retax, first.

6 MR. KERN: Good morning, Your Honor. Robert Kern for
7 defendants.

8 All right. So we are moving to retax the settlement
9 cross-claims. You know, the requirement for costs to be
10 recoverable is it has to be expressly authorized, must be
11 substantiated by sufficient documentation and itemization, and
12 they have to be actual and reasonable.

13 The biggest issue here is the receiver -- a receiver
14 is not an authorized, under 18.005.

15 They listed the receiver as a professional witness,
16 and while they did name the receiver as a professional witness
17 after the receiver was -- you know, had completed his report
18 and was no longer here, though, you know, none of those costs
19 were incurred in that capacity as a witness. All the costs
20 were as a receiver.

21 I cited case law to the Court in the brief showing
22 that receivers are generally not considered as a cost -- are
23 not considered as a taxable cost. So it's just inappropriate
24 that that be included in the costs.

25 We also disputed the amount for copy fees. You know,

1 10 cents is what most places take to cover their costs. The
2 fact that some firms will charge their client 25 cents per
3 copy is, you know, that's just their choice of how to, you
4 know, affect their fees and such. But this is about the
5 actual costs, not, you know, what they're going to charge
6 their client.

7 So we believe that the copy fees should be at 10 cents
8 a copy or something close to that. We also believe that they
9 shouldn't be allowed to do any copies that are outside the
10 area that costs were granted for, which is specifically the
11 derivative claim. We believe that they should also be
12 required to itemize per the rule, but, you know, I'm not sure
13 how that would be done.

14 Westlaw research, there's case law supporting the fact
15 that computerized legal research, even to allow it, unless
16 it's specifically itemized to show what issue was researched,
17 they didn't provide that information. Plus the fact is, is
18 that if they have a subscription to the service, then that is
19 not an actual cost incurred for this case. That's simply
20 overhead that they're billing to the client which is not
21 appropriate as a taxable cost.

22 THE COURT: Thank you.

23 Mr. Calaway, your opposition?

24 MR. CALAWAY: Thank you, Your Honor.

25 Mr. Arnould is entitled to his costs in this case. He

1 filed his memo of costs, as you know, for \$55,000. These
2 costs should be awarded for three reasons, Your Honor.

3 One, they're well documented. They're all authorized
4 by the statute. And the amounts that -- actual costs that
5 were incurred are reasonable and I'll address these issues, as
6 well as some of the issues that Mr. Kern just raised.

7 As for the documentation in the costs, there's no
8 factual basis to say that they're not documented. We provided
9 a very extensive declaration for counsel, with exhibits
10 categorizing each category of costs and how they were
11 incurred, with receipts.

12 I think that this is pretty well established by the
13 papers.

14 The most specific issue that I think Mr. Kern raised,
15 and I think this is the crux of his motion to retax, is the
16 receiver's fees and costs.

17 The receiver's fees and costs are authorized, are
18 specifically authorized by NRS Chapter 18, but also NRS
19 Chapters 32 and Chapter 86. And you know, Your Honor, NRS
20 32.340 specifically states that if costs of the receiver are
21 to be borne or can be borne by a person who actually justified
22 the appointment of the receiver in the first place.

23 And a brief overview of what happened in this case, if
24 you'll allow me, Your Honor, you remember Mr. Muney's actions
25 were the catalyst that actually caused this company Chief Exec

1 Suppliers to go into receivership.

2 As you may recall, Mr. Muney had locked out his
3 partner, Mr. Arnould, my client, from the company's warehouse;
4 and this was done on multiple occasions. And then Muney, he
5 had closed the judicial dissolution action that we requested,
6 even though he knew it was reasonably impractical to carry on
7 the business, the partners were not each speaking to each
8 other.

9 The interesting part about this is about halfway
10 through the litigation, Mr. Arnould -- excuse me -- Mr. Muney
11 then stipulated and agreed that it was not reasonably
12 practical to carry on the business.

13 And so all of this required the receiver to go and
14 come in and provide an accounting and to fight back and forth
15 with Mr. Muney and -- and again, this receivership was not
16 necessary, but it was only necessary because of Mr. Muney's
17 actions.

18 Further, Your Honor, NRS 649 also expressly provides
19 for fees and expenses. The Court in its findings and
20 conclusions correctly stated that Mr. Arnould prevailed on all
21 of his derivative claims. I think the statute itself actually
22 says that you're entitled to all of your fees, even if you
23 prevail derivatively in whole or in part. So in this case,
24 649 is a shoe-in for costs, including receiver's costs.

25 And then finally, Your Honor, NRS 18.005.17 is very

1 broad and also provides for these costs for the receiver. It
2 states that any other reasonable necessary expenses incurred
3 in connection with the action can be recovered.

4 So Your Honor, we're on firm statutory grounds here.

5 As for the amount of costs and whether they are
6 reasonable, Mr. Muney's arguments that 25 cents is
7 unreasonable for photocopy. It's without any basis. He comes
8 up with a number saying that 10 cents is a standard.

9 But as Your Honor is -- may be familiar, the County
10 Recorder's Office, itself, charges, like, a dollar per page.
11 So our 25 cents per page is not unreasonable by any stretch of
12 the imagination, and are actually below what might even be
13 considered reasonable.

14 As for the legal research, Your Honor, these legal
15 research costs were -- are also expressly provided for in NRS
16 Chapter 18. But aside from that, a lot of these research
17 costs were incurred because of the extensive claims that --
18 counterclaims that were brought by Mr. Muney. Specifically,
19 he brought counterclaims that -- that had no basis in law or
20 fact and were ultimately dismissed on summary judgment. But
21 nevertheless, Mr. Arnould had to defend against these cases --
22 these claims.

23 Mr. Arnould only brought two causes of action. And
24 the counterclaims were -- were, I think, six times that or --
25 there was 12 -- 10 or 12. Regardless, they were numerous.

1 And so the legal research, to still address that, I
2 think was relatively low. And the charges for \$2,234 for this
3 research is not unreasonable at all. In fact, I think that's
4 low, considering the claims.

5 And then finally, Your Honor, even with the copying
6 fees, I think it -- I find it telling that Mr. Kern even
7 states on the record that he admits he doesn't know how we
8 should be able to track exactly what each of these costs and
9 fees are for. That's because it would be impossible to keep
10 track of, you know, a copy of a letter here or a copy of a
11 motion here.

12 We don't know of any -- I don't know of any software
13 or service for attorneys that would do that. If there were a
14 consistent one, we would try to provide that. But we did
15 track or costs and our copies by each client and by each
16 client number. And we do that very -- very carefully. And I
17 think we tracked that the best we could.

18 And so for these reasons, Your Honor, we would ask
19 that you would award Mr. Arnould his costs in the full amount
20 of \$55,000, which would include those receiver's fees and
21 costs.

22 THE COURT: Thank you.

23 The reply, please.

24 MR. KERN: Well, yeah, Your Honor. First of all,
25 it's -- the fact that we eventually gave in on dissolution and

1 chose not to fight it all the way to the end, when it became
2 apparent that operating the company wasn't going to work,
3 should not be considered as argument for bad faith or anything
4 of the sort. It's an argument for the fact that we chose not
5 to fight that element further than it needed to be fought.

6 I don't think the Court can blame us for having a
7 profitable company and wanting to keep the profitable company
8 in existence, if at all possible.

9 So as far as the -- sorry -- the copy fees -- I mean,
10 the recorder fees doesn't really argue anything, because they
11 don't argue that that's a cost. That's what the recorder
12 charges per page for what they're giving you, which means
13 they're paying for their people to access the stuff and get
14 it, et cetera.

15 And as the -- essentially the biggest issue here,
16 though, is the receiver. And the fact is that receivers, by
17 the Courts, have been determined not to be an attributable
18 cost. And the receiver would -- is not identified under
19 18.005, and none of the costs of the receiver were incurred in
20 the capacity of a witness. They may have been after the fact.

21 So just simply naming him after the work was done does
22 not just automatically just take all of those costs and add it
23 to them as a -- as a professional witness.

24 THE COURT: All right.

25 This is the defendant's motion to relax. It will be

1 granted in part and denied in part as follows:

2 It's granted with regard to the receiver fees, parking
3 fees, and lunch fees. It's denied with regard to photocopies,
4 Westlaw, and the miscellaneous settlement conference host
5 fees.

6 And so because it's granted, Mr. Kern, you'll prepared
7 the order.

8 Mr. Calaway will approve the form of order.

9 MR. CALAWAY: Thank you, Your Honor.

10 THE COURT: Now, let's take the plaintiff's motion for
11 fees.

12 MR. CALAWAY: Yes, Your Honor. Would you like me to
13 start?

14 THE COURT: Please.

15 MR. CALAWAY: Okay. Mr. Arnould is seeking an award
16 for his attorney's fees in the amount of \$199,000.
17 Mr. Arnold's motion for attorney's fees should be granted.
18 And again, I will give you three reasons for that.

19 Number one, the findings of fact and conclusions of
20 law entered by this Court were very clear. Mr. Arnould was
21 indeed the prevailing party in this matter. I don't think
22 that's in dispute. But I think it's very important to
23 recognize, especially in light of Mr. Muney's argument that
24 there was no money judgment in this matter, which is false.
25 And the findings of fact and conclusions of law contradict

1 that. And there's a judgment that has been entered in this
2 Court for \$6,603. And so I think there's no question that
3 Mr. Arnould has obtained the money judgment in the amount of
4 \$6,603, and that he has indeed prevailed in this matter.

5 The second issue in this case is for a reason that
6 Mr. Arnould is entitled to his fees is that, again, he is on
7 firm statutory basis to recover these fees. NRS
8 Chapter 86.489 lay this out very clear.

9 Specifically, Your Honor, in this case, as you know,
10 Mr. Arnould, this was at its base an accounting case. And you
11 know, he's entitled to his fees to -- after all of the
12 accounts were settled, and -- and I think under NRS 18, yes,
13 under NRS 18.010(2)(a), because his judgment was less than
14 \$20,000, the statute and law are very clear on this that he's
15 entitled to his fees and costs.

16 In addition, Your Honor, Mr. Arnould is entitled to
17 his fees and costs under NRS 18.010(2)(b) because Muney failed
18 to provide any support of his counterclaims and defenses.

19 This was a very, very confusing thing that happened in
20 this case. We went through -- since 2019, a year or more to
21 almost two years of litigation, lots and lots of discovery.
22 And then Motion for Summary Judgment was filed by Mr. Arnould.

23 And Mr. Muney provided no facts in support of his
24 opposition. He didn't cite to any evidence.

25 The Supreme Court in *Capanna versus Orth* is very clear

1 on this issue that if a claim, with respect to -- interpreted
2 in 18.010(2)(b), a claim is frivolous or groundless if there
3 is no credible evidence to support it. And in this case, the
4 findings of fact and conclusions of law, repeatedly state, for
5 each of Mr. Muney's claims, that he failed to provide any
6 credible evidence in support -- and also for his
7 [indiscernible], the same thing. So this is a clear statutory
8 basis for fees as well.

9 As for the final statutory basis, again, looking to
10 the findings of fact and conclusions of law, Mr. Arnould
11 prevailed derivatively on his claims. And this was a finding,
12 and Mr. Arnould under NRS 86.489 is entitled to his fees and
13 expenses, as was just discussed earlier, even if he prevailed
14 in whole or in part. In this case, he prevailed entirely on
15 all of his derivative claims and is therefore entitled to his
16 attorney's fees.

17 Finally, Your Honor, I think one of the -- Mr. Muney's
18 opposition to the fees then starts to basically just take
19 potshots at the reasonableness of Mr. Arnold's attorney's fees
20 and costs. The problem with this [indiscernible], Your Honor,
21 in context, is that we tried to find out comparatively what
22 these reasonable fees and costs might be. We sent a subpoena
23 to Mr. Muney's -- issued a subpoena to Mr. Muney's counsel to
24 request -- just, you know, even what the amount of fees and
25 costs might be, since they've been litigating from the

1 inception of this case -- and so were we. We thought that
2 would be a good way to measure what might be reasonable, in
3 case we wanted to deduct some of our fees or reduce some of
4 our fees in light of what the opposing counsel charged. But
5 Your Honor, he refused that.

6 And so we were left only to look at our fees and go
7 through them meticulously to determine whether what was
8 charged was reasonable under the *Brunzell* factors. And we did
9 that, Your Honor.

10 First, we looked at the qualities of the advocates,
11 the attorneys -- and I'll speak for my firm, we all worked on
12 this case, and we all did exceptional work. And you know, I
13 think that the fees and hourly rates that were charged by each
14 attorney that contributed to this case were commensurate with
15 their experience and skill.

16 Second, the character of the work done was also
17 expensive, Your Honor. And it's well documented in the
18 outline -- and outlined in the detailed billing invoices that
19 were provided to support the motion.

20 Again, Mr. Muney makes broad sweeping arguments at the
21 fees generally, but he fails to point out to a single specific
22 billing entry that might be unreasonable. He just broadly
23 states that certain things are not reasonable for an attorney
24 to charge. Some of these -- some of these things include
25 bizarre things like communicating with your client, which is,

1 of course, you know, an ethical requirement that we have to
2 keep our client, you know, apprised of this matter.

3 Some of the other things that he opposes is, you know,
4 attorney communications, which again, Your Honor, are all
5 necessary. We work in a law firm. And if one attorney billed
6 at a higher rate than the other attorney, it would only make
7 sense that we would want to be able to communicate so that
8 the -- to keep the attorney's fees reasonable and below costs,
9 you know, as reasonable as possible.

10 And you know, further, Your Honor, some of the things
11 that Muney opposes are, again, the dissolution, which we've
12 already discussed; [indiscernible]; subpoenas, which Mr. Muney
13 chose to oppose himself; and finally, Your Honor, the
14 mediations and settlements.

15 You know, attempts to mediate and attempts to settle
16 were good faith attempts that Mr. Kern and his clients were on
17 board with and even requested. And so, you know, we worked
18 with them on that.

19 And the fact that we didn't come to a settlement
20 doesn't mean those fees aren't -- and costs aren't reasonably
21 incurred. It's just all part of this -- part of the
22 litigation and hopefully resolving it. That attempts should
23 be deducted. In fact, those are express attempts to keep fees
24 reasonable, and I think they only support the *Brunzell*
25 factors.

1 And then finally, the remaining of the *Brunzell*
2 factors are in the papers, Your Honor. I won't belabor them.
3 But we believe, Your Honor, that Mr. Arnold's fees are
4 exceptionally reasonable in this case. They are all
5 statutorily supported. And that an award of the entire amount
6 of \$199,985 would be awarded to Mr. Arnould.

7 THE COURT: Thank you.

8 Mr. Kern.

9 MR. KERN: Thank you, Your Honor.

10 So of the three bases for the claim, he absolutely can
11 meet the standard for the first two. And the third is limited
12 and is subject to Your Honor's discretion -- it's not
13 automatic.

14 As for the first, it is clearly not a money award. If
15 we look at the actual language for the findings of fact and
16 conclusions of law, page -- pages 13 and 16 of that, are
17 explicit that they refer to the money awarded as a capital
18 adjustment. It is part of the division of funds that --
19 excuse me -- a division of the assets, and that 6,000 was the
20 final balancing between assets split between the parties. It
21 was not a money judgment. And if the receiver did not, you
22 know, adjudicate money judgment issues. The receiver divided
23 the business equitably, and that was part of that capital
24 division.

25 The capital division is not a money judgment. And if

1 you look at the case law we cited it's pretty clear that
2 the -- that money changing hands doesn't make it a money
3 judgment. It's, you know, an award of damages that make it a
4 money judgment.

5 And that simply didn't happen here, which means that
6 NRS 18.010(2)(a) doesn't apply.

7 As far as 18.010(2)(b), essentially whether these were
8 brought as a frivolous or improper purpose -- that's a very
9 high bar, and it's a very different bar from the standard or
10 the grant of summary judgment.

11 If you look at these facts, none of these were
12 frivolous. None -- there was no finding that any were brought
13 for an improper purpose.

14 Judicial dissolution and accounting were going to
15 require participation by the parties and court action
16 regardless.

17 None of the counterclaims were even addressed outside
18 the Motion for Summary Judgment. So they had minimal effect
19 on the costs incurred in this case.

20 As far as the argument that the receivership deprived
21 my client's standing to pursue the counterclaims and thus it
22 was improper for them to continue, that's simply defeated by
23 looking at the order appointing the receiver. It was
24 expressly a limited purpose receiver. It was expressly not
25 given control of all company assets.

1 The only company asset he was given control of was the
2 Las Vegas warehouse, which definitely does not include all
3 legal claims [indiscernible].

4 As far as the specific counterclaims, most of these
5 were simply excluded by the receiver from consideration in his
6 report because they occurred other a year ago, which he put in
7 his report was as a receiver how he was accounting it. To
8 quote the report, The receiver only considered transactions
9 made during the current period. Receiver was not instructed
10 to audit all accounting records from back at the inception of
11 the company and did not do so.

12 That means that he would -- it was not a finding of
13 that there was no basis for any of these. It was a finding
14 that the records within the last year to support that.

15 As far as individually, the breach of fiduciary duty
16 claim was supported by listed witnesses and competent records
17 on misallocation of commissions that were produced in
18 discovery. The conversion money had received claims were
19 based on Arnould admitted to taking sole control of the
20 company property in his discovery responses, which is the
21 definition of a conversion. And even if the details of that
22 weren't sufficient to prevail, it is sufficient to at least
23 make clear that it is not a frivolous claim.

24 Unjust enrichment -- essentially the same factual
25 basis of the two claims above, because that's such a broad

1 area.

2 And the constructive fraud -- fraudulent concealment
3 claims essentially allege that Arnould used his position as
4 bookkeeper to misallocate the funds. Again, supported by
5 witness -- you know, expected witness testimony and produced
6 company records. It wasn't considered by the receiver because
7 he excluded it past the one-year cutoff.

8 I'm not here arguing we should have won on those. I
9 mean obviously, I think we should have. But what I'm arguing
10 is there was clearly some basis for bringing the
11 [indiscernible] claims that makes them clearly not frivolous.

12 As far as the third basis for attorney's fees, the
13 derivative claim under NRS 86.489 -- you know, we've stated
14 before we don't believe that this was a derivative claim, but
15 that's been determined already.

16 In this issue, this -- the Court has given the
17 authority and the discretion to award attorney's fees on that,
18 but it is still a matter of discretion for the Court. This is
19 not automatic. And I think the fact that it's made in the
20 discretion of the Court means that the Court's intended to,
21 you know, determine if fees are warranted by the specific acts
22 involved here -- and in this case, whether it was completely
23 improper for my client to defend against dissolution.

24 I would argue that if not, then we did present
25 evidence that this was still a profitable company, even during

1 litigation. And we wanted to keep a profitable company
2 operating.

3 You know, we eventually accepted dissolution because
4 things just got worse throughout the litigation, to where it
5 was clear that it wasn't going to work. And you know, the
6 Court will note that at that time we stopped fighting.

7 So I would ask the Court to use discretion not to
8 award attorney's fees there. However, if it does, those
9 attorney's fees are limited to that required for the
10 derivative claim.

11 NRS 86.489 is about -- excuse me -- provides for
12 expenses and costs and reasonable attorney's fees, for the
13 derivative claim. The derivative claim was only a portion of
14 this case, only a portion of what was litigated, so they
15 should be limited to the amounts that were used there. And
16 certainly no fees incurred after the derivative claim was
17 resolved in August 2020.

18 Moving on, as far as the improper amounts and claims,
19 this is about reasonable and necessary attorney's fees. So
20 what is, if not everything occurred, it's everything that
21 needed to be done to get there. And prelitigation work
22 certainly isn't part of that. Whatever meetings they had and
23 everything to decide if they want to go forward is not part of
24 this. It is not an attorney's fee in this litigation.

25 As far as client communications, yes, client

1 communications are expected. They are, however, not a
2 necessary element. But even if they are, the amount of -- the
3 amount of communications and meetings there was just
4 absolutely excessive. And if this particular client needed a
5 large amount of hand holding, that's something that the client
6 shouldn't be paying for. That's something that -- you know,
7 that's something that has no bearing on the necessity, as far
8 as our liability, of what had to be done for this litigation.

9 Likewise, just massive amounts of conferences between
10 attorneys on the same side, just talking about things that
11 aren't -- in most cases aren't even specified. A lot of
12 entries simply say attention to redacted matter. There's no
13 way to determine if those are appropriate or proper or
14 anything of sort. They shouldn't be allow to claim fees for
15 dealing with something that we can't even tell what it was.

16 Most importantly, there are a significant number of
17 entries that appear to be from a different litigation that by,
18 what they say, could not be about this litigation, which
19 raised concerns about everything listed here that doesn't have
20 facts specific to this one.

21 If you look at -- referring to the entries on 9/16/20,
22 and 9/17/20 -- they're talking about attending mediation.
23 This case did not have any sort of mediation in September of
24 to 2020. There are multiple references to meeting with
25 clients, plural, even though their plaintiff -- the plaintiff

1 was a singular client. That's on note to like June 10th,
2 2020, and 9/17/2020. The problem with that is they've clearly
3 mixed -- they've clearly mixed entries from another
4 litigation. They really need to go through and identify which
5 are the appropriate ones and which are not part of this case
6 and resolve that before any fees should be granted.

7 THE COURT: Thank you.

8 MR. KERN: You know, that -- [indiscernible] seeking
9 fees for pursuing Arnold's copyright and DNCA issues with a
10 parties -- not party to this litigation. Those claims are not
11 part of this litigation. None of that has to do with anything
12 here. Those, you know, Arnould's violating copyright, having
13 DNCA issues, of someone not a party here and not litigated
14 here is not something -- a part of this.

15 There were no subpoenas issued, you know, in this
16 case. They indicated an intent, but the subpoenas were not
17 issued. And they thus shouldn't be able to claim expenses for
18 pursuing something that, you know, were improper subpoenas,
19 and you know, were never went through.

20 Likewise, any amounts incurred after the date of
21 dissolution. In their summary judgment motion itself, they
22 specifically argued that their derivative claim was won on
23 August 20th, 2020. And that means that everything past that
24 is not a part of or expense for the derivative claim.

25 Likewise, they listed a significant amount of

1 disbursements. Those are not fees. Those are costs. And
2 they're costs that they did not elect to raise in their
3 memorandum of costs.

4 Anyway, that's just a significant amount of issues
5 here. And that's our position, Your Honor.

6 THE COURT: Thank you.

7 And the reply, please.

8 MR. CALAWAY: Yes, Your Honor. Thank you.

9 Well, I'll start at the top here with Mr. Kern's
10 response to his -- Mr. Muney's argument -- excuse me.

11 As a threshold matter, Your Honor, we don't think that
12 these are automatic. We understand that these are
13 discretionary to the Court. And what we're saying here,
14 Your Honor, is that within this Court's discretion, it would
15 be proper to award fees and costs based off the facts and the
16 law.

17 So the continuance argument that these things are not
18 argument. We agree and we understand that. That's why we
19 took the time to go through this motion and to provide the
20 extensive detail in our billings that we did.

21 The second issue that was raised, Your Honor, that I
22 want to address is this money judgment issue. Again, there is
23 a money judgment -- \$6,603, that was reduced to a judgment.
24 The notion that an account -- an equitable accounting claim is
25 not an action that would entitle one to damages or to recovery

1 of a money judgment is false and is not supported by Nevada
2 law. We provide that in the papers.

3 Second, under NRS 18.010(2)(b), specifically about
4 this whether the claims were frivolous or groundless, whether
5 Mr. Muney was entitled even with that statute, Mr. Kern's
6 argument that there was some basis to support their claims is
7 just not supported by the record.

8 If there was some evidence to support their claims,
9 they would have included those in their opposition to the
10 Motion for Summary Judgment, which there was no evidence.
11 That is primarily why summary judgment was granted. And so
12 again, *Capanna versus Orth* is very, very clear on this. If
13 there is no credible evidence, the findings of fact and
14 conclusions of law repeatedly state -- and there was no
15 evidence to support those claims and defenses, then that's the
16 definition of frivolous and groundless, and entitle Arnould to
17 fees under that statute.

18 Under NRS 86, Your Honor, 489, all of the fees and
19 costs again that were incurred were with respect to this
20 claim. And these claims that Mr. Muney -- or Mr. Arnould
21 brought were all derivative. This is all in the findings of
22 fact and conclusions of law. Those derivative claims were
23 necessary. He prevailed on those derivative claims, and
24 86.489 provides that basis.

25 As to reduce or parse out which of those claims were

1 derivative and which were not, that would be impossible,
2 especially where his claims were not brought separately, but
3 were counterclaims and defenses and commingled with the
4 accounting issues. In fact, many of the issues and
5 counterclaims that were brought up were addressed in the
6 derivative accounting action by the receiver and considered by
7 the receiver.

8 And so all of these claims and counterclaims were
9 within the scope of that derivative lawsuit that Mr. Muney --
10 Mr. Arnould brought and then prevailed.

11 Finally, Your Honor, under *Brunzell*, just to touch on
12 a few of the issues that were brought up here.

13 Prelitigation was absolutely necessary in this
14 litigation. It was arguably part of the litigation because
15 NRS 86.495 under Judicial Dissolution, which was the primary
16 cause of action here in this case, looks to whether the
17 partners can carry on the business.

18 And so exhausting that -- that issue and trying to
19 carry on the business or determining whether the partners can
20 carry on the business was part of this case. And regardless,
21 it was a very small part of the fees and costs overall. I
22 would say less than 5 percent were devoted to that.

23 And so that's just a petty issue, and I think it
24 overlooks the broader realities of this case.

25 As for billings for attention to the matter. Again,

1 that's an ethical requirement, much like attorney/client
2 communication, that we would be required to do. And that is,
3 you know, *de facto* reasonable.

4 As for the mediations, we didn't bill for other cases.
5 We didn't bill -- we didn't comingle our entries. The
6 mediations that he was discussing -- there were several
7 mediations, not just one. And some of these were included
8 Supreme Court mandatory mediation that we opted to not do; but
9 were insisted on pursuing by opposing counsel, and so we
10 attended those. We were not commingling or crossing our cases
11 here, and we went through and we checked those issues.

12 As for the intellectual property issue, again, those
13 were assets that were addressed in the receiver's final
14 report. They were issues that were raised to the receiver as
15 to who owned the website, who owned some of the -- the logos
16 and other potentially proprietary information -- I don't know
17 if I would call them intellectual property. And photos that
18 were taken of products.

19 That issue was raised by them and had to be addressed
20 by the receiver. And so there was some briefing and some
21 discussion and research that had to be done with respect to
22 what was proprietary, how it was obtained, and whether it was
23 an asset of the company relevant to the dissolution.

24 So that issue, again, was within the scope of the
25 litigation and even costs incurred were also reasonable for

1 that.

2 In sum, Your Honor, I think Mr. Muney -- Mr. Muney's
3 arguments fall flat. If there were some basis for him to have
4 maintained his claims and defenses in this case, I haven't
5 seen them. He hasn't produced them to this Court. They
6 weren't in the pleadings. They weren't in the papers. And if
7 they existed, we would have loved to see them, especially
8 after spending, you know, over two years, or about two years,
9 in litigation and discovery and motion practice and
10 receivership.

11 So in sum, Your Honor, Mr. Arnould is seeking an award
12 for his attorney's fees in the full amount of \$199,000.

13 THE COURT: This is the --

14 MR. CALAWAY: I'm happy to answer any questions --

15 THE COURT: I don't have any. Thank you.

16 MR. CALAWAY: -- if the Court has them.

17 THE COURT: This is the plaintiff's motion for
18 attorney's fees. The motion will be granted.

19 And Mr. Kern, I did look at your opposition, and I did
20 consider all of the things that you mentioned in opposition.
21 But I do find that the plaintiff's entitled to the fees, one
22 because he's the prevailing party. Number two, because it was
23 a derivative action. And also because it turned out that the
24 counterclaims, which they had to defend until summary
25 judgment, were groundless.

1 So I -- and I also looked at the reasonableness of all
2 of the fees and actually reviewed. You know, the hourly rates
3 for reasonable given the nature of the kind of work and the
4 quality of the applicant -- the increments were a tenth of an
5 hour, and there were very few redactions.

6 So for that reason, and I -- I consider the issue of
7 conferences. But something I also look at is making sure that
8 the highest per hour biller bills less. It looked like they
9 made a real effort to make sure that a lot of the work was
10 done at Mr. Calaway's level, in order to save from the senior
11 partner having to do a lot of the work. So they do seem
12 reasonable to me, given the litigation and the outcome.

13 So for those reasons, the motion will be granted.

14 Mr. Calaway to prepare that order.

15 Mr. Kern, you'll have the ability to review and
16 approve the form of the order.

17 Any questions?

18 MR. CALAWAY: No, Your Honor.

19 MR. KERN: No, Your Honor.

20 THE COURT: Thank you, both.

21 Stay safe and healthy until I see you next.

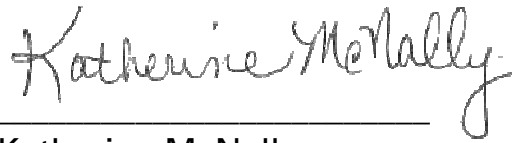
22 MR. CALAWAY: Thank you, Your Honor.

23 MR. KERN: Thank you.

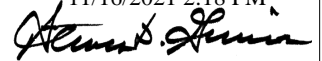
24 [Proceeding adjourned at 11:43 a.m.]

25 * * * * *

1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
3 to the best of my ability.

4 

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6 Katherine McNally
7 Independent Transcriber CERT**D-323
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CLERK OF THE COURT

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Attorneys for Plaintiff/Counter-Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD, individually,

Plaintiff,

vs.

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

Defendants.

And related Counterclaims.

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

JUDGMENT IN FAVOR OF DOMINIQUE
ARNOULD AND AGAINST CLEMENT
MUNY

MARQUIS AURBACH COFFING

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

**JUDGMENT IN FAVOR OF DOMINIQUE ARNOULD AND AGAINST CLEMENT
MUNEY**

Based upon the Findings of Fact and Conclusions of Law entered on November 10, 2021,
and other good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment awarding
attorney fees in the sum of \$199,985 in favor of Dominique Arnould and against Clement Mune
be and hereby is entered; and

IT IS FURTHER ORDERED that the Court awards Dominique Arnould post-judgment
interest under NRS 99,040, adjusted biannually, on its award of attorney fees of \$199,985 until
fully paid and satisfied.

November 16, 2021

Dated this 16th day of November, 2021

Nancy L Allf

TW

279 4B8 06F1 6260
Nancy Allf
District Court Judge

Respectfully Submitted by:
MARQUIS AURBACH COFFING

Approved as to form:
KERN LAW LTD.

By: /s/ Alexander Calaway
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
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*Attorneys for Plaintiffs/Counter-
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By: /s/ Robert Kern
Robert Kern, Esq.
Nevada Bar No. 10104
601 S. 6th St.
Las Vegas, Nevada 89101
*Attorneys for Defendants/Counter-
Plaintiffs*

Cally Hatfield

From: Robert Kern <robert@kernlawoffices.com>
Sent: Tuesday, November 16, 2021 12:30 PM
To: Alexander K. Calaway
Cc: Cally Hatfield; Phillip Aurbach
Subject: RE: [External] Judgment for \$199.985 (v2).DOCX [IWOV-iManage.FID1085969]

Yes, you may affix my E-signature

Robert Kern, Esq.
Attorney
Kern Law, Ltd.
601 S. 6th Street
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From: [Alexander K. Calaway](#)
Sent: Monday, November 15, 2021 2:02 PM
To: [Robert Kern](#)
Cc: [Cally Hatfield](#); [Phillip Aurbach](#)
Subject: Judgment for \$199.985 (v2).DOCX [IWOV-iManage.FID1085969]

Robert,
Here is the judgment. Please advise if we can affix your e-signature and submit.
Thanks,



Alexander K. Calaway, Esq.
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

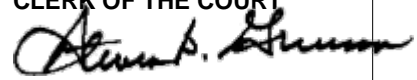
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/16/2021

15 Cally Hatfield	chatfield@maclaw.com
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17 Melissa Milroy	Admin@KernLawOffices.com
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Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD, individually,

Plaintiff,

vs.

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

Defendants.

And related Counterclaims.

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

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Granting Dominique Arnould's Motion for Attorney Fees Against Clement Muney was entered in the above-captioned matter on the 10th day of November, 2021, a copy of which is attached hereto.

Dated this 16th day of November, 2021.

MARQUIS AURBACH COFFING

By /s/ Alexander K. Calaway

Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar No. 15188
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) 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 16th day of November, 2021. 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/ Cally Hatfield
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).

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants,

And related counterclaims.

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

**ORDER GRANTING DOMINIQUE
ARNOULD'S MOTION FOR ATTORNEY
FEES AGAINST CLEMENT MUNY**

Plaintiff Dominique Arnould's ("Arnould") Motion for Attorney Fees ("Motion") came before this Court for hearing via BlueJeans video on November 4, 2021 at 11:00 a.m. with Alexander K. Calaway, Esq. of Marquis Aurbach Coffing appearing on behalf of the plaintiff Dominique Arnould ("Arnould"), and Robert Kern, Esq. appearing for defendant/counter-claimant Clement Muney ("Muney") and defendant Chef Exec Suppliers, LLC ("CES").

NOW, THEREFORE, having reviewed the Motions, all briefing related thereto, pleadings on file herein, and arguments of counsel at the time of the above identified hearing, being fully advised on the matter, and good cause appearing therefore, the Court hereby finds and decides the Motion as follows.

1 **I. DISCUSSION**

2 1. As a preliminary matter, this Court incorporates by reference its Findings of Fact
3 and Conclusions of Law (hereinafter cited as “Findings”) which were entered on September 9,
4 2021, on file herein.

5 **A. MR. ARNOULD IS ENTITLED TO ATTORNEY FEES UNDER NRS**
6 **18.010(2)(A)**

7 2. In his Motion, Mr. Arnould argues that he is entitled to attorney fees under the NRS
8 18.010(2)(a). The Court agrees.

9 3. Under NRS 18.010(2)(a), a “court may make an allowance of attorney's fees to a
10 prevailing party ... [w]hen the prevailing party has not recovered more than \$20,000.”

11 4. Here, on September 10, 2021, this Court entered Findings of Fact and Conclusions
12 of Law (the “Findings”) which reflected the Court’s disposition of this case.¹ The Findings state
13 that “Mr. Arnould is entitled to judgment in his favor of and that judgment may be entered against
14 Mr. Muney in the amount of \$6,303.93.”² On September 14, 2021, judgment was entered in favor
15 of Mr. Arnould and against Mr. Muney in the amount of \$6,303.93 (hereinafter the “Judgment”).³

16 5. Therefore, since Mr. Arnould’s prevailed, and his Judgment did not exceed
17 \$20,000, he is entitled to his attorneys’ fees under NRS 18.010(2)(a).

18 **B. MR. ARNOULD IS ENTITLED TO ATTORNEY FEES UNDER NRS**
19 **18.010(2)(B).**

20 6. In his Motion, Mr. Arnould argues that he is entitled to attorneys’ fees under NRS
21 18.010(2)(b). The Court agrees.

22 7. NRS 18.010(2)(b) authorizes the district court to award attorney fees to a prevailing
23 party “when the court finds that the claim, counterclaim ... or defense of the opposing party was
24 brought or maintained without reasonable ground or to harass the prevailing party.”⁴ The Nevada

25 ¹ See Findings, on file herein.

26 ² Findings of Fact and Conclusions of Law, at ¶64, on file herein.

27 ³ September 14, 2021 Judgment, on file herein.

28 ⁴ NRS 18.010(2)(b) in full provides:

Supreme Court has held that “[f]or purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it.” *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (quoting *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009)) (emphasis added).

8. Here, Mr. Muney failed to provide any credible evidence in support of his counterclaims and defenses.⁵ The Court granted Mr. Arnould’s motion for summary judgment because, among other things, Mr. Muney failed to provide any fact to support of his counterclaims and defenses by way of exhibit, affidavit or otherwise.⁶ The Court expressly stated in its Findings that: “Mr. Muney failed to cite to any material facts that support his defenses and counterclaims in this matter.”⁷

9. Therefore, since Mr. Muney’s counterclaims and defenses were frivolous and groundless, Mr. Arnould is entitled to his attorneys’ fees under NRS 18.010(2)(b).

C. MR ARNOULD IS ENTITLED TO HIS ATTORNEY FEES UNDER NRS 86.489.

10. In his Motion, Mr. Arnould argues that he is entitled to attorneys’ fees under NRS 86.489. The Court agrees.

11. NRS 86.489 provides:

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or

Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate situations. It is the intent of the Legislature that the court award attorney’s fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. [emphasis added].

⁵ Findings, at ¶¶17, 18, 29, 35, 42, 54, 65, 76, 86, 93, 103, 108, and 113.

⁶ *Id.* at ¶¶17, 18, 29, 35, 42, 54, 65, 76, 86, 93, 103, 108, and 113.

⁷ *Id.* at ¶¶17-18.

1 claim, the court may award the plaintiff reasonable expenses, including reasonable
2 attorney's fees . . .

3 Thus, a plaintiff who has successfully brought a derivative claim (in whole or in part) on behalf of
4 a Nevada limited liability company is entitled an award of her reasonable expenses and attorney's
5 fees. NRS 86.489.

6 12. First, Mr. Arnould prevailed on his first cause of action which sought declaratory
7 relief from the Court that it is not reasonably practicable to carry on Chef Exec and an order
8 granting judicial dissolution pursuant to NRS 86.495.⁸ Mr. Arnould's first cause of action also
9 sought a declaration that the requirements for appointment of a receiver to run the Las Vegas
10 operations of Chef Exec and potentially dissolve the company.⁹

11 13. In this case, the Court appointed a receiver for the very purpose of controlling the
12 Las Vegas warehouse and accounting for the operations of Chef Exec.¹⁰ Then, on August 21, 2020,
13 the Court found that:

14 Both Parties don't' dispute and stipulated that it is not reasonably practicable to
15 carry on the business of the Company in conformance with the operating agreement
16 since there is no operating agreement and since the owners of the Company cannot
17 get along and disagree about the operation of the Company. Therefore, the
18 Company must be dissolved.... [and] the date of dissolution should be September
19 30, 2020.¹¹

20 Then, on November 3, 2020, the Receiver filed articles of dissolution for Chef Exec.¹² Therefore,
21 Mr. Arnould prevailed on his first cause of action.

22 14. Moreover, Mr. Arnould prevailed derivatively on his first cause of action.¹³ As this
23 Court set forth in its Findings: (a) Mr. Arnould met the derivative pleading requirements for his
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25 ⁸Findings, at ¶¶21-28.

26 ⁹ *Id.* at ¶30.

27 ¹⁰ See June 8, 2020 Order Appointing Receiver; *see also* June 12, 2020 Order selecting Receiver, on file
28 herein.

¹¹ See Order of Dissolution, at ¶¶1-2, on file herein.

¹² *Id.*

¹³ Findings, at ¶36.

1 first cause of action;¹⁴ and (b) Mr. Arnould's first cause of action was derivative because the
2 appointment of a receiver and dissolution benefited Chef Exec.¹⁵

3 15. As such, the Court finds that Mr. Arnould prevailed derivatively on his first cause
4 of action and is therefore entitled to seek his reasonable attorney's fees and expenses pursuant to
5 NRS 86.489. Thus, the attorney's fees judgment should be in favor of Mr. Arnould and against
6 Mr. Muney.

7 16. Second, the Mr. Arnould prevailed on his second claim for relief for accounting of
8 Chef Exec.¹⁶ In this case, a receiver was appointed as a liquidating receiver and part of his duties
9 were to perform an accounting, adjust the capital accounts of the parties and file a tax return for
10 Chef Exec.¹⁷ This resulted in a stipulation for Mr. Muney repay Chef Exec \$22,712.56 and pay
11 his partner \$6,303.93 in order to settle his capital account with Chef Exec.¹⁸ Notably, Mr. Arnould
12 obtained at least \$22,712.56 for Chef Exec in order to settle its outstanding debts with the
13 receiver.¹⁹ Thus, Mr. Arnould's accounting action was successful and allowed Chef Exec to
14 dissolve and settle its obligations.

15 17. Therefore, Mr. Arnould is entitled to his attorneys' fees as he was successful in his
16 derivative claims brought on behalf of Chef Exec. Mr. Arnould's attorney fees judgment should
17 be in favor of Mr. Arnould and against Mr. Muney.

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23 ¹⁴ *Id.* at ¶38.

24 ¹⁵ *Id.* at ¶39.

25 ¹⁶ February 26, 2021 Stipulation and Order, on file herein, at ¶¶43-67.

26 ¹⁷ *Id.* at ¶39.

27 ¹⁸ *Id.*

28 ¹⁹ *Id.*

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24. From MAC, Phillip S. Aurbach, Esq., Alexander K. Calaway, Esq., Jordan B. Peel, Esq. and David G. Alleman, Esq. advocated on behalf of Mr. Arnould throughout the litigation. Mr. Aurbach is a partner at MAC and charged an hourly rate in this case in the amount of \$400/hr. Mr. Alleman is a partner at MAC and charged an hourly rate in this case in the amount of \$425/hr. Mr. Peel is a partner at MAC and charged an hourly rate in this case in the amount of \$305/hr. Mr. Calaway is an associate at MAC and charged an hourly rate of \$230/hr. The other legal professionals working on the matter from MAC were Taylor Fong, a paralegal, and Amelia Mallette, a law clerk, who both charged an hourly rate of \$175/hr.

25. Phillip S. Aurbach, Esq. is a partner at MAC. As an experienced litigator, Mr. Aurbach has an excellent reputation in this community for competency in civil litigation and quality legal work. Mr. Aurbach is an AV Preeminent rated attorney by Martindale-Hubbell and has been named to the Best Lawyers in America List. In addition, Mr. Aurbach has consistently been named a Mountain States Super Lawyer. Mr. Aurbach has extensive experience trying cases to verdict and is a highly sought-after litigator in Las Vegas. During this case, Mr. Aurbach took a hands-on approach, advised on strategy, participated in drafting, and appeared and argued at numerous hearings.

26. Alexander K. Calaway, Esq. is an associate attorney at MAC and has been honored with awards such as legal elite and best up and coming attorney in Nevada. Mr. Calaway obtained his Juris Doctorate degree from the University of Idaho College of Law with distinction. Mr. Calaway has been barred in Nevada since 2019, has practiced law in the community since 2019. Within this case, Mr. Calaway was second chair and participated extensively in motion drafting, discovery, and appeared and argued at numerous hearings. Mr. Calaway has a reputation for competency in commercial litigation matters.

27. David G. Alleman, Esq. is a partner at MAC, practicing in real estate, corporate and commercial transactions. Mr. Alleman is the chair of MAC's transactional department. Mr. Alleman received his Juris Doctorate degree from the Brigham Young University, cum laude. Mr. Alleman was admitted to practice in Nevada in 2002. Mr. Alleman engaged in work related to the initial demand, dissolution, and membership related work for Mr. Arnould with respect to Mr.

1 Arnould's interest in Chef Exec. This work was critical to the allegations and claims alleged by
2 Mr. Arnould in his verified complaint. Mr. Alleman has a reputation for competency and skill in
3 transactional issues that arose in this matter.

4 28. Jordan B. Peel, Esq. is a partner at MAC, practicing in real estate, corporate and
5 commercial transactions. Mr. Peel practices primarily in MAC's transactional department. Mr.
6 Peel received his Juris Doctorate degree from the University of Nevada. Mr. Peel was admitted to
7 practice in Nevada in 2009. Mr. Peel engaged in work related to the initial demand, dissolution,
8 and membership related work for Mr. Arnould with respect to Mr. Arnould's interest in Chef Exec.
9 This work was critical to the allegations and claims alleged by Mr. Arnould in his verified
10 complaint. Mr. Peel has a reputation for competency and skill in transactional issues that were
11 arose in this matter.

12 29. All of the attorneys at MAC who provided services on behalf of Mr. Arnould are
13 skilled attorneys with years of experience and have an excellent reputation in this community for
14 competency in civil litigation and quality legal work. All legal professionals who provided services
15 on behalf of Mr. Arnould are skilled professionals with competency in civil litigation and quality
16 legal work.

17 30. Further, the hourly rates charged by MAC are below the average for comparably
18 experienced attorneys in firms of comparable size, thus, providing further proof of the
19 reasonableness of the amounts charged. Thus, the sum being sought is reasonable in light of the
20 legal experience and the fees generally charged in this community.

21 31. Second, all of the work performed was necessary to achieve the ultimate result of
22 Mr. Arnould being the prevailing party. The time recorded by MAC is reflected in the attached
23 allocated invoice maintained by the firm, which were provided in support of Mr. Arnould's Motion
24 as Exhibit 1. These billing statements establish that all legal services rendered were reasonable and
25 necessary in litigating the action.

26 32. These billing statements further establish the efforts of MAC in successfully
27 litigating this matter included researching, drafting, and revising briefs, client communications,
28

1 preparing for and attending hearings, drafting motions, pretrial motion practice, and extensive
2 written discovery.

3 33. As discussed above, none of the work performed by MAC on behalf of Mr. Arnould
4 has been done in a cursory manner. Instead, all work was thoroughly researched, supported by
5 applicable law and evidence, and finalized after multiple drafts and iterations to reach a final
6 product. Moreover, each task performed by counsel was essential and was of the highest character
7 and caliber necessary for handling such a case.

8 34. Finally, it is apparent by the Court's decision obtained in this case that Mr. Arnould,
9 through MAC, obtained a great result.

10 35. Accordingly, the fees incurred by Mr. Arnould represent the reasonable amounts
11 incurred in obtaining a successful result in favor of Mr. Arnould and Chef Exec derivatively.

12 36. Thus, this Court hereby grant's Mr. Arnould's Motion for attorney fees in an
13 amount equal to \$199,985.00, which shall be paid by Clement Muney.

14 37. Interest on the \$199,985.00 shall accrue interest at the maximum applicable legal
15 rate under NRS 99.040 from December 7, 2020, the date of the settlement of accounts by the
16 receiver, until fully paid and satisfied.

17 38. Pursuant to NRS 99.040, the post-judgment interest rate from December 7, 2020
18 through December 2021 was 5.25% per year, and will adjust accordingly on each January 1 and
19 July 1 thereafter until the award of attorney fees is satisfied.

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Based upon the above findings and conclusions,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Dominique Arnould's Motion for Attorney Fees in the sum of \$199,985 plus interest against Clement Munez is GRANTED and a sperate judgment therefore may be submitted.

IT IS SO ORDERED.

November 10, 2021

Dated this 10th day of November, 2021

Nancy L Alf

TW

1EA FCF 51E7 1178
Nancy Alf
District Court Judge

Respectfully submitted by:

Approved as to Form:

MARQUIS AURBACH COFFING

KERN LAW, LTD.

By: /s/ Alexander K. Calaway

By: /s/ Robert Kern

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

Robert Kern, Esq.
Nevada Bar No. 10104
601 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendants

Cally Hatfield

From: Robert Kern <robert@kernlawoffices.com>
Sent: Wednesday, November 10, 2021 4:01 PM
To: Alexander K. Calaway
Cc: Phillip Aurbach; Cally Hatfield; Kellie Piet
Subject: RE: [External] Order for \$199,985 [IWOV-iManage.FID1085969]

Yes, that is acceptable – you may add my E-signature

Robert Kern, Esq.
Attorney
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601 S. 6th Street
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Subject: Order for \$199,985 [IWOV-iManage.FID1085969]

Mr. Kern,
Please advise if we can submit with your e-signature.



Alexander K. Calaway, Esq.

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acalaway@maclaw.com
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

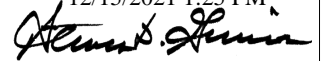
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23 Alexander Calaway	acalaway@maclaw.com
24 Kellie Piet	kpiet@maclaw.com

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CLERK OF THE COURT

Marquis Aurbach Coffing

Phillip S. Aurbach, Esq.

Nevada Bar No. 1501

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10001 Park Run Drive,

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Telephone: (702) 382-0711

Facsimile: (702) 382-5816

paurbach@maclaw.com

acalaway@maclaw.com

Attorneys for Plaintiff/Counter-Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD, individually,

Plaintiff,

vs.

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

Defendants.

And related Counterclaims.

Case No.: A-19-803488-B

Dept. No.: 27

**JUDGMENT FOR \$5,984.46 IN FAVOR OF
DOMINIQUE ARNOULD AND AGAINST
CLEMENT MUNY**

MARQUIS AURBACH COFFING

10001 Park Run Drive

Las Vegas, Nevada 89145

(702) 382-0711 FAX: (702) 382-5816

**JUDGMENT FOR \$5,984.46 IN FAVOR OF DOMINIQUE ARNOULD AND AGAINST
CLEMENT MUNEY**

Based upon the Findings of Fact and Conclusions of Law entered on November 24, 2021,
and other good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment awarding
costs in the sum of \$5,984.46 in favor of Dominique Arnould and against Clement MuneY be and
hereby is entered; and

IT IS FURTHER ORDERED that the Court awards Dominique Arnould post-judgment
interest under NRS 99.040, adjusted biannually, on its award of costs of \$5,984.46 until fully
paid and satisfied.

Dated this 15th day of December, 2021

Nancy L Alif

C7A 40F 3CA0 80D5
Nancy Alif
District Court Judge

Respectfully Submitted by:
MARQUIS AURBACH COFFING

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

Approved as to form:
KERN LAW LTD.

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

Cally Hatfield

Subject: FW: [External] Judgment for Costs.DOCX [IWOV-iManage.FID1085969]

From: Robert Kern <robert@kernlawoffices.com>

Sent: Thursday, December 9, 2021 3:56 PM

To: Alexander K. Calaway <acalaway@maclaw.com>

Subject: RE: [External] Judgment for Costs.DOCX [IWOV-iManage.FID1085969]

Yes, you may

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Las Vegas, NV 89101
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From: Alexander K. Calaway <acalaway@maclaw.com>

Sent: Thursday, December 9, 2021 10:19:38 AM

To: Robert Kern <robert@kernlawoffices.com>

Cc: Phillip Aurbach <PSA@maclaw.com>; Kellie Piet <kpiet@MACLAW.com>; Cally Hatfield <chatfield@maclaw.com>

Subject: Judgment for Costs.DOCX [IWOV-iManage.FID1085969]

Robert,
Please advise if we can submit with your e-signature.
Thanks,



Alexander K. Calaway, Esq.

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

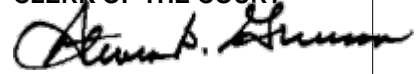
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24 Kellie Piet	kpiet@maclaw.com

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1 **Marquis Aurbach**
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paurbach@maclaw.com
6 acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants,

And related counterclaims.

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

PLAINTIFF DOMINIQUE ARNOULD'S
MOTION TO INCREASE BOND
AMOUNT

(HEARING REQUESTED)

17 Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould"), by and through his attorneys,
18 Marquis Aurbach, hereby files his Motion to Increase Bond Amount ("Motion"). This Motion is
19 made and based upon the pleadings and papers on file herein, the following points and authorities,
20 and any argument allowed by the Court at the time of hearing.

Dated 23rd day of February, 2022.

MARQUIS AURBACH

By /s/ Alexander K. Calaway

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

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

Mr. Arnould requests that this Court increase the amount of bond posted by Clement Muney ("Muney"). While Mr. Arnould does not dispute that Mr. Muney has posted a bond necessary to obtain a stay pursuant to NRCP 62(d), the bond that was posted was insufficient because it does not include the amounts of post-judgment interest awarded to Mr. Arnould in the underlying judgments. Moreover, the bond posted does not represent the actual amount necessary to secure Mr. Arnould since this amount does not reflect the amount necessary to protect Mr. Arnould against damages that he may sustain by reason of Mr. Muney's unsuccessful appeal. *See e.g. Nelson v. Herr*, 121 Nev. at 836, 122 P.3d at 1254, as modified (Jan. 25, 2006); *see also Liu Jui-Kwa Chen v. Eighth Jud. Dist. Ct. of State in & for Cty. of Clark*, 133 Nev. 994, 390 P.3d 166 (2017) (unpublished). Since Mr. Muney's posted bond is insufficient, Mr. Arnould respectfully requests that the Present Bond amount be increased to \$318,000.00.

II. FACTS AND PROCEDURE

1. On September 14, 2021, this Court entered an \$6,303.93 Judgment in favor of Mr. Arnould and against Mr. Muney.

2. On November 16, 2021, this Court entered an \$199,985.00 Judgment in favor of Mr. Arnould and against Mr. Muney.

3. On December 15, 2021, this Court entered an \$5,984.46 Judgment in favor of Mr. Arnould and against Mr. Muney.

4. These three (3) Judgments (collectively referred to as the "Judgments") in favor of Mr. Arnould and against Mr. Muney total \$212,273.39 and expressly award post-judgment interest.

5. On January 19, 2022, Mr. Muney posted a supersedeas bonds in total amount of \$213,261.40 (the "Present Bonds") to avoid execution of the Judgments.

6. Mr. Muney has appealed all of the Judgments.

1 **III. LEGAL ARGUMENT**

2 **A. LEGAL STANDARD**

3 In *Nelson* the Nevada Supreme Court explained that the “purpose of security for a stay
4 pending appeal is to protect the judgment creditor’s ability to collect the judgment if it is affirmed
5 by preserving the status quo and preventing prejudice to the creditor arising from the stay.” *Id.* The
6 actual amount necessary to secure a judgment creditor is based upon “principles of equity and
7 justice” since this amount must reflect the amount “necessary to protect an appellee against
8 damages he may sustain by reason of an unsuccessful appeal.” *Id.* (quoting *Gottwals v. Rencher*,
9 60 Nev. 35, 46, 92 P.2d 1000, 1004 (1939)). Here, the Present Bond is insufficient to protect Mr.
10 Arnould has a judgment creditor for the life of the appeal.

11 Pursuant to NRS 99.040(1) and NRS 17.130(2), when there is no express contract in
12 writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate
13 at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on
14 January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2
15 percent, upon all money from the time it becomes due. Here, Mr. Arnould is entitled to in post
16 judgment interest accruing on the Judgments.

17 **B. THE COURT SHOULD ORDER THAT THE BOND BE INCREASED TO**
18 **\$318,000 TO PROTECT MR. ARNOULD AGAINST DAMAGES THAT HE**
19 **MAY SUSTAIN BY REASON OF MR. MUNNEY’S UNSUCCESSFUL**
20 **APPEAL.**

21 The total amount of security to be posted to secure Mr. Arnould pending appeal is
22 \$318,000.00. This proposed amount is rooted in several factors: (a) the approximate duration of
23 an appeal in Nevada is 2.5 years; (b) the *average* statutory rate in Nevada based upon historical
24 rates;¹ (c) the fact that Mr. Arnould’s Judgments expressly provide for post-judgment interest;²
25 and (d) the fact that Mr. Arnould would likely be entitled to his attorney’s fees and costs in the

26 ¹ C.f. Nevada’s historical prime rates made available by the Commissioner of Financial Institutions:
27 <https://fid.nv.gov/uploadedFiles/fidnv.gov/content/Resources/Prime%20Interest%20Rate%20January%201,%202022.pdf> (last updated January 1, 2022).

28 ² See Judgments, on file herein.

1 event Mr. Muney appeal is unsuccessful.³ Notably, the average post-judgment interest rates
2 referenced above have been historically low⁴ and are likely to increase over the next 2-3 years.
3 For example, Federal Reserve chairman, Jerome H. Powell, recently signaled a “raise to the federal
4 funds rate” as soon as March 2022.⁵ Thus, this proposed amount is conservative as it assumes the
5 applicable interest rates under NRS 99.010(1) and NRS 17.130(2) does not exceed historical
6 averages.

7 Further, pursuant to Nevada law, this amount will meet the “purpose of security for a stay
8 pending appeal” which the is to “protect [Mr. Arnould’s] ability to collect the judgment if it is
9 affirmed by preserving the status quo and preventing prejudice to [him] arising from the stay.”
10 *Nelson*, 121 Nev. at 835, 122 P.3d at 1254. As set forth above, this amount is based upon
11 “principles of equity and justice” since the amount is for only that amount “necessary to protect
12 [Mr. Arnould] against damages he may sustain by reason of an unsuccessful appeal.” *Id.* (quoting
13 *Gottwals*, 60 Nev. at 46, 92 P.2d at 1004.

14 Finally, this does not impose an unnecessary burden on Mr. Muney, since he need only
15 post an additional \$104,738.60 to fully secure Mr. Arnould pending appeal. As noted above, Mr.
16 Muney’s Present Bond totals \$213,261.40, which he posted this amount in a single day.⁶ Thus,
17 Mr. Arnould respectfully requests that this Court increase the total bond amount by \$104,738.60,
18 which will bring the total bond amount to \$318,000.00.

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22 ³ See November 10, 2021 Order Granting Mr. Arnould’s Motion for Attorney’s Fees, on file herein; *see*
23 *also* Findings of Fact and Conclusions of Law Granting in Part and Denying in Part Defendants’ Motion to
Retax, on file herein.

24 ⁴ *Supra* Footnote 1.

25 ⁵ See New York Times, *Fed Signals Rate Increase in March, Citing Inflation and Strong Job Market*,
26 available at: <https://www.nytimes.com/2022/01/26/business/economy/fed-interest-rates-inflation.html> (last
27 visited January 26, 2022); *see also* Federal Reserve issues FOMC statement, available at:
28 <https://www.federalreserve.gov/newsevents/pressreleases/monetary20220126a.htm> (last visited January
26, 2022).

⁶ See Notices of posting bond, on file herein.

1 **C. THIS COURT IS AUTHORIZED TO SET BOND AT \$318,000 PURSUANT**
2 **TO NEVADA LAW.**

3 Mr. Muney's position is that NRS 20.037(1) limits the bond amount that can be set by this
4 Court.⁷ This argument ignores the exemption under NRS 20.037(4), which states that the
5 provisions in this section "do not limit the discretion of a court, for good cause shown, to set the
6 bond on appeal in an amount less than the amount otherwise required by law." (Emphasis added).
7 The "law" in NRS 20.037(4) is the well-established law in Nevada that amount necessary to secure
8 a judgment creditor is based upon "principles of equity and justice" and should reflect the amount
9 "necessary to protect an appellee against damages he may sustain by reason of an unsuccessful
10 appeal." *Nelson*, 121 Nev. at 835, 122 P.3d at 1254; *see e.g. Liu Jui-Kwa Chen*, 133 Nev., 390
11 P.3d. (unpublished).

12 Here, it is this "district court [who] is in the best position to weigh the relevant
13 considerations" for the amount of security necessary to secure a judgment creditor. *Id.* Based upon
14 NRS 20.037(4) and the Nevada Supreme Court's decision in *Nelson*, this Court is authorized to
15 set bond in any amount between \$50,000,000 and the amount necessary to secure Mr. Arnould
16 under the *Nelson* decision. As set forth above, the amount necessary to protect Mr. Arnould against
17 the damages he may sustain by reason of Mr. Muney's unsuccessful appeal is equal to
18 \$318,000.00. Accordingly, the Court is well within its authority to set a bond at \$318,000.00

19 ///

20
21
22
23

24 ⁷ NRS 20.037(1) provides:

25 Notwithstanding any other provision of law or court rule, and except as otherwise
26 provided in this section and NRS 20.035, if an appeal is taken of a judgment in a
27 civil action in which an appellant is required to give a bond in order to secure a stay
28 of execution of the judgment during the pendency of any or all such appeals, the
total cumulative sum of all the bonds required from all the appellants involved in
the civil action must not exceed the lesser of \$50,000,000 or the amount of the
judgment.

1 **IV. CONCLUSION**

2 For the reasons set forth herein, Mr. Arnould respectfully requests that the Present Bond
3 amount be increased to \$318,000.00.

4 Dated this 23rd day of February 2022.

5
6 MARQUIS AURBACH

7
8 By /s/Alexander K. Calaway
9 Phillip S. Aurbach, Esq.
10 Nevada Bar No. 1501
11 Alexander K. Calaway, Esq.
12 Nevada Bar No. 15188
13 10001 Park Run Drive, Las Vegas, NV 89145
14 *Attorneys for Plaintiff*
15
16
17
18
19
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21
22
23
24
25
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28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF DOMINIQUE ARNOULD'S MOTION TO INCREASE BOND AMOUNT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 23rd day of February, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁸

KERN LAW, LTD
Robert Kern, Esq.
Robert@Kernlawoffices.com
Admin@KernLawOffices.com
601 S. 6th Street
Las Vegas, NV 89101
Attorneys for Defendants

James T. Leavitt, Esq.
jamestleavittesq@gmail.com

/s/ Cally Hatfield
An employee of Marquis Aurbach

⁸ 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).

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

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DOMINIQUE ARNOULD,

13 Plaintiff/Counter-Defendant,

14 vs.

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

19 Defendants/Counter-Claimants.)

) Case Number: A-19-803488-B

) Dept. Number: 27

20 **DEFENDANTS' MOTION FOR**
21 **SANCTIONS PURSUANT TO NRCP**
22 **CHAPTER 11**

23 **HEARING REQUESTED**

24 COMES NOW, CLEMENT MUNEY and CHEF EXEC SUPPLIERS, LLC, by and
25 through their attorney of record, Robert Kern, Esq., of Kern Law, Ltd., and hereby
26 respectfully move this Court for sanctions pursuant to NRCP 11(c), for violation of NRCP
27 11(b). This motion is made pursuant to NRCP 11, and is based on the records and files of
28 this case, the attached memorandum and exhibits and any matters adduced at the hearing.

Respectfully submitted this 23rd day of February 2022

KERN LAW

By: /s/ Robert Kern /s/

Robert Kern, Esq.

601 S. 6th Street

Las Vegas, NV 89101

(702) 518-4529

Attorney for Defendants/Appellants

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4
5 **STATEMENT OF FACTS**

6 This motion is being filed after a long and continuing course of conduct in which
7 counsel for Arnould has repeatedly made filings that they knew to be frivolous, and without
8 any legal merit whatsoever. Plaintiff's present motion to increase the bond amount above the
9 amount of the judgment comes after multiple emails in which counsel for Muney provided
10 copious law and authority showing the statutory prohibition on a bond being set in excess of
11 the amount of the judgment. Muney's counsel gave explicit warning that a motion for
12 sanctions would be filed if he was forced to oppose yet another baseless filing.

13 Below are a few of the most egregious filings by Arnould's counsel in this matter so
14 far:

15 -In December 2020, at the December 23 2020 status hearing, when
16 discussing the final receiver's report, Counsel for Arnould stated that he
17 wished to file a motion to accept the receiver's report, and the Court
18 instructed him not to file it until after January 29, which was the deadline
19 to object to the report. Despite the explicit instruction, counsel filed a
20 motion to accept the report only a few hours after the Court instructed
21 him not to, forcing opposing counsel to spend his Christmas needlessly
22 opposing the motion. Muney's counsel reminded Arnould's counsel of
23 the Court's instruction and requested the motion be withdrawn, but
24 Arnould's counsel stated that it didn't matter because Muney already had
25 sufficient time to object (See Exhibit 1). At the hearing for the motion
26 the Court admonished Arnould's counsel for ignoring her instructions.

27 -In September 2021, after final judgment in the case, when no motion for
28 fees was pending, and after the close of discovery, Plaintiff's counsel
filed a subpoena duces tecum ("SPDT") on Muney's counsel, seeking
counsel's entire client file for the present litigation. Arnould's counsel
explained that such information would be helpful in supporting a motion
for attorneys fees that they planned to file in the future. Muney's counsel
requested that the SPDT be withdrawn, pointing out that the SPDT was
invalid for being filed after close of discovery, for seeking information in
a case that was concluded (and thus not relevant to any claim or
defense), for seeking information that was explicitly attorney-client

1 privileged, and privileged as attorney work product, as well as being
2 effectively meaningless in determining whether his own fees were
3 reasonable (See Exhibit 2). Arnould's counsel refused to withdraw it, and
4 Muney's counsel was forced to file a motion for a protective order.
5 Ultimately the issue was not adjudicated because the motion for fees was
6 granted in full prior to the hearing on the motion for protective order.

7 -In November 2021, Counsel for Muney filed a motion to retax costs
8 after Arnould's counsel sought to claim the full amount of receiver fees
9 as a witness cost. At the hearing on November 4, the Court affirmed
10 almost all the costs claimed, but rejected the receiver fees, and ordered
11 counsel for Muney to draft the order since he prevailed on the issue of
12 receiver fees. Counsel for Arnould refused to sign the proposed order,
13 alleging that the Court had in fact approved the receiver fees. Counsel for
14 Arnould then filed a competing order (against the department's stated
15 policy) seeking to have the order state that the receiver fees were
16 approved. In that email they included the transcript of the hearing, which
17 unquestionably shows the Court ordering that receiver fees were not
18 approved. Arnould's counsel filed their competing order even though
19 they had the transcript that clearly showed otherwise (See Exhibit 3¹).

20 In the present motion, after the judgment, Defendant/Appellant Muney filed a
21 supersedeas bond with the Court in the full amount of the judgment (for all three
22 judgments: underlying, fees, and costs), totaling \$213,261.40. Muney invoked the stay
23 on appeal granted by posting of a supersedeas bond under NRCP 62. After posting the
24 bond, Muney sought to vacate the hearing set for his motion for a stay pending appeal,
25 as the stay had become automatic on the filing of the full bond. Arnould opposed
26 Muney's attempt to vacate the hearing, despite the hearing being for a motion that
27 Muney withdrew, and for a matter that was moot, demanding that Muney agree to a
28 significant increase in the bond, in order for them to agree to let the moot hearing be
vacated (See Exhibit 4). The hearing occurred, and the Court agreed that Muney had the
power to withdraw his own motion. At the hearing, counsel for Arnould stated that they
planned to file a motion to increase the bond.

¹ The transcript of the November hearing is redacted, as the portion covering the hearing of the unrelated motion has been removed for brevity.

1 Prior to the hearing, counsel for the parties fully discussed the fact that NRS
2 20.037(1) explicitly set a limit on the amount of a bond, that it could not ever be greater
3 than the amount of the judgment. Arnould's counsel argued that "the amount of the
4 judgment" should include post-judgment interest (See Exhibit 4). Despite the fact that
5 this interpretation would conflict with the plain meaning of the statute, Muney's counsel
6 provided transcripts from the legislative hearings on the passage of the statute, which
7 stated that the current practice was for judges to often set the bond at the amount of the
8 judgment, plus 2-3 years of post-judgment interest. They went on to say that the
9 proposed statute would end that practice, and cap the bond amount at the judgment
10 amount alone. The hearings further involved some parties complaining that they did not
11 like the fact that the law would remove Courts' discretion to include post-judgment
12 interest in a bond (See Exhibit 5).

13 After the hearing, counsel for Muney emailed Arnould's counsel, and gave notice
14 that the filing of a motion to set the bond amount above the full amount of the judgment
15 would be met with a motion for Chapter 11 sanctions, as there was no basis in law for
16 such a motion (See Exhibit 6). On February 23, 2022 counsel for Arnould filed the
17 baseless motion nonetheless. This motion is being drafted and served the same day,
18 pursuant to NRCPP 11(c)(2), and will be filed if the motion to increase bond amount has
19 not been withdrawn after 21 days.

20 21 ARGUMENT

22 23 **A. THERE IS NO LEGAL BASIS WHATSOEVER ALLOWING THE BOND TO 24 BE SET ABOVE THE JUDGMENT AMOUNT**

25 NRS 20.037(1) sets the maximum bond supersedeas bond amount allowed by law,
26 as the amount of the judgment:

27 **NRS 20.037 Limitation on amount of bond to secure stay of execution**
28 **of judgment pending appeal; exceptions.**

1 1. Notwithstanding any other provision of law or court rule, and except
2 as otherwise provided in this section and NRS 20.035, if an appeal is taken of
3 a judgment in a civil action in which an appellant is required to give a bond in
4 order to secure a stay of execution of the judgment during the pendency of
5 any or all such appeals, the total cumulative sum of all the bonds required
from all the appellants involved in the civil action must not exceed the lesser
of \$50,000,000 or the amount of the judgment.

6 ...
7 3. If the plaintiff proves by a preponderance of evidence that an
8 appellant who posted a bond pursuant to subsection 1 or 2 is purposefully
9 dissipating or diverting assets outside of the ordinary course of its business to
10 evade the ultimate payment of the judgment, the court may, if the court
11 determines that such an order is necessary to prevent such dissipation or
12 diversion, require the appellant to post a bond in an amount that does not
exceed the full amount of the judgment.

13 4. The provisions of this section do not limit the discretion of a court,
14 for good cause shown, to set the bond on appeal in an amount less than the
15 amount otherwise required by law.

16 NRS 20.037 (Non-relevant sections omitted)(Emphasis added). This statute was passed by
17 the Nevada legislature in the 2015 session, for the stated intent of limiting the discretion of
18 courts to set supersedeas bonds above a set amount (See Exhibit 7). If there is any question
19 of whether bonds being limited to “the amount of the judgment” mean the actual amount of
20 the judgment, or the amount of judgment plus some reasonable term of post-judgment
21 interest, the legislative hearings on the bill make clear that the statute was intended to
22 remove discretion to add post-judgment interest:

23 “Courts frequently require bonding for not just the amount of the judgment, but also several
24 years of postjudgment interest as well as other costs and fees.” (Discussing the status quo that
25 the Bill proposed to change) (Exhibit 5, p.10) Bill Sponsor Michael Roberson, Minutes of the
26 Assembly Judiciary Committee March 12, 2015 (Re: SB 134 – NRS 20.037).

27 “My criticism on the second part of the bill is that it includes the amount of the judgment but
28 does not include interest.” (Exhibit 5, p.19) Comments of Matthew Sharp, Minutes of the
Assembly Judiciary Committee March 12, 2015 (Re: SB 134 – NRS 20.037).

1 Basic principles of statutory interpretation require that the Court may not do any
2 interpretation at all beyond the plain meaning, if the meaning is plain. *Washoe Med. Ctr. v.*
3 *Second Jud. Dist. Ct.*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-793 (2006). In this case, the
4 “amount of the judgment” is stated as the limit of a Court's authority to set the bond. This
5 would clearly mean the monetary amount shown in the Judgment. Arnould's argument that
6 this should include post-judgment interest would mean that there is never a set amount of
7 the bond, and never a maximum, as the amount of the judgment plus interest is an amount
8 that is completely variable, depending upon how far in time the interest would be estimated.
9 This would contradict the primary purpose of the statute, to make the maximum bond
10 amount a set amount, without Court discretion to increase it. Also is the principle that an
11 interpretation should not render any language meaningless; as Arnould's interpretation
12 would effectively remove any limit on the Court's discretion, that interpretation would
13 render the entire statute meaningless, as it would remove any limit on the Court's discretion
14 that the statute created. *Leven v. Frye*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

15
16 After being presented with the above information, Arnould's counsel still filed their
17 motion. They supported the motion by arguing that the language of a case decided before
18 the bill was passed should limit the statute (*Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420
19 (2007)), and that the fact that section 4 of the statute gives discretion to set a lower bond,
20 should be interpreted to contradict the limit set by section 1. Arnould's motion is not
21 warranted by existing law, or by a nonfrivolous argument for extending, modifying, or
22 reversing existing law or for establishing new law. It is an abuse of process, filed with no
23 imaginable purpose other than to harass Muney, and to increase the cost of litigation. As
24 this motion is part of a longstanding pattern of improper filings, which counsel was
25 informed of every time, and nonetheless pursued every time, the conduct must be
26 interpreted as intentional and egregious. Muney respectfully requests this Court to sanction
27 counsel for Arnould significantly, in an amount sufficient to deter this continuing and
28 pervasive pattern of malfeasance.

1
2
3
4 **CONCLUSION**

5 As set forth herein, by the factors set forth by NRCP 11(b) and (c), under the facts
6 presented, and the continuing and abusive nature of the acts complained of, an award of
7 sanctions is appropriate.

8 Respectfully submitted this 23rd day of February, 2022

9 **KERN LAW**

10 By: /s/ Robert Kern /s/
11 Robert Kern, Esq.
12 601 S. 6th Street
13 Las Vegas, NV 89101
14 (702) 518-4529
15 Attorney for Defendants/Appellants

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the 23rd day of February, 2022, I served a true and correct
18 copy of the foregoing **Motion for Sanctions**, pursuant to NRCP 5(b), by electronic service,
19 addressed to the following:

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

24 Alex Calaway, Esq.
25 Marquis Aurbach Coffing
26 Acalaway@Maclaw.com
27 *Counsel for Dominique Arnould*

28 /s/ Robert Kern
Employee of Kern Law

EXHIBIT 1

RE: [External] Motion [IWOV-iManage.FID1085969]

Alexander K. Calaway <acalaway@maclaw.com>

Wed 12/23/2020 4:58 PM

To: Robert Kern <robert@kernlawoffices.com>; Phil Aurbach's Gmail <paurbach@gmail.com>; Phillip Aurbach <PSA@maclaw.com>

Cc: 'Tracy O'Steen' <tosteen@carlyoncica.com>

Hi Robert,

Which order are you referring to exactly? Again, our motion complies with the timeline Judge Allf mentioned in the status hearing today. And by January 29th your client would have had 8 weeks to object to the receiver's report if he is so inclined – which should be plenty of time (even omitting 3-5 days for the holiday).

Do you think you agree your client should pay the receivers' fees since your client will be objecting to the receiver's report? If your client is willing to stipulate to closing the bank account, transferring the assets in the receivership estate, and paying the receiver fees/expenses arising after 12/7/2020 (date of final report), we would be amenable to withdrawing our motion.

Please advise.

Thanks,

Alex

**Alexander K. Calaway, Esq.**

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.207.6069

f | 702.382.5816

acalaway@maclaw.commaclaw.com

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Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Robert Kern <robert@kernlawoffices.com>**Sent:** Wednesday, December 23, 2020 4:49 PM**To:** Phil Aurbach's Gmail <paurbach@gmail.com>**Cc:** Alexander K. Calaway <acalaway@maclaw.com>**Subject:** Re: [External] Motion [IWOV-iManage.FID1085969]

If the judge ordered it, it really doesn't matter whether it seems reasonable or not.

And the judge did order that, so I would ask you to withdraw the motion so I don't have to spend my holiday opposing it.

Phil, who is this Mr. Moore you're speaking of?

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

From: Phil Aurbach <paurbach@gmail.com>
Sent: Wednesday, December 23, 2020 4:44:46 PM
To: Robert Kern <robert@kernlawoffices.com>
Cc: Alexander K. Calaway <acalaway@maclaw.com>
Subject: Re: Motion [IWOV-iManage.FID1085969]

I thought she didn't want our motion set for hearing prior to 1/29/2021.
Ps we asked if your client wants to keep fighting the receiver, he should pay the full amount of the receivers fees.
Pss does it make a difference to Mr Moore's licenses that he has an outstanding judgment owed to the Receiver?
Phil

On Wed, Dec 23, 2020 at 4:11 PM Robert Kern <robert@kernlawoffices.com> wrote:

My recollection was that she said not to file it until after the deadline to object, so that "Mr Kern doesn't have to worry about opposing the motion before objecting"

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

From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Wednesday, December 23, 2020 4:00:33 PM
To: Robert Kern <robert@kernlawoffices.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Subject: RE: Motion [IWOV-iManage.FID1085969]

Hi Robert,

It was my understanding that the Judge wanted to wait to accept the report until 1/29/21 to allow for objections if there be any. You may notice the 1/29/20 date in the motion.

Thanks,

Alex



Alexander K. Calaway, Esq.

[10001 Park Run Drive](#)

[Las Vegas, NV 89145](#)

t | 702.207.6069

f | 702.382.5816

acalaway@maclaw.com

maclaw.com



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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, December 23, 2020 3:56 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>

Subject: [External] Motion

Hi Alex,

It was my understanding that the judge asked you to hold off filing this motion until the time to file an objection had expired. I'm this surprised to see it filed immediately after the hearing. Did you have a different understanding?

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

--

Phil Aurbach

EXHIBIT 2

RE: [External] Subpoena DT [IWOV-iManage.FID1085969]

Alexander K. Calaway <acalaway@maclaw.com>

Tue 9/7/2021 9:20 PM

To: Robert Kern <robert@kernlawoffices.com>; Phil Aurbach's Gmail <paurbach@gmail.com>; Phillip Aurbach <PSA@maclaw.com>

Hi Kern,

I noticed you filed your objection and motion for protective order. Do you believe your objection and motion are exempt from EDCR 2.34?

To answer your questions:

1. Unless you do not intent do oppose the reasonableness of Mr. Arnould's fees, the time spent and fees billed are probative to the Brunzell factors applied in Nevada.
2. The MSJ was granted after the close of discovery, and as such, the claim/basis for attorney's fees arise after the close of discovery.
3. All claims and defenses have been adjudicated in the MSJ except the issue of attorney's' fees and costs.
4. The amount of fees you billed are not privileged and redacting privileged information from billing sheets mitigates any potential privilege issues (but regardless, you have waived any privilege issue by failing to provide a privilege log).

**Alexander K. Calaway, Esq.**

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.207.6069

f | 702.382.5816

acalaway@maclaw.commaclaw.com**Please consider the environment before printing this e-mail!**

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Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Robert Kern <robert@kernlawoffices.com>**Sent:** Tuesday, September 7, 2021 5:57 PM**To:** Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>**Subject:** RE: [External] Subpoena DT [IWOV-iManage.FID1085969]

Hi Alex,

You still haven't answered how you believe you can issue a subpoena after the close of discovery. Also, there is nothing in my client file that has any probative value on any claim or defense in this case, as all claims and defenses have been adjudicated.

Then there's the issue of privilege, atty work product, and relevance.

How do you justify that?

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: [Alexander K. Calaway](#)
Sent: Tuesday, September 7, 2021 5:47 PM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: [External] Subpoena DT [IWOV-iManage.FID1085969]

Robert,

What exactly you objecting to? You initially asked how exactly your client's billing records are relevant to our attorney's fees claim. As Phil already stated, we believe the issue of the reasonableness of attorneys fees in this matter is material and the subpoena only seeks the total amount of fees billed to your client.

Thanks,



Alexander K. Calaway, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6069
f | 702.382.5816
acalaway@maclaw.com
maclaw.com



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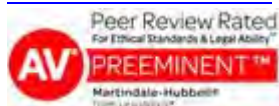
Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Robert Kern <robert@kernlawoffices.com>
Sent: Tuesday, September 7, 2021 4:58 PM
To: Phil Aurbach's Gmail <paurbach@gmail.com>
Cc: Alexander K. Calaway <acalaway@maclaw.com>
Subject: RE: [External] Subpoena DT

Hey Phil and Alex,

Today is my objection deadline, so I need to know; will you agree to withdraw the subpoena?

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: [Robert Kern](#)
Sent: Tuesday, September 7, 2021 1:29 PM
To: [Phil Aurbach](#)
Cc: [Alexander K. Calaway](#)
Subject: RE: Subpoena DT

There is still the issue of the fact that the case is over and discovery has closed. As you effectively argued against the motion to compel; once discovery is closed, further discovery is not allowed.

Robert Kern, Esq.
Attorney
Kern Law, Ltd.
601 S. 6th Street
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From: [Phil Aurbach](#)

Sent: Wednesday, September 1, 2021 7:43 PM

To: [Robert Kern](#)

Cc: [Alexander K. Calaway](#)

Subject: Re: Subpoena DT

Total amount of billing, but the redacted statement allow us to verify them against ours. Give us your total fees billed to the client and we will let you know if we need the redacted backup. Ok?

PhilA

On Wed, Sep 1, 2021 at 5:37 PM Robert Kern <robert@kernlawoffices.com> wrote:

So what exactly are you looking for? The billing rate? Total amount of billing for the matter? Something else?

Robert Kern, Esq.

Attorney

Kern Law, Ltd.

[601 S. 6th Street](#)

[Las Vegas, NV 89101](#)

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From: [Phil Aurbach](#)

Sent: Wednesday, September 1, 2021 3:50 PM

To: [Robert Kern](#)

Cc: [Alexander K. Calaway](#)

Subject: Re: Subpoena DT

Your fees go to the issue of reasonableness of our fees. You can redact any attorney-client communication, but there is a host of cases that say fees are not privileged.

Phil

On Wed, Sep 1, 2021 at 3:11 PM Robert Kern <robert@kernlawoffices.com> wrote:

Before I draft our objection, how exactly are my client's billing records remotely relevant to your attorneys fees claim?

Robert Kern, Esq.

Attorney

Kern Law, Ltd.

[601 S. 6th Street](#)

[Las Vegas, NV 89101](#)

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EXHIBIT 3

From: Alexander K. Calaway
Sent: Monday, November 15, 2021 3:11 PM
To: Robert Kern; Phillip Aurbach; Cally Hatfield; Kellie Piet
Subject: RE: [External] Orders [IWOV-iManage.FID1085969]

Robert,

1. I think you have got the court's order reversed. The motion to retax was granted in part and granted in part. The court awarded Arnould his costs, including his receiver fees, costs for lunch, and costs for parking, but rejected his costs for photocopies and settlement hosting.
2. I agree that the subpoena and protective order are now moot after the fee award.



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>
Sent: Monday, November 15, 2021 1:39 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>; Kellie Piet <kpier@MACLAW.com>
Subject: [External] RE: [External] Orders [IWOV-iManage.FID1085969]

Hey Alex,

Here is my responses to the markup. There are some changes I'm ok with, however you have reversed the Court's ruling – maybe you were confused about when she said she was granting the first three items she mentioned? But that was referring to granting the motion to retax in regard to those items. So the motion to retax was granted in regard to the receiver fees, lunch, and parking, but denied in regard to all other costs.

Separately, your motion for attorneys fees has been granted. Will you withdraw your subpoena? If so, I can withdraw the motion for protective order from it, and we don't have to go to this hearing that keeps getting rescheduled.

Robert Kern, Esq.
Attorney
Kern Law, Ltd.
601 S. 6th Street
Las Vegas, NV 89101
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(702) 825-5872 - fax



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From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Monday, November 15, 2021 8:22:58 AM
To: Robert Kern <robert@kernlawoffices.com>; Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>; Kellie Piet <kpiet@MACLAW.com>
Subject: RE: [External] Orders [IWOV-iManage.FID1085969]

Robert,
I sent you my revisions to the order. Did you receive them?
Attached is the email and the order.
Thanks,



Alexander K. Calaway, Esq.
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From: Robert Kern <robert@kernlawoffices.com>
Sent: Friday, November 12, 2021 1:11 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>; Kellie Piet <kpiet@MACLAW.com>
Subject: Re: [External] Orders [IWOV-iManage.FID1085969]

Hey Phil,

The reason I'm drafting the order is because the motion was primarily granted. Receiver costs were explicitly rejected.

Robert Kern, Esq.
Attorney
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From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Wednesday, November 10, 2021 5:16:56 PM
To: Robert Kern <robert@kernlawoffices.com>; Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>; Kellie Piet <kpiet@MACLAW.com>
Subject: RE: Orders [IWOV-iManage.FID1085969]

Robert,

Attached are my red-line changes. I tried to add a comment bubble for each red-line change I made to facilitate discussion. But to be honest, I am very confused on how you got to the \$5,984.46 number. Bottom line is that the Arnould asked for \$55,084.60, the court awarded him all costs (including the \$49,006.36 for receiver costs), but did not award him costs for the photocopies and settlement conference hosting expenses which total \$1,324.53. This means Arnould's total award of costs should equal \$53,760.07. Here is the verified memo of costs for reference (I highlighted the portions the judge specifically excluded from the cost award):

EXHIBIT	DESCRIPTION	AMOUNT	NRS AUTHORIZED
1	Clerk of the Court Filing Fees Online Filing Fees – District Court	\$1,930.00 \$119.00	NRS 18.005(1) NRS 18.005(1)
2A-2D	Receiver Costs	\$49,006.36	NRS 18.005(4)-(5), (17)
3	Process Server - Report to Court	\$105.00	NRS 18.005(7)
4	Photocopies	\$1,254.75	NRS 18.005(12)
5	Postage	\$10.05	NRS 18.005(14)
6	Scanning	\$152.75	NRS 18.005(12)(17)
7	Westlaw Research	\$2,254.49	NRS 18.005(17)
8	Messenger Service	\$5.00	NRS 18.005(17)
9	Miscellaneous: Settlement Conference Hosting	\$69.78	NRS 18.005(17)
10	Parking Fees	\$24.00	NRS 18.005(17)
11	Premiere Global Services Conference Call	\$53.42	NRS 18.005(17)
12	Witness Fees	\$100.00	NRS 18.005(4-5)
	TOTAL COSTS:	\$55,084.60	



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, November 10, 2021 2:49 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>

Subject: [External] RE: Orders

Attached is the proposed FFCL and order regarding the motion to retax.
Please review and let me know if I may affix your e-signature.

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



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From: [Alexander K. Calaway](#)
Sent: Saturday, November 6, 2021 6:38 PM
To: [Robert Kern](#); [Phillip Aurbach](#); [Cally Hatfield](#)
Subject: Orders

Hi Robert,
FYI- I plan to get over a draft order granting the motion for fees on Monday. Let me know when you plan to circulate the order partially granting motion to retax costs.
Thanks,
Alex

Get [Outlook for iOS](#)

Findings of Fact and Conclusions of Law and Order Granting in Part and Denying in Part Defendants_ Motion to Retax Costs.DOCX [IWOV-iManage.FID1085969]

Alexander K. Calaway <acalaway@maclaw.com>

Tue 11/16/2021 10:10 AM

To: Robert Kern <robert@kernlawoffices.com>

Cc: Phillip Aurbach <PSA@maclaw.com>; Cally Hatfield <chatfield@maclaw.com>; Kellie Piet <kpiet@MACLAW.com>

Robert,

It appears we fundamentally disagree as to the Court's order at the November 4, 2021 hearing as to Arnould's request for costs and Muney's motion to retax costs. Please be advised that we are going to submit the attached version of the order to the Court with the following explanation:

"Department 27,

The parties fundamentally disagree as to the Court's award of costs at the November 4, 2021 hearing. Attached for the Court's review and signature is Mr. Arnould's understanding as to the Court's consideration.

Thank you,"



Alexander K. Calaway, Esq.

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Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Cally Hatfield
Sent: Wednesday, November 17, 2021 2:20 PM
To: 'White, Terrance'
Cc: Alexander K. Calaway; Robert Kern; Phil Aurbach's Gmail; Kellie Piet
Subject: RE: [External] A-19-803488-B - ORDR - Arnould v. Muney et al. [IWOV-iManage.FID1085969]

Good afternoon,

Please see the attached Word version of our Order and the transcript from the November 4, 2021 hearing.

Thank you,



Cally Hatfield | Legal Assistant
to Alexander K. Calaway, Esq. and
Harry L. Arnold, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
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From: White, Terrance <Dept27LC@clarkcountycourts.us>
Sent: Tuesday, November 16, 2021 12:44 PM
To: Cally Hatfield <chatfield@maclaw.com>
Cc: Alexander K. Calaway <acalaway@maclaw.com>; 'Robert Kern' <robert@kernlawoffices.com>; Phil Aurbach's Gmail <paurbach@gmail.com>; Kellie Piet <kpiet@MACLAW.com>
Subject: RE: [External] A-19-803488-B - ORDR - Arnould v. Muney et al. [IWOV-iManage.FID1085969]
Importance: High

Please send word copies of the Order, Objection/Redline, and the Hearing Transcript for the Court's consideration.



Terrance White JD, MBA, LLM
Law Clerk
to the Honorable Nancy L. Allf
Eighth Judicial District Court | Department 27
Regional Justice Center Courtroom 3A

Phone: (702) 671-0884
Email: Dept27LC@clarkcountycourts.us

From: Cally Hatfield [<mailto:chatfield@maclaw.com>]
Sent: Tuesday, November 16, 2021 11:19 AM
To: DC27Inbox
Cc: Alexander K. Calaway; 'Robert Kern'; Phil Aurbach's Gmail; Kellie Piet
Subject: A-19-803488-B - ORDR - Arnould v. Muney et al. [IWOV-iManage.FID1085969]

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good morning Department 27,

The parties fundamentally disagree as to the Court's award of costs at the November 4, 2021 hearing. Attached for the Court's review and signature is Mr. Arnould's understanding as to the Court's consideration.

Thank you,

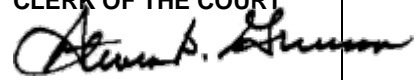


Cally Hatfield | Legal Assistant
to Alexander K. Calaway, Esq. and
Harry L. Arnold, Esq.
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1 **TRAN**

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 DOMINIQUE ARNOULD,)
8 Plaintiff,) CASE NO: A-19-803488-B
9 vs.)
10 CLEMENT MUNY,) DEPT. XXVII
11 Defendant.)
12

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14 THURSDAY, NOVEMBER 04, 2021

15
16 **TRANSCRIPT OF PROCEEDINGS**

17 **RE: MOTIONS**

18
19
20 FOR PLAINTIFF:
21 ALEXANDER KIP CALAWAY, ESQ. (Blue Jeans)

22 FOR DEFENDANT:
23 ROBERT J. KERN, ESQ. (Blue Jeans)

24 RECORDED BY: BRYNN WHITE, COURT RECORDER
25 TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 THURSDAY, NOVEMBER 04, 2021 10:31 a.m.

3 * * * * *

4
5 THE COURT: Staying on the 10 o'clock calendar, but
6 it's right at 10:30, and we have calendar calls. Are the
7 parties here on Arnould versus Muney?

8 MR. CALAWAY: Yes, Your Honor.

9 MR. KERN: Yes, Your Honor.

10 THE COURT: Let me have appearances.

11 MR. CALAWAY: Alex Calaway, appearing on behalf of
12 plaintiff.

13 MR. KERN: Robert Kern, appearing on behalf of
14 defendants.

15 THE COURT: Thank you.

16 I have calendar calls at 10:30. I wondered if you
17 guys could trail to 11 a.m.?

18 MR. CALAWAY: That's fine with plaintiffs, Your Honor.

19 MR. KERN: Yeah. We can do that, Your Honor.

20 THE COURT: Thank you both for your professional
21 courtesy.

22 [Recess taken from 10:32 a.m., until 11:03 a.m.]

23 THE COURT: It's 11:03. Let me circle back now to
24 Arnould versus Muney. And I had the appearance of Mr. Calaway
25 and Mr. Kern previously. Are you both there?

1 MR. CALAWAY: Yes, Your Honor.

2 MR. KERN: Yes, Your Honor.

3 THE COURT: Okay. So we have motions on today to
4 retax and for attorney's fees.

5 Let's take the motion to retax, first.

6 MR. KERN: Good morning, Your Honor. Robert Kern for
7 defendants.

8 All right. So we are moving to retax the settlement
9 cross-claims. You know, the requirement for costs to be
10 recoverable is it has to be expressly authorized, must be
11 substantiated by sufficient documentation and itemization, and
12 they have to be actual and reasonable.

13 The biggest issue here is the receiver -- a receiver
14 is not an authorized, under 18.005.

15 They listed the receiver as a professional witness,
16 and while they did name the receiver as a professional witness
17 after the receiver was -- you know, had completed his report
18 and was no longer here, though, you know, none of those costs
19 were incurred in that capacity as a witness. All the costs
20 were as a receiver.

21 I cited case law to the Court in the brief showing
22 that receivers are generally not considered as a cost -- are
23 not considered as a taxable cost. So it's just inappropriate
24 that that be included in the costs.

25 We also disputed the amount for copy fees. You know,

1 10 cents is what most places take to cover their costs. The
2 fact that some firms will charge their client 25 cents per
3 copy is, you know, that's just their choice of how to, you
4 know, affect their fees and such. But this is about the
5 actual costs, not, you know, what they're going to charge
6 their client.

7 So we believe that the copy fees should be at 10 cents
8 a copy or something close to that. We also believe that they
9 shouldn't be allowed to do any copies that are outside the
10 area that costs were granted for, which is specifically the
11 derivative claim. We believe that they should also be
12 required to itemize per the rule, but, you know, I'm not sure
13 how that would be done.

14 Westlaw research, there's case law supporting the fact
15 that computerized legal research, even to allow it, unless
16 it's specifically itemized to show what issue was researched,
17 they didn't provide that information. Plus the fact is, is
18 that if they have a subscription to the service, then that is
19 not an actual cost incurred for this case. That's simply
20 overhead that they're billing to the client which is not
21 appropriate as a taxable cost.

22 THE COURT: Thank you.

23 Mr. Calaway, your opposition?

24 MR. CALAWAY: Thank you, Your Honor.

25 Mr. Arnould is entitled to his costs in this case. He

1 filed his memo of costs, as you know, for \$55,000. These
2 costs should be awarded for three reasons, Your Honor.

3 One, they're well documented. They're all authorized
4 by the statute. And the amounts that -- actual costs that
5 were incurred are reasonable and I'll address these issues, as
6 well as some of the issues that Mr. Kern just raised.

7 As for the documentation in the costs, there's no
8 factual basis to say that they're not documented. We provided
9 a very extensive declaration for counsel, with exhibits
10 categorizing each category of costs and how they were
11 incurred, with receipts.

12 I think that this is pretty well established by the
13 papers.

14 The most specific issue that I think Mr. Kern raised,
15 and I think this is the crux of his motion to retax, is the
16 receiver's fees and costs.

17 The receiver's fees and costs are authorized, are
18 specifically authorized by NRS Chapter 18, but also NRS
19 Chapters 32 and Chapter 86. And you know, Your Honor, NRS
20 32.340 specifically states that if costs of the receiver are
21 to be borne or can be borne by a person who actually justified
22 the appointment of the receiver in the first place.

23 And a brief overview of what happened in this case, if
24 you'll allow me, Your Honor, you remember Mr. Muney's actions
25 were the catalyst that actually caused this company Chief Exec

1 Suppliers to go into receivership.

2 As you may recall, Mr. Muney had locked out his
3 partner, Mr. Arnould, my client, from the company's warehouse;
4 and this was done on multiple occasions. And then Muney, he
5 had closed the judicial dissolution action that we requested,
6 even though he knew it was reasonably impractical to carry on
7 the business, the partners were not each speaking to each
8 other.

9 The interesting part about this is about halfway
10 through the litigation, Mr. Arnould -- excuse me -- Mr. Muney
11 then stipulated and agreed that it was not reasonably
12 practical to carry on the business.

13 And so all of this required the receiver to go and
14 come in and provide an accounting and to fight back and forth
15 with Mr. Muney and -- and again, this receivership was not
16 necessary, but it was only necessary because of Mr. Muney's
17 actions.

18 Further, Your Honor, NRS 649 also expressly provides
19 for fees and expenses. The Court in its findings and
20 conclusions correctly stated that Mr. Arnould prevailed on all
21 of his derivative claims. I think the statute itself actually
22 says that you're entitled to all of your fees, even if you
23 prevail derivatively in whole or in part. So in this case,
24 649 is a shoe-in for costs, including receiver's costs.

25 And then finally, Your Honor, NRS 18.005.17 is very

1 broad and also provides for these costs for the receiver. It
2 states that any other reasonable necessary expenses incurred
3 in connection with the action can be recovered.

4 So Your Honor, we're on firm statutory grounds here.

5 As for the amount of costs and whether they are
6 reasonable, Mr. Muney's arguments that 25 cents is
7 unreasonable for photocopy. It's without any basis. He comes
8 up with a number saying that 10 cents is a standard.

9 But as Your Honor is -- may be familiar, the County
10 Recorder's Office, itself, charges, like, a dollar per page.
11 So our 25 cents per page is not unreasonable by any stretch of
12 the imagination, and are actually below what might even be
13 considered reasonable.

14 As for the legal research, Your Honor, these legal
15 research costs were -- are also expressly provided for in NRS
16 Chapter 18. But aside from that, a lot of these research
17 costs were incurred because of the extensive claims that --
18 counterclaims that were brought by Mr. Muney. Specifically,
19 he brought counterclaims that -- that had no basis in law or
20 fact and were ultimately dismissed on summary judgment. But
21 nevertheless, Mr. Arnould had to defend against these cases --
22 these claims.

23 Mr. Arnould only brought two causes of action. And
24 the counterclaims were -- were, I think, six times that or --
25 there was 12 -- 10 or 12. Regardless, they were numerous.

1 And so the legal research, to still address that, I
2 think was relatively low. And the charges for \$2,234 for this
3 research is not unreasonable at all. In fact, I think that's
4 low, considering the claims.

5 And then finally, Your Honor, even with the copying
6 fees, I think it -- I find it telling that Mr. Kern even
7 states on the record that he admits he doesn't know how we
8 should be able to track exactly what each of these costs and
9 fees are for. That's because it would be impossible to keep
10 track of, you know, a copy of a letter here or a copy of a
11 motion here.

12 We don't know of any -- I don't know of any software
13 or service for attorneys that would do that. If there were a
14 consistent one, we would try to provide that. But we did
15 track or costs and our copies by each client and by each
16 client number. And we do that very -- very carefully. And I
17 think we tracked that the best we could.

18 And so for these reasons, Your Honor, we would ask
19 that you would award Mr. Arnould his costs in the full amount
20 of \$55,000, which would include those receiver's fees and
21 costs.

22 THE COURT: Thank you.

23 The reply, please.

24 MR. KERN: Well, yeah, Your Honor. First of all,
25 it's -- the fact that we eventually gave in on dissolution and

1 chose not to fight it all the way to the end, when it became
2 apparent that operating the company wasn't going to work,
3 should not be considered as argument for bad faith or anything
4 of the sort. It's an argument for the fact that we chose not
5 to fight that element further than it needed to be fought.

6 I don't think the Court can blame us for having a
7 profitable company and wanting to keep the profitable company
8 in existence, if at all possible.

9 So as far as the -- sorry -- the copy fees -- I mean,
10 the recorder fees doesn't really argue anything, because they
11 don't argue that that's a cost. That's what the recorder
12 charges per page for what they're giving you, which means
13 they're paying for their people to access the stuff and get
14 it, et cetera.

15 And as the -- essentially the biggest issue here,
16 though, is the receiver. And the fact is that receivers, by
17 the Courts, have been determined not to be an attributable
18 cost. And the receiver would -- is not identified under
19 18.005, and none of the costs of the receiver were incurred in
20 the capacity of a witness. They may have been after the fact.

21 So just simply naming him after the work was done does
22 not just automatically just take all of those costs and add it
23 to them as a -- as a professional witness.

24 THE COURT: All right.

25 This is the defendant's motion to retax. It will be

1 granted in part and denied in part as follows:

2 It's granted with regard to the receiver fees, parking
3 fees, and lunch fees. It's denied with regard to photocopies,
4 Westlaw, and the miscellaneous settlement conference host
5 fees.

6 And so because it's granted, Mr. Kern, you'll prepared
7 the order.

8 Mr. Calaway will approve the form of order.

9 MR. CALAWAY: Thank you, Your Honor.

10 THE COURT: Now, let's take the plaintiff's motion for
11 fees.

12 MR. CALAWAY: Yes, Your Honor. Would you like me to
13 start?

14 THE COURT: Please.

15 MR. CALAWAY: Okay. Mr. Arnould is seeking an award
16 for his attorney's fees in the amount of \$199,000.

17 Mr. Arnold's motion for attorney's fees should be granted.

18 And again, I will give you three reasons for that.

19 Number one, the findings of fact and conclusions of
20 law entered by this Court were very clear. Mr. Arnould was
21 indeed the prevailing party in this matter. I don't think
22 that's in dispute. But I think it's very important to
23 recognize, especially in light of Mr. Muney's argument that
24 there was no money judgment in this matter, which is false.
25 And the findings of fact and conclusions of law contradict

EXHIBIT 4

From: Lawrence, Karen
Sent: Tuesday, February 1, 2022 8:49 AM
To: 'Alexander K. Calaway'; Robert Kern; Phil Aurbach's Gmail
Cc: White, Terrance
Subject: RE: [External] A-19-803488-B - SAO - Arnould v. Munev - Withdrawal of Motion

The Motion for Stay will remain on calendar for tomorrow/ February 2, 2022 at 9:00 a.m.

From: Alexander K. Calaway [mailto:acalaway@maclaw.com]
Sent: Tuesday, February 1, 2022 6:33 AM
To: Robert Kern; Phil Aurbach's Gmail; Lawrence, Karen
Subject: Re: [External] A-19-803488-B - SAO - Arnould v. Munev - Withdrawal of Motion

[NOTICE: This message originated outside of Eighth Judicial District Court -
- DO NOT CLICK on links or open attachments unless you are sure the content
is safe.]

Good morning,

We object to the withdrawal. We believe the motion for stay requested the court to determine the amount of the bond to be posted. The defendant Clement Munev's position was that the bond should be set at a nominal amount due. While Mr. Munev has since changed his position and posted bonds totaling \$213,261.40, we believe this amount is still insufficient security to cover the entire amount of the judgments with interest, fees, and costs.

Regards,

Alexander K. Calaway, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6069
f | 702.382.5816
m | 509.840.9110

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From: Robert Kern <robert@kernlawoffices.com>
Sent: Monday, January 31, 2022 5:51:35 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach <paurbach@gmail.com>;
'dept27ea@clarkcountycourts.us' <dept27ea@clarkcountycourts.us>
Subject: Re: [External] A-19-803488-B - SAO - Arnould v. Munev - Withdrawal of Motion

Good afternoon,
In light of the automatic stay from the posting of the supersedeas bond in the full amount of the

judgments, Defendant Munev wishes to withdraw his motion for stay pending appeal, as well as his opposition to Plaintiff's charging order, as both are now moot. We would thus also request that the hearing on those matters set for this Wednesday, February 2, be vacated.

Robert Kern, Esq.
Attorney
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601 S. 6th Street
Las Vegas, NV 89101
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(702) 825-5872 - fax
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From: Robert Kern <robert@kernlawoffices.com>
Sent: Monday, January 31, 2022, 3:51 PM
To: DC27Inbox; 'Cally Hatfield'; Alexander K. Calaway; Phil Aurbach
Subject: A-19-803488-B - SAO - Arnould v. Munev - Withdrawal of Motion

Good afternoon,

In light of the automatic stay from the posting of the supersedeas bond in the full amount of the judgments, Defendant Munev wishes to withdraw his motion for stay pending appeal, as well as his opposition to Plaintiff's charging order, as both are now moot. We would thus also request that the hearing on those matters set for this Wednesday, February 2, be vacated.

Robert Kern, Esq.
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From: Alexander K. Calaway
Sent: Monday, January 24, 2022 1:30 PM
To: Robert Kern; Phil Aurbach's Gmail
Cc: Phillip Aurbach; Cally Hatfield
Subject: RE: [External] [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Hi Robert,

Yes, we addressed that already. The total "amount of the judgment" includes prejudgment interest per the language in each of each of the judgments. Moreover, we believe the statute has limited applicability (if any) because it does not represent the amount necessary to protect Mr. Arnould against the damages he may sustain by reason of Mr. Muney's unsuccessful appeal. We believe that amount is equal to 1.5x the total amounts of the judgements (i.e. \$319,892.10). Your argument also fails to consider NRS 20.037(4) which expressly states that the statute does "not limit the discretion of a court, for good cause shown, to set the bond on appeal in an amount less than the amount otherwise required by law [i.e. \$50,000,000]." We're confident that both Judge Alf and the Nevada Supreme Court would agree with this analysis because it is the law. But again, notwithstanding the forgoing and without waiving anything, we are willing to stipulate to Mr. Muney posting only \$300,000.00 to avoid expending attorney's fees and costs for motion practice. **We will refrain from filing our motion until tomorrow at 5:00pm PST, offer is good until then.**

Regards,



Alexander K. Calaway, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
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acalaway@maclaw.com
maclaw.com



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From: Robert Kern <robert@kernlawoffices.com>
Sent: Monday, January 24, 2022 1:07 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Cc: Phillip Aurbach <PSA@maclaw.com>
Subject: RE: [External] [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Again, the statute is clear – the “amount of the judgment”. That is not the same as “the judgment plus interest”. I know you guys are very confident in Allf’s rulings, but matters relating to a stay on appeal will ultimately go to the appellate court for decision.

Robert Kern, Esq.
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www.KernLawOffices.com



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From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Monday, January 24, 2022 10:46:12 AM
To: Robert Kern <robert@kernlawoffices.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Cc: Phillip Aurbach <PSA@maclaw.com>
Subject: RE: [External] [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Robert,

When a statute's language is plain and its meaning clear, courts will apply that plain language. *L.V. Dev. Assocs. v. Eighth Jud. Dist. Ct.*, 130 Nev. 334, 325 P.3d 1259 (2014). Only when a statute is ambiguous does the Supreme Court look to a statute’s legislative history. *Id.* The plain language of the NRS 20.037(1) states that the limitation applies to the amount of bond to be posted for “a bond in order to **secure a stay of execution** of the judgment during the pendency of any or all such appeals....” (emphasis added). There are two types of bonds (1) a bond necessary to secure a stay pending appeal; and (2) a bond necessary to provide security for the judgment creditor in the event of an unsuccessful appeal. This statute applies to the first type of bond.

It should be noted that the two types of bonds serve very different purposes. NRS 20.037 applies to the first purpose — setting the maximum amount necessary to **secure a stay** for the judgment debtor. The second purpose— the amount necessary to **secure the judgment creditor** during the appeal—is a matter of discretion to be determined by the trial court. For example, the Nevada Supreme Court has recognized this purpose even after NRS 20.037’s passage. See e.g. *Liu Jui-Kwa Chen v. Eighth Jud. Dist. Ct. of State in & for Cty. of Clark*, 133 Nev. 994, 390 P.3d 166 (2017) (quoting *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005) (“The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and

preventing prejudice to the creditor arising from the stay.”). The actual amount necessary to secure a judgment creditor is based upon “principles of equity and justice” since this amount must reflect the amount “necessary to protect an appellee against damages he may sustain by reason of an unsuccessful appeal.” *Id.* (quoting *Gottwals v. Rencher*, 60 Nev. 35, 46, 92 P.2d 1000, 1004 (1939)). It is “the district court is in the best position to weigh the relevant considerations” not an arbitrary amount set by statute. *Id.*

Once again, we believe the amount necessary to protect Mr. Arnould against the damages he may sustain by reason of Mr. Muney’s unsuccessful appeal is equal to 1.5x the total amounts of the judgements (i.e. \$319,892.10). Notwithstanding the forgoing and without waiving anything, we would be willing to stipulate to Mr. Muney posting only **\$300,000.00** to avoid expending attorney’s fees and costs via motion practice.

Regards,



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Thursday, January 20, 2022 10:07 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>

Cc: Phillip Aurbach <PSA@maclaw.com>

Subject: [External] RE: [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Yes,

See attached – note the highlighted sections. The first (p10) notes that the bill is meant to stop the current practice of judges requiring years of postjudgment interest for a supersedeas bond. The same is re-iterated on p.12. Finally on p.17, an opponent to the bill states that current practice (before the bill) is to include the amount of the judgment plus interest in a bond. Then on p.19 he goes on to oppose the fact that the bill does not include interest in the amount of the judgment (for the limit an bond amounts).

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Attorney

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From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Thursday, January 20, 2022 8:15:25 PM
To: Phil Aurbach's Gmail <paurbach@gmail.com>; Robert Kern <robert@kernlawoffices.com>
Cc: Phillip Aurbach <PSA@maclaw.com>
Subject: RE: [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Robert,
Were you able to find the legislative history on this?



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From: phil aurbach <paurbach@gmail.com>
Sent: Thursday, January 20, 2022 6:16 AM
To: Robert Kern <robert@kernlawoffices.com>; Alexander K. Calaway <acalaway@maclaw.com>
Cc: Phillip Aurbach <PSA@maclaw.com>
Subject: Re: [External] Supersedeas Bond [IWOV-iManage.FID1085969]

Hi Robert

Can you send us the legislative history to which you are referring?

Phil

From: Robert Kern [<mailto:robert@kernlawoffices.com>]

Sent: Wednesday, January 19, 2022, 5:16 PM

To: Alexander K. Calaway

Cc: Phillip Aurbach

Subject: [External] Supersedeas Bond [IWOV-iManage.FID1085969]

gree to that. I'm reading the legislative history of the statute now, and it is clearly stated that they intended to bloc

--



Phillip S. Aurbach

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wk- 702-942-2155

EXHIBIT 5

**MINUTES OF THE MEETING
OF THE
COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
March 12, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, March 12, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Scott T. Hammond, Senate District No. 18

Minutes ID: 440



Senator David R. Parks, Senate District No. 7
Senator Michael Roberson, Senate District No. 20

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Sarah M. Clark, representing Indian Springs Operating Company, LLC
Ron Garcia, General Manager, Indian Springs Operating Company LLC
Buffy Brown, Senior Research Specialist, Administration Division, State Gaming Control Board
Brian Connett, Deputy Director, Prison Industries, Department of Corrections
Loren Young, representing Las Vegas Defense Lawyers
Jeffrey Cooper, Chairman, Legislation Committee, Nevada Society of Certified Public Accountants
Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada
Cheryl Blomstrom, representing Nevada Manufacturers Association
Justin Harrison, Director, Las Vegas Metro Chamber of Commerce
Stuart MacKie, Private Citizen, Hazen, Nevada
Matthew L. Sharp, representing Nevada Justice Association

Chairman Hansen:

[The roll was taken.] We have three bills on the agenda, and we will start with Senate Bill 124.

**Senate Bill 124: Revises provisions governing gaming establishments.
(BDR 41-787)**

Senator Scott T. Hammond, Senate District No. 18:

I am grateful to be here this morning, and I am pleased to bring Senate Bill 124 for your consideration. First, I will provide you with some background. Next to me is Sarah Clark, who will help you to understand the intent and language of the bill. As many of you know, I am a teacher. I have been working at Indian Springs High School for the last 16 years. If you have ever driven from

Las Vegas to Carson City, you have probably driven through the small town of Indian Springs. It is about 45 minutes northwest of Las Vegas on U.S. 95. One of the principal employment centers of Indian Springs is a casino that was shut down not too long ago. I want to let you know a little bit about why the casino was shut down.

Creech Air Force Base (AFB) is located in Indian Springs and has been expanding. Not too many people know this, but although the U.S. Air Force Thunderbirds are stationed at Nellis AFB, it is at Creech AFB in Indian Springs where they do many of their practice drills. They have been doing drills there for a long time, and the drone program is expanding out there as well. The Air Force wanted to expand the facility. Also, there were concerns about the integrity of the base. The base needed to make sure they did not have problems with security. While the casino was open for business, anyone could have gone to the back and launched a grenade far enough to hit the runway. That was the main purpose for them wanting to expand the base. The owner of the casino started negotiations with the base allowing them to determine a purchase price for the property. Instead of allowing the AFB to take it through eminent domain, the owner decided to negotiate in good faith. It took a long time, but the Air Force base purchased the casino from the owner. Afterwards, the owner realized that he now had no recourse to move his casino to the other side of the highway and reopen with his existing license. There were provisions that would allow someone to do that, but only through certain means. One of those provisions was through eminent domain.

The owner was caught in a bad situation. He wanted to move the casino because the community needed it, and they still need it. Most of the students that I have taught over the past 16 years obtained their first job there. It is a place where residents meet. It is one of only two places in Indian Springs where you can have a meal. If you are traveling through, you can spend the night. It is a vital part of the community. That is why they came to me to help them with this piece of legislation. Although they could not be here, Senator Goicoechea and Assemblyman Oscarson, who represent the district, are in support of the bill as well. For these various reasons, I am here before you asking you to consider this bill. I would now like to introduce Sarah Clark.

Sarah M. Clark, representing Indian Springs Operating Company, LLC:

I would like to thank the Committee for your consideration of this bill. I would also like to thank our joint sponsors. As Senator Hammond has mentioned, *Nevada Revised Statutes* (NRS) 463.302 allows the State Gaming Control Board to relocate an unrestricted license under three very narrow and specific circumstances. The narrow language of this bill would allow the Gaming Control Board that authority with respect to circumstances such as this.

The existing location of the gaming establishment is adjacent to a military installation. The move and transfer are necessary because the existing location has been designated for expansion of the military installation. It would allow the license to be moved within one mile of that location.

We have been working and engaged with the Gaming Control Board, the county, and the town, throughout the process. We have also submitted a letter of support from the Indian Springs Town Advisory Board ([Exhibit C](#)). As mentioned by Senator Hammond, this business is very important to the community who would like the casino reopened. This is the first step in moving forward and would allow us to do just that.

I would also like to introduce Ron Garcia, the General Manager of Indian Springs Operating Company, LLC. He is at the Grant Sawyer Building in Las Vegas.

Ron Garcia, General Manager, Indian Springs Operating Company, LLC:

For 30 years, the casino has been the mainstay for the community and travelers. I am sure a few of you must have stopped there for lunch a time or two while heading up north. The casino is located directly next to Creech AFB. Several years ago, the U.S. government designated the casino for acquisition to expand the perimeter for homeland security reasons. Wanting to cooperate and avoid entering into a legal battle, we negotiated the sale of the property and closed it last October. We would really like to reopen the casino directly across the highway. As soon as we found out the government was taking the property, we contacted Clark County, and the Gaming Control Board to see what was necessary to reopen. Unfortunately, under the current law, the license cannot be moved.

We are proud to be a part of the community there, and we are grateful to the bill's sponsors for taking up this issue. We appreciate the Committee for taking this bill into consideration.

Chairman Hansen:

Senator Hammond, is there anyone else you would like to have testify? I have to say that this bill is so narrowly tailored, I would be surprised if there was any opposition.

Senator Hammond:

No, thank you.

Assemblyman Elliot T. Anderson:

This is just a comment. I met with the bill's sponsors, and they took the suggestion to keep it tailored. This is something that state and

federal governments worked on together through the National Conference of State Legislature Task Force on Military and Veterans Affairs. One thing the Task Force works on is state encroachment issues. There is a standing effort to aid these types of projects. This bill is well in line with those efforts. I am happy to help our military and help our business owners deal with these types of issues.

Chairman Hansen:

I see no further questions. Is there anyone else who would like to testify in favor of S.B. 124? [There was no one.] Is there anyone who is opposed to this bill? [There was no one.] Is there anyone in the neutral position?

Buffy Brown, Senior Research Specialist, Administration Division, State Gaming Control Board:

I would like to extend our apologies for Chairman A.G. Burnett, who was not available to be here. On his behalf, I would like to indicate that the bill's sponsors worked together with the Gaming Control Board. The Board feels that the casino is an important part of the community. We support it to the extent that we do not disagree, and we believe the bill is reasonable.

Assemblyman Nelson:

I am in support of this bill, but I would like clarification for the record. The license will not change at all. Is that correct?

Buffy Brown:

That is correct. The purpose is just to move the location.

Assemblyman Nelson:

Are we just grandfathering it and allowing the move across the street to accommodate the military base expansion?

Buffy Brown:

Yes. I do not have the expertise in all of the details in the other parts of that statute for when properties can move, but they are all narrowly tailored for that reason. It is to maintain control and to maintain the license.

Chairman Hansen:

Senator, do you have anything further to add?

Senator Hammond:

[Shook his head as to indicate no.]

Chairman Hansen:

We are going to close the hearing on S.B. 124 at this time. We will now open the hearing on Senate Bill 96.

Senate Bill 96: Revises provisions relating to Prison Industries. (BDR 16-281)

Senator David R. Parks, Senate District No. 7:

I am here as the Chair of the Legislative Committee on Industrial Programs to present Senate Bill 96. In Las Vegas, I am joined by Brian Connett, Deputy Director of the Department of Corrections. He also directs Nevada's prison industry program.

Senate Bill 96 seeks to clarify and expand the authorized uses of those funds generated internally to prison industry programs and deposits them in the fund for new construction of facilities for Prison Industries. The proposed uses include relocating, expanding, modifying, enhancing or improving an existing program; purchasing or leasing equipment; paying for the operation of Prison Industries including paying staff and offender wages when necessary; and paying for advertising and promotion of prison industry goods and services. Depending upon which of these activities the Director of the Department of Corrections wants to pay for out of the fund, the Director must submit a proposal to either the Committee on Industrial Programs, the State Board of Examiners, or both. If the Director uses money from the fund to pay for operations including staff and offender wages, the Director must repay the money borrowed from the fund as soon as those funds become available.

At its November 7, 2014 meeting, the Committee on Industrial Programs unanimously voted in support of this bill. The Senate also passed this bill with a unanimous vote. I will be happy to answer any questions that you or the Committee members may have. Deputy Director Connett can provide testimony and answer technical questions from Las Vegas.

Brian Connett, Deputy Director, Prison Industries, Nevada Department of Corrections:

I appreciate your time to hear S.B. 96, which relates to the Department of Corrections prison industry program. Silver State Industries, also known as Prison Industries, was created under NRS Chapter 209, and operates under the Nevada Department of Corrections. Prison Industries operates 17 industries and has approximately 479 inmate workers. Prison Industries trains inmates with marketable skills to assist them in finding employment after their release. The inmates also assist the Department's correctional institutions by working, learning skills, and remaining productively occupied. Prison Industries has oversight from the Department's director, and the Committee on Industrial

Programs, which is a legislative subcommittee. All contracts are reviewed and approved by the State Board of Examiners. Nevada's Prison Industries has a fund authorized by NRS 209.192 for capital projects. This fund is completely subsidized through wage deductions of inmate workers from Prison Industries as NRS 209.463, subsection 1, paragraph 1. There is no cost to the state or its taxpayers to fund this account. Currently, the money in this fund must only be expended to house new industries, expand existing industries, provide for more offender work, or for any other purpose as authorized by the Legislature.

We are requesting the Committee approve language to expand the uses of this fund by adding the following paragraphs to section 1, subsection 1: "(b) To relocate, expand, upgrade or modify an existing industry in the industrial program to enhance or improve operations or security or to provide additional employment or training of offenders; (c) To purchase or lease equipment to be used for the training of offenders or in the operations of prison industries; (d) To pay or fund the operations of prison industries, including, without limitation, paying the salaries of staff and wages of offenders if the cash balance in the Fund for Prison Industries is below the average monthly expenses for the operation of prison industries." Section 1, subsection 4 says "If any money in the Fund is used as described in paragraph (d) of subsection 1, the Director shall repay the amount used as soon as sufficient money is available in the Fund for Prison Industries."

To provide detail on the uses of the Fund, section 1, subsection 1, paragraph (e) says, "To advertise and promote the goods produced and services provided by prison industries." This would include media buys, the printing of catalogs and brochures, funding shows and conferences, Nevada Sheriffs' and Chiefs' Association, Nevada League of Cities & Municipalities, Nevada Association of Counties, chambers of commerce, et cetera.

Language has also been added in subsection 2, paragraph (a) "As described in paragraphs (b) to (e), inclusive, of subsection 1, the Director shall submit a proposal for the expenditure to the Committee on Industrial Programs and the State Board of Examiners."

We are also requesting language be stricken from NRS 209.192, section 1, subsection, 1, paragraph (f) which says "The money in the Fund must not be expended for relocating an existing industry in the industrial program unless the existing industry is being expanded to provide additional employment of offenders."

As Senator Parks has said, we have run this by the Committee on Industrial Programs, and it passed unanimously. Thank you for your time. I would be happy to answer any questions.

To my left is Diane Dastal, and she is our Administrative Services Officer for the program. She is here for any technical support or questions you may have.

Assemblyman Gardner:

You said there were 17 industries. Can you let us know what some of those industries are?

Brian Connett:

The industries include everything from an arrangement with the Bureau of Land Management (BLM) to board about 1700 horses to manufacturing operations such as cut and sew, which is a garment operation. We also have several other operations: printing, drapery, metal fabrication, furniture, auto restoration, and card sorting. Those are some of the operations that we have.

Assemblywoman Diaz:

You are saying that you can currently use the funds in different ways such as construction, to expand programs, et cetera. Moving forward, I would like to hear what you are thinking of using the money for. I also have another question. Section 1, subsection 1, paragraph (b) says "...to enhance or improve operations or security...." I would like some information about the security part.

Brian Connett:

What we intend to use the funds for is to purchase and update our equipment. A lot of the equipment that Prison Industries uses is quite old, almost antique. We would like to upgrade our equipment and be able to train inmate workers on current equipment. With regard to security, there are times when we would like to enhance our security in the prison industry shops. Our shops, except for the ranch, are primarily located inside the prison perimeter fences. If we can enhance our security, we certainly would like to use these funds to do so.

Chairman Hansen:

Over the years, there have been concerns about prison-made products competing with products made in the private sector. Labor organizations have been concerned when projects have been completed by prison laborers rather than going out to bid. Will this have any impact on those types of issues?

Brian Connett:

No, sir. We do not see that there will be any impact on our competition with private sector industries.

Chairman Hansen:

I am fully supportive of the program. The prisoners will be returning to the general population, and they will need some training and skills in order to return to making a living rather than becoming a repeat offender. It sounds like a great program. Senator Parks, is there anything you would like to add?

Senator Parks:

No, I do not have any further comments.

Chairman Hansen:

Is there anyone else who would like to testify in favor of S.B. 96? [There was no one.] We will open it up to opposition. Is there anyone in Carson City or Las Vegas that would like to testify in opposition? [There was no one.] Is there anyone in the neutral position? Seeing none, we will close the hearing on S.B. 96.

We will now open the hearing on Senate Bill 134. We are awaiting Senator Roberson; therefore, we will take a one-minute recess [at 8:24 a.m.].

Chairman Hansen:

We will now reconvene [at 8:26 a.m.].

Senate Bill 134: Makes various changes relating to the provision of a bond in certain civil actions. (BDR 2-948)

Senator Michael Roberson, Senate District No. 20:

I am here to introduce Senate Bill 134, which passed out of the Senate with a vote of 18 to 2. We all know the challenges that Nevada's economy faces and the rise and abuse of lawsuits. This experience by our business community has only made matters worse. Nevada was recently placed on the American Tort Reform Foundation's Judicial Hellholes watch list which identifies jurisdictions with "histories of abusive litigation or troublesome developments." Civil justice reforms that curb some of the abusive practices in our courts provide a cost-free way for the Legislature to help businesses have a stable platform on which to create economic growth and jobs while still ensuring justice for injured parties.

An undeniable trend in litigation over the past decade has been the skyrocketing size of damage awards. Since 2011, more than ten jury verdicts entered across the country have exceeded \$1 billion. Nevada has not been left out of this trend towards shockingly large verdicts. Over the last several years, at least four Nevada juries have returned awards for more than \$50 million. One verdict entered into against a health insurer for more than \$500 million prompted the

Las Vegas Review Journal to declare Las Vegas the undisputed jackpot justice capital of the world. Awards of over \$1 million, which at one time had been landmark verdicts that made the news, are now commonplace. Nevada juries have returned more than two dozen verdicts of seven figures or more in the last ten years. Many of them were against small businesses.

Defendants who are subjected to such enormous damage awards invariably seek to appeal them. They are often successful in getting the judgments reduced or overturned on appeal, particularly where a significant portion of the award is made up of punitive damages. When an award is entered for millions of dollars, appeals are a healthy part of the justice system. When an award threatens the continued vitality of a company, possibly causing layoffs or even bankruptcy, it is entirely proper for an appellate court to review the case for error and make sure the trial court got it right.

Like most states, Nevada requires the defendant to post a bond in order to stay the execution of a judgment during the course of appeal. The purpose of requiring the posting of a bond is to protect the judgment creditors' ability to collect the judgment, if it is affirmed, by preserving the status quo and preventing prejudice to the creditor arising from the stay. At the same time, the filing of a bond establishes a stay of execution that protects the defendant from having the plaintiff seize assets during the appeals process. Nevada's current appeal bond practice, in virtually all cases, necessitates the bond the defendants must post to obtain a stay during an appeal to be equal to or larger than the amount of the judgment. Neither Nevada Rules of Civil Procedure 62(d) nor the Federal Rule of Appellate Procedure, Rule 8 specifies the amount of a bond the defendant must post in Nevada. Therefore, courts have discretion to determine how large of a bond is necessary to give the plaintiff sufficient security in the judgment. Courts frequently require bonding for not just the amount of the judgment, but also several years of postjudgment interest as well as other costs and fees. Nevada courts have required full bonds even when the amount involved exceeds \$50 million.

Nevada's current appeal bond provisions did not anticipate the potentially crushing size that today's verdicts sometimes involve. The cost of obtaining a multimillion dollar bond, in some cases a bond in the hundreds of millions of dollars, becomes unattainable for many defendants, even if they have a strong case that warrants appellate review. If a business cannot obtain the financing it needs to post an appeal bond, that business is effectively denied the right to appeal. The only other option is to file for bankruptcy.

Nevada is in the minority of states that do not cap the size of the required appeal bond for all industries. To date, at least 29 states have recognized the

potential consequences of exorbitant appeal bonds and have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, it should be noted that five other states do not require the defendant to post a bond at all during an appeal. The bond limits range from \$1 million to \$150 million, but 24 states set the upper limit at \$50 million or less. Nearly all of the statutes include a provision that allows for a higher bond amount up to the value of the judgment if the court determines that the appellate is dissipating assets to avoid paying the judgment. Notably since at least 2005, Nevada has had a \$50 million appeal bond cap in place, but it is available only to tobacco companies involved in the master settlement agreement. It is also worth recognizing that the State has exempted itself from the burdens of obtaining any bond on appeal when it is sued in a civil case.

Senate Bill 134 would extend to all industries and businesses the \$50 million cumulative limit on the appeal bond the defendants must post to stay the execution of a judgment in Nevada. If a particular defendant can establish that it is a qualified small business, the upper limit of the bond for that particular business is set at \$1 million. This bond limit would not change any other aspects of the law. This means it does not change the rules by which the trial is conducted or affect who ultimately wins or loses the lawsuit. Additionally, it does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. This limit is essential to guarantying that all defendants are treated fairly and are able to fully exercise the right to appeal without being forced to declare bankruptcy or settle the case before completion of the appellate review.

Senate Bill 134 is also essential to protect the rights of plaintiffs by insuring the defendants are not bankrupted by huge appeal bond requirements. The limit would help to guaranty the plaintiffs, who obtained judgments, will have solvent defendants from whom they can collect. Plaintiffs are also protected by the provision in the bill allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. Therefore, S.B. 134 would not injure plaintiffs in any way but would merely guaranty that all defendants, no matter how large the judgment against them, can exercise the right to appeal. For all of the foregoing reasons, we should pass S.B. 134.

Loren Young, representing Las Vegas Defense Lawyers:

We are in full support of this bill. I want to echo Senator Roberson's comments and note that a right to a jury trial is very important to Nevada and all citizens of the United States. It is important to make sure that those rights are preserved as well as the right to appeal, and to ensure those verdict findings are correct. It is important to make sure those rights are preserved for both plaintiff as well

as a defendant. This bill will ensure a defendant's right to pursue that appeal if necessary. It also protects the plaintiff because it ensures the defendant will not try to dissipate assets to avoid a judgment, and it still provides the judge the discretion to evaluate the situation. The bond amount can be adjusted appropriately once evaluated by the judge. We are in support of this bill, and we appreciate Senator Roberson bringing it forth.

Assemblyman Wheeler:

This bill seems like common sense to me. Do you know what percentage of judgments on appeal have actually been reduced?

Senator Roberson:

That is a good question, and perhaps Loren can answer it for you.

Loren Young:

I do not know the exact percentage of judgments that could be reduced. Currently, the way the law stands is that a judge would require a defendant to post a bond in the entire amount of the judgment. Usually they add interest for three years on top of the judgment. On appeal, they would not usually reduce the amount of the judgment. They would either remand for a new trial if there was something that went awry, then the District Court would be given instructions to have another trial and overturning the verdict would be overturned. It is not really a reduction of the judgment. It is either affirmed or overturned, and then a new trial is started.

Assemblywoman Diaz:

It was cited in your testimony that Nevada is one of the states that does not establish a limit. How did you arrive at the figures of \$50 million and \$1 million, respectively. Is it because other states are capping it there? If not, how did you arrive at those figures?

Senator Roberson:

We thought that was a reasonable amount considering what other states do. There are currently 24 states requiring a \$50 million appeal bond cap. It ranges is from no required cap up to \$150 million in some other states.

Assemblyman Elliot T. Anderson:

I would like to get some context on some of the awards that you mentioned. As I understand it, when the jury comes back with an award, oftentimes they may be a bit impassioned and could take things a bit too far. It is difficult to say for sure without knowing the facts of a specific case. How often are the juries' awards immediately reduced by judges? I have read of at least a few

cases where that has happened. Were the awards that you mentioned ultimately reduced?

Senator Roberson:

I do not know.

Assemblyman Nelson:

I have a question regarding the concern of small businesses. I have read the definition under the Small Business Administration (SBA) Statutory Guidelines. How did you arrive at the figure of \$1 million limit for small businesses? Also, why is it important to this legislation?

Senator Roberson:

I am open to a lower amount. From my perspective, you can consider no appeal bond requirement for a small business. Certainly, we wanted to recognize how the small businesses would be much more heavily burdened by a large appeal bond requirement than larger businesses. We decided on \$1 million for a small business.

Assemblyman Nelson:

Does the SBA have a position on this? Have they advocated for this at all?

Senator Roberson:

I am not aware that the SBA has voiced an opinion on this.

Assemblyman Nelson:

I have dealt with this in cases where sometimes courts have not followed the law by not setting the required bond amounts, even on appeal. I see there is a need for uniformity.

Senator Roberson:

While any dollar amount may appear arbitrary, the idea was for a much lower appeal bond amount for small businesses. I am open to a smaller amount, if that is where you are going with this.

Assemblyman Gardner:

I did some research regarding the \$1 billion bonanza, as Bloomberg Press is calling it. It is about how we are getting a great deal more billion dollar judgments. Every single one that I have read about over the last ten years has been reduced. Some of them are simply determined out of a miscalculation. There was one ten years ago in California that was reduced from \$28 billion to \$28 million due to a jury miscalculation. There was another one for \$40 billion which was also reduced to a much smaller amount. I am assuming that the

reason for having this bill is to prevent the bankrupting of companies, especially since almost all of them are reduced anyway either by settlement or by the judge.

Senator Roberson:

That is exactly right. Unless we put some limits on what is required for appeal bonds, the right to appeal can be effectively undermined by judges setting appeal bond amounts that are unsustainable for small or large businesses. This is not good for plaintiffs either. If a company has to file bankruptcy because they cannot afford to pay for the appeal bond that the judge ordered, it is difficult to collect even if the judgment is upheld on appeal.

Chairman Hansen:

Senator, would you like Mr. Cooper to testify at this time?

Senator Roberson:

Although I did not know that Mr. Cooper was here, I am happy to have him testify.

Jeffrey Cooper, Chairman, Legislation Committee, Nevada Society of Certified Public Accountants:

I serve as Chairman of the Legislation Committee for the Nevada Society of Certified Public Accountants (CPA). I have practiced as a licensed CPA in Nevada since 1977. The CPA Society of Nevada supports S.B. 134, and we believe that the current structure challenges the accounting profession with an unreasonable appeal cost which may possibly force the settlement of meritless cases. We believe this bill provides adequate protection of plaintiffs while not placing an unreasonable burden on businesses.

Chairman Hansen:

Are there any further questions for any of the testifiers at this time? Seeing none, thank you all for your testimony. Is there anyone else who would like to testify in favor of S.B. 134 at this time?

Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada:

We appreciate the Senate Majority Leader for bringing forth S.B. 134, and we strongly support it. We think it is important to put Nevada's small businesses on the same playing field as multinational tobacco companies. It allows small businesses to exercise their appellate rights. Additionally, it will ensure that the small businesses will not have to lay off all of their employees just for exercising their appellate rights. We support this bill and urge its passage.

Cheryl Blomstrom, representing Nevada Manufacturers Association:

Me too.

Justin Harrison, Director, Las Vegas Metro Chamber of Commerce:

Tort reform has been a longstanding priority of the Las Vegas Metro Chamber of Commerce. We believe that through reform we can bring Nevada on par with other states, thus creating a greater incentive for economic growth and job creation. The proposed \$50 million cap, and \$1 million cap for small businesses, affords the defense their full right to exercise an appeal without the fear of bankruptcy through the current system of bond requirements. We urge the bill's passage.

Assemblywoman Seaman:

What role does tort law play in bringing new business to Nevada?

Tray Abney:

It plays a big role. The Senate Majority Leader mentioned Nevada being placed on the judicial hellhole list. The U.S. Chamber of Commerce has a similar list. Nevada is always near the top because of how difficult it is to do business in this state. I would argue that as our economic development authorities and others are looking to bring companies to this state, they are going to see those types of things. That will go into their calculation. They calculate many things such as tax rates, regulations, educated work force, et cetera. This is definitely one of the pieces that goes into that calculation.

Chairman Hansen:

Are there any further questions? [There were none.] Is there anyone else who would like to testify in favor? Seeing none, we will move to the opposition.

Stuart MacKie, Private Citizen, Hazen, Nevada:

I gave you all a copy of some bonds ([Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)). There is one question that I would like to ask directly. Why is it that the bonding company does not pick up the amount that must be paid to the court? I do not understand why we are creating a new court. The bonding company has to pay, so why should they not cover the appeal? It should not be the person because he paid for a bond that should have covered him. Yet, he has to make up everything over and above that. It does not sound right. It sounds like the Indian thing that happened on the Truckee River. There were a bunch of contracts signed for the Paiute Tribe, but they did not have a real lawyer. Now the Indians do not have a valid contract for anything.

The Truckee-Carson Irrigation District (TCID) which is located in Fallon, owns water at Donner Lake, where you cannot own water because it is in California. The whole problem is that nobody pays attention to what they are doing.

I have handed out official bonds to everyone ([Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)). I will begin by discussing the last district attorney (DA), and the sheriff of Washoe County, who just left office, and they paid \$100,000 a year for an unlimited policy. The two people who took over as the district attorney, and the sheriff, paid \$100,000 a year, and they get a \$7,500,000 bond. It sounds like the insurance company has gotten wind that they would get sued on this unlimited policy, so all of a sudden, the new DA is not worth having a decent bond, but he is willing to pay \$100,000 for it. I show one bond out of Washoe County for \$5 million in which they pay \$500 per year. That is two-thirds of what the sheriff pays. I think they are looking for work for the attorneys that do not have work currently. It does not sound like they are generating anything. What was the real reason that they could not put this on the insurance companies which would save us court time. After seeing what is on these bonds, I cannot believe the insurance companies are not able to do what is being asked.

Chairman Hansen:

Thank you very much for your testimony. Are there any questions for Mr. MacKie? [There were none.]

Matthew L. Sharp, representing Nevada Justice Association:

I am going to split up my comments because, generally speaking, we are not opposed to the \$50 million portion of the bill. I am happy to answer any questions but, in my experience, there were verdicts rendered by juries with overwhelming evidence of bad corporate conduct. I want to take a little bit away from that issue. I hear Senator Roberson's argument on the \$50 million aspect of it. What I wanted to talk about is the other part of this bill.

In section 1, it refers to \$50 million or the amount of the judgment. I would like to explain how we get to that point. When you have obtained a jury verdict in favor of the plaintiff, you have gone through the process. A jury has decided your case has merit and awards a judgment. The fact is that nearly all cases are upheld on appeal. The last I heard, the rate was at 90 percent. I am sure the Supreme Court could provide that information to the Committee. The purpose of the bonding requirement is to put skin in the game. What happens is you get a judgment, and a party can execute on that judgment pending a supersedeas bond. All the supersedeas bond does is secure the judgment plus interest. To me, that is common sense. If somebody appeals a case, they should have skin in the game. They should not be able to file an

appeal just for the sake of filing an appeal. If they have a meritorious position, these bonds are readily available.

With regard to the amount of the judgment, currently it includes the amount of the judgment plus interest. Interest is 2 points above prime. To me, it makes sense even in a business context. You can have a small business that has defaulted on a loan of over \$1 million with no defense for having defaulted on the loan. However, with this bill, they can file an appeal for any reason and stall from going into collections for two years. It is a two-to three-year process typically before the Supreme Court makes a decision on appeal.

My point is we should divorce ourselves from the \$50 million issue, which is the exception to the rule. Most cases are ones where juries or judges have made decisions and the person who lost should have skin in the game. The courts should continue to have discretion to set the bond in an amount to protect the party who prevailed. We discussed proposing an amendment, and I am happy to work on these issues.

The other point I would make is about section 3. The reality is that once you have received a judgment, you have prevailed on the case. Therefore, if a business goes bad during a recessionary time while on appeal, and there is no bond in place, it hurts the plaintiff whether it is an injured party or a business. It does not necessarily mean the appellant is doing anything wrong. If recessionary times hit, they may not be spending money to avoid paying a judgment. The business just went bad. The purpose underlying the supersedeas bond is to protect that person who has prevailed at the time of trial. It is like a security interest for a bank.

Section 4 should give the courts discretion to flip it the other way. There are instances where a higher bond may be necessitated. There may come a point that the court should have discretion to do that. With that, I am happy to answer any questions.

Assemblyman Wheeler:

One of the things you said was that the party who loses the lawsuit needs to have some skin in the game. I would have to agree with you on that. However, for a corporation, \$50 million is some pretty good skin. For a small business like a mom-and-pop place, \$1 million is a lot of money. Do you agree that is pretty substantial skin in the game?

Matthew L. Sharp:

I would say you are correct with regard to the \$50 million issue in almost all instances. I would be happy to explain what our firm has done in those

instances. I can envision moments when \$50 million may not be enough, but that would be the exception to the rule. With regard to the \$1 million issue, I would have to look at the context of the business. You may be correct. Whether a particular business is small or not, perhaps \$1 million is a lot. You can also have a concern where \$1 million is nothing. What I typically see in my practice is the small businesses that we sue do have insurance. Typically, the insurance companies post those bonds. I will go back to the banking issue. If the small business took out a loan that is over \$1 million, and they lose on the case, they owe \$1 million. In that context, I do not see where the bond encourages skin in the game.

Assemblyman Wheeler:

One of the other things you said was regarding the two-or three-year process before the Supreme Court rules. In November, we instituted an intermediate court. Do you still think it is going to take that long? I was discussing this with Justice Hardesty just last night. He said that they should be able to get most of these appeals down to one year or less.

Matthew L. Sharp:

That would be correct in the context of family courts or criminal courts. In the context of civil appeals that involve legal issues, I am not sure. Obviously, that is an issue. If you have no reason not to appeal, you will flood the courts with appeals that should not be filed. If you do not have a bond type requirement, people just file appeals.

Assemblyman Gardner:

You were talking about how 90 percent of appeals are upheld by the Supreme Court. Are you sure on those numbers? The reason I ask is because I have appealed several cases through the Supreme Court, and we have always won on those. It seems to me that 90 percent is a very high number. Also, you were talking about people who win judgments. Back in 2006, the *Los Angeles Times* did some research of our judges in Las Vegas. The research found that some of the judges were rewarding verdicts to their plaintiff friends who had filled their coffers when then were running for office. There was a big corruption-related story on that. Maybe they did not win. Maybe they just had a judge that they paid off. I am not saying for sure that is what occurred, but the whole point of appeal is to have this chance to take another look at it. We would want to make it more accessible and not less. By requiring somebody to put up \$28 billion, like the case ten years ago in Los Angeles, it would stop somebody from appealing when it was supposed to only be \$28 million. Would you agree?

Matthew L. Sharp:

I would like to respond on a few points. I am not familiar with that case out of Los Angeles. Obviously, as stated, it does not make any sense to require a \$28 billion bond. I do not know why a judge would have required it. Currently, we have provisions in the law currently that the courts can adjust the supersedeas bond requirements. I have heard of other instances where some of these involve business disputes and not personal injury cases. I am not here to advocate on the extreme. I am not here to argue about the \$50 million issue. In terms of prevailing rates on appeals, I can only tell you that those are the statistics I have heard from justices at settlement conferences in the past. I believe it is safe to say that the overwhelming majority of cases on appeal are upheld. That does not mean the lawyers do not have success on appeal. I have had successes on appeal as well. The fact is that most cases are upheld on appeal.

Regarding your comments about the Las Vegas judiciary, I have been lucky enough to practice in Las Vegas. In my opinion, some of the finest judges in the state are in Las Vegas. At the end of the day, we have to trust the judicial system. From my perspective, when a judge or jury has found in favor of whomever, whether it is the defendant or the plaintiff, the process has worked. The whole point of a bond is to protect the prevailing party as if it is a secured interest. My criticism on the second part of the bill is that it includes the amount of the judgment but does not include interest. Additionally, it encourages appeals simply for the time value of money.

Assemblyman Nelson:

I have two questions for you. For those not aware of the bonding process, can you explain what an appellate does, in terms of how much money or security usually has to be put up front in order to obtain a bond?

Matthew L. Sharp:

In order to stay execution and to post a supersedeas bond, you would go to a bonding company. They usually require security to post that bond. From my experience with my clients who have lost cases, posting a bond required adequate security to do so. Usually the bond would be 80 to 90 percent, if not 100 percent.

Assemblyman Nelson:

You and I have had many discussions about the Seventh Amendment right to trial; I agree with it. As Senator Roberson has mentioned, there are a number of states that do not even require a supersedeas bond to pursue an appeal. From a philosophical standpoint, is it not true that you should have a right to appeal?

Matthew L. Sharp:

I completely agree. Everybody should have a right to appeal. My only point would be that there should be some security provided to the prevailing party. Currently, our courts are providing for the amount of judgment plus interest. I believe that is fair. Divorcing the issue from the extremes on both ends and staying in the middle, like we do currently, is pretty good policy.

Assemblyman Ohrenschall:

Can you comment further on section 2, subsection 4 of the bill? This section provides discretion to the judge in the "less than" direction but not in the other direction. How do you see that playing out, and what might be the unintended consequences on tort law or in a contract dispute?

Matthew L. Sharp:

As a practical matter, in many cases, you will have posttrial motions. The way it typically works is you go through a trial, you get a verdict, and then you have posttrial motions. This may take six months to a year to play out. That is going to be at play in terms of how much the bond should be, making for another layer of litigation.

Chairman Hansen:

I see no further questions. Thank you very much, Mr. Sharp. Is there anybody else who would like to testify in opposition? Seeing none, we will move to neutral. Is there anyone in the neutral position? [There was no one.]

Senator Roberson:

I would like to thank you for the opportunity to be here. I look forward to being before your Committee many more times this session.

Chairman Hansen:

We will close the hearing on S.B. 134 and will open it up to public comment.

Assemblyman Gardner:

I realized that earlier I talked about my record at the Supreme Court. Personally, I have not been at the Supreme Court. I was referring to my firm's record at the Supreme Court. I just wanted to make that clear.

Chairman Hansen:

We have moved the Homeowner Association (HOA) meeting to Monday, March 23, 2015, at 7 a.m. We will also have a meeting behind the bar to introduce some bill draft requests (BDR).

Diane Thornton, Committee Policy Analyst:

The reason we moved the meeting is because of scheduling conflicts. We moved the HOA meeting to the time of our regular Committee. We have five bills which will take a long time. We will start the HOA meeting at 7 a.m. That date is a deadline for Committee BDR introductions. Therefore, during floor session, we will have to introduce about four or five BDRs behind the bar.

Chairman Hansen:

Is there any further Committee business at this time?

Assemblyman Elliot T. Anderson

Is there any possibility of moving the HOA meeting to the evening of March 23? If I recall, you scheduled a full Judiciary Committee meeting with one of my bills being heard that day. I am wondering if two hours will be enough time to hear four or five bills. I am wondering how the logistics of that will work out.

Chairman Hansen:

Let us do a little homework on it. We will coordinate with the Chair of the HOA Subcommittee and get it worked out. That is a critical day because of bill introductions, but we will work it out.

Assemblyman Elliot T. Anderson

Is the HOA meeting scheduled for March 16 or March 23? March 16 is the BDR introduction deadline.

Chairman Hansen:

That is for the personal introductions. There are personal introductions and then there are Committee introductions.

Assemblyman Elliot T. Anderson

Thank you, I understand.

Chairman Hansen:

We will see what we can work out, but for the moment, the 7 a.m. meeting will be on the docket. Is there any further business to discuss? Seeing none, this meeting is adjourned [at 9:13 a.m.]

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 12, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B.124	C	Jayme Brown, Indian Springs Town Advisory Board	Letter of support
S.B. 134	D	Stuart MacKie, Private Citizen	Public Official Bond
S.B. 134	E	Stuart MacKie, Private Citizen	Official Bond and Oath
S.B. 134	F	Stuart MacKie, Private Citizen	Verification Certificate

EXHIBIT 6

RE: [External] Bond Sufficiency [IWOV-iManage.FID1085969]

Robert Kern <robert@kernlawoffices.com>

Wed 2/2/2022 2:01 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>

Hi Alex,

1 - "the amount otherwise required by law" is the amount set in section 1 of this statute.

2 – Nelson v Heer (2005) predates this statute (2015). So to the extent that it conflicts, Nelson v Heer is overruled. (I do not believe it conflicts). Further, nothing in Nelson v Heer sets an explicit limit on bond amounts. Are you really arguing that the legislature passed a law that puts an explicit limit on the discretion of a court to set a bond amount, and then, by saying the Court had discretion to set the bond LOWER, meant that the Court has discretion to ignore the limit on the Court's discretion created by the first part of the law?

I'm not going to waste further time on nonsensical arguments; the law is explicit. If you file the motion, I will seek sanctions.

Robert Kern, Esq.

Attorney

Kern Law, Ltd.

601 S. 6th Street

Las Vegas, NV 89101

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From: [Alexander K. Calaway](#)

Sent: Wednesday, February 2, 2022 1:44 PM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Subject: RE: [External] Bond Sufficiency [IWOV-iManage.FID1085969]

Hi Robert,

Applying an exception to a statute is not "ignoring" the rest of the statute. How do you grapple with these issues:

1. The plain language of the exception under NRS 20.087(4).
2. What the "amount otherwise required by law" is -- if not the discretionary power of a district court to set bond amounts referenced as set forth in Nelson v. Herr?
3. Why the Nevada Supreme Court has continued to recognize the viability of Nelson v. Herr and the court's discretionary power in setting bond – even after the legislature enacted NRS 20.037?

Thanks,



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, February 2, 2022 1:31 PM

To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>

Subject: RE: [External] Bond Sufficiency [IWOV-iManage.FID1085969]

Alex,

Your sole legal argument is that subsection 4 allows the judge discretion to set the amount LESS than the maximum required by law, and then you ignore the section of the law that explicitly sets the judgment amount as the maximum allowed by law.

(“the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed the **lesser of \$50,000,000 or the amount of the judgment.**”)

There is no legitimate interpretation that allows the explicit meaning of the statute to be ignored.

Robert Kern, Esq.

Attorney

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From: [Alexander K. Calaway](#)
Sent: Wednesday, February 2, 2022 11:54 AM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: Bond Sufficiency [IWOV-iManage.FID1085969]

Hi Robert,

Thanks for reaching out. Since no pleading, motion or other paper has been submitted to the court, there can be no violation of NRCP 11(b), and your email is moot.

Conversely, your email misstates the law, and if filed with the court, it may be in violation of NRCP 11(b), as set forth below:

1. First, as I have already explained to you at length, your interpretation of NRS 20.037 is wrong because you are ignoring the exception under NRS 20.037(4), which states that “[t]he provisions of this section do not limit the discretion of a court, for good cause shown, to set the bond on appeal **in an amount less than the amount otherwise required by law.**” Notably, the “amount otherwise required by law” in Nevada would be the amount sufficient to secure a judgment creditor for the life of an appeal (see *Nelson v. Herr*).
2. Second, the legislative history is not binding law and only informs a court in a statutory interpretation analysis if the statute is found to be ambiguous, whereas here, by your own admission “the law is explicitly clear.” A plain reading of the statute vests in the district court the ability to increase bond.
3. Third, we are not aware of any existing case law interpreting NRS 20.037. Thus, any motion we intend to file would fall within NRS 11(b)(2) as “warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]”

Regards,



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Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Robert Kern <robert@kernlawoffices.com>
Sent: Wednesday, February 2, 2022 11:03 AM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Subject: [External] Bond Sufficiency

Good Morning Phil and Alex,

Pursuant to NRCP 11(c)(2), I'm writing to give notice that I will be moving for Chapter 11 sanctions if a motion is filed to oppose the sufficiency of the bond in this matter.

The law is explicitly clear; the full amount of the judgment is the maximum amount a bond may be set for. (NRS 20.037). The plain meaning of "the full amount of the judgment" is the amount that is written in the judgment as the judgment amount. Any other amount would not be a determinable amount. If that is not sufficient, as I have sent you before, the legislative history of NRS 20.037 makes clear that the intent of the bill was to end the practice of requiring post-judgment interest to be added to the judgment amount for a supersedeas bond. There is no reasonable interpretation of this that would allow a court to set the amount of a supersedeas bond higher. I've argued all this before, yet you still forced my client to expend fees for me to attend this morning's hearing. I will be pursuing sanctions if you file a motion on this, and if denied, will bring it to the appellate court, pursuant to NRAP(8)(a)(2).

All authority I've cited is reprinted below, or attached. If you have a legitimate dispute about the law on this, I'm willing to discuss briefly.

NRS 20.037 Limitation on amount of bond to secure stay of execution of judgment pending appeal; exceptions.

1. Notwithstanding any other provision of law or court rule, and except as otherwise provided in this section and [NRS 20.035](#), if an appeal is taken of a judgment in a civil action in which an appellant is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed the lesser of \$50,000,000 or the amount of the judgment.

...

3. If the plaintiff proves by a preponderance of evidence that an appellant who posted a bond pursuant to subsection 1 or 2 is purposefully dissipating or diverting assets outside of the ordinary course of its business to evade the ultimate payment of the judgment, the court may, if the court determines that such an order is necessary to prevent such dissipation or diversion, require the appellant to post a bond in an amount that does not exceed the full amount of the judgment.

4. The provisions of this section do not limit the discretion of a court, for good cause shown, to set the bond on appeal in an amount less than the amount otherwise required by law.

Minutes of the Assembly Judiciary Committee March 12, 2015 (Re: SB 134 – NRS 20.037)

p. 10 – Bill Sponsor Michael Roberson - "Courts frequently require bonding for not just the amount of the judgment, but also several years of postjudgment interest as well as other costs and fees." (Discussing the status quo without the bill, that will be changed)

p.19 – Comments of Matthew Sharp "My criticism on the second part of the bill is that it includes the amount of the judgment but does not include interest."

...

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EXHIBIT 7

CHAPTER.....

AN ACT relating to civil litigation; limiting the amount of a bond to secure a stay of execution of certain judgments pending appeal; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill generally requires that the amount of a bond that an appellant is required to pay to secure a stay of execution of certain judgments pending appeal must not exceed the lesser of: (1) \$50,000,000; or (2) the amount of the judgment. Under **section 2**, if the appellant is a small business concern as defined by the federal Small Business Act, the amount of such a bond must not exceed the lesser of: (1) \$1,000,000; or (2) the amount of the judgment. **Sections 3 and 4** of this bill provide that the provisions of this bill become effective upon passage and approval and apply to all actions pending or filed on or after such effective date.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 17.370 is hereby amended to read as follows:

17.370 1. If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

2. If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, including, without limitation, a showing that an appeal is pending or will be taken, that a stay has been granted, requested or will be requested, or that the time for taking an appeal has not yet expired, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state, including, without limitation, security determined pursuant to NRS 20.035, *or section 2 of this act*, if applicable.

Sec. 2. Chapter 20 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law or court rule, and except as otherwise provided in this section and NRS 20.035,



if an appeal is taken of a judgment in a civil action in which an appellant is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed the lesser of \$50,000,000 or the amount of the judgment.

2. If an appellant is a small business concern, the amount of the appellant's bond required pursuant to subsection 1 must not exceed the lesser of \$1,000,000 or the amount of the judgment.

3. If the plaintiff proves by a preponderance of evidence that an appellant who posted a bond pursuant to subsection 1 or 2 purposefully dissipating or diverting assets outside of the ordinary course of its business to evade the ultimate payment of the judgment, the court may, if the court determines that such an order is necessary to prevent such dissipation or diversion, require the appellant to post a bond in an amount that does not exceed the full amount of the judgment.

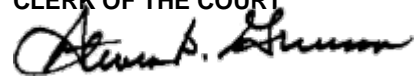
4. The provisions of this section do not limit the discretion of a court, for good cause shown, to set the bond on appeal in an amount less than the amount otherwise required by law.

5. For the purposes of this section, "small business concern" has the meaning ascribed to it in the Small Business Act, 15 U.S.C. §§ 631 et seq., and any regulations adopted pursuant thereto.

Sec. 3. This act applies to all actions pending or filed on or after the effective date of this act.

Sec. 4. This act becomes effective upon passage and approval.





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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

**OPPOSITION TO PLAINTIFF'S
MOTION TO INCREASE BOND**

COMES NOW, CLEMENT MUNEY and CHEF EXEC SUPPLIERS, LLC, by and
through their attorney of record, Robert Kern, Esq., of Kern Law, Ltd., and hereby oppose
Plaintiff's motion to increase bond. This opposition is made pursuant to NRCP 11 and NRS
20.037, and is based on the records and files of this case, the attached memorandum and
exhibits and any matters adduced at the hearing.

Respectfully submitted this 4th day of March 2022

KERN LAW

By: /s/ Robert Kern /s/

Robert Kern, Esq.

601 S. 6th Street

Las Vegas, NV 89101

(702) 518-4529

Attorney for Defendants/Appellants

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4
5 **ARGUMENT**

6 **A. THERE IS NO LEGAL BASIS WHATSOEVER ALLOWING THE BOND TO**
7 **BE SET ABOVE THE JUDGMENT AMOUNT**

8 NRS 20.037(1) sets the maximum bond supersedeas bond amount allowed by law,
9 as the amount of the judgment:

10 **NRS 20.037 Limitation on amount of bond to secure stay of execution**
11 **of judgment pending appeal; exceptions.**

12 1. Notwithstanding any other provision of law or court rule, and except
13 as otherwise provided in this section and NRS 20.035, if an appeal is taken of
14 a judgment in a civil action in which an appellant is required to give a bond in
15 order to secure a stay of execution of the judgment during the pendency of
16 any or all such appeals, the total cumulative sum of all the bonds required
from all the appellants involved in the civil action must not exceed the lesser
of \$50,000,000 or the amount of the judgment.

17 ...
18 3. If the plaintiff proves by a preponderance of evidence that an
19 appellant who posted a bond pursuant to subsection 1 or 2 is purposefully
20 dissipating or diverting assets outside of the ordinary course of its business to
21 evade the ultimate payment of the judgment, the court may, if the court
22 determines that such an order is necessary to prevent such dissipation or
23 diversion, require the appellant to post a bond in an amount that does not
exceed the full amount of the judgment.

24 4. The provisions of this section do not limit the discretion of a court,
25 for good cause shown, to set the bond on appeal in an amount less than the
26 amount otherwise required by law.

27 NRS 20.037 (Non-relevant sections omitted)(Emphasis added). This statute was passed by
28 the Nevada legislature in the 2015 session, for the stated intent of limiting the discretion of
courts to set supersedeas bonds above a set amount (See Exhibit 7). If there is any question
of whether bonds being limited to “the amount of the judgment” mean the actual amount of
the judgment, or the amount of judgment plus some reasonable term of post-judgment

1 interest, the legislative hearings on the bill make clear that the statute was intended to
2 remove discretion to add post-judgment interest:
3

4 “Courts frequently require bonding for not just the amount of the judgment, but also several
5 years of postjudgment interest as well as other costs and fees.” (Discussing the status quo that
6 the Bill proposed to change) (Exhibit 5, p.10) Bill Sponsor Michael Roberson, Minutes of the
7 Assembly Judiciary Committee March 12, 2015 (Re: SB 134 – NRS 20.037).
8

9 “My criticism on the second part of the bill is that it includes the amount of the judgment but
10 does not include interest.” (Exhibit 5, p.19) Comments of Matthew Sharp, Minutes of the
11 Assembly Judiciary Committee March 12, 2015 (Re: SB 134 – NRS 20.037).
12

13 Basic principles of statutory interpretation require that the Court may not do any
14 interpretation at all beyond the plain meaning, if the meaning is plain. *Washoe Med. Ctr. v.*
15 *Second Jud. Dist. Ct.*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-793 (2006). In this case, the
16 “amount of the judgment” is stated as the limit of a Court's authority to set the bond. This
17 would clearly mean the monetary amount shown in the Judgment. Arnould's argument that
18 this should include post-judgment interest would mean that there is never a set amount of
19 the bond, and never a maximum, as the amount of the judgment plus interest is an amount
20 that is completely variable, depending upon how far in time the interest would be estimated.
21 This would contradict the primary purpose of the statute, to make the maximum bond
22 amount a set amount, without Court discretion to increase it. Also is the principle that an
23 interpretation should not render any language meaningless; as Arnould's interpretation
24 would effectively remove any limit on the Court's discretion, that interpretation would
25 render the entire statute meaningless, as it would remove any limit on the Court's discretion
26 that the statute created. *Leven v. Frye*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).
27
28

1 After being presented with the above information, Arnould's counsel still filed their
2 motion. They supported the motion by arguing that the language of a case decided before
3 the bill was passed should limit the statute (*Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420
4 (2007)), and that the fact that section 4 of the statute gives discretion to set a lower bond,
5 should be interpreted to contradict the limit set by section 1. Arnould's motion is not
6 warranted by existing law, or by a nonfrivolous argument for extending, modifying, or
7 reversing existing law or for establishing new law. It is an abuse of process, filed with no
8 imaginable purpose other than to harass Muney, and to increase the cost of litigation. As
9 this motion is part of a longstanding pattern of improper filings.

10 Plaintiff's motion must be denied, because it seeks relief that is explicitly prohibited
11 by statute. As the filing of this motion is a continuation of a long pattern of improper and
12 baseless filings, Defendants have provided Plaintiff notice, pursuant to NRCP 11, of their
13 intent to seek sanctions once the required notice period has elapsed. Defendants nonetheless
14 invite the Court to consider imposing NRCP 11 sanctions sua sponte.

17 CONCLUSION

18 As set forth herein, setting of a supersedeas bond above the amount of the judgment
19 is explicitly prohibited by NRS 20.037, thus Plaintiff's motion must be denied.

20
21 Respectfully submitted this 4th day of March, 2022

22 KERN LAW

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