

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 VII

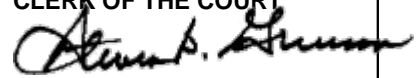
APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT

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EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,
Plaintiff,

vs.

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

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

**RESPONSE TO DEFENDANTS'
OBJECTION TO RECEIVER'S FINAL
REPORT AND RECOMMENDATIONS**

Hearing Date: February 10, 2020
Hearing Time: 10:00 a.m.

Larry L. Bertsch, duly appointed Receiver in the above-captioned case, by and through his counsel, the law firm of Carlyon Cica Chtd., hereby submits his response to Defendants' Objection (the "Objection") to Receiver's Final Report and Recommendations (the "Response"). In order to assist the Court and the parties, the Receiver has addressed each point of dispute set forth in Defendants' Objection. Based upon the Court's decision with respect to the disputed issues, the Receiver will adjust his Final Report as necessary.

I.

INTRODUCTION

On June 15, 2020, the Court entered an order (the "Order") naming Larry L. Bertsch of Larry L. Bertsch CPA & Associates as the receiver in this matter with limited powers ("Receiver"). The Order specified that the Receiver's role will be to supervise the operations of Chef Exec Suppliers

1 LLC (the “Company”) in consultation with Dominique Arnould (“Arnould”) and Clement Muney
2 (“Muney” and together with Arnould, the “Parties” or the “Partners” and each a “Partner”), to allow
3 them to continue operations of the Company, and to prepare a report about the viability of the
4 Company. When the Receiver was appointed on June 15, 2020, the Company’s 1065 Tax Return had
5 already been prepared and filed for 2019 (the “2019 Tax Return”). The Receiver considered the 2019
6 Tax Return to be reliable history with respect to the Company’s operations, and the Receiver
7 considered any transaction occurring prior to January 1, 2020 as being accepted by each Partner.
8 Therefore, the Receiver did not explore prior years nor did he consider filing amendments to any tax
9 returns filed for prior years.

10 II.

11 RESPONSE TO POINTS OF DISPUTE

12 A. Warehouse Rent

13 1. Las Vegas

14 The company leased warehouse space in Las Vegas, Nevada, which lease expired on
15 September 30, 2019 (the “Prior Lease”). In order to renew or extend the LV Lease, the Landlord
16 required each Partner to provide a personal guaranty of the obligations thereunder. Arnould would
17 not agree to provide a personal guarantee of the LV Lease. Accordingly, Muney leased the warehouse
18 through his entity, CCMJ (the “New Lease”). The Prior Lease required payments of \$2,650.00 per
19 month for rent and CAM charges of \$1,210.00 per month, for a total of \$3,860.00 due each month.
20 The New Lease signed by CCMJ required payments of \$4,647.00 per month for rent and CAMS of
21 \$1,210.00, aggregating a cost of \$5,857.00 for each month starting with October 2019 (the
22 “Undisputed Rent”). Muney purportedly subleased the Las Vegas warehouse to the Company and
23 added an additional amount of \$5,033.00 each month to the Undisputed Rent, thereby asking that the
24 Company pay CCMJ rent for the Las Vegas warehouse in the total amount of \$10,890.00 each month.
25 This additional amount of \$5,033.00 is in disputed (the “Disputed Rent”). At a hearing on August
26 12, 2020, the Court also stated that the rent in the amount of \$5,875.00 was “undisputed” and the
27 additional rent charged by CCMJ in the amount of \$5,033 as “disputed.” The amount of rent for the
28 Las Vegas warehouse set forth on the Company’s financial statements as of 9/30/2020 (before

adjustment) was \$98,010.00. The Undisputed Rent should have been listed as \$52,713.00 and the Disputed Rent listed as \$60,396. There was no written agreement between the Company and CCMJ regarding the Las Vegas warehouse following CCMJ's execution of the New Lease. The Receiver concentrated on the Undisputed Rent because prior CCMJ's execution of the New Lease, the Company paid the monthly rent with no mark-up.

2. Los Angeles Warehouse.

The Company also leased warehouse space in Los Angeles, California. Arnould used the warehouse space in Los Angeles to keep inventory for two other companies he owned, AAA Foods and Wines of the World. Since there was a dispute and each of the owners had different opinions of the amount that should be charged, the Receiver decided to split the difference. Muney's objection to the Receiver's Final Report considered twenty-seven (27) months of transaction history, while the Receiver only dealt with nine (9) months for the period January 1, 2020 to September 30, 2020.

The Opposition has considered the past 27 months, while the Receiver only dealt with 9 months, only making adjustments for the period from 1/1/2020 to 9/30/2020.

B. Disputed Transactions

1. Charges Against Muney in Dispute and Contained in Receiver's Final Report.

The amount of \$24,894.85 in #5 refers to **Exhibit 2** to Muney's Objection. **Exhibit 2** includes transactions/sales going back to the year 2009. The Receiver only considered transactions made during the current period. The Receiver was not instructed to audit all the accounting records going back to the inception of the Company and did not do so. If this is required, it will come at significant expense. The Receiver finds not plausible reason to adjust any transaction charged against Muney as set forth in the Receiver's Final Report.

2. Purportedly Improper Charges to Arnould Not Included in Report and Disputed by Muney.

#1 - The amount stated in Muney's Objection cannot be reconciled. The attached invoices included at **Exhibit 4** are dated 9/24/2019, 9/30/2019 and 11/26/2019, for \$700.00 each. The total of these invoices being \$2,100.00 does not equal \$7,050.93. Outside of being a prior year, this should

1 have been addressed in 2019, the year before the Receiver was appointed. In addition, the Receiver
2 was never presented any document to approve payments as suggested in the Opposition.

3 #2 – The Receiver determined the purchase of the Iphone by Arnould to be a business
4 expense. It was expensed due to the amount, and not recorded as an asset of the Company.

5 #3 – The order placed 8/7/2020 is attached hereto as **Exhibit B** and shows goods ordered
6 totaling \$29,778.61. Yet, payment was made by the Company prior to the appointment of the
7 Receiver of \$10,000 as a deposit on 6/9/2020. In addition, an invoice was received from Yangzhou
8 Linghai Plastic Manufacturing Co. Ltd. (the “Plastic Company”) in the amount of \$28,910.46. *See*
9 **Exhibit B**. Shortly after the Receiver was appointed, a demand for an additional \$9,910.46 amount
10 was requested by the Plastic Company with the requestor stating that if the additional money was not
11 sent, the entire order would be cancelled, and the deposit would not be returned. Thereafter, an
12 amount was paid to the Plastic Company as an extra “Shipping Cost.” It is unclear whether the goods
13 were added to the closing inventory as reported on 9/30/2020. In order to properly account for this
14 order and determine if it necessitates an adjustment to the Receiver’s Final Report, the appropriate
15 documents must be made available to the Receiver.

16 #4 – This point in the Objection involves a trip to China by Arnould with wife in 2018, almost
17 2 years ago. This should have been an issue in 2018, not 2020. The expense was on the books and
18 each Partner accepted the tax returns filed for those years. If addressed in 2018 with the Company’s
19 tax preparer, then it may not have been deducted as a business expense, but as a draw of the Partner.
20 The Receiver will not make adjustments to address such issues.

21 #5 – When the Receiver was appointed, he requested each Partner to submit a letter setting
22 forth their grievances with respect to each other. The results of the letters are summarized on Exhibit
23 C-16 of the Receiver’s Final Report. Exhibit C-16 shows that the Receiver treated each side equally,
24 and the Receiver does not believe any further adjustments are necessary.

25 #6 – The Appointment Order required the Partners to confer with the Receiver regarding
26 transactions and payments made by the Company. Sometimes they did and other times they did not.
27 It was not until 8/13/2020 that the policy was established to have the Reviver approve expenditures.
28 This entry was made around the time of this particular transaction. The Receiver was not asked to

1 approve this expenditure and in looking at the Bank Account, this expenditure was a wire transfer.
2 Most expenditures were made by check after the Receiver's approval. Since the Bank Account was
3 not kept by the Receiver, the Receiver complained that expenses were being paid without conferring
4 with him or informing him of payments made. This appears to be one of those cases.

5 **C. The LA Delivery Truck**

6 ***1. Delivery Fees***

7 The Receiver did address the issue of Delivery Charges. In trying to make a proper and
8 equitable determination, the Receiver looked to prior years and decided to maintain the course of
9 dealing that had been in place for prior years. Prior years established a pattern, and if the delivery
10 charges were an issued, those should have been addressed as an issue before 2020. The Receiver
11 used the same method established by past transactions, and the 1065 Tax Returns were filed by the
12 Receiver using that criteria.

13 ***2. Truck Valuation***

14 The truck at issue is a 2012 Sprinter Mercedes 3500 Cargo Van that was purchased from a
15 company owned by Arnould. The Company spent significant funds to repair the vehicle. The vehicle
16 has been used by the Company for the last several years. In order to obtain a fair value, the Receiver
17 used Kelly Blue Book as his resource. The Receiver does agree with Muney that a fair distribution of
18 the asset would be to auction the asset between the two former Partners.

19 **III**

20 **CONCLUSION**

21 Based upon the books and records provided to the Receiver, the reconciliation for liquidating
22 the Company is reasonable. Much of the Receiver's time was spent in monitoring the books after the
23 appointment of the Receiver. Much of the controversy between the Partners related to prior years
24 and how each had wronged the other. Those issues should have been addressed at the time they
25 occurred. The Partners accepted the Form 1065 tax returns for the Company for the years it was in
26 operation. The Partner disputes should have been raised when reviewing the tax return for each
27 applicable year, and not now that those tax returns have been accepted.

28 Notwithstanding, the Receiver will prepare the Liquidating Tax Return (Form 1065) when

1 the Court determines which entries in his Final Report should be adjusted and use those adjustments
2 in filing the Final Tax Return for the Company. At this time, the Receiver has not been presented
3 with any documentation that would warrant a revision of the Report currently before the Court.

4 Respectfully Submitted this 5th day of February, 2021

5
6 /s/ Larry L. Bertsch
LARRY L. BERTSCH, Receiver

8 CARLYON CICA CHTD.

9 /s/ Tracy O'Steen
10 CANDACE C. CARLYON, ESQ.
Nevada Bar No. 2666
11 TRACY M. O'STEEN, ESQ.
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12 265 E. Warm Springs Road, Suite 107
13 Las Vegas, Nevada 89119
14 Counsel for Receiver
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EXHIBIT A

Chef Exec				
Warehouse in Las Vegas				
Payment of Rent in 2019				
	EFT - 10/1/2019 (A/P)			10,890.00
	EFT -11/1/2019			10,890.00
	EFT -12/1/2019			10,890.00
				32,670.00
	Undisputed Rent (3X\$5,857)			(17,571.00)
	Amount to Apply to 2020			15,099.00
	Amount paid for Warehouse in 2020			
	EFT - 1/1/2020			10,890.00
	EFT - 2/1/2020			10,890.00
	EFT - 3/1/2020			10,890.00
	EFT - 4/1/2020			10,890.00
	Total Funds available for 2020			58,659.00
	Undisputed Rent for 9 months (9X\$5,857)			(52,713.00)
	Over paid Rent to Liquidation			5,946.00
	Disputed Rent (12X\$5,033)			60,396.00

ASSIGNMENT, ASSUMPTION AND FIRST AMENDMENT TO LEASE

This Assignment, Assumption and First Amendment to Lease (the "Agreement") is dated for reference purposes only as August 21, 2019 (the "Effective Date") by and between Trustees Under the Testamentary Trust of Helen Director, Deceased ("Landlord"), Chef Exec Suppliers, LLC, a Nevada limited liability company ("Assignor"), and CMJJ Gourmet, Inc., a Nevada corporation ("Assignee" or "Tenant").

RECITALS

- A. Assignor as tenant and Landlord entered into that certain a Lease dated September 18, 2014 (the "Lease") for the premises located at 3655 West Quail Avenue, Suite C, Las Vegas Nevada 89118 consisting of approximately 7,745 square feet (the "Premises"). The Lease has a Scheduled Expiration Date of September 30, 2019. A copy of the Lease is attached as Exhibit A and the terms of the Lease are fully incorporated as if set forth in this Amendment.
- B. Assignor, as tenant under the Lease, wishes to assign its interest to Assignee and, subject to the provisions set forth below, Landlord is willing to consent to the assignment by Assignor and assumption by Assignee.
- C. Thereafter, Landlord and Assignee desire to amend the Lease as set forth below.

Therefore, in consideration of the recitals and mutual covenants contained herein, the parties hereby agree as follows:

TERMS AND CONDITIONS

- 1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Lease as of the Effective Date of this Agreement.
- 2. Assumption. Assignee hereby accepts such assignment and assumes all obligations of Assignor under the Lease from and after the Effective Date.
- 3. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.
- 4. Further Documentation. Assignor and Assignee shall execute and deliver or cause to be executed and delivered such documents as Landlord or other parties may reasonably request in order to effect and consummate the assignment.
- 5. Full force and Effect. Assignor represents and warrants that the Lease (i) is currently in full force and effect, (ii) Landlord is not in default under the Lease, (iii) constitutes the entire agreement between Landlord and Assignor, and (iv) Assignor has no claims against Landlord.
- 6. Consent. Subject to, and contingent upon receipt of any third-party consents, if required, receipt by Landlord of information regarding the financial condition of Assignee and proof of insurance as required under the Lease, Landlord consents to the assignment. This consent is not a waiver of any default by Assignor or any right of Landlord nor is it consent to any future assignment or sublease and is not a waiver of the requirement to seek and obtain consent for the same. Assignor acknowledges that such consent does not release Assignor or any of Assignor's predecessors or guarantors from its or their obligations under the Lease or from any obligation that expressly survives the termination of the Lease.
- 7. Term. The Lease Term shall be extended to September 30, 2022.
- 8. Base Rent. Effective October 1, 2019, Base Rent shall be:

October 1, 2019 through September 30, 2020	\$4,647.00 per month plus Estimated Operating Expenses
October 1, 2020 through September 30, 2021	\$4,879.00 per month plus Estimated Operating Expenses
October 1, 2021 through September 30, 2022	\$5,123.00 per month plus Estimated Operating Expenses

In accordance with Paragraph 4 of the Lease, effective October 1, 2019, Tenant's Estimated Proportionate Share of Operating Expenses shall be One Thousand Two Hundred Ten and 00/100 dollars (\$1,210.00) per month and subject to adjustment in accordance with the Lease

9. Security Deposit. The Security Deposit tendered by Assignor in connection with the Lease shall be retained by Landlord as the Security Deposit for the Premises. Any portion of the Security Deposit required to be returned by Landlord to the Lease's "Tenant" at the termination of the Lease, if any, shall be disbursed to Assignee at the termination of the Lease. Assignor releases Landlord from any and all claims, liabilities, or obligations associated with the retention and/or disbursement of any Security Deposit related to the Premises.

10. Delinquent Payment; Handling Charges. Paragraphs 5.1 and 5.2 of the Lease are revised as follows: "Section 5.1 of the Lease is deleted and replaced with the following: "If any sum payable by Tenant to Landlord under this Lease is not paid when due, Tenant shall also pay a late charge equal to One Hundred and 00/100 dollars (\$100.00) or ten percent (10%) of the delinquent amount, whichever is greater. In addition, any amount due from Tenant to Landlord which is not paid when due shall bear interest at an annual rate of fifteen percent (15%). Any late charges and interest shall be deemed and constitute Additional Rent under the Lease and shall be paid by Tenant within five (5) calendar days from receipt of any statement or invoice from Landlord. Landlord reserves all other rights and remedies provided to Landlord at law and under this Lease."

Section 5.2 The first sentence of Section 5.2 of the Lease is deleted and replaced with the following: "In the event that any check, draft, or other instrument of payment given by Tenant to Landlord is dishonored or returned for any reason, Tenant shall pay to Landlord the sum of One Hundred and 00/100 dollars (\$100.00) in addition to any Late Charge under the Lease and Landlord, at its option, may require all future Rent be paid by automatic direct deposit, cashier's check or certified funds."

11. Insurance. The following is inserted after the first sentence of Paragraph 11.1: "In the event Tenant fails to maintain the insurance required in Exhibit B, Landlord may charge Tenant an administrative fee which sum shall be deemed Additional Rent in the amount of One Hundred Fifty Dollars (\$150.00) or Landlord's actual costs, whichever is higher. However, if Tenant fails to provide evidence that it is in compliance with the requirements of the Lease in Exhibit B within thirty (30) days following delivery of written notice from Landlord, then Landlord may impose an additional charge of \$150.00 each time Landlord provide Tenant with notice. Landlord may apply the Security Deposit toward the charges assessed in the manner set forth in Paragraph 6 above."

12. Rules and Regulations and Signage. Paragraph 13 of the Lease is deleted and replaced in its entirety with the following: "Tenant and its employees and agents shall faithfully observe and comply with the rules and regulations for the Property attached as Exhibit E and such changes to such rules and regulations as Landlord may from time to time reasonably promulgate (the "Rules and Regulations") and the Signage Criteria which are attached hereto as Exhibit C and C-1, and all such modifications, additions, deletions and amendments thereto as Landlord shall adopt in writing from time to time. Landlord shall not be liable to Tenant for any violation of the Rules and Regulations by any other person, including any other tenant. In the event of a violation by Tenant of any of the Rules and Regulations set forth on Exhibit E or otherwise reasonably established by Landlord pursuant to Paragraph 9.1, or Signage Criteria, or if Tenant shall make use of the Property in violation of Paragraph 9, Landlord may impose a charge against Tenant to correct the violation and to compensate Landlord for the additional administrative costs incurred as a result of Tenant's violation. The amount of the charge, which sum shall be deemed Additional Rent, shall be (a) the actual cost reasonably incurred by Landlord to remedy the violation and/or to correct the harm caused to Landlord or third parties by Tenant's violation, and, (b) the fixed sum of One Hundred Fifty and 00/100 dollars (\$150.00) per violation. Only one such charge shall be imposed even though a violating condition may continue for more than one day, if the Tenant promptly corrects the behavior that gave rise to the violation following receipt of written notice from Landlord. However, if Tenant fails to correct the behavior that gave rise to a violation within ten (10) days following written notice from Landlord, or if Tenant commits a subsequent violation of the same type in any twelve (12) month period, then Landlord may impose the foregoing charge as if each day that the violating condition continued were a separate violation. The parties have agreed that the foregoing fixed sum charges are a reasonable estimate of the damages that Landlord would incur in the event of the proscribed behavior by Tenant and are not intended to be a penalty. At Landlord's option, it may apply a portion of the Security Deposit to the charge."

Exhibit E of the Lease is deleted and replaced in its entirety with the attached Exhibit E.

13. Estoppel Certificates. The words "Financial Statements" are deleted from the caption of Paragraph 23 of the Lease.

14. Notices. Paragraph 24 of the Lease is deleted and replaced in its entirety by the following: "All Notices, demands, consents, or other information desired or required to be given under this Lease shall be

effective only if given in writing and sent by one of the following methods and addressed to the appropriate Addresses For Notices set forth in the Basic Lease Information for such party, or at such other address as may be specified from time to time, in writing, or, if to Tenant, at the Premises: (a) certified United States mail, postage prepaid, return receipt requested, (b) nationally recognized express mail courier that provides written evidence of delivery, fees prepaid, (c) United States first-class mail, postage prepaid, (d) personal delivery, or (e) by electronic mail, with a copy sent by United States first-class mail, postage prepaid. Any such notice, demand, consent, or other information shall be deemed given (i) if sent by certified mail, on the date of delivery shown on the receipt card, (ii) if sent by courier, on the date it is recorded by such courier, (iii) if sent by United States first-class mail, three (3) business days from the date mailed, (iv) if delivered personally, upon delivery or, if refused by the intended recipient, upon attempted delivery, or (v) if by electronic mail, three (3) business days from the date a copy of the same is sent by United States first-class mail, postage prepaid."

15. Confidentiality. Tenant and its employees, agents and brokers shall keep confidential all matters concerning the terms of this Amendment and the negotiations which led to it and shall not disclose the fact or substance of the negotiations or the terms to anyone without the prior written consent of the Landlord. Notwithstanding the foregoing, the provisions and preceding negotiations may be revealed to the Tenant's accountants, attorneys and lenders so long as each such recipient is advised of the necessity for them to also maintain the confidentiality of the information. If any third party demands entitlement to the benefits received by Tenant under this Amendment or similar terms or conditions on the basis that Tenant received such treatment, it will be deemed to be a violation of this confidentiality requirement by Tenant and such violation shall constitute an event of Default under the Lease.

16. Authority to Execute Amendment. Each individual executing this Agreement represents that he or she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding upon such party in accordance with its terms.

17. Effect of Agreement. Landlord may deal with Assignee in any manner in connection with the Lease without the knowledge or consent of Assignor and without affecting Assignor's continuing liability under the Lease. Without limiting the generality of the foregoing, Assignor acknowledges that any extension of time, subsequent assignment of the Lease, amendment or modification to the Lease, delay or failure by Landlord in the enforcement of any right under the Lease, or compromise of the amount of any obligation or liability under the Lease made with or without the knowledge or consent of Assignor shall not affect Assignor's continuing liability under the Lease. Except as otherwise modified by this Agreement, the Lease shall remain unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms and conditions of the Lease and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. Any capitalized terms used and not otherwise defined herein shall have the same meanings and definitions as set forth in the Lease.

THE SUBMISSION OF THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LEASE FOR EXAMINATION AND NEGOTIATION DOES NOT CONSTITUTE AN OFFER TO LEASE OR A RESERVATION OF OR OPTION FOR THE PREMISES. THIS DOCUMENT AND THE OBLIGATIONS HEREUNDER SHALL BECOME EFFECTIVE AND BINDING ON THE PARTIES ONLY UPON EXECUTION AND DELIVERY OF THIS AGREEMENT BY TENANT AND BY LANDLORD.

Landlord

Trustees Under the Testamentary Trust
of Helen Director, Deceased

By: 

Its: Authorized Representative

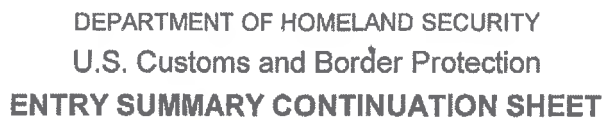
Assignee

CMJJ Gourmet, Inc.
a Nevada corporation

By: 

Print Name: Clement MURPHY

Title: President

CBP Form 7501 (12/19)

Assignor

Chef Exec Supplies, LLC
a Nevada limited liability company

By:  _____

Print Name: Rement MURPHY

Title: Managing Partner

EXHIBIT E
RULES AND REGULATIONS

Except as otherwise expressly provided in the Lease to which this exhibit is attached, the following Rules and Regulations shall apply:

1. The sidewalk, entries and driveways of the Project shall not be obstructed by Tenant or its agents or used by them for any purpose other than ingress and egress to and from the Premises.
2.
 - a. Tenant must properly remove and dispose of fats, oils and grease ("FOG") and shall NOT dispose of FOG down a toilet or a drain. Tenant shall comply with all applicable laws, rules and regulations regarding the disposal of FOG. Tenant acknowledges that if FOG is improperly disposed of, it can cause significant problems in the sewer line and possibly lead to sewer overflows.
 - b. Tenant must establish an effective FOG management program for recyclable grease, interceptor and grease trap waste. Tenant must provide Landlord with monthly receipt showing that they have had a certified company effectively clean out and service grease interceptors.
 - c. Tenant shall be liable for the costs of repairs and any damages that relate or pertain to the failure to maintain and follow an adequate FOG maintenance and disposal system.
3. Tenant and its employees, invitees and guests shall at all times comply with the Nevada Clean Indoor Air Act and there shall be no smoking of any kind in or around the Premises. In addition, no vaping or electronic smoking devices of any nature shall be used in or around the Premises.
4. Tenant shall not place any objects, including antennas, satellites, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises or on the roof of the Project, without Landlord's explicit consent. No A-frame signs allowed on the Project, the landscaping or the sidewalks.
5. Except for seeing-eye dogs or service animals, no animals, including birds or reptiles, shall be allowed in the offices, halls, corridors or common areas in the Project. Feeding of pigeons is strictly prohibited.
6. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises including revving and testing of engines, vehicles and car stereo systems.
7. If Tenant desires data or telephone lines or other electric connections or installations in the Premises, Landlord or its agent will direct the electrician as to where and how the wires may be introduced and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense, with prior written authorization from Landlord.
8. Tenant shall not install or operate any steam or gas engine or boiler or carry on any mechanical business in the Premises except as specifically approved in the Lease. The use of oil, gas or flammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project. Tenant cannot under any circumstances spray paint objects inside of or outside of leased Premises, unless using a certified paint booth.
9. Parking any type of recreational vehicles is specifically prohibited on or about the Project. No vehicle of any type shall be stored in the parking areas at any time. In the event a vehicle is disabled, improperly or illegally parked, or the vehicle is without a current license plate and tag, it shall be towed within 24 hours at the Tenant's expense. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in designated parking areas in conformity with all signs and other markings and cannot take more than one designated parking space. All parking will be open parking; numbering or lettering of individual spaces will not be permitted except as specified by Landlord. The parking lot cannot be used for the testing of vehicles, motorcycles, choppers, ATVs, motor scooters and pocket bikes, etc.
10. Landlord reserves the right to designate areas for employee parking.
11. Tenant shall maintain the Premises free from rodents, insects and other pests. Interior extermination/spraying are the Tenant's responsibility.

12. Landlord reserves the right to exclude or expel from the Project any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.
13. a. Tenant agrees that all Tenants' trash and rubbish shall be deposited in receptacles and that Tenant shall not cause or permit any trash receptacles to remain outside the building. Tenant cannot use on-site compactor/dumpsters for the disposal of any manufacturing materials and by-products, landscaping refuse, glass panes, etc., or for excessive amounts of any type of refuse. The compactor/dumpsters are for ordinary office refuse only. All boxes and pallets must be crushed or broken down before placing them into the compactor. All movable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose. In the event Landlord provides or designates trash receptacles, Tenant agrees, at its own cost and expense, to cause such receptacles to be emptied and trash removed. Tenant agrees to bag trash before depositing it in the authorized trash area. Landlord reserves the right to contract for trash removal and bill Tenant for said service.

b. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.
14. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, exterior electrical lights and fixtures, heating apparatus or any other service equipment affecting the Premises. Any damages caused by lack of notice by Tenant to Landlord will be the responsibility of the Tenant.
15. Tenant shall not permit storage outside the Premises including, without limitation, outside storage of pallets, trucks, trailers and other vehicles or dumping of waste or refuse or permit any harmful materials to be placed in any drainage or sanitary system or trash receptacle in or about the Premises.
16. No auction, public or private, will be permitted on the Premises or the Project. No sidewalk sales allowed.
17. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.
18. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease.
19. Tenant shall ascertain from Landlord the maximum amount of electrical current that can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.
20. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.
21. No vehicle washing allowed on Property or Premises unless provided by contracted service that does not use Property water. Exterior Property water is for Landlord only and not for the use of the Tenant, unless permission is given to the Tenant by written notice.
22. No auto/vehicle repair work is to be done anywhere on Property, except the interior of Tenant's Premises, if that is Tenant's business activity as stated in the lease. Tenants who repair customer vehicles as part of their business cannot park such vehicles overnight in the parking lot. They must be stored inside the Tenant's Premises.
23. The maximum speed limit for all vehicles on the property is 10 miles per hour or as posted, depending on conditions. The Tenant is responsible for compliance of all traffic regulations by it and its employees, vendors, clients and customers.

EXHIBIT B

CHEF EXEC SUPPLIERS, LLC

LAS VEGAS, NV 89118

Purchase Order

Phone #	TEL: 702-683-2433
Fax #	FAX: 702-992-9880

Date	8/7/2020
P.O. No.	795

Vendor	Ship To
Yangzhou Linghai Plastic Manufacturing Co. Ltd No. 3 Rd, Yiling Industrial Zone Yangzhou, Jiangsu CHINA 86514-8656209	Chef Exec Suppliers, LLC 16742 Stagg Street Unit #105 Van Nuys, CA 91406

Terms	Due Date	Account #	Expected	Ship Via	FOB	Other2
Prepay	8/7/2020		8/10/2020	Ocean Ship		
Item	Description	Qty	Rate	Amount		
LPM-20130TC	WHISKEY SHOT GLASS TRANSP CRYSTAL 24 X 24/CS (20130)	200	19.6416	3,928.32		
LPM-20680TC	TRI EDGES CUP MEDIUM TRANSP CRYSTAL 50 X 20/CS (20680)	100	21.00	2,100.00		
LPM-20140TC	RHUM SHOT GLASS TRANSP CRYSTAL 24 X 24/CS (20140)	480	19.6416	9,427.97		
M-VR61TC	MINI CUBE TRANSPARENT CRYSTAL 600/CS (VR61TC)	160	12.60	2,016.00		
SC-NDB01TC	ROUND SHOT GLASS CLEAR 42X56H 1000/CS	95	18.00	1,710.00		
PLA-052505TC	GLASS RIBBON CRYSTAL 300/CS	100	7.26	726.00		
PLA-052438NR	ASIAN CUP BLACK Ø. 70 x H. 35 mm ± 8,5 cl 600/CS	80	15.66	1,252.80		
M-VR73TC	ROUND SLANTED CUP TRANSP CRYST 600/CS	140	21.00	2,940.00		
PLA-052530TC	FANFAN GLASS CRYSTAL 6 cl Ø.50 x H.45mm 864/CS	135	15.552	2,099.52		
PLA-052539CR	CAMELIA CUP LARGE CRYSTAL CLEAR 720/CS	100	17.28	1,728.00		
FREIGHT-A/P	FREIGHT CHARGES	1	1,850.00	1,850.00		
				Total	\$29,778.61	

Yangzhou Linghai Plastic Manufacturing Co., Ltd.

No.3 Road, Yiling Industrial Zone, Jiangdu District of Yangzhou City, Jiangsu Province of China
TEL : 0514-86562099 FAX: 0514-86567599

TEL : 0514-86562099 FAX: 0514-86567599

CE00122
N/M
CE00122

SOLD TO:
Chef Exec Suppliers LLC
PO Box 1800 Studio City, CA 91614
(702) 683-2433

Shipment by VESSEL or On or about
From: YANGZHOU Via To: LA

BY T/T

Compensation
Cargo Freight 40 Feet Container
Remaining Balance

-868.15
1850
28910.46

BANK DETAILS

Bank Name
Address
Swift Code
Beneficiary
A/C NO.:

CHINA CONSTRUCTION BANK, YANGZHOU BRANCH
NO.388 WENCHANG MIDDLE ROAD, YANGZHOU · JIANGSU · CHINA
PCCBCNBJSY
YANGZHOU LINGHAI PLASTIC MANUFACTURING CO.,LTD.
22014251090220104186

PLASTIC INJECTED ITEMS

Design, Personalization, Presentation, Packing as per Technical Specifications and Samples Sent
Quantity per reference, unit pricing and packing as per proforma invoice
FOB YANGZHOU

Chef Exec Receivership

Check Request Form

Email Copy of Invoice and Request to: Larry@llbcpa.com & Scott@llbcpa.com

Date: 8/30/2020

Requested by: Clement

Payee: Yangzhou Linghai Plastic plastic Manufacturing CO, Ltd.

Amount: \$1,116

Notes/Memo/Comments:

Difference in shipping from what we were quoted before the covid and since shipping prices from China went up

Receiver's Signature: 

Date: 9/1/2020

Send copy of check or evidence of payment when made.

Scott Kruse

From: Clement Muney <clement@chefexecsuppliers.com>
Sent: Sunday, August 30, 2020 10:30 AM
To: Scott Kruse
Cc: Clement Chef Exec; Larry Bertsch; Jeremy Muney
Subject: Extra shipping cost for coming container from China
Attachments: CE200122-INVOICE-extra freight.xls; extra shipping cost Linghai Plastic.docx

Hello Scott,

Following your conversation with Jeremy and the raise of shipping cost from China since Covid comparting to what were quoted initially for shipping, please find attached the invoice and the form you requested to get the suppliers paid.

Please let me know if you need anything else

Sincerely,

Clement

10:21 AM

02/03/21

Accrual Basis

CHEF EXEC SUPPLIERS, LLC

Register QuickReport

All Transactions

Type	Date	Num	Memo	Account	Clr	Split	Amount
Yangzhou Linghai Plastic Mnfctrng CO Ltd							
Check	06/09/2020	EFT		Wells Fargo 3940	X	Accounts Paya...	-10,000.00
Check	08/07/2020	EFT	Balance Invoi...	Wells Fargo 3940	X	Accounts Paya...	-9,910.46
Bill Pmt -Check	08/07/2020		QuickBooks g...	Wells Fargo 3940	X	Accounts Paya...	0.00
Bill Pmt -Check	08/07/2020		QuickBooks g...	Wells Fargo 3940	X	Accounts Paya...	0.00
Total Yangzhou Linghai Plastic Mnfctrng CO Ltd							-19,910.46
TOTAL							-19,910.46

9/18/20



INVOICE

BILL TO PARTY:		INVOICE DATE	INVOICE #
CHEF EXEC SUPPLIERS LLC 1960 GREY EAGLE STREET HENDERSON, NV 89074		09/18/2020	152004970-01
		TERMS	DUE DATE
		30 DAYS INVOICE DATE	10/18/2020
		SEAFRIGO FILE# / BOOKING#	YOUR CONTACT
		152004970	CLARISA HERDOCIA c.herdocia@seafriigo-usa.com
MASTER BL#	HOUSE BL #	VESSEL / FLIGHT	
N0537ATWH145	NKG00800671	MSC RAVENNA / 035N	
PORT OF LOADING	PORT OF DISCHARGE	REFERENCE NUMBER	ENTRY NUMBER
LOS ANGELES, CA	LONG BEACH, CA	CE00122	BLS-90135252
DEPARTURE DATE	ARRIVAL DATE	PIECES / WEIGHT (lbs) / DESCRIPTION	
09/19/20	09/19/20	1,543 / 21,278.25 PLASTIC TABLEWARE	
SHIPPER / EXPORTER		IMPORTER / CONSIGNEE	
		CHEF EXEC SUPPLIERS LLC	
CONTAINER NUMBER(S)		REMARKS / COMMENTS	
TCKU7024556140HC			

DESCRIPTION OF CHARGES	CURRENCY	EXCHANGE RATE	CHARGE LINE	AMOUNT USD
DUTY & TAXES	USD	1	3,782.40	3,782.40
DESTINATION DELIVERY CHARGE	USD	1	72.50	72.50
ADMIN FEES	USD	1	25.00	25.00
ENTRY FEE	USD	1	100.00	100.00
ISF - IMPORT SECURITY FILING (10+2)	USD	1	35.00	35.00
FDA CLEARANCE/PRIOR NOTICE	USD	1	25.00	25.00
TMS (PIER PASS)	USD	1	68.00	68.00
CONTAINER DRAYAGE	USD	1	1,885.00	1,885.00
CHASSIS RENTAL 3 DAYS	USD	1	105.00	105.00
PRE-PULL FEES	USD	1	150.00	150.00
EXTRA STOP	USD	1	75.00	75.00

TOTAL INVOICE AMOUNT: \$6,322.90

SEAFRIGO BANK INFORMATION	MAKE CHECK PAYABLE TO / REMITTANCE ADDRESS:
Santander ACCT# : 9997409973 ABA# : 231372691 SWIFT#: SVRNUS33	Seafriigo USA, Inc 735 Dowd Avenue Elizabeth NJ 07201

** Notice is hereby constituted under the truth in lending act that any accounts remaining unpaid after 10 days from the indicated terms are subject to 1.5% per month interest and collection costs, including attorney fees.

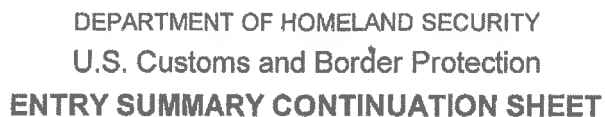


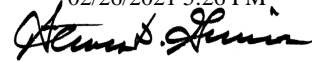
DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB APPROVAL NO. 1651-0022
EXPIRATION DATE 01/31/2021

ENTRY SUMMARY

1. Filer Code/ Entry Number BLS 9013525-2	2. Entry Type 01 ABI/A	3. Summary Date 9/30/20 HB	4. Surety Number 856	5. Bond Type 8	6. Port Code 2704	7. Entry Date 9/19/20
8. Importing Carrier MSC RAVENNA		9. Mode of Transport 11		10. Country of Origin CN		11. Import Date 9/19/20
12. B/L or AWB Number		13. Manufacturer ID CNYANPLA30YAN		14. Exporting Country CN		15. Export Date 9/07/20
16. I.T. Number	17. I.T. Date	18. Missing Docs		19. Foreign Port of Lading 57037		20. U.S. Port of Unlading 2709
21. Location of Goods/G.O. Number Z952		22. Consignee Number SAME		23. Importer Number 26-072955100		24. Reference Number
25. Ultimate Consignee Name and Address				26. Importer of Record Name and Address CHEF EXEC SUPPLIERS LLC 1960 GREY EAGLE STREET		
City State NV Zip				City HENDERSON State NV Zip 89074-0000		
27.	28. Description of Merchandise			32.	33.	34.
Line Number	29. A. HTSUS No. B. AD/CVD Case No.	30. A. Gross Weight B. Manifest Qty.	31. Net Quantity in HTSUS Units	A. Entered Value B. CHGS C. Relationship	A. HTSUS Rate B. AD/CVD Rate C. IRC Rate D. Visa Number	Duty and I.R. Tax Dollars Cents
001	ARTICLE OF CHINA,US NTE 20 9903.88.15	9652	SUDUN0537ATWH145 LFFVNKG00800671 Invoice 001 9651.75KG	26137 C1 Not Related	7.5% 6.5% 0.3464% 0.125%	1543CTNS 1960.28 1698.91 90.54 32.67
Other Fee Summary (for Block 39) 499 90.54 501 32.67				35. Total Entered Value \$ 26,137 Total Other Fees \$ 123.21		36. Declaration of Importer of Record (Owner or Purchaser) or Authorized Agent
I declare that I am the <input type="checkbox"/> Importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, OR <input checked="" type="checkbox"/> owner or purchaser or agent thereof. I further declare that the merchandise prices set forth in the invoices are true, OR <input type="checkbox"/> was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.				37. Duty 3659.19 38. Tax 0.00 39. Other 123.21 40. Total 3782.40		
41. DECLARANT NAME (LAST, FIRST, M.I.) SEAFRIGO USA, INC., ATTORNEY-IN-FACT				42. SIGNATURE CLARISA HERDOCIA		43. DATE 09/17/20
Broker/Filer Information Name (Last, First, M.I.) and Phone Number SEAFRIGO USA, INC. 735 DOWD AVENUE ELIZABETH, NJ 07201-0000				44. Broker/Importer File Number 152004970 CE00122		
TEL# (201) 770-1143				Page 1 of 2		

CBP Form 7501 (12/19)


CLERK OF THE COURT

SAO
CANDACE C. CARLYON, ESQ.
Nevada Bar No. 2666
TRACY M. O'STEEN, ESQ.
Nevada Bar No. 10949
CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119
PHONE: (702) 685-4444
FAX: (725) 220-4360
Counsel for the Receiver

**EIGHT JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants.

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

**STIPULATION AND ORDER FOR
PAYMENT OF PROFESSIONAL FEES
OF RECEIVER AND FOR RELEASE OF
FUNDS HELD IN TRUST**

Larry L. Bertsch, duly appointed Receiver in the above caption case (the "Receiver"), Dominique Arnould ("Arnould"), and Clement Muney ("Muney" and together with Arnould, the "Partners" and together with the Receiver, the "Parties"), each by and through their respective undersigned counsel, hereby stipulate and agree as follows (the "Stipulation"):

1. On June 15, 2020, the Court entered an order (the "Order") naming Larry L. Bertsch of Larry L. Bertsch CPA & Associates as the receiver over Chef Exec Suppliers, LLC, a Nevada limited liability company (the "Company") with limited powers.

2. On December 7, 2020, the Receiver filed his Final Report and Recommendations with the Court (the "Final Report"), which was approved by Order of the Court on February 17, 2021.

3. Pursuant to the Final Report, Muney is to pay the amount of \$22,712.56 to the Receiver within ten (10) days of entry of this Stipulation, which will be used to pay the professional fees of the Receiver and his counsel.

CARLYON CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119

1 4. Pursuant to the Final Report, Arnould is to pay the Receiver the amount of \$22,712.56
2 within ten (10) days of entry of this Stipulation which will be used to pay professional fees of the
3 Receiver and his counsel.

4 5. The Receiver is currently holding the amount of \$37,923.10 in his Trust account. The
5 Parties agree that this amount can be used by the Receiver to pay the professional fees incurred during
6 this Receivership.

7 **IT IS SO STIPULATED.**

8 DATED this 26th day of February, 2020.

9 MARQUIS AURBACH COFFING

CARLYON CICA CHTD.

10 /s/ Alexander K. Calaway, Esq

/s/ Tracy M. O'Steen, Esq.

11 PHILLIP S. AURBACH, ESQ.

CANDACE C. CARLYON, ESQ.

12 Nevada Bar No. 1501

Nevada Bar No. 26666

13 ALEXANDER K. CALAWAY, ESQ.

TRACY M. O'STEEN, ESQ.

14 Nevada Bar No. 15188

Nevada Bar No. 10949

15 10001 Park Run Dr.

265 E. Warm Springs Road, Suite 107

16 Las Vegas, Nevada 89145

Las Vegas, Nevada 89119

17 Counsel for Dominique Arnould

Counsel for the Receiver

18 KERN LAW LTD.

19 /s/ Robert Kern, Esq.

20 ROBERT KERN, ESQ.

21 Nevada Bar No. 10104

22 601 S. 6th St.

23 Las Vegas, Nevada 89101

24 Counsel for Clement Muney

ORDER

The Court having reviewed and considering the foregoing Stipulation, and for good cause appearing:

IT IS HEREBY ORDERED that the Stipulation is **APPROVED** in its entirety.

IT IS HEREBY FURTHER ORDERED that pursuant to the Stipulation of the Parties, Muney is to pay the amount of \$22,712.56 to the Receiver within ten (10) days of entry of this Order, which will be used to pay the professional fees of the Receiver and his counsel.

IT IS HEREBY FURTHER ORDERED that pursuant to the Stipulation of the Parties, Arnould is to pay the Receiver the amount of \$22,712.56 within ten (10) days of entry of this Order which will be used to pay professional fees of the Receiver and his counsel.

IT IS HEREBY FURTHER ORDERED that the \$37,923.10 the Receiver is holding in trust may be immediately applied to the payment of the professional fees incurred by the Receiver and his counsel.

Dated this 26th day of February, 2021

February 26, 2021

Nancy L Alf
DISTRICT COURT JUDGE

NB

Respectfully submitted by:

CARLYON CICA CHTD.

009 C73 4FED 9766
Nancy Alf
District Court Judge

/s/ Tracy M. O'Steen, Esq.

TRACY M. O'STEEN, ESQ.

Nevada Bar No. 10949

265 E. Warm Springs Road, Suite 107

Las Vegas, Nevada 89119

Counsel for the Receiver

Cristina Robertson

From: Tracy O'Steen
Sent: Friday, February 26, 2021 12:53 PM
To: Cristina Robertson
Subject: FW: [External] Chef Exec Stipulation [IWOV-iManage.FID1085969]
Attachments: SAO for Payment of Fees and Release of Funds.docx

Can you add e-signature, for me, Kern and Callaway and submit to chambers? Thanks!

Tracy M. O'Steen, Esq.

CARLYON CICA CHTD.

265 E. Warm Springs Rd. Ste. 107

Las Vegas, Nevada 89119

T 702.685.4444 | D 702.936.3647

TOSTeen@CarlyonCica.com | www.ccclaw.vegas

Licensed in Nevada, Arizona and Mississippi

From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Friday, February 26, 2021 12:36 PM
To: Tracy O'Steen <tosteen@carlyoncica.com>; Robert Kern <robert@kernlawoffices.com>
Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@lbcpa.com>
Subject: RE: [External] Chef Exec Stipulation [IWOV-iManage.FID1085969]

Ok, then you may proceed with my e-signature.



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: Tracy O'Steen <tosteen@carlyoncica.com>
Sent: Friday, February 26, 2021 11:59 AM
To: Alexander K. Calaway <acalaway@maclaw.com>; Robert Kern <robert@kernlawoffices.com>
Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@lbcpa.com>
Subject: RE: [External] Chef Exec Stipulation [IWOV-iManage.FID1085969]

To be clear, I took the language out of the Stipulation because it is not necessary for Larry to file the tax return. He will file the Final Return in March consistent with his Final Report and Accounting, which includes the equalization payment required by Mr. Munev. If that issue is resolved in favor of Mr. Munev following trial, an amended return can be filed by Mr. Bertch.

For now, the Receiver would like to move forward with the stipulation to obtain payment of fees and release of funds held in Trust .

Tracy M. O'Steen, Esq.

CARLYON CICA CHTD.

265 E. Warm Springs Rd. Ste. 107

Las Vegas, Nevada 89119

T 702.685.4444 | D 702.936.3647

TOsteen@CarlyonCica.com | www.ccclaw.vegas

Licensed in Nevada, Arizona and Mississippi

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

Sent: Friday, February 26, 2021 11:49 AM

To: Tracy O'Steen <tosteen@carlyoncica.com>; Robert Kern <robert@kernlawoffices.com>

Cc: Candace Carlyon <c Carlyon@carlyoncica.com>; Larry Bertsch <larry@lbcpa.com>

Subject: RE: Chef Exec Stipulation [IWOV-iManage.FID1085969]

All:

1. I agree that the tax issues are addressed in the accepted Final Report.
2. I disagree with Mr. Kern's suggestion that the his client's "objection" limits application of Receiver's Final Report in the liquidation. The attached order discharging the receiver was pretty clear: "That Plaintiff's Motion to Approve Receiver's Final Report and Discharge Receiver is GRANTED in all respects ...[and] **That the Receiver's Final Report and findings are accepted pursuant to NRS 32.350...**" (p. 2:18-20).
3. In light of #2, there was nothing ordered by the Court that would even suggest a limited acceptance of the Receiver's Final Report. The merits of Munev's objection are reserved for trial. And as for the present liquidation under the Receiver's Final Report, the liquidation should occur just as the accepted Final Report prescribes. So I believe the following language (you included in your first SAO) will be necessary to stay consistent with Larry's report:
 - Pursuant to the Final Report, Munev is to pay the amount of \$22,712.56 to the Receiver within ten (10) days of entry of this Stipulation, which will be used to pay the professional fees of the Receiver and his counsel.
 - Pursuant to the Final Report, Arnould is to pay the Receiver the amount of \$22,712.56 within ten (10) days of entry of this Stipulation which will be used to pay professional fees of the Receiver and his counsel.
 - Pursuant to the Final Report, Munev is to the pay the Receiver the amount of \$5,541.43 to equalize distributions made to the Partners, with Munev reserving his objections to this payment for trial on the merits.

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

Sent: Friday, February 26, 2021 11:22 AM

To: Robert Kern <robert@kernlawoffices.com>; Alexander K. Calaway <acalaway@maclaw.com>

Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@llbcpa.com>

Subject: [External] RE: Chef Exec Stipulation

I removed the language regarding the tax return completely and a revised stipulation is attached. Initially, I included that language to tie up what I saw as an open issue, but the after taking a closer look, the Report and the Order are clear on the Receiver's obligation with regard to filing the tax return. The stipulation now addresses only payment of fees and release of the funds in trust. Please let me know if have approval to submit the revised stipulation on your e-signature.

Thank you,

Tracy M. O'Steen, Esq.

CARLYON CICA CHTD.

265 E. Warm Springs Rd. Ste. 107

Las Vegas, Nevada 89119

T 702.685.4444 | D 702.936.3647

TOSteen@CarlyonCica.com | www.ccclaw.vegas

Licensed in Nevada, Arizona and Mississippi

From: Robert Kern <robert@kernlawoffices.com>

Sent: Friday, February 26, 2021 10:36 AM

To: Alexander K. Calaway <acalaway@maclaw.com>; Tracy O'Steen <tosteen@carlyoncica.com>

Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@llbcpa.com>

Subject: Re: Chef Exec Stipulation

I appreciate the change, but I don't think we can stipulate to the tax return accepting the report's accounting without essentially stipulating to the report's accounting. We would like the tax return done without any of the disputed accounting; as far as getting this stipulation in place, we could still do this stipulation if you remove the language "consistent with the accounting set forth in the Final Report. "

Robert Kern, Esq.

Attorney

Kern Law, Ltd.

601 S. 6th Street

Las Vegas, NV 89101

(702) 518-4529 - phone

(702) 825-5872 - fax

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[OBJ]

Robert Kern, Esq.
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[OBJ]

From: Tracy O'Steen <tosteen@carlyoncica.com>
Sent: Friday, February 26, 2021 10:09:33 AM
To: Robert Kern <robert@kernlawoffices.com>; Alexander K. Calaway <acalaway@maclaw.com>
Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@lbcpa.com>
Subject: RE: Chef Exec Stipulation

Robert,

I addressed the issue with Mr. Bertsch and he is fine with that change. He will still be filing the Final Tax Return consistent with his Report in March to avoid penalties for late filing.

Counsel, please let me know if I have approval to submit on your e-signature.

Thank you,

Tracy M. O'Steen, Esq.
CARLYON CICA CHTD.
265 E. Warm Springs Rd. Ste. 107
Las Vegas, Nevada 89119
T 702.685.4444 | D 702.936.3647
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From: Robert Kern <robert@kernlawoffices.com>
Sent: Friday, February 26, 2021 9:45 AM
To: Tracy O'Steen <tosteen@carlyoncica.com>; Alexander K. Calaway <acalaway@maclaw.com>
Cc: Candace Carlyon <ccarlyon@carlyoncica.com>; Larry Bertsch <larry@lbcpa.com>
Subject: RE: Chef Exec Stipulation

Hi Tracy,

No – the court has not ruled on the conclusions of the Receiver's Report – it was accepted as a report, as was Muneys' objection; the conclusions of the breakdown of what is owed between the parties is still subject to adjudication. If paragraph 5 is deleted then we will agree to the stipulation.

Robert Kern, Esq.
Attorney
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From: [Tracy O'Steen](#)
Sent: Wednesday, February 24, 2021 2:07 PM
To: [Robert Kern](#); [Alexander K. Calaway](#)
Cc: [Candace Carlyon](#); [Larry Bertsch](#)
Subject: Chef Exec Stipulation

Counsel,

Attached is a stipulation for your review and comment that provides for payment of the professional fees, filing of the final tax return (Federal & California), and for the release of the funds held in trust by the Receiver. I note that although Mr. Munez disputes the equalization payment of \$5,541.43, Mr. Bertsch needs that payment made so that the Final Tax Return can be filed consistent with his accounting. I have included language that Munez still disputes this payment and that his objections are reserved for trial on the merits. If the trial necessitates changes in the accounting, then that is an issue for a later date. We need to wrap up the Receiver's role now.

Alex, could you please add the amount that was sent to Larry by check from the CitiBank Account? I have a blank for that to be added. I have not been able to confirm the exact amount with Larry, and did not want to hold this stipulation up.

Please let me know if you have changes or comments. I am trying to avoid more motion practice and hope we can reach an agreement as to the attached.

Best,

Tracy M. O'Steen, Esq.
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Licensed in Nevada, Arizona and Mississippi

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/26/2021

15 Jennifer Case	jcase@maclaw.com
16 Robert Kern	Robert@Kernlawoffices.com
17 Melissa Milroy	Admin@KernLawOffices.com
18 Candace Carlyon	ccarlyon@carlyoncica.com
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25
26
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28

MARQUIS AURBACH COFFING

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1 **Marquis Aurbach Coffing**
Phillip S. Aurbach, Esq.
2 Nevada Bar No. 1501
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paurbach@maclaw.com
6 acalaway@maclaw.com
Attorneys for Plaintiff

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DOMINIQUE ARNOULD,

11 Plaintiff,

12 vs.

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

15 Defendants,

16 And related counterclaims.

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

17 **PLAINTIFF, DOMINIQUE ARNOULD'S,**
18 **DESIGNATION OF EXPERT WITNESS**

19 COMES NOW, Plaintiff, Dominique Arnould, by and through his attorneys, Marquis
20 Aurbach Coffing, hereby submits his Designation and Disclosure Expert Witness and related
21 documents in compliance with the Nevada Rules of Civil Procedure as follows

22 **EXPERT WITNESS**

- 23 1. Larry L. Bertsch, CPA, CFF, GCMA
24 265 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119

25 Mr. Bertsch has been a Certified Public Accountant for over 55 years. Mr. Bertsch has
26 worked as a court appointed receiver, forensic accountant, bankruptcy trustee, and the chief
27 financial officer over several large hotel and casinos. *See* Motion to Select Receiver, at Ex. A.

1 Mr. Bertsch has administered and closed over 8,000 Chapter 7 bankruptcies and numerous
2 Chapter 11 and Chapter 7 operating bankruptcies. *See id.* Mr. Bertsch has also served as a special
3 master, liquidating trustee, and a receiver in hundreds of cases involving partnerships, limited
4 liability companies, corporations, and divorces. *Id.* Mr. Bertsch has experience in testifying on
5 accounting and forensic accounting matters and has testified in both state and federal courts. *Id.*

6 Mr. Bertsch is expected to testify regarding his Final Report regarding Chef Exec
7 Suppliers, LLC, its books, QuickBooks, accounts, capital accounts, financial documents, and
8 issues surrounding the complaint, counter-complaint, and pleadings in this case. His opinions are
9 based upon a review and analysis of the relevant documents, items, and events in this matter. *See*
10 Bates Stamp Nos. ARNOULD000812. Mr. Bertsch may also testify regarding his opinions as
11 they related to other subjects that he is qualified to testify to as these issues are raised in this
12 lawsuit, including potential rebuttal and impeachment testimony. Mr. Bertsch's receiver report,
13 supplemental report, testimony, and opinions therein rely upon documents provided by the
14 Parties in this matter including, but not limited to those documents and files which were provided
15 to him by the Managers and Members of Chef Exec Suppliers LLC as part of Mr. Bertsch's
16 reports. Mr. Bertsch's reports, previous testimony, and underlying documents have been
17 disclosed on the record as the Receiver's Final Report.

18 Dated this 14th day of May, 2021.

19
20 MARQUIS AURBACH COFFING

21
22 By /s/Alexander K. Calaway
23 Phillip S. Aurbach, Esq.
24 Nevada Bar No. 1501
25 Alexander K. Calaway, Esq.
26 Nevada Bar No. 15188
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

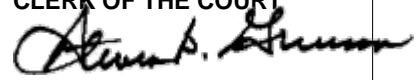
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF, DOMINIQUE ARNOULD'S DESIGNATION OF EXPERT WITNESS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of May, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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

/s/ Marie Jorczak
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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 paurbach@maclaw.com
 acalaway@maclaw.com
Attorneys for Plaintiff/Counter-Defendant

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants,

And related counterclaims.

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

**PLAINTIFF, DOMINIQUE ARNOULD'S
MOTION FOR SUMMARY JUDGMENT****HEARING REQUESTED**

Plaintiff/Counter-Defendant DOMINIQUE ARNOULD (hereinafter "Arnould"), by and through his attorneys, Marquis Aurbach Coffing, hereby submits this Motion for Summary Judgment (the "Motion"). This Motion is based upon papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument permitted at the time of the hearing on this matter.

Dated this 14th day of June, 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
Attorneys for Plaintiff/Counter-Defendant

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

This case is about the break-up of a two-member limited liability company, Chef Exec Suppliers, LLC (“CES”). Since it was not reasonably practicable for CES’s two members to carry on the business together, this Court judicially dissolved CES last September. After the dissolution, the Court’s appointed receiver facilitated the winding-up of CES and the distribution of CES’s assets. The receiver accounted for the assets and liabilities of CES and provided a comprehensive recommendation to the Court as to how they should be distributed to each member on an equitable basis. One member of CES, Defendant Clement Muney (“Muney”), objected to the receiver’s recommendations and raised a number of issues he had with the receiver’s accounting method and conclusions. The only issues raised were accounting issues.

On May 14, 2021, discovery closed. Over the course of the year-long discovery period, Arnould supplemented his disclosures three (3) times, disclosed over 1200 documents in support of his claims and defenses, and timely designated the receiver’s report and recommendation as an expert report. Conversely, Muney failed to supplement his initial disclosures, produced less than 100 documents, and failed to obtain an expert report. Despite the myriad of accounting issues Muney attempted to raise in his objection, Muney failed to produce any admissible accounting evidence to support his objections and claims. Despite the fact that Muney had the Receiver’s report for over six (6) months, Muney never even bothered to produce an expert report to support any other viable accounting of CES. In a word, all Muney has done in this case is take baseless pot-shots at the receiver’s accounting and file frivolous appeals.

Now, Muney wishes to go to trial so he can present his unsupported arguments of counsel to a jury. It is quite clear to everyone, except for Muney, that there is no evidence that would change the equitable results already achieved by the receiver. This is precisely the sort of case entitled to summary judgment under NRCP 56 because there is no genuine dispute as to any material fact, Muney cannot produce admissible evidence to support a genuine factual dispute, nor can he set out any facts that would be admissible in evidence via affidavit or declaration. Accordingly, Arnould is entitled to judgment as a matter of law.

1 For these reasons and the reasons set forth herein, Arnould respectfully requests this Court
2 enter summary judgment in his favor on all causes of action in his Complaint. In addition, since
3 Muney cannot sustain his claims as a matter of law, Arnould respectfully requests this Court
4 summarily dismiss all of Muney's causes of action and putative derivative claims set forth in his
5 Counter-Complaint.

6 **II. STATEMENT OF UNDISPUTED FACTS¹**

7 1. Muney and Arnould are equal co-owners and co-managers of CES.² CES is a
8 Nevada limited liability company, validly formed under Nevada law, with no operating
9 agreement.³

10 2. CES had two branches of operations: one in Las Vegas, NV and the other in Los
11 Angeles, CA.⁴ In managing the affairs of CES, Muney and Arnould **both** had access to CES's
12 QuickBooks account via cloud-based server.⁵ Muney and Arnould both monitored the accounts
13 of CES as co-managers.⁶

14 3. On June 8, 2020, the Court found the requirements to appoint a receiver over CES
15 had been met and ordered the appointment of a receiver with limited powers to prepare a report
16 about the viability of CES.⁷

19 ¹ Consistent with NRCP 56(c)(1)(A)-(B), the undisputed facts set forth herein are primarily derived from
20 (1) Counter-Plaintiffs' own Counter-Complaint, (2) the Final Report which has been designated and timely
21 disclosed as an expert report pursuant to NRCP 16.1(a)(2)(A)-(F); and (3) the Court's existing findings on
the record herein.

22 ² See Counter-Complaint, at ¶¶2-3; see also Plaintiff's Motion for Partial Summary Judgment, Ex. 1
23 (hereinafter "Arnould Decl."), ¶¶2-3.

24 ³ *Id.* at ¶3; Arnould Decl. at ¶3.

25 ⁴ *Id.* at ¶4; Arnould Decl. at ¶4.

26 ⁵ *Id.* at ¶6.

27 ⁶ *Id.*

28 ⁷ See June 8, 2020 Order, on file herein; see also Feb. 17, 2021, Order, at ¶1, on file herein.

1 4. On June 12, 2020, Larry L. Bertsch, CPA was appointed as receiver to take control
2 of the Nevada warehouse and inventory (hereinafter the “Receiver”).⁸ This was due to Muney
3 looking around the warehouse.⁹

4 5. On August 21, 2020, the Court found that:

5 Both Parties don’t dispute and stipulated that it is not reasonably practicable to carry
6 on the business of [CES] in conformance with the operating agreement since there
7 is no operating agreement and since the owners of [CES] cannot get along and
8 disagree about the operation of [CES]. Therefore, [CES] must be dissolved.... [and]
the date of dissolution should be September 30, 2020.¹⁰

9 6. On December 7, 2020, the Receiver issued his Final Report and Recommendations
10 (hereinafter the “Final Report”).¹¹

11 7. In his findings, the Receiver made “recommendations as to the distribution of the
12 assets and liabilities of the Company to each Partner **on an equitable basis.**”¹²

13 8. The Receiver’s report includes his factual findings, analysis, and accounting
14 opinions.¹³ Due to the voluminousness content and detail of the Final Report (which is already on
15 the record), **Arnould incorporates by reference all of the factual findings, analysis, and exhibits in**
16 **the Final Report as if fully stated herein pursuant to law and NRS 52.275(1).**¹⁴

17
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20
21 _____
22 ⁸ See June 12, 2020 Order, on file herein.

23 ⁹ *Id.*

24 ¹⁰ See Order of Dissolution, at ¶¶1-2, on file herein.

25 ¹¹ Final Report, on file herein.

26 ¹² *Id.* (Emphasis added).

27 ¹³ *Id.* at p. 2.

28 ¹⁴ *Id.*

9. On January 29, 2021, Muney objected to the Receiver's report¹⁵ and the Receiver responded to these objections on February 6, 2021.¹⁶ In his filed objection, Muney:

a. Objected to the Receiver's allocation of rent expense for the warehouse in Nevada, and argued that the Receiver improperly "adjust[ed] the accounting..." because it is a "legal issue for determination by the finder of fact...";¹⁷

b. Objected to 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;¹⁸ and

c. Objected to the Receiver's calculations as to how CES's delivery truck costs should be allocated and how the truck itself should be valued.¹⁹

10. However, Muney's objections contained no expert testimony in support, no declaration/affidavit in support, and no authenticated documentary evidence.²⁰ Therefore, Muney's objection was only argument of counsel.²¹

11. On February 17, 2021, the Receiver's report was approved and accepted by this Court, and the Receiver was discharged.²²

12. It is undisputed that the Receiver:

a. has been a Certified Public Accountant for over 55 years;²³

¹⁵ Defendants' Objection to Receiver's Final Report, on file herein.

¹⁶ See Feb. 17, 2021, Order, at ¶4, on file herein.

¹⁷ Defendants' Objection to Final Report, on file herein.

¹⁸ *Id.* at 5-8.

¹⁹ *Id.* at p. 8-9.

²⁰ *Id.*

²¹ *Id.*

²² *See id.*

²³ Plaintiff's Designation of Expert Witness, attached hereto as **Exhibit 1**; see also Arnould's Motion to Select Receiver, at Exhibits A-C, on file herein.

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

3 c. has administered and closed over 8,000 Chapter 7 bankruptcies and
4 numerous Chapter 11 and Chapter 7 operating bankruptcies;²⁵

5 d. has served as a special master, liquidating trustee, and a receiver in hundreds
6 of cases involving partnerships, limited liability companies, corporations, and divorces;²⁶ and

7 e. has experience in testifying on accounting and forensic accounting matters
8 and has testified in both state and federal courts.²⁷

9
10 13. On May 14, 2021, the Receiver was designated by Arnould in this case as an expert
11 witness and designated the Receiver's Final Report as a written report.²⁸

12 14. The Receiver is competent to testify as an expert regarding his Final Report and
13 regarding CES, its books, QuickBooks, accounts, capital accounts, financial documents, and issues
14 surrounding the Complaint, Counter-Complaint, and pleadings in this case.²⁹

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

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22
23 ²⁴ See Motion to Select Receiver, at Ex. A, on file herein.

24 ²⁵ *Id.*

25 ²⁶ *Id.*

26 ²⁷ *Id.*

27 ²⁸ See **Exhibit 1**.

28 ²⁹ *Id.*; see also Final Report, on file herein.

1 files.³⁰ The Receiver's Final Report on file herein rely upon the QuickBooks and documents
2 provided by both Arnould and Muney in this matter.³¹

3 16. The Receiver's Final Report and underlying documents were timely disclosed on
4 the record as the Receiver's Final Report.³²

5 17. On February 26, 2021, it was stipulated and ordered by this Court that both Muney
6 and Arnould each pay \$22,712.56 to the Receiver pursuant to the Receiver's Final Report to settle
7 CES's outstanding obligations.³³

8 18. To date, Muney has refused to pay Arnould the \$6,303.93 necessary to equalize the
9 capital account in accordance with the Final Report.³⁴

10 19. On May 14, 2021, Muney designated Andrew Martin, MS, CFE, CFF, CGMA,
11 CICA, CPA ("Martin") and Gene Proctor ("Proctor") as expert witnesses in this matter.³⁵

12 20. No expert report by Martin and Proctor were disclosed in this matter.³⁶

13 21. Discovery in this matter has closed.³⁷

14 **III. LEGAL STANDARD**

15 In *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602, 172
16 P.3d 131, 134 (2007), the Nevada Supreme Court set forth the standard for summary judgment in
17 Nevada under NRCP 56(a). Summary judgment is appropriate "when the pleadings, depositions,
18

19 ³⁰ *Id.* (the native Chef Exec Supplier's QuickBooks file (ARNOULD000812) was disclosed and made
20 available in discovery to both parties).

21 ³¹ *Id.*

22 ³² *Id.*

23 ³³ Feb. 3, 2021 Stipulation and Order, on file herein.

24 ³⁴ Final Report, at p. 11 and Exhibit D-1.

25 ³⁵ See Muney's Designation of Expert Witness, attached hereto as **Exhibit 2**.

26 ³⁶ *Id.*

27 ³⁷ See Business Court Scheduling Order and Order Resetting: (1) Civil Jury Trial; (2) Calendar Call; And
28 (3) Status Check (Second Request), on file herein.

1 answers to interrogatories, admissions, and affidavits, if any, that are properly before the court
2 demonstrate that no genuine issue of material fact exists, and the moving party is entitled to
3 judgment as a matter of law.” *Id.* (internal citations omitted).

4 Nevada courts follow the federal approach outlined in *Celotex Corp. v. Catrett* with respect
5 to burdens of proof and persuasion in the summary judgment context. *Id.* As such, “[t]he party
6 moving for summary judgment bears the initial burden of production to show the absence of a
7 genuine issue of material fact,” thereafter, “the party opposing summary judgment assumes a
8 burden of production to show the existence of a genuine issue of material fact. *Id.* citing 477 U.S.
9 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *see also, Clauson v. Lloyd*, 103 Nev. 432, 743 P.2d
10 631 (1987) (explaining *Celotex’s* application in Nevada); *see also Wood v. Safeway, Inc.*, 121 Nev.
11 724, 731–32, 121 P.3d 1026, 1031 (2005) (adopting the summary judgment standard set forth in
12 *Celotex* and other Supreme Court decisions).

13 Under NRCP 56(c)(1), a party opposing summary judgment on the basis that a fact is
14 genuinely disputed must support his or her assertion by: (A) citing to particular parts of materials
15 in the record; or (B) showing that the materials cited do not establish the absence or presence of a
16 genuine dispute or lack admissible evidence to support the fact. A party opposing a summary
17 judgment motion must “set out facts that would be admissible in evidence, and show that the affiant
18 or declarant is competent to testify on the matters stated.” *Id.* at 56(c)(4). If a party fails to properly
19 support an assertion of fact or fails to properly address another party’s assertion of fact, then the
20 court may “grant summary judgment if the motion and supporting materials — including the facts
21 considered undisputed — show that the movant is entitled to it.” *Id.* at (e)(3).

22 **IV. LEGAL ARGUMENT**

23 **A. ARNOULD PREVAILED ON HIS FIRST CAUSE OF ACTION AND** 24 **ENTITLED TO AN ORDER PROVIDING FOR EXPENSES UNDER NRS** **86.489.**

25 Arnould has brought a derivative claim against Muney on behalf of CES (who is a named
26 nominal defendant).³⁸ In his first cause of action, Arnould’s seeks declaratory relief that the

27 ³⁸ Compl. at ¶15.
28

1 requirements for receiver and dissolution had been met.³⁹ There can be no dispute that each of
2 these requests have already been adjudicated by this Court and in Arnould's favor.⁴⁰ Because it is
3 undisputed Arnould prevailed on his first cause of action, he is entitled to his reasonable expenses
4 pursuant to NRS 86.489.

5 **1. It is undisputed that Arnould prevailed on his first cause of action.**

6 First, Arnould requested declaratory relief from the Court stating that "it is not reasonably
7 practicable" to carry on CES and an order granting judicial dissolution pursuant to NRS 86.495
8 and 86.505.⁴¹ Arnould alleged that that the "[d]isputes between [he] and Muney have arisen and
9 are so deep that it is not reasonably practicable to carry on the business of the Company."⁴² Muney
10 denied these allegations.⁴³ In this case, on August 21, 2020, the Court found that:

11 Both Parties don't dispute and stipulated that **it is not reasonably practicable to**
12 **carry on the business of the Company** in conformance with the operating
13 agreement since there is no operating agreement and since the owners of the
14 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, 2020.⁴⁴

15 Moreover, Arnould's first cause of action sought a declaration that the requirements for
16 appointment of a receiver to have been met to "run the Las Vegas operations of [CES] and
17 potentially dissolve the company..."⁴⁵ Once again, Muney denied and opposed these allegations.⁴⁶

20 ³⁹ *Id.* at ¶¶16-19;

21 ⁴⁰ *See* Order of Dissolution; *See also*, June 8, 2020 Order, on file herein.

22 ⁴¹ *Id.* at ¶17.

23 ⁴² *Id.* at ¶9.

24 ⁴³ *See* Answer, at p. 2.

25 ⁴⁴ *See* Order of Dissolution, at ¶¶1-2, on file herein (emphasis added).

26 ⁴⁵ Compl. at ¶18.

27 ⁴⁶ *See* Answer, at p. 2.

1 But on June 8, 2020, the Court found that granted Arnould's request to appoint a receiver,⁴⁷ and
2 on June 12, 2020, appointed the Receiver to take control of the Nevada warehouse and inventory.⁴⁸

3 **2. Arnould is entitled to an order that entitling him to his reasonable**
4 **derivative expenses pursuant to NRS 86.489.**

5 Next, since Arnould prevailed on his first cause of action which was brought derivatively
6 on behalf of CES, Arnould is entitled to an order stating that he has prevailed on this derivative
7 claim. A derivative action "may not be dismissed or compromised without the approval of the
8 court..." See NRCP 23.1.⁴⁹ A plaintiff who has successfully brought a derivative claim (in whole
9 or in part) on behalf of a Nevada LLC is entitled an award of her reasonable expenses and
10 attorney's fees. NRS 86.489; see e.g., *Roil Energy, LLC. v. Edington*, 195 Wash. App. 1030 (2016)
11 (the Washington state court of appeals applied NRS 86.489 in the context of a Nevada LLC
12 derivative action and awarded attorney's fees and costs). Thus, this Court may enter an order that
13 Arnould is entitled to his reasonable attorney's fees at the summary judgment phase and allow
14 further briefing as to the reasonable amount after the order is entered. See e.g. *Carlson v. Hallinan*,
15 925 A.2d 506, 548 (Del. Ch. 2006), opinion clarified, No. CIV.A. 19466, 2006 WL 1510759 (Del.
16 Ch. May 22, 2006).

17 **Here, Arnould is entitled to his attorney's fees and expenses for recovering money for CES**
18 **as a result of Arnould's successful derivative claims for relief.**⁵⁰ Since, there can be no legitimate
19 dispute that Arnould prevailed on his first cause of action, he is entitled to an order stating he has
20

21 ⁴⁷ See June 8, 2020 Order, on file herein.

22 ⁴⁸ See June 12, 2020 Order, on file herein.

23 ⁴⁹ Here, it cannot be disputed that Arnould's claims were proper derivative claims under NRCP 23.1 since
24 Munev (1) failed to raise any affirmative defenses that might bar Arnould's derivative action and (2) failed
25 to challenge Arnould's derivative pleading in via pre-answer motion pursuant to NRCP 12(b)(5); see e.g.
26 *JPMorgan Chase Bank, N.A. v. SFR Invs. Pool I, LLC*, 433 P.3d 263 (Nev. 2019) (citing *Idaho Res., Inc.*
27 *v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 461, 874 P.2d 742, 743 (1994)) (if affirmative defenses are
not pleaded, asserted by a motion or tried by consent, they are waived). As such, Munev has conceded to
the derivative nature of Arnould's claims; and any argument by Munev that Arnould is not entitled to an
order that he is entitled to fees and expenses pursuant to NRS 86.489 is without merit.

28 ⁵⁰ See Order re: Dissolution, on file herein; see also Order appointing receiver, on file herein.

1 prevailed on his derivative action and entitled to seek recovery of his expenses pursuant to NRS
2 86.489.

3 **B. ARNOULD IS ENTITLED TO SUMMARY JUDGMENT ON HIS**
4 **SECOND CAUSE OF ACTION.**

5 Arnould is entitled to summary judgment on his second cause of action for an accounting
6 of CES **because there are no material facts in dispute as to the Receiver's accounting of CES.**⁵¹

7 An equitable accounting "is a restitutionary remedy based upon avoiding unjust
8 enrichment." *See* D. Dobbs, Remedies § 4.3 at 415 (1973). Nevada courts have long recognized
9 the action of an equitable accounting. *Botsford v. Van Riper*, 33 Nev. 158, 110 P. 705 (1910);
10 *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle USA, Inc. v. Rimini*
11 *Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nov. Aug. 13, 2010); *Mobius*
12 *Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434 (D.
13 Nev. Jan. 23, 2012). Courts generally define an action for an accounting as "a proceeding in equity
14 for the purpose of obtaining a judicial settlement of the accounts of the parties in which proceeding
15 the court will adjudicate the amount due, administer full relief and render complete justice."
16 *Verdier v. Superior Court*, 88 Cal.App.2d 527, 530, 199 P.2d 325 (Cal.1948); *Teselle v.*
17 *McLoughlin*, 173 Cal. App. 4th 158, 92 Cal. Rptr. 3d 696 (Cal. App. 2009).

18 This Court is authorized to adjudicate an accounting claim by adopting a receiver's
19 undisputed accounting. Nevada courts are given "wide discretion" in equitable accounting actions
20 and may either "refer a case to a referee in the first instance... take the account itself, or ... order
21 that an account be rendered..." *Foster v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 77 Nev. 365, 369, 365
22 P.2d 313, 316 (1961) (quoting *State v. Callahan*, 48 Nev. 265, 229 P. 702, 703 (1924)) (emphasis
23 added) (internal citations omitted). In matters accounting for profits of an LLC, NRS 86.5419 is
24 instructive:

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
probable value, and an account of all debts due from and to it, as nearly as the same
can be ascertained, and make a report to the court of his or her proceedings at least

27 ⁵¹ *See* Compl. at ¶¶20-25.
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every 3 months thereafter during the continuance of the trust, and whenever the receiver shall be so ordered.

In this case, the Receiver completed a full accounting of CES that satisfies the requirements for an accounting under Nevada law and NRS Chapter 86.⁵² Thus, this Court should enter judgment in favor of the Receiver's equitable accounting of CES because (1) the complexity of CES's accounts make an equitable accounting of CES proper; (2) Mune's objections to the Receiver's accounting and Final Report are inadmissible; and (3) the Receiver's accounting of CES is undisputed and cannot be disputed.

1. **The complexity of CES's accounts make an equitable accounting of proper.**

First, an equitable accounting is proper where "the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable." *Civic Western Corp. v. Zila Industries, Inc.*, 66 Cal.App.3d 1, 14, 135 Cal.Rptr. 915 (Cal.1977) (citation and quotes omitted). Although courts typically grant an accounting where a fiduciary relationship exists between the parties, courts have extended the remedy of accounting to nonfiduciaries where "dealings between the parties are so complex that an equitable master, and not a jury, is required to sort out the various dealings between the parties." *Leonard v. Optimal Payments Ltd. (In re Nat'l Audit Def. Network)*, 332 B.R. 896, 918–19 (Bankr. D. Nev. 2005).

Here, the Receiver was appointed to account for the assets of CES, which was completed on December 7, 2020.⁵³ Due to the disagreements between the parties, the lack of communication, and necessary adjustments to the books and records, it cannot be disputed that the dealings between Arnould and Mune were complex.⁵⁴ Indeed, the breadth of the Receiver's report itself illustrates

⁵² See Final Report, on file herein; *c.f.* Defendants' Objection to the Receiver's Final Report and Recommendation, on file herein.

⁵³ *Id.*

⁵⁴ *Id.*

the complexity involved in accounting for CES.⁵⁵ Thus, an equitable accounting is proper in this case.

2. Muney's objections to the Receiver's Final Report are inadmissible.

Second, while Muney *objected* to the Receiver's accounting, he failed to provide *any admissible evidence* that may support his objections at trial.⁵⁶ Each of issues Muney raises in his objection require specialized and technical knowledge in accounting, which are subjects reserved for experts. *See* NRS 50.275. But Muney has not and cannot provide any expert testimony on these subjects (as set further explained below). Specifically, Muney objected to: (a) how the Receiver adjusted the accounting for rent expense; (b) how the Receiver booked and accounted for various expenditures; and (c) the value of CES's delivery truck.⁵⁷ Since Muney has failed to provide any admissible accounting evidence supporting each of his objections to the Final Report, the Receiver's Final Report and accounting is undisputed.

a. How the Receiver adjusted the accounting for rent expense is undisputed.

Muney objects to the Receiver's allocation of rent expense for the warehouse in Nevada, arguing that Receiver improperly "adjust[ed] the accounting..." because "this issue is still in dispute, and is a legal issue for determination by the finder of fact..."⁵⁸ Notably, however, Muney failed to provide any accounting that adjusts for rent expenditures differently, nor can Muney produce any expert opinion on the market value of rents at trial. As such, the Receiver's accounting on this subject is undisputed.

b. How the Receiver booked and accounted for various expenditures is undisputed.

Muney objects to, among other things, the Receiver's accounting of various expenditures, such as the Receiver's accounting of shipping charges and how they were expensed, the Receiver's

⁵⁵ *See id.*

⁵⁶ *See* Defendants' Objection to Final Report, on file herein.

⁵⁷ *Id.*

⁵⁸ *Id.* at p. 2.

1 accounting of CES's checks and how they were entered in the books, the Receiver's classification
2 of business expenses, and the Receiver's invoicing for rent.⁵⁹ In support of his objection, Muney
3 provides a myriad of documents and exhibits allegedly authenticating these expenditures.⁶⁰ Aside
4 from the fact that there is no authenticating affidavit of declaration for these exhibits, Muney also
5 fails to provide any alternative accounting as to how these various expenditures should be booked
6 or accounted for.⁶¹ As such, the Receiver's accounting on this subject is undisputed.

7 **c. How the CES's delivery truck should be valued is undisputed.**

8 Muney objected to the Receiver's calculations as to how the delivery truck costs should be
9 allocated and how the truck should be valued.⁶² Muney even goes so far as to provide his own
10 spreadsheet analysis of the CES delivery expenses.⁶³ Even if Muney were an expert qualified to
11 provide this sort of analysis (which he is not), his spreadsheet literally pulls numbers out of thin
12 air and is thus inadmissible. *See* NRS 50.305 (requiring disclosure of underlying data for expert
13 opinions). Similarly, Muney claims the CES delivery truck should be valued on the expenditures
14 made to maintain the truck.⁶⁴ Of course, Muney cites to no accounting method or basis to support
15 his assertion, nor does he provide any alternative accounting or valuation for the delivery truck.
16 Thus, the Receiver's accounting on this issue is undisputed.

17 **3. The Receiver's accounting of CES is undisputed and cannot be**
18 **disputed at trial.**

19 Finally, the Receiver's equitable accounting of CES is undisputed and cannot be disputed,
20 because Muney failed to produce an expert report or any other admissible accounting of profits for
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23 ⁵⁹ *Id.* at 5-8.

24 ⁶⁰ *Id.*

25 ⁶¹ *Id.*

26 ⁶² *Id.* at p. 8-9.

27 ⁶³ *Id.* at Exhibit 7, attached thereto.

28 ⁶⁴ *Id.*

CES.⁶⁵ As this Court is well aware, to defeat this Motion, Munev must “set out facts that would be admissible in evidence.” NRCp 56(c)(4). As noted above, Munev’s objections to the Final Report require a specialized and technical knowledge in accounting. NRS 50.275. But to present expert testimony, the proffering party must provide a written disclosure of their experts *and* the contents of those experts’ testimonies, including the information each expert considered in forming an opinion, well in advance of trial. *Sanders v. Sears-Page*, 131 Nev. 500, 517, 354 P.3d 201, 212 (Nev. App. 2015) (citing NRCp 16.1(a)(2)). This policy underlying NRCp 16.1 “serves to place all parties on an even playing field and to prevent trial by ambush or unfair surprise.” *Id.*; *see also Roberts v. Libby*, 132 Nev. 1023 (Nev. App. 2016).

In this case, Munev *objected* to the Receiver’s accounting, but failed to provide *any admissible evidence* that would support his objections.⁶⁶ Because Munev failed to produce an expert report, he is barred from attempting to proffer expert testimony that would be remotely competent in presenting an alternative accounting at trial.⁶⁷ Munev is not an accountant, none of his witnesses that may testify are accountants, and thus, Munev cannot dispute the Final Report and its accounting of profits for CES. Since Munev cannot present expert testimony, the Final Report and Receiver’s accounting of profits is undisputed.⁶⁸

Moreover, the amounts due under the undisputed accounting are undisputed and even partially stipulated to on or about February 26, 2021.⁶⁹ After the parties agreed to each pay \$22,712.56 to the Receiver to close out the receivership estate, the parties settled their accounts and accepted the distribution of CES’s assets.⁷⁰ The only unsettled amounts due under the

⁶⁵ Munev’s Expert Witness Designation, attached hereto as **Exhibit 2**.

⁶⁶ *See* Defendants’ Objection to Final Report, on file herein.

⁶⁷ *See* Munev’s Designation of Expert, attached hereto as **Exhibit 2**.

⁶⁸ *Id.*

⁶⁹ February 26, 2021 Stipulation and Order, on file herein.

⁷⁰ *Id.*

undisputed accounting is the \$6,303.93 due from Muney to be paid to Arnould.⁷¹ Accordingly, judgment in favor of the Receiver's undisputed equitable accounting should be reduced to judgment in favor of Arnould and entered in the amount of \$6,303.93 as a matter of law.⁷²

C. SINCE ARNOULD IS ENTITLED TO SUMMARY JUDGMENT ON SECOND CAUSE OF ACTION FOR ACCOUNTING, HIS BREACH OF FIDUCIARY DUTY CLAIM BECOMES MOOT.

The only outstanding amounts still owed pursuant to the undisputed accounting is the \$6,303.93 Muney must pay to Arnould to equalize the capital accounts in accordance with the Final Report.⁷³ Since Arnould is entitled to summary judgment on his equitable accounting claim, his breach of fiduciary duty claim becomes moot. This is because Muney's diversion of funds and profits were addressed in the Receiver's equitable accounting and capital account adjustment,⁷⁴ and the only outstanding amount still due to settle the accounts is the \$6,303.93 Muney still owes to Arnould in accordance with the Final Report.⁷⁵

Thus, if the Court grants Arnould his request for judgment as a matter of law on his equitable accounting claim, then Arnould's breach of fiduciary duty claim becomes moot, and the Receiver's equitable accounting and recommendations need only be reduced to a judgment as set forth above. Alternatively, if this Court does not grant summary judgement on Arnould's equitable accounting claim, then Arnould requests leave to amend his Complaint to include an unjust enrichment claim against Muney personally in the amount of \$6,303.93, as set forth in the First Amended Complaint, attached hereto.⁷⁶

⁷¹ Final Report, at p. 11 and Exhibit D-1.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ To the extent this Court denies Arnould's motion for summary judgment, Arnould respectfully requests leave to amend to file his First Amended Complaint, attached hereto as **Exhibit 3**. See EDCR 2.30.

1 **D. SUMMARY JUDGMENT IS PROPER WITH RESPECT TO MUNEY’S**
2 **DERIVATIVE CAUSES OF ACTIONS.**

3 In each of Muney’s counterclaims, he also included CES as a counter-plaintiff.⁷⁷ But
4 Muney’s counterclaims cannot be construed as a type of derivative suit on behalf of CES, because
5 his Counter-Complaint fails to meet any of the requirements of a derivative suit under NRCP
6 23.1.⁷⁸ For cases concerning LLCs, a member or manager is only authorized to bring an action to
7 enforce the rights of a limited-liability company “if the managers or members with authority to do
8 so have refused to bring the action [i.e. demand] or if an effort to cause those managers or members
9 to bring the action is not likely to succeed [i.e. futility].” NRS 86.483; *see also* NRS 86.587
10 (requiring this to plead with particularity). In addition, the complaint must be verified and must
11 allege that the plaintiff was a member at the time of the transaction of which the plaintiff complains
12 or that the plaintiff’s share or membership thereafter devolved on the plaintiff by operation of law.
13 *See* NRCP 23.1. Unless the plaintiff fairly and adequately represents the interests of company,
14 “[t]he derivative action *may not be maintained...*” *Id.* (emphasis added).

15 Here, Muney’s Counter-Complaint is devoid of any allegations that would support a
16 derivative claim.⁷⁹ He fails to verify his Counter-Complaint, fails to allege a demand or futility,
17 and fails to allege how he fairly and adequately represents the interests of the company.⁸⁰ This is
18 because he cannot meet any of these requirements. Thus, his claims cannot be raised derivatively.
19 Accordingly, Muney lacks standing to derivatively bring his first, second, third, fourth, fifth, and
20 sixth causes of action on behalf CES and summary judgment in favor of Arnould is proper.

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⁷⁷ *See generally* Counter-Compl.

25 ⁷⁸ *Id.*

26 ⁷⁹ *Id.*

27 ⁸⁰ *See id.*
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1 **E. SUMMARY JUDGMENT IS PROPER FOR MUNEY’S FIRST, FIFTH**
2 **AND SIXTH CAUSES OF ACTION, BECAUSE ARNOULD OWED NO**
3 **DUTIES TO MUNEY.**

4 Muney and CES’s breach of fiduciary duty, constructive fraud, and fraudulent concealment
5 claims are predicated on a fundamental misunderstanding of Nevada law. An essential element
6 within Muney’s first, fifth, and sixth causes of action is a duty owed by Arnould, however, Arnould
7 did not owe a duty to Muney under Nevada law. As such, summary judgment in favor of Arnould
8 on Muney’s first, fifth and sixth causes of action is proper as a matter of law.

9 **1. Muney’s first cause of action fails as a matter of law, since Arnould**
10 **owed no fiduciary duties to Muney and CES.**

11 First, Muney’s first cause of action states that “Arnould as co-owner and co-manager of an
12 LLC, owed a fiduciary duty to Counter-Plaintiffs Chefexec and Muney...”⁸¹ This is false. Arnould
13 owed no fiduciary duties to Muney and CES, because there was no operating agreement between
14 the members of CES imposing fiduciary duties.

15 In Nevada, a claim for breach of a fiduciary duty requires, as a threshold, the existence of
16 a fiduciary duty. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008)
17 (listing the three elements of the claim) (citing *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d
18 865, 880-81 (9th Cir. 2007) (applying Nevada law)). Under NRS Chapter 86, the only duties owed
19 by a member or manager to the LLC or to any other member of the LLC are: (1) the implied
20 contractual covenant of good faith and fair dealing; and (2) duties prescribed by the “articles of
21 organization or the operating agreement.” NRS 86.298. Unlike Nevada’s statutes covering
22 corporations and partnerships, NRS Chapter 86 does not set out fiduciary duties owed by and
23 between its members. *Cf.* NRS 78.138; NRS 87.210; *see also Ela v. Destefano*, 869 F.3d 1198,
24 1202 (11th Cir. 2017) (finding “persuasive the argument that ‘[w]here [a legislature] knows how
25 to say something but chooses not to, its silence is controlling’”) (quoting *Animal Legal Def. Fund*
26 *v. U.S. Dep’t of Agriculture*, 789 F.3d 1206, 1217 (11th Cir. 2015)).

27 Moreover, NRS 86.286(5) provides:

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⁸¹ *Id.* at ¶19.

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

(Emphasis added)⁸² Thus, while members of an LLC can contract to fiduciary duties, such duties
do not necessarily exist otherwise, aside from the implied contractual covenant of good faith and
fair dealing. *See e.g. Israyelyan v. Chavez*, 466 P.3d 939 (Nev. 2020) (holding that the Legislature's
use of “if” in NRS 86.286(5) supports this interpretation) (unpublished).⁸³

Here, it is undisputed that there is no binding contract between the partners that imposed
any fiduciary duties on Arnould.⁸⁴ Specifically, there was no valid operating agreement nor any
other valid agreement prescribing fiduciary duties owed to Muney.⁸⁵ Since there was no contract,
there cannot be any implied contractual covenant of good faith or fair dealing.⁸⁶ Accordingly,
Arnould did not owe fiduciary duties to Muney (nor CES)⁸⁷ under the facts of this case, and his
first cause of action must be summarily dismissed.

⁸² The syntax of NRS 86.286(5) and NRS 86.298 suggest that its purpose is not so much to affirm the
particular duty of good faith and fair dealing as to *exclude* any duties *other* than the implied covenant of
good faith and fair dealing (as well as those expressly included in an operating agreement) since the
covenant of good faith and fair dealing has been implied in every Nevada contract for over 30 years. *See*
Ainsworth v. Combined Ins. Co. of America, 763 P.2d 673, 676, 104 Nev. 587, 592, n. 1 (Nev. 1988).

⁸³ *See e.g. HP Tuners, LLC v. Cannata*, No. 318CV00527LRHWGC, 2019 WL 3848792, at *4 (D. Nev.
Aug. 15, 2019) (holding that “unlike many states, Nevada does not impose any statutory fiduciary duties
on members of LLCs”) (internal quotations omitted); *see e.g. In re 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).

⁸⁴ Counter-Complaint, at ¶2.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ An operating agreement is a “valid agreement of the members as to the affairs of a limited-liability
company and the conduct of its business.” NRS 86.101. The LLC itself is not a party to the operating
agreement; consequently, the LLC is not a party to whom the covenant of good faith and fair dealing is
owed.

2. **Muney's fifth cause of action fails as a matter of law, since Arnould owed no duty to "manage and disburse" CES's funds; and Muney's claim is barred by the doctrine of unclean hands.**

Next, Muney states in his fifth cause of action for constructive fraud that Arnould owed a duty to Muney and CES to "lawfully manage and disburse" funds and assets belonging to CES.⁸⁸ "Constructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others or to violate confidence." *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982); *See also, Perry v. Jordan*, 111 Nev. 943, 946–47, 900 P.2d 335, 337 (1995). As set forth below, Muney's claim for constructive fraud fails both factually and legally.

a. **Muney's claim for constructive fraud legally fails since Arnould owed no duty to "manage and disburse" funds and assets as a matter of law.**

To legally maintain his fifth cause of action, Muney must establish that Arnould owed a legal duty "arising out of a fiduciary or confidential relationship." *Perry*, 111 Nev. at 946–47, 900 P.2d at 337 (quoting *Long*, 98 Nev. at 13, 639 P.2d at 529–30) (internal quotations omitted). "A "confidential or fiduciary relationship" exists when one reposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." *Id.* Thus, a legal or equitable duty is only imposed "where one party imposes confidence in the other because of that person's position, and the other party knows of this confidence." *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 635, 855 P.2d 549, 553 (1993) (internal quotations and citations omitted).

In this case, the only "relationship" between Muney and Arnould was their undisputed relationship as "equal co-owners" and co-managers of CES.⁸⁹ Muney's Counter-Complaint even states that Arnould allegedly breached his duty as a "business partner" of Muney in his constructive

⁸⁸ Counter-Complaint at ¶46.

⁸⁹ *Id.* at ¶¶2-3.

1 fraud claim.⁹⁰ Thus, the only duties that can be imposed as to Arnould for constructive fraud are
2 the duties arising out of Arnould's status as a member and co-manager CES.

3 However, as already explained above, NRS Chapter 86 restricts the duties owed by a
4 member and manager of an LLC to only the implied contractual covenant of good faith and fair
5 dealing. *See* NRS 86.298 and 86.286(5); *see e.g. Israyelyan*, 466 P.3d at *4. The Legislature
6 intended for managers and members of an LLC to either opt-out of fiduciary duties, or to
7 contractually agree to fiduciary duties by way of an operating agreement. *Id.* But, in this case, it
8 is undisputed that Muney and Arnould were the only members of CES and had no operating
9 agreement,⁹¹ and accordingly, there can be no other duties imposed upon Arnould within the scope
10 of his business relationship with Muney. Therefore, even if Muney's allegation that Arnould failed
11 to "manage and disburse [CES] funds and assets" were true (which it is not), Muney *still cannot*
12 *impose a duty to do so as a matter of law*.⁹² As such, Muney's claim for constructive fraud should
13 be summarily dismissed as a matter of law.

14 **b. Muney's constructive fraud claim fails due to Muney's**
15 **undisputed unclean hands.**

16 Even if an *equitable* duty to "manage and disburse" funds legally existed for members and
17 managers of an LLC (which it does not), this equitable duty would have to be applied equally to
18 both Arnould and Muney since they are undisputedly co-managers and "equal co-owners."⁹³ A
19 review of the Receiver's undisputed accounting in this case reveals that Muney's constructive
20 fraud action must be barred under the doctrine of unclean hands and Muney's failure to do equity,
21 which was a timely-raised affirmative defense of Arnould.⁹⁴

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24 ⁹⁰ *Id.*

25 ⁹¹ *Id.* at ¶2.

26 ⁹² *Id.* at ¶46.

27 ⁹³ *Id.* at ¶¶2-3.

28 ⁹⁴ *See* Answer to Counter-Complaint, at pg. 2 (third affirmative defense).

1 In Nevada, the affirmative defense of “unclean hands” bars a party from receiving equitable
2 relief because of that party's own inequitable conduct. *Las Vegas Fetish & Fantasy Halloween*
3 *Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 182 P.3d 764 (2008). In applying the doctrine,
4 Nevada courts consider two factors: (1) the egregiousness of the claimant’s misconduct at issue,
5 and (2) the seriousness of the harm caused by the claimant’s misconduct.” *Id.* at 276, 767. If these
6 factors weigh against granting the claimant’s equitable relief, then the unclean hands doctrine must
7 bar that remedy. *Id.*

8 In this case, it is undisputed that Muney managed the entire Las Vegas side of CES.⁹⁵
9 According to the unrefuted accounting by the Receiver, **both** Muney and Arnould failed to “consult
10 with one another” in their management of CES; and **both** engaged in various attempts to “sabotage
11 the decisions and actions of the other.”⁹⁶ The Receiver’s undisputed accounting revealed a myriad
12 of misdeeds of Muney that constitute a serious and egregious mismanagement of CES funds and
13 assets. To note only a few, Muney: failed to manage the Las Vegas inventory;⁹⁷ failed to account
14 for \$29,090.58 worth of obsolete inventory in Las Vegas;⁹⁸ overcharged CES for rent to the tune
15 of \$54,450;⁹⁹ withheld interest on a \$20,000 loan from CES to himself;¹⁰⁰ provided improper
16 discounts costing CES \$5,403.86;¹⁰¹ used CES’s mail system to send packages and items for his
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22 ⁹⁵ *Id.* at ¶13.

23 ⁹⁶ Final Report, at pg. 2.

24 ⁹⁷ *Id.* at Exhibit C-1.

25 ⁹⁸ *Id.*

26 ⁹⁹ *Id.* at Exhibit C-2.

27 ¹⁰⁰ *Id.* at Exhibit C-16.

28 ¹⁰¹ *Id.*

1 other companies;¹⁰² wrote checks to himself for non-business expenses amounting to \$4,165.29;¹⁰³
2 and used CES funds to pay for various other personal items like groceries and golf outings.¹⁰⁴

3 Therefore, even if an equitable duty for a manager or member of an LLC to “manage and
4 disburse” funds existed under Nevada law (which it does not), such a duty cannot be applied in
5 equity in this case by Muney due to his unclean hands. Thus, Muney’s claim of constructive fraud
6 fails as a matter of law.

7 **3. Muney’s sixth cause of action fails as a matter of law, since Arnould**
8 **owes no duty to disclose.**

9 Finally, Muney states in his sixth cause of action that Arnould had “a duty to disclose all
10 dealings *to his partner*, but nonetheless intentionally concealed his acts.”¹⁰⁵ Aside from the fact
11 that Arnould practiced total transparency as a co-manager of CES and that this claim has already
12 been addressed by the Receiver’s undisputed accounting, Muney cannot maintain his sixth cause
13 of action for fraudulent concealment, because, as a matter of law, Arnould did not owe a duty to
14 disclose in his capacity as a member, manager, or “*partner*” as Muney alleges in his Counter-
15 Complaint.¹⁰⁶

16 One of the essential elements in a fraudulent concealment case is that the defendant actually
17 *owed a duty to disclose a fact* to the plaintiff. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1485
18 (1998), overruled in part on other grounds in *GES, Inc. v. Corbitt*, 117 Nev. 265 (2001) (using the
19 conjunction “and” in listing each element in listing all five elements of fraudulent concealment);
20 *see also Couturier v. Am. Invsco Corp.*, 10 F.Supp.3d 1143, 1157 (D. Nev. 2014) (same); *Aliya*
21 *Medcare Fin., LLC v. Nickell*, No. CV 14-07806 MMM (EX), 2015 WL 11072180, at *9 (C.D.
22 Cal. Sept. 25, 2015) (same) (applying Nevada law).

23 _____
24 ¹⁰² *Id.*

25 ¹⁰³ *Id.*

26 ¹⁰⁴ *Id.*

27 ¹⁰⁵ *Id.* at ¶53 (emphasis added).

28 ¹⁰⁶ *Id.*

1 In this case, it is undisputed that Muney and Arnould were the only members of CES and
2 had no operating agreement.¹⁰⁷ As explained above, NRS Chapter 86 restricts the duties owed by
3 a member and manager of an LLC to only the implied contractual covenant of good faith and fair
4 dealing. *See* NRS 86.298 and 86.286(5); *see e.g. Israyelyan*, 466 P.3d at *4. Therefore, even if all
5 Muney’s allegation that Arnould failed to disclose to Muney (which it is not), then Muney *still* has
6 no claim for fraudulent concealment because Arnould owed no duty to Muney. Accordingly,
7 judgment in favor of Arnould on his sixth cause of action should be granted.

8 **F. SUMMARY JUDGMENT IS PROPER WITH RESPECT TO MUNEY’S**
9 **FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION**
BECAUSE HE LACKS STANDING.

10 The substantive allegation undergirding Muney’s first, second, third, and fourth causes of
11 action is that Arnould made payments to himself that Muney deems improper, and that,
12 accordingly, Arnould should “[r]eturn all of the funds” to CES.¹⁰⁸ There are no allegations by
13 Muney that funds should be returned to Muney personally, but rather, Muney asks the Court for
14 an order that Arnould repay CES.¹⁰⁹ This raises the threshold issue question of whether Muney has
15 standing to raise his claim at all.

16 In general, standing “consists of both a case or controversy requirement stemming from
17 Article III, Section 2 of the Constitution, and a subconstitutional prudential element.” *In re*
18 *AMERCO Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations
19 omitted). While “state courts do not have constitutional Article III standing, Nevada has a long
20 history of requiring an actual justiciable controversy as a predicate to judicial relief.” *Id.* (internal
21 quotation omitted). Thus, to pursue a legal claim, an “injury in fact” must exist. *Bennett v. Spear*,
22 520 U.S. 154, 167 (1997). The “injury-in-fact” analysis requires the claimant to show that the
23 action caused or threatened to cause the claimant's injury-in-fact, and that the relief sought will
24 remedy the injury. *See generally Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38-39 (1976).

25 _____
26 ¹⁰⁷ Counter- Compl. at ¶¶2.

27 ¹⁰⁸ *Id.* at pg. 11, ¶3.

28 ¹⁰⁹ *Id.* at pg. 11, ¶3.

1 A person acting in their individual capacity is legally distinct from the same person acting in their
2 representative capacity. *See Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 728, 380 P.3d
3 836, 842 (2016).

4 Here, Muney is asking the Court to order Arnould repay to CES “all of the funds” which
5 Muney alleges were “stolen, embezzled or in any other way wrongfully taken” by Arnould.¹¹⁰
6 However, as set forth below, all of the “funds” Muney refers to in each of his causes of action are
7 CES funds. Thus, Muney lacks standing to recover CES’s funds and his first, second, third, and
8 fourth claims and each should be summarily dismissed as a matter of law.

9 **1. Muney lacks standing to raise his first cause of action.**

10 First, Muney expressly states that his cause of action for breach of fiduciary duty involves
11 “funds that belonged to the company”;¹¹¹ the misappropriation of “Chefexec” benefits;¹¹²
12 misallocating “commissions” paid by the company; and “self dealing [sic]... to the detriment of
13 Chefexec.”¹¹³ Accordingly, this cause of action belongs to CES—the putative transferor—and not
14 to Muney.

15 **2. Muney lacks standing to raise his second cause of action.**

16 Second, Muney states that Arnould allegedly “took control of” funds “in denial of, and the
17 exclusion of, Counter-Plaintiffs’ rights thereto.”¹¹⁴ In the Receiver’s undisputed accounting, there
18 was no evidence that Arnould took control of Muney’s funds.¹¹⁵ Nor did Muney’s objections to
19 the Receiver’s final accounting provide any evidence that Arnould took control of Muney’s

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¹¹⁰ *Id.* at pg. 11, ¶3.

23 ¹¹¹ *Id.* at ¶20.

24 ¹¹² *Id.*

25 ¹¹³ *Id.* at ¶7.

26 ¹¹⁴ *Id.* at ¶¶7-8.

27 ¹¹⁵ *See* Final Report, at p. 11 and Exhibit D-1.
28

1 funds.¹¹⁶ Accordingly, Muney lacks standing to bring his second cause of action, since any funds
2 controlled by Arnould were CES's funds.¹¹⁷

3 **3. Muney lacks standing to raise his third cause of action.**

4 Third, Muney states that Arnould allegedly "received monies that belonged to Counter-
5 Plaintiffs in the form of funds taken from the business."¹¹⁸ Thus, Muney's own allegation states
6 that the funds were "taken from the business" not Muney personally.¹¹⁹ Regardless, there has been
7 no evidence produced that would suggest that Arnould received monies that belonged to Muney.¹²⁰
8 Accordingly, Muney lacks standing to bring his third cause of action, since any funds received by
9 Arnould in this case were CES monies.¹²¹

10 **4. Muney lacks standing to raise his fourth cause of action.**

11 Fourth, Muney states that Arnould was unjustly enriched because he benefited by a "receipt
12 of funds and monies *belonging to Chefexec, or other sales reps or owners of Chefexec...*"¹²²
13 Once again, Muney's own allegation states that the funds and monies allegedly wrongfully taken
14 by Arnould belonged to CES, its employees, or its owners.¹²³ Regardless, there has been no
15 evidence produced that would suggest that Arnould received monies that belonged to Muney.¹²⁴
16 Accordingly, Muney lacks standing to bring his fourth cause of action, since any funds or monies
17 Arnould allegedly received the benefit of did not belong to Muney.¹²⁵

18 _____
19 ¹¹⁶ See Defendants' Objection to Final Report.

20 ¹¹⁷ *Id.* at ¶26.

21 ¹¹⁸ *Id.* at ¶31.

22 ¹¹⁹ *Id.*

23 ¹²⁰ *Id.*

24 ¹²¹ *Id.* at ¶26.

25 ¹²² *Id.* ¶38. (Emphasis added).

26 ¹²³ *Id.*

27 ¹²⁴ *Id.*

28 ¹²⁵ *Id.*

For these reasons and the reasons set forth herein, Arnould respectfully requests this Court enter summary judgment in his favor on all causes of action in his Complaint. In addition, since Munev cannot sustain his claims as a matter of law, Arnould respectfully requests this Court summarily dismiss all of Munev's causes of action and putative derivative claims set forth in his Counter-Complaint.

Dated this 14th day of June, 2021.

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF, DOMINIQUE ARNOULD'S MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of June, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹²⁶

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

/s/ Marie Jorczak
An employee of Marquis Aurbach Coffing

¹²⁶ 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

EXHIBIT 1

MARQUIS AURBACH COFFING

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

1 **Marquis Aurbach Coffing**
Phillip S. Aurbach, Esq.
2 Nevada Bar No. 1501
Alexander K. Calaway, Esq.
3 Nevada Bar No. 15188
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
paurbach@maclaw.com
6 acalaway@maclaw.com
Attorneys for Plaintiff

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DOMINIQUE ARNOULD,

11 Plaintiff,

12 vs.

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

15 Defendants,

16 And related counterclaims.

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

17 **PLAINTIFF, DOMINIQUE ARNOULD'S,**
18 **DESIGNATION OF EXPERT WITNESS**

19 COMES NOW, Plaintiff, Dominique Arnould, by and through his attorneys, Marquis
20 Aurbach Coffing, hereby submits his Designation and Disclosure Expert Witness and related
21 documents in compliance with the Nevada Rules of Civil Procedure as follows

22 **EXPERT WITNESS**

- 23 1. Larry L. Bertsch, CPA, CFF, GCMA
24 265 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119

25 Mr. Bertsch has been a Certified Public Accountant for over 55 years. Mr. Bertsch has
26 worked as a court appointed receiver, forensic accountant, bankruptcy trustee, and the chief
27 financial officer over several large hotel and casinos. *See* Motion to Select Receiver, at Ex. A.

1 Mr. Bertsch has administered and closed over 8,000 Chapter 7 bankruptcies and numerous
2 Chapter 11 and Chapter 7 operating bankruptcies. *See id.* Mr. Bertsch has also served as a special
3 master, liquidating trustee, and a receiver in hundreds of cases involving partnerships, limited
4 liability companies, corporations, and divorces. *Id.* Mr. Bertsch has experience in testifying on
5 accounting and forensic accounting matters and has testified in both state and federal courts. *Id.*

6 Mr. Bertsch is expected to testify regarding his Final Report regarding Chef Exec
7 Suppliers, LLC, its books, QuickBooks, accounts, capital accounts, financial documents, and
8 issues surrounding the complaint, counter-complaint, and pleadings in this case. His opinions are
9 based upon a review and analysis of the relevant documents, items, and events in this matter. *See*
10 Bates Stamp Nos. ARNOULD000812. Mr. Bertsch may also testify regarding his opinions as
11 they related to other subjects that he is qualified to testify to as these issues are raised in this
12 lawsuit, including potential rebuttal and impeachment testimony. Mr. Bertsch's receiver report,
13 supplemental report, testimony, and opinions therein rely upon documents provided by the
14 Parties in this matter including, but not limited to those documents and files which were provided
15 to him by the Managers and Members of Chef Exec Suppliers LLC as part of Mr. Bertsch's
16 reports. Mr. Bertsch's reports, previous testimony, and underlying documents have been
17 disclosed on the record as the Receiver's Final Report.

18 Dated this 14th day of May, 2021.

19
20 MARQUIS AURBACH COFFING

21
22 By /s/Alexander K. Calaway
23 Phillip S. Aurbach, Esq.
24 Nevada Bar No. 1501
25 Alexander K. Calaway, Esq.
26 Nevada Bar No. 15188
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF, DOMINIQUE ARNOULD'S DESIGNATION OF EXPERT WITNESS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of May, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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

/s/ Marie Jorczak
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).

EXHIBIT 2

EXHIBIT 2

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

11
12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

15 DOMINIQUE ARNOULD,

16 Plaintiff/Counter-Defendant,

17 vs.

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

22 Defendants/Counter-Claimants.

) Case Number: A-19-803488-B

) Dept. Number: 27

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)
) **DEFENDANTS' MOTION FOR STAY**
) **PENDING APPEAL**

) **HEARING REQUESTED**
)

23
24 **DEFENDANT CLEMENT MUNEY'S**
25 **DESIGNATION OF EXPERT WITNESS**

26 COMES NOW, Defendant Clement Muneuy, by and through his attorney, Kern Law,
27 Ltd., hereby submits his Designation and Disclosure Expert Witness and related documents
28 in compliance with the Nevada Rules of Civil Procedure as follows

29 **EXPERT WITNESS**

30 1. Andrew Martin, MS, CFE, CFF, CGMA, CICA, CPA
31 7345 S. Durango Drive Suite B107-319
32 Las Vegas, NV 89113

33 Andrew Martin is a Certified Public Accountant (CPA), Certified Fraud
34 Examiner(CFE), Certified in Financial Forensics (CFF), Certified Internal Controls Auditor

1 (CICA) and Certified Global Management Accountant(CGMA), with MS and BS in
2 accounting. Martin has over 32 years of professional experience providing accounting,
3 advisory, audit and tax services to a diverse group of business, individual, governmental,
4 and non-profit clients, as well as being a successful business owner. Martin also has
5 distinguished public service career in Nevada serving as State Legislator, Trustee of College
6 Saving Plans of Nevada, and member of Nevada Economic Forum and Clark County School
7 District Bond Oversight Committee.

8 Mr. Martin is expected to provide testimony in review and analysis of the Final
9 Receiver's Report regarding Chef Exec Suppliers, LLC, review of the books, accounts, and
10 business records of Chef Exec Suppliers, LLC., and issues surrounding the complaint,
11 counter-complaint, and pleadings in this case. His opinions are based upon a review and
12 analysis of the relevant documents, items, and events in this matter. Mr. Martin may also
13 testify regarding his opinions on any other subjects that he is qualified to testify to, that are
14 relevant to the present suit. Mr. Martin's report, testimony, and opinions therein rely upon
15 documents provided by the Parties in this matter.

16 2. Gene Proctor
17 Coldwell Banker Premier Realty
18 8290 West Sahara Ave, Suite 200
19 Las Vegas, NV 89117

20 Gene Proctor is a Nevada licensed real estate agent with Coldwell Banker Premier
21 Realty, and works as a commercial leasing and sales specialist. Proctor has worked in Las
22 Vegas real estate for 23 years.

23 Mr. Proctor is expected to provide testimony relating to the leasing of the Chef Exec
24 Suppliers, LLC Las Vegas warehouse, as well as relating to the Las Vegas commercial real
25 estate market as a whole. His opinions are based upon his extensive experience in the Las
26 Vegas commercial real estate industry. Mr. Proctor may also testify regarding his opinions
27 on any other subjects that he is qualified to testify to, that are relevant to the present suit.
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Dated this 14th day of May, 2021.

KERN LAW

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2021, I served a true and correct copy of the foregoing **Defendants’ Designation of Expert Witnesses**, by electronic service, addressed to the following:

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

Alexander Callaway
Marquis Aurbach Coffing
acalaway@maclaw.com
Counsel for Dominique Arnould

/s/ Robert Kern
Employee of Kern Law

EXHIBIT 3

EXHIBIT 3

1 **Marquis Aurbach Coffing**
Phillip S. Aurbach, Esq.
2 Nevada Bar No. 1501
10001 Park Run Drive
3 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
4 Facsimile: (702) 382-5816
paurbach@maclaw.com
5 *Attorneys for Plaintiff*

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 DOMINIQUE ARNOULD,

10 Plaintiff,

11 vs.

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

16 Defendants.

Case No.:
Dept. No.:

Arbitration Exemption Requested:
(Declaratory Relief)

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

17 **FIRST AMENDED COMPLAINT FOR APPOINTMENT OF A RECEIVER OR**
18 **DISSOLUTION OF LLC; DECLARATORY RELIEF; BREACH OF FIDUCIARY**
19 **DUTY; AND DAMAGES**

20 Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould") by and through his attorneys
21 Marquis Aurbach Coffing, alleges and complains as follows:

22 **PARTIES**

- 23 1. Clement Muney (hereinafter Muney) is a 50% owner/member and co-manager of
24 CHEF EXEC SUPPLIERS, LLC, (hereinafter Chef Suppliers or the Company).
- 25 2. Arnould is the other 50% owner/member and co-manager of Chef Suppliers.
- 26 3. Muney and Chef Suppliers at all relevant times mentioned herein, were doing
27 business in Clark County, Nevada.
- 28

JURISDICTION AND VENUE

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

BACKGROUND FACTS

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

1 11. It has been impossible to get Munev to discuss his breach of fiduciary duties
2 including but not limited to forming a new entity and having payments for Chef Suppliers'
3 inventory go to his new entity, which was formed without the knowledge or consent of Plaintiff
4 Arnould.

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

7 13. Arnould is a manager.

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

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

14 **FIRST CLAIM FOR RELIEF**
15 **(Declaratory Relief, Receiver and Dissolution)**

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

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

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

22 19. In order to pursue his claims as a direct and proximate result of the Defendants'
23 conduct outlined herein, Arnould has incurred attorneys' fees as special damages in the sum of
24 \$5,000 as of the date of filing this pleading and increasing up to and through trial and appeal, if
25 any.

26 **SECOND CLAIM FOR RELIEF**
27 **(Accounting & Unjust Enrichment)**

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

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

22. Defendant Munev owes such funds and profits derived therefrom to Chef Suppliers and/or Arnould. Munev has unjustly retained the money or property of Chef Suppliers and/or Arnould against fundamental principles of justice or equity and good conscience.

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

Dated this ____ day of June, 2021.

MARQUIS AURBACH COFFING

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

Nevada Bar No. 1501
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

VERIFICATION

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

Dated this ____ day of June, 2021

DOMINIQUE ARNOULD

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

11
12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 DOMINIQUE ARNOULD,

15 Plaintiff/Counter-Defendant,

16 vs.

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

21 Defendants/Counter-Claimants.

) Case Number: A-19-803488-B

) Dept. Number: 27

) **DEFENDANTS' OPPOSITION TO**
) **ARNOULD'S MOTION FOR SUMMARY**
) **JUDGMENT**

22
23 COME NOW, CLEMENT MUNEY and CHEF EXEC SUPPLIERS, LLC, by and
24 through their attorney of record, Robert Kern, Esq., of Kern Law, Ltd., and hereby submit
25 this opposition to Arnould's motion for summary judgment.
26

27 **I. INTRODUCTION**

28 Plaintiff Arnould's motion for summary judgment relies primarily upon his
confusion between a receiver's report, and an adjudication of the merits of the claims related
to the receiver's report. Contrary to Arnould's belief, the Receiver's Report and
Recommendations do not function as an adjudication of all the matters in this case, and thus
the material disputes of fact remain on almost all claims in this matter, and the remaining

1 claim (award of costs of a derivative action) are simply without any legal support, as the one
2 issue that has been resolved in this case is not a derivative cause of action.
3

4 Although not directly relevant to the motion, or opposition, Muney feels the need to
5 dispute Arnould's allegation that Muney has failed to pay the amounts ordered by this Court.
6 Muney promptly paid the \$22,712.56 ordered by this Court. The amount that Arnould
7 alleges Muney "refused to pay" was an additional amount that was never ordered by this
8 Court.
9

10 II. ARGUMENT

11 a. Dissolution Was not a Derivative Cause of Action.

12
13 Arnould's first claim seeks costs and attorneys fees in the action based on NRS
14 86.489, which authorizes costs and fees after a party prevails in a *derivative* action. Arnould
15 then alleges that because the claim for dissolution was granted, he is entitled to costs for that
16 claim. While Arnould did allege that the claim for breach of fiduciary duty was either a
17 derivative action or a direct action (in the alternative)¹, he did not bring the claim for
18 dissolution as a derivative action. More importantly, a claim for dissolution would most
19 likely be incapable of being brought as a derivative action, as a derivative action is required
20 to be for the benefit of the company, and a dissolution is a destruction of the company.

21 Further, the claim for dissolution was specifically brought under NRS 86.495²,
22 which authorizes a member of the LLC to seek dissolution, but does not authorize the
23 company to seek dissolution through a derivative suit. (NRS 86.405(1) ("Upon application
24 by or for a member, the district court may decree dissolution..."). Since a derivative action is
25

26 ¹ See Complaint pp.3-4. ("Defendant Muney owes such funds and profits derived
therefrom to Chef Suppliers and/or Arnould.")

27 ² See Complaint p.4. "...an Order granting dissolution should be entered pursuant to NRS
28 86.495 and 86.505"

1 required to be brought “in the right of a limited-liability company to recover a judgment in
2 its favor” (NRS 86.483), an action for dissolution is incapable of being a derivative action,
3 as it requires being brought by the member himself.
4

5 Finally, even if the statute did allow for the dissolution claim to be treated as a
6 derivative action, a motion for fees is required to be filed within 21 days of entry of the
7 judgment. NRCP 54(d)(2)(B)(i). As the order of dissolution was entered on August 21,
8 2020, the motion for summary judgment was filed 297 days after the order of dissolution.
9 As the language of the rule is mandatory (“...the motion *must* be filed no later than 21 days
10 after ...” Id. {emphasis added}), this grossly untimely motion for fees must be denied.
11
12

13 **b. As an Accounting Requires Significant Determinations of Disputed Issues of**
14 **Fact, it can not be Granted Through Summary Judgment.**

15 Arnould's mistaken belief that the Receiver's Report functioned as an adjudication of
16 the merits of the case is unfounded. A Receiver's powers are delineated by NRS 32.295(1),
17 as well as the court order appointing the Receiver. None of the powers contained in NRS
18 32.295(1) authorize adjudication of disputed issues, and the Court's order appointing the
19 Receiver in this case specifically limited its power, and gave it no authority to adjudicate
20 issues:

21 4. It is further ordered that Plaintiff's Motion for Appointment of Trustee or
22 Receiver is GRANTED to the extent that a receiver ("Receiver") with
23 limited powers as defined below ("Limited Powers").

24 5. It is further ordered that the Receiver's role will be to supervise the
25 operations of the Company in consultation with Arnould and Muney, to
26 allow them to continue operations of the Company, and prepare a report
27 about the viability of the Company.

28 (Order Appointing Receiver, entered June 8, 2020, p.5). At no time in this proceeding was
the Receiver given authority to adjudicate issues, by Court order, or by statute. The
Receiver's Report and Recommendation was just that; a recommendation that can be used as

1 evidence, for the Court or jury to accept or not accept. This means that Arnould's entire
2 argument for summary judgment on the issue of an accounting is essentially asking this
3 court to grant summary judgment on multiple disputed issues, because one piece of
4 evidence favors them.
5

6 1. There are Significant Issues of Material Fact.
7

8 NRCP Rule 56 specifies that summary judgment can only be granted if Arnould
9 establishes that there are no disputes of material fact to be determined. To quote from
10 Plaintiff's motion, an accounting requires the court to "adjudicate the amount due,
11 administer full relief and render complete justice." *Verdier v. Superior Court*, 88
12 Cal.App.2d 527, 530, 199 P.2d 325 (Cal.1948); *Teselle v. McLoughlin*, 173 Cal. App. 4th
13 158, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). To fully adjudicate the amounts due between
14 the parties would require a large number of determinations of disputed fact.

15 First, the overall determination of how much of the Receiver's Report to adopt over
16 the objections to it is by itself a determination of disputed fact. But to complete an
17 accounting, the Court would have to make an entire list of determinations of disputed fact:

18 -Las Vegas warehouse rent: whether there was a fiduciary duty, whether there was a
19 breach of such duty, whether the price charged was reasonable in that market,
20 whether there was bad faith;

21 -Los Angeles warehouse rent: resolving the conflicting testimony regarding how
22 much space was used by Arnould's company;

23 -Determining whether disputed amounts charged by Muney were proper;

24 -Determining whether disputed amounts charged by Arnould were proper;

25 -Determining the proper valuation of the LA delivery truck, and the valuation of
26 delivery services by the LA delivery truck.
27
28

1
2 Further, this Court has already held that the question of whether Muney breached a
3 fiduciary duty is not capable of resolution on summary judgment because of the existence of
4 issues of material fact:

5 IT IS HEREBY ORDERED that Defendants Motion for Summary
6 Judgment on the issue of whether Defendant Muney breached fiduciary
7 duties is denied because there are genuine issues of material fact.

8 (Order denying summary judgment, entered January 17, 2020). With multiple issues of
9 disputed material fact in this matter, an accounting can not be rendered by summary
10 judgment.

11 2. The Receiver's Report is not Undisputed.

12 Arnould's entire argument as to why this Court could determine issues with disputed
13 of material fact on summary judgment, is based on the novel argument that, because
14 Muney's objection to the receiver's report is alleged to be inadmissible as evidence, that this
15 somehow makes the receiver's report 'undisputed'. Arnould provides neither logical
16 explanation, nor any authority whatsoever to explain how he alleges that an objection to the
17 report being inadmissible as evidence (which Muney very much disputes), is somehow the
18 same as Muney not having objected to the report. Muney did properly and timely file an
19 objection to the Receiver's Report, which the Court accepted and noted on the record³. The
20 Receiver's Report is thus not "undisputed".

21 Further, Arnould's allegation that the cases cited support the fact that an undisputed
22 receiver's report can be adjudicated simply by being adopted are incorrect; the cases cited
23 say nothing of the sort. The *Foster Bank* case, which Arnould alleges supports their
24 argument, simply states that a Court is authorized to assign an accounting to a referee for
25 determination⁴. As this Court did not assign this matter to a referee for adjudication, and
26

27 ³ "Defendants' objections and the Receiver's response have been noted, received and
28 recorded herein." Order, February 17, 2021 p.2.

⁴ "We have no statutory provision as to the method of procedure when it has been made to
appear that an accounting should be ordered, but it seems that a court of equity has a wide

1 instead assigned a receiver with limited powers for the limited purposes of keeping the
2 company operating and preparing a report on its viability, the case cited has no bearing here.
3 *Foster v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 77 Nev. 365, 369, 365 P.2d 313, 316 (1961).
4 Likewise, the statute cited (NRS 86.5419) applies only to a receiver appointed pursuant to
5 NRS 86.5415; Arnould did not seek to appoint a receiver under this statute because the facts
6 of this case did not meet the requirement of appointing a receiver under that statute. This
7 receiver was appointed with explicit limited powers; none of those powers were to
8 adjudicate the contested claims of the case.
9

10 As summary judgment can not resolve a matter with material issues of disputed fact,
11 and many material issues of disputed fact would require determination in order to conduct
12 an accounting, an accounting is not possible in this matter on summary judgment.
13

14 **c. Breach of Fiduciary Duty Requires Resolution of Issues of Disputed Fact**

15 Arnould's argument that the Breach of Fiduciary Duty claim is moot because it is
16 resolved by an accounting fails because summary judgment can not resolve issues of
17 disputed fact, regardless of whether those disputes are contained within a claim for
18 accounting, or a claim for breach of fiduciary duty. As explained above, the claim for
19 accounting can not be resolved on summary judgment because it would require resolution of
20 multiple material issues of disputed fact. Likewise, without resolution of the accounting, the
21 breach of fiduciary duty claim is not moot, and clearly has disputed issues of fact. As
22 referenced above, this Court already denied summary judgment on this claim specifically,
23 ruling that there were material issues of disputed fact (Order denying MSJ January 17,
24 2020). It is also clear that for Arnould to prevail on this issue, he would have to establish
25 that the rent charged to Chef Exec Suppliers, LLC (hereinafter, "Chef Exec") for the Las
26

27 _____
28 discretion in this matter — it may refer a case to a referee in the first instance, or it may take
the account itself, or it may, before making an order of reference or before taking the
account itself, order that an account be rendered, duly verified." *Foster Bank*, Id.

1 Vegas warehouse was unreasonable for that market and terms; this is unquestionably an
2 issue of fact, and thus can not be resolved by summary judgment.
3

4 **Muney's Counterclaims**

5 **d. Breach of Fiduciary Duty**

6 **1. Existence of Duty**

7
8
9 Arnould first argues that summary judgment dismissing Muney's claim against
10 Arnould for breach of fiduciary duty is proper, because there are no duties owed between
11 members of an LLC absent a operating agreement. Arnould loses this argument by
12 necessity, under the doctrine of judicial estoppel. Judicial estoppel "generally prevents a
13 party from prevailing in one phase of a case on an argument and then relying on a
14 contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 US 742
15 (U.S. Supreme Court 2001); quoting *Pegram v. Herdrich*, 530 U. S. 211, 227, n. 8 (U.S.
16 Supreme Court 2000). Under the doctrine of judicial estoppel, a party may be estopped
17 merely by the fact of having alleged or admitted in his pleadings in a former proceeding the
18 contrary of the assertion sought to be made." *Breliant v. Preferred Equities Corp.*, 918 P. 2d
19 314 (NV S.Ct 1996); quoting *Sterling Builders, Inc. v. Fuhrman*, 80 Nev. 543, 549, 396
20 P.2d 850, 854 (1964). In the present case, Arnould survived Muney's motion for summary
21 judgment by arguing the exact opposite of his position in this motion:

22 In Nevada, in the absence of an operating agreement, managing members of
23 a limited liability company generally have authority to prescribe the
24 management of the company. *See* NRS § 86.291. However, this does not
25 vest in a manager the unfettered power to do whatever he or she pleases
26 with respect to LLC assets. *See id.* Under Nevada's limited liability
27 company statutes, a member or manager of an LLC can receive income
28 from an LLC through fixed compensation (NRS 86.281(9)), distributions
upon a dissolution (NRS 86.521), or profit distributions (NRS 86.341).
Here, Chef Exec compensated its managers by fixing a commission on sales
made by the managers, and by distributing profits equally between the
Managers. Never did Chef Exec nor Arnould agree to compensate Muney

1 an addition \$5,088.00 for simply renewing a lease. 51 As such he violated
2 the statutory fiduciary duties pertaining to member compensation in NRS
3 Chapter 84 *et seq.* Similarly, Muney had a duty created by statute to hold
4 the manager's contributions in trust. *See* NRS 86.391(2). Just as Defendants
5 point out in their Motion, Muney's acts potentially "constitute a violation of
a duty to make promised contributions to the LLC, or to hold in trust any
property promised to the LLC."

6 (Arnould Opposition to MSJ, December 19, 2019 p.10). The US Supreme Court has held
7 that "a party should not be allowed to gain an advantage by litigation on one theory, and
8 then seek an inconsistent advantage by pursuing an incompatible theory." *New Hampshire*
9 *v. Maine, Id., citing* 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §
10 4477, p. 782 (1981)), the Nevada Supreme Court has adopted this doctrine, with the
11 requirement that some benefit be realized from the prior position, and indicated that a
12 favorable decision on the particular issue constitutes such a benefit. *Breliant v. Preferred*
13 *Equities Corp.*, 918 P. 2d 314 (NV S.Ct 1996) ("...a favorable judgment is not always a
14 necessary element of judicial estoppel, so long as the party against whom the estoppel is
15 sought has been successful in arguing its original position against the party asserting the
16 estoppel.(Internal quotes removed). If Arnould had not prevailed on the issue of whether a
17 fiduciary duty could exist between members of an LLC, he would necessarily have lost that
18 claim on summary judgment, thus his prevailing on this issue, and the Court's acceptance of
19 the argument, was necessary for the denial of summary judgment that was ordered. As
20 Arnould's argument is in explicit and direct contradiction to the position that it took to
21 successfully defeat summary judgment by Muney, he should be judicially estopped from
22 reversing his position here.

23
24 As this Court has already accepted the reasoning Arnould argued above, Muney
25 accepts this reasoning as well, and hereby cites this argument to show that there was in fact
26 a fiduciary duty owed between Arnould and Muney.

27 2. Standing

28

1 Arnould's second argument against Muney's breach of fiduciary duty claim is that
2 Muney lacks standing to raise it, having not filed a derivative action. Arnould
3 misunderstands the principle. The counterclaims were filed by both Chef Exec, *and* Muney⁵.
4 (*See* Answer and Counterclaim, p.1). A company is not required to follow the rules for a
5 derivative suit in order to bring claims in its own name. (*See* Every case in America with a
6 company name listed as a Plaintiff). The rules for a derivative suit limit when a member
7 alone can bring a claim that may belong to the company; there are no such restrictions for
8 the company itself bringing claims that belong to itself. As the Answer and Counterclaim
9 was filed in the name of Chef Exec and Muney almost two years ago (November 2019), and
10 every pleading since has been filed in the name of Chef Exec and Muney, Arnould has
11 clearly consented to Chef Exec's position in this matter. There is no question that Chef Exec
12 has standing to raise its own claims. As Chef Exec was dissolved, its interests were assigned
13 to Muney and Arnould, as they were 50% owners (NRS 86.521). As Muney is the inheritor
14 of 50% of Chef Exec's interest in its own claims, he retains clear standing to pursue those
15 claims, because prior to dissolution they belonged to fellow counterclaimant Chef Exec, and
16 post-dissolution, 50% of those claims belong to Muney personally. It is indisputable that a
17 party has standing to pursue its own claims.
18

19 As Muney has standing, and this Court has already determined that there is a
20 fiduciary duty owed between Muney and Arnould, this claim can not be resolved as a matter
21 of law, and summary judgment on this issue must be denied.
22

23 **e. Conversion**

24 Conversion is the wrongful taking control of property belonging to another, without
25 legal right. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (Nev.,2000).
26

27 ⁵“COME NOW Defendants, CLEMENT MUNEY, (hereinafter “Muney”), and CHEF
28 EXEC SUPPLIERS, LLC (hereinafter, “CHEFEXEC”) by and through their undersigned
counsel Robert Kern, ESQ., of KERN LAW, Ltd. and submit the following
COUNTERCLAIMS . . .”

1 Plaintiff Arnould has admitted in discovery to taking funds that belonged to the company,
2 and inventory that belonged to the company, and taking it out of the possession of the
3 company, and putting into his own exclusive control. (See Arnould Resp to RFA's #6, 7, 13,
4 14; Resp to ROG's #13, 17, 18). This alone makes a prima facie case for conversion against
5 Arnould.
6

7 As Arnould's sole argument for summary judgment on the Conversion claim is that
8 Muney lacks standing to bring the claim, this argument fails, for the same reason that the
9 standing argument for the breach of fiduciary duty claim fails. The counterclaim was
10 brought by both Muney and Chef Exec, and upon Chef Exec's dissolution, 50% of Chef
11 Exec's interest in the claim became Muney's property.
12

13 **f. Money Had and Received**

14 Muney's justification and standing for this claim is essentially identical to that of the
15 claim for conversion, above.
16

17 **g. Unjust Enrichment**

18 Muney's justification and standing for this claim is essentially identical to that of the
19 claim for conversion, above.
20

21 **h. Constructive Fraud**

22 As explained under the breach of fiduciary duty counterclaim above, this Court has
23 already held that fiduciary duties exist between Muney and Arnould arising from their being
24 members of Chef Exec.
25

26 Arnould's argument that Muney's mere existence as a member of Chef Exec makes
27 him a participant in Arnould's fraud against him is ludicrous, and without support of any
28 legal authority. The argument that the Receiver's report saying that both parties did things

1 wrong fails both because the Receiver's report is not an adjudication of the issues, and
2 because the statement that both parties did things they shouldn't have does not meet the
3 standard of unclean hands. The Nevada Supreme Court has held that, "the unclean hands
4 doctrine should only apply when the egregiousness of the party's misconduct constituting
5 the party's unclean hands and the seriousness of the harm caused by the misconduct
6 collectively weigh against allowing the party to obtain such a remedy." *LAS VEGAS*
7 *FETISH & FANTASY v. Ahern Rentals*, 182 P. 3d 764 - Nev: Supreme Court 2008. As this
8 test is explicitly one that requires a determination of fact, and because the question of
9 whether Muney committed wrongdoing, or such serious wrongdoing as to justify unclean
10 hands is clearly disputed by Muney, summary judgment on this issue is prohibited under
11 NRCF Rule 56.
12

13 **i. Fraudulent Concealment**

14
15 As Arnould's argument for summary judgment of this issue is identical to his
16 argument for summary judgment on the Constructive Fraud claim above, Muney's response
17 is the same as above.

18 **CONCLUSION**

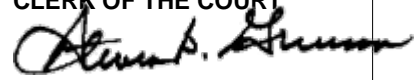
19
20 As shown above, for all counterclaims, Muney has standing, and this Court has
21 previously held that fiduciary duties exist between Muney and Arnould. Arnould's claim for
22 dissolution was not a derivative cause of action, and thus the dissolution did not invoke
23 Chapter 86's allowance of costs for a successful derivative action. Arnould's claim for an
24 accounting would require adjudication of a vast number of material disputes of fact, and the
25 Receiver's Report is not "undisputed", thus the accounting can not be granted on summary
26 judgment. Finally, Arnould's remaining claim of breach of fiduciary duty has not been
27 resolved by the Receiver's Report, and thus disputed issues of fact remain, making that
28 claim inapplicable for summary judgment as well. As none of the claims meet NRCF Rule

1
2 56's requirements for a grant of summary judgment, the motion for summary judgment must
3 be denied.

4 DATED this 24th day of June, 2021

5 **KERN LAW**

6 By: /s/ Robert Kern
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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

PLAINTIFF, DOMINIQUE ARNOULD'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Plaintiff/Counter-Defendant DOMINIQUE ARNOULD (hereinafter "Arnould"), by and through his attorneys, Marquis Aurbach Coffing, hereby submits this Reply in Support of Motion for Summary Judgment (the "Reply"). This Reply is based upon papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument permitted at the time of the hearing on this matter.

Dated this 9th day of July, 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
Attorneys for Plaintiff/Counter-Defendant

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

First, Muney's opposition fails under the requirements NRCP 56(c).¹ Apparently, Muney wishes to go to trial so he can present his unsupported arguments of counsel to a jury. It is quite clear to everyone, except Muney, that there is no admissible fact that would change the equitable accounting of Chef Exec Suppliers LLC ("CES") already achieved by the receiver. This is precisely the sort of case entitled to summary judgment under NRCP 56 because there is no genuine dispute as to any material fact, Muney cannot produce admissible evidence to support a genuine factual dispute, nor can he cite to any fact that would be admissible in evidence via affidavit or declaration. Since Muney cannot cite to a single material disputed fact, his Opposition must fail under NRCP 56(c).

Second, as to Arnould's first cause of action, Muney does not dispute that Arnould properly plead a derivative claim, that Arnould prevailed on his first cause of action, or that a member of is entitled to his fees and expenses under NRS 86.489. Instead, Muney's arguments rely on misstatements of the law and a backwards interpreting of NRS 86.495. In a word, Muney fails to cite to any law or fact that would preclude an order stating that Arnould prevailed derivatively on his first cause of action pursuant to NRS 86.489.

Third, Muney does not dispute that Arnould owed not duty to Muney and CES, making summary judgment in favor of Arnould on Muney's first, fifth and sixth causes of action proper. Muney's only argument in his Opposition is an improper application of judicial estoppel, which would require a showing that Arnould intended to sabotage the judicial process or engage in any intentional wrongdoing to obtain an unfair advantage. Since neither occurred here, judicial estoppel is inapplicable, and Muney's first, fifth, and sixth causes of action fail as a matter of law.

Finally, Muney's Opposition on the standing issue misses the point. Muney focuses on the fact that a company may bring an action without a derivative claim, which is true. However, all of the "funds" Muney refers to in each of his causes of action were CES funds, and in this case, all

¹ Defendants' Opp. to Arnould's Motion for Summary Judgment (hereinafter "Opposition"), on file herein.

1 assets and claims were distributed by the Receiver in his Final Report. Thus, to the extent CES
2 maintained an action against Arnould, that action abated pursuant to NRS 86.5423, and Muney
3 cannot maintain the action.

4 In sum, Arnould respectfully requests this Court enter summary judgment in his favor on
5 all causes of action in his Complaint. In addition, since Muney cannot maintain his claims as a
6 matter of law, Arnould respectfully requests this Court summarily dismiss all of Muney's causes
7 of action in his Counter-Complaint.

8 **II. UNDISPUTED FACTS**

9 Arnould incorporates by reference each of the facts set forth in his Motion and Statement
10 of Undisputed Facts, on file herein.

11 **III. LEGAL ARGUMENT**

12 **A. MUNEY'S OPPOSITION FAILS TO DEFEAT SUMMARY JUDGMENT 13 PURSUANT TO NRCP 56(C).**

14 Muney repeatedly asserts there are material facts in dispute that preclude summary
15 judgment, yet his Opposition is devoid of any factual support.² Pursuant to NRCP 56(c)(1), a party
16 opposing summary judgment on the basis that a fact is genuinely disputed must support his or her
17 assertion by: (A) citing to particular parts of materials in the record; or (B) showing that the
18 materials cited do not establish the absence or presence of a genuine dispute or lack admissible
19 evidence to support the fact. A party opposing a summary judgment motion must "set out facts
20 that would be admissible in evidence, and show that the affiant or declarant is competent to testify
21 on the matters stated." *Id.* at 56(c)(4). If a party fails to properly support an assertion of fact or
22 fails to properly address another party's assertion of fact, then the court may "grant summary
23 judgment if the motion and supporting materials — including the facts considered undisputed —
24 show that the movant is entitled to it." *Id.* at (e)(3).

25
26
27
28 ² See generally, Opposition.

1 In his Opposition, Muney does not cite to any fact, affidavit, declaration, exhibit, or witness
2 that might refute the Receiver's accounting.³ Arnould agrees that the Receiver's Final Report is
3 not a final adjudication in this case, but that does not mean that Muney has disputed any material
4 fact in the Receiver's Final Report. Which admissible fact did Muney cite to in his Opposition that
5 refutes the Receiver's final accounting of CES? There is none. Since Muney cannot cite to a single
6 material disputed fact, his Opposition must fail under NRCP 56(c).

7 **B. MUNEY FAILS TO RAISE ANY MATERIAL FACTUAL DISPUTE AS**
8 **TO ARNOULD'S SECOND CAUSE OF ACTION.**

9 Arnould is entitled to judgment as a matter of law on his second cause of action, equitable
10 accounting. The only admissible accounting of CES that can be presented at trial is the Receiver's
11 Final Report. As noted above, NRCP 56(c)(4) requires a party opposing a summary judgment
12 motion to "set out facts that would be admissible in evidence, and show that the affiant or declarant
13 is competent to testify on the matters stated." Here, Muney has not and cannot.

14 First, Muney failed to produce an expert report or any other admissible accounting of
15 profits for CES in this case. As set forth in Section IV(B)(2) of Arnould's Motion, each of Muney's
16 objections to the Final Report would require a specialized and technical knowledge in accounting.
17 NRS 50.275. But to present expert testimony, Arnould must provide a written disclosure of their
18 experts and the contents of those experts' testimonies, including the information each expert
19 considered in forming an opinion, well in advance of trial.⁴ Since Muney failed to retain or disclose
20 expert testimony in this case, he cannot proffer any accounting evidence that refutes the Receiver's
21 equitable accounting of CES.

22
23
24
25
26 ³ *Id.*

27 ⁴ *Sanders v. Sears-Page*, 131 Nev. 500, 517, 354 P.3d 201, 212 (Nev. App. 2015) (citing NRCP 16.1(a)(2)).
28 The policy underlying NRCP 16.1 "serves to place all parties on an even playing field and to prevent trial
by ambush or unfair surprise." *Id.*; see also *Roberts v. Libby*, 132 Nev. 1023 (Nev. App. 2016).

Second, Munev failed to cite to any fact that would support his “list of determinations of disputed fact” included in his Opposition.⁵ As set forth below, each of these subjects are supported only by argument of counsel and would require expert testimony:

- **Las Vegas Warehouse Rent**

- ♦ Munev argues there is a factual dispute as to whether rent was “reasonable in that market” but fails to provide any admissible fact as to what a “reasonable” market rate was at the time.
- ♦ This issue is an issue that would require specialized and technical knowledge in real estate prices and commercial rent in Las Vegas, Nevada (*see* NRS 50.275) but Munev failed to disclose any expert opinions in this case which precludes Munev from proffering evidence on this subject at trial. *Sanders*, 131 Nev. at 517, 354 P.3d at 212 (citing NRCP 16.1(a)(2)).⁶

- **Disputed Amounts Charged by Munev/Arnould**

- ♦ Munev vaguely argues that “disputed amounts” charged by Munev and Arnould raise factual questions, but (1) fails to cite to any amount actually in dispute, and (2) fails to cite to any fact that might support his conclusory statement that “charges” were improper.
- ♦ This is an issue that would require specialized and technical knowledge accounting (*see* NRS 50.275) yet Munev failed to disclose any expert opinions in this case, which precludes Munev from proffering evidence on this subject at trial. *Sanders*, 131 Nev. at 517, 354 P.3d at 212 (citing NRCP 16.1(a)(2)).

- **Appraisal of the Delivery Truck and Services.**

- ♦ Munev argues the Receiver did not properly value CES’ delivery truck and delivery services, but again, Munev fails to (1) provide cite to any fact that might dispute the Receiver’s valuation, and (2) fails to cite to any fact that might support his conclusory statement that the Receiver’s valuation was improper.
- ♦ This is an issue that would require specialized and technical knowledge in appraisals (*see* NRS 50.275) yet Munev failed to disclose any expert opinions in this case, which precludes Munev from proffering evidence on this subject at trial. *Sanders*, 131 Nev. at 517, 354 P.3d at 212 (citing NRCP 16.1(a)(2)).

⁵ See Opposition, at p. 4-5.

⁶ In addition, this issue is an issue that would require specialized and technical knowledge in real estate prices and commercial rent in Las Vegas, Nevada. *See* NRS 50.275. As note above, Munev failed to disclose any expert opinions in this case, and as such, no evidence on the issue may be proffered at trial. *Sanders*, 131 Nev. at 517, 354 P.3d at 212 (citing NRCP 16.1(a)(2)).

1 Third, Muney argues that this Court already decided that there were genuine issues of fact
2 in January 17, 2020.⁷ Of course, Muney fails to point out that this particular order was entered
3 months before discovery had closed. Now, discovery has closed and the parties are approach trial,
4 and at this stage, Muney must provide some disputed fact material to his claims and defenses in
5 this matter. Muney has failed to do so and cannot retain his claims and defenses in this case based
6 upon empty arguments of counsel. *See* NRCP 56(c).

7 Finally, Muney concludes that “an accounting can not [sic] be rendered by summary
8 judgment.”⁸ Of course, Muney provides no authority for this assertion, because there is none. In
9 reality, the standard for summary judgment under NRCP 56 are well-settled in Nevada. Muney
10 cannot continue to trial with nothing but “gossamer threads of whimsy, speculation, and
11 conjecture” to support his claims and defenses. *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (internal
12 quotations omitted). Indeed, this is precisely the sort of case that should be summarily decided
13 under NRCP 56.

14 **C. ARNOULD IS ENTITLED TO AN ORDER PROVIDING FOR EXPENSES**
15 **UNDER NRS 86.489.**

16 Muney does not dispute that a member of an LLC is entitled to his or her attorney’s fees
17 and expenses for bringing a successful derivative claim for relief. Muney does not dispute that
18 Arnould prevailed on his first cause of action or that Arnould properly plead a derivative claim.⁹
19 Instead, Muney argues that Arnould’s claim was not a derivative claim; and that Arnould’s time
20 to bring a motion for attorney’s fees on his first cause of action has expired. Both of these
21 arguments fail.

22 First, Arnould’s dissolution claim was a derivative claim. Muney argues that a claim for
23 dissolution may not be brought derivatively because “a derivative action is required to be for the
24

25 ⁷ *See* Opposition, at p. 5.

26 ⁸ *Id.*

27 ⁹ *See* Order re: Dissolution, on file herein; *see also* Order appointing receiver, on file herein.

benefit of the company, and a dissolution is a destruction of the company.”¹⁰ But this argument is based upon a flawed understanding of the Receiver’s accounting. The irony of Muney’s argument is that the dissolution in this case only benefited CES. The Receiver’s Final Report required both Muney and Arnould to pay CES to settle their respective capital accounts.¹¹ In so doing, CES discharged its outstanding obligations with the Receiver, which was reflected and accounted for in CES’ final tax return.¹² Thus, CES benefited from Arnould’s first cause of action.

Further, Muney’s argument is based upon a flawed assumption that judicial dissolution does not benefit the company itself, which flies in the face of the statute authorizing judicial dissolution. The statute calls for dissolution whenever it is “not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement.” NRS 86.495(1) (emphasis added). The statute says nothing of whether the requested dissolution would benefit the members. *Id.* Put another way, NRS 86.495 inherently focuses on furthering the interests of the company, not its members, which makes the claim inherently derivative as it seeks to further the business, articles, and operating agreement of the company. Thus, Arnould’s first cause of action is inherently derivative.

Second, Arnould may still move for attorney’s fees and costs after a final order by this Court. Muney’s Opposition blatantly misstates the law by stating that: “a motion for fees is required to be filed within 21 days of entry of the judgment.”¹³ In reality, NRCP 54(d)(2)(B)(i) provides that a motion must be “filed no later than 21 days after written notice of entry of judgment

¹⁰ See Opposition, at 2.

¹¹ Receiver’s Final Report, at pgs 4-5:

In an Order entered by the Court in this case, each Partner was to pay directly to the Receiver, his fees, those of his counsel, and security for the Las Vegas warehouse. **Since this should be a cost of the Receivership and thus the Company, the Receiver has brought the cost into the books so that upon the Adjusted Financial Statements, the amount of the Receiver's fees and his additional costs will be included in the Tax Return and for the reporting of K-1 information.** [emphasis added]

¹² *Id.*

¹³ Opposition, at p. 3.

1 is served.” (Emphasis added). Here, a written notice of entry as to the August 21, 2020 order for
2 dissolution was never served, thus, the 21-day limit has not tolled under NRCP 54(d)(2)(B)(i).

3 Even if Muney files a notice of entry, the August 21, 2020 order was not a final judgment.
4 NRCP 54 defines “judgment” to “include[] a decree and any order from which an appeal lies.”
5 NRCP 54(a). While the August 21, 2020 order partially adjudicated Arnould’s claims, NRCP 54(b)
6 provides that “any order or other decision, however designated, that adjudicates fewer than all the
7 claims or the rights and liabilities of fewer than all the parties does not end the action as to any of
8 the claims or parties and may be revised at any time before the entry of a judgment adjudicating
9 all the claims and all the parties’ rights and liabilities.” Since there are several claims for relief in
10 this action and no NRCP 54(b) certification was made, the August 21, 2020 order was not a final
11 order under NRCP 54(d)(2)(B)(i).

12 **D. SUMMARY JUDGMENT IS PROPER FOR MUNEY’S FIRST, FIFTH**
13 **AND SIXTH CAUSES OF ACTION, BECAUSE ARNOULD OWED NO**
14 **DUTIES TO MUNEY.**

15 Summary judgment in favor of Arnould on Muney’s first, fifth and sixth causes of action
16 is proper as a matter of law. In his Opposition, Muney’s only argument is that Arnould is judicially
17 estopped from taking this position.¹⁴ But, judicial estoppel is only applied when “a party’s
18 inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair
19 advantage.” *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (internal
20 quotations omitted). However, judicial estoppel does not preclude changes in position that are not
21 intended to sabotage the judicial process. *Id.* (citing *U.S. v. Real Property Located at Incline*
Village, 976 F.Supp. 1327, 1340 (D.Nev.1997)).

22 Here, Arnould did not intend to sabotage the judicial process or engage in any intentional
23 wrongdoing to obtain an unfair advantage. Rather, Arnould’s change in position was due to a
24 clarification by the Nevada Supreme Court made in *Israyelyan v. Chavez*, 466 P.3d 939 (Nev.
25 2020) in July 2020. When Arnould first argued that fiduciary duties were owed in December 2019,
26 there were persuasive authorities on the subject, but no ruling by the Nevada Supreme Court

27
28 ¹⁴ See Arnould Opposition to Motion for Summary Judgment, p. 10 (filed on December 19, 2019).

1 directly on point.¹⁵ It was unclear at the time which fiduciary duties, if any, were owed by a
2 member or manager when no operating agreement exists. This is why Arnould's briefing focused
3 on statutory duties arising under other provisions of NRS Chapter 86 (i.e. how a member is
4 compensated).¹⁶ After *Israilyelyan*, Arnould's position changed.

5 In any event, Arnould did receive an unfair advantage against Muney since Muney brought
6 a counter-claim for breach of fiduciary duty against Arnould.¹⁷ Since Arnould did not intend to
7 sabotage the judicial process or engage in any intentional wrongdoing to obtain an unfair
8 advantage judicial estoppel does not apply.

9 **E. SUMMARY JUDGMENT IS PROPER WITH RESPECT TO MUNEY'S**
10 **FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION**
11 **BECAUSE HE LACKS STANDING.**

12 Muney's Opposition on the standing issue misses the point. Muney focuses on the fact that
13 a company may bring an action without a derivative claim. Muney fails to address the fact that the
14 substantive allegation undergirding his first, second, third, and fourth causes of action is that
15 Arnould made payments to himself that Muney deems improper, and that, accordingly, Arnould
16 should "[r]eturn all of the funds" to CES.¹⁸ However, all of the "funds" Muney refers to in each
17 of his causes of action are CES' funds.

18 In this case, all funds, assets and claims were received by the Receiver as part of the
19 receivership estate and distributed by the Receiver in his Final Report. Thus, to the extent CES
20 maintained an action against Arnould, that action abated pursuant to NRS 86.5423, and Muney

21 ¹⁵ See e.g. *HP Tuners, LLC v. Cannata*, No. 318CV00527LRHWGC, 2019 WL 3848792, at *4 (D. Nev.
22 Aug. 15, 2019) (holding that "unlike many states, Nevada does not impose any statutory fiduciary duties
23 on members of LLCs") (internal quotations omitted); see e.g. *In re Plyam*, 530 B.R. 456, 472 (9th Cir.
24 B.A.P. 2015) ("Unlike California, Nevada does not have a statute equating the fiduciary duties of a manager
25 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).

26 ¹⁶ See Arnould Opposition to Motion for Summary Judgment, p. 10 (filed on December 19, 2019).

27 ¹⁷ See generally Counter-Compl.

28 ¹⁸ *Id.* at pg. 11, ¶3.

1 cannot maintain the action. As such, Muney lacks standing to recover CES's funds and his first,
2 second, third, and fourth claims and each should be summarily dismissed as a matter of law.

3 **IV. CONCLUSION**

4 For these reasons and the reasons set forth herein, Arnould respectfully requests this Court
5 enter summary judgment in his favor on all causes of action in his Complaint. In addition, since
6 Muney cannot maintain his claims as a matter of law, Arnould respectfully requests this Court
7 summarily dismiss all of Muney's causes of action and putative derivative claims set forth in his
8 Counter-Complaint.

9 Dated this 9th day of July, 2021.

10 MARQUIS AURBACH COFFING

11
12 By /s/ Phillip S. Aurbach
13 Phillip S. Aurbach, Esq.
14 Nevada Bar No. 1501
15 Alexander K. Calaway, Esq.
16 Nevada Bar No. 15188
17 *Attorneys for Plaintiff/Counter-Defendant*
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CERTIFICATE OF SERVICE

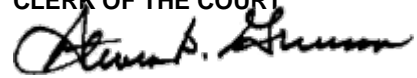
I hereby certify that the foregoing **PLAINTIFF, DOMINIQUE ARNOULD'S REPLY
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of July, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹⁹

Robert Kern
Melissa Milroy

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/s/ Marie Jorczak
An employee of Marquis Aurbach Coffing

¹⁹ 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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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

**MOTION TO COMPEL RESPONSES TO
DISCOVERY REQUESTS**

**HEARING REQUESTED
DISCOVERY COMMISSIONER**

Pursuant to Rules 26, 33, 34, 36, and 37 of the Nevada Rules of Civil Procedure, Defendant CLEMENT MUNEY ("Muney"), by and through his attorney of record, Robert Kern, Esq., of Kern Law, Ltd., moves this Court for an order that: (a) enters sanctions against Plaintiff DOMINIQUE ARNOULD ("ARNOULD") for failure to provide responses to Muney's discovery that comply with the Nevada Rules of Civil Procedure, including attorney fees pursuant to Rule 37(a)(5)(A) and Rule 37(d)(3); (b) compels Arnould to immediately provide the documents and responses requested; (c) bars Arnould Arnould from using or referencing any evidence that was requested in Muney's discovery but not produced; and (d) extends Muney's time for discovery by 60 days after receipt of compliant discovery responses from Plaintiff, in case follow-up requests are required. The motion is

1 based on the memorandum of points and authorities below, the papers and exhibits on file,
2 and any argument permitted by the Court at hearing on the matter.
3

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. SUMMARY OF RELEVANT FACTS**

7 The present matter involves a business dispute between the 50% owners of Chef
8 Exec Suppliers, LLC (“Chef Exec”)(the “Company”). Plaintiff Arnould's claims include a
9 demand for accounting and dissolution of the Company, as well as a claim of breach of
10 fiduciary duty against Muney, for leasing warehouse space from a company owned by him.
11 Defendant Muney's counterclaims include a claim for conversion, alleging Arnould took
12 sole possession of Company funds and inventory, a claim for breach of fiduciary duty for
13 stealing commissions from sales staff, and other claims not relevant to the present discovery
14 dispute. There has also been dispute over the question of whether Arnould took “all
15 reasonable steps” to secure financing for the previous settlement agreement between the
16 parties.

17 Muney's requests for production and interrogatories to Arnould were served via
18 Odyssey on October 28, 2020. Arnould's responses to were filed on December 7, 2020, after
19 extension of time to answer was granted. On February 12, 2021 counsel for Muney
20 requested a meet and confer regarding the sufficiency of Arnould's responses. That day
21 Arnould's counsel asked for a breakdown of the issues of concern, which were also sent the
22 same day. On February 17, counsel for Muney followed up with an email, and counsel
23 agreed to hold a meet and confer conference on February 18 at 2:00 p.m.. At that meet and
24 confer conference, several improper objections were noted, which counsel for Muney
25 indicated would not be an issue if no documents were withheld pursuant to the disputed
26 objections. Also multiple interrogatories were identified which had not been substantively
27 answered. Counsel for Arnould agreed to supplement the interrogatories, and to supplement
28 specific requests for production. Counsel for Arnould also agreed to indicate that no

1 documents were withheld pursuant to the other requests, however requested that the
2 requests be re-worded to make them more clear. The parties agreed.

3
4 Following this time, counsel for Muney took time away to deal with his pending
5 divorce and his mother's funeral arrangements, thus there was some delay before Muney's
6 counsel was able to check on the status of the supplemental responses.

7 When counsel for Muney requested status on the supplemental responses (on April
8 12, 2021), and provided an email with the requested clarified wording on April 14, 2021,
9 Arnould's counsel responded (on April 16) that he would require the wording of the requests
10 to be amended prior to providing the agreed-upon supplementation ("please amend for
11 clarity the following requests and we will subsequently amend our responses in pleading
12 form"). This email from Arnould was written less than 30 days prior to the close of
13 discovery, set for May 14. On May 13, counsel for Muney responded by emailing restated
14 wording of the requests to assuage Arnould's concerns. The restated requests were prefaced
15 by the following language:

16 The following are restatements of the previous interrogatories, with clari-
17 fied language at Plaintiff's request. The language hereby provided retroac-
18 tively replaces that of the previous numbered requests. The clarifications
19 are being formally provided at Plaintiff's insistence, and solely on the con-
20 dition that Plaintiff properly respond to the clarified requests. This restate-
21 ment does not waive any previous deadlines or failures to properly comply
22 with any previous deadlines.

23 Arnould had only requested changed wording on two of the twelve requests for
24 production, however Muney assumed Arnould was waiting to provide all supplements at the
25 same time. As Arnould had promised to supplement once he received the clarified wording,
26 Muney waited for the supplemental responses to be provided. After hearing nothing from
27 Arnould, Muney inquired on June 23 when the supplemental responses would be provided.
28 At that time, Arnould's counsel stated that since the requests were not received more than 30
days prior to the close of discovery (despite their promise to supplement occurring less than
30 days before the close of discovery), that Arnould no longer had a duty to supplement.

1 Arnould sought to classify the restated requests as new requests, and thus claimed no duty to
2 respond. After significant discussion between counsel, counsel for Arnould made clear that
3 he would not honor his previous commitment to supplement the requests as he had agreed in
4 the meet and confer, and threatened sanctions for untimeliness if Muney attempted to
5 compel responses. As the present dispute arose solely from a refusal to honor a previous
6 meet and confer on the same issue, Muney's counsel did not deem a second meet and confer
7 required.
8

9 **II. LEGAL ARGUMENT**

10 **a. Legal Standard**

11 In pertinent part, Rule 37(a)(3)(B) provides that a party seeking discovery may seek
12 a motion to compel a discovery response if a party fails to respond to interrogatories,
13 requests for production, or requests for admission, and Rule 37(a)(4) clarifies that an
14 evasive or incomplete disclosure is treated as a failure to respond for purposes of this rule.
15 Rule 37 goes on to state that sanctions shall be applied if the motion is granted, and Rule
16 37(d)(2) specifies that objections to any request are not a sufficient excuse for failing to
17 answer unless a motion for a protective order was filed prior to the filing of the motion to
18 compel.

19 **b. Timeliness**

20 Muney apologizes to the Court and the Commissioner that this motion was filed
21 after the close of discovery, however this was a direct result of Arnould's continued
22 assertions that he would comply with the original discovery requests. As it is now clear that
23 Arnould's assurances were actually an attempt to use the deadlines to avoid their duty to
24 supplement, pursuant to NRCP 26(e)(1), as well as avoiding the supplementation they
25 agreed to at the previous meet and confer. As it seems that Arnould had no intention of
26 making the supplementations that he promised at the meet and confer, it is clear that his
27 agreements at that conference were made for the purpose of causing Muney to delay the
28 filing of a motion to compel until less than 30 days from the close of discovery. As the
delay appears to have been intentionally caused by Arnould's bad faith, Arnould should be

1 estopped from claiming the delay as a means to avoid enforcement of the discovery they
2 agreed to provide.

3 As there is a motion for summary judgment currently pending in this matter,
4 allowing enforcement of the discovery requests at this time should not cause any undue
5 delay or prejudice to the case.

6
7 c. Muney Made All Reasonable Attempts to Resolve the Dispute

8 Once Arnould's responses were received, and were seen to be deficient, Muney
9 requested a meet and confer, and at Arnould's request, provided a written breakdown of the
10 responses Muney considered deficient. A meet and confer was held February 18, 2021,
11 where counsel for both parties fully discussed the issues, and Arnould's counsel agreed to
12 correct the deficiencies, but asked that Muney provide clarified language on a few of the
13 requests. Muney provided this language on April 14, at which point Arnould refused to
14 supplement the responses unless the clarified language was in the form of a restated request.
15 The clarified language was provided in that form prior to the close of discovery, yet
16 Arnould still refused to provide the supplements to his responses.

17 It is clear from reviewing the emails that Arnould's insistence upon "amended"
18 requests was a bad-faith attempt to have the requests deemed as 'new requests' filed less
19 than 30 days from the close of discovery, ensuring that Muney could never enforce
20 supplementation to the deficient responses. However as Muney did not file his clarified
21 wording as "amended requests", Arnould's claim that they were untimely fails, as the
22 requests in question were served on October 28, 2020, significantly before the close of
23 discovery. Muney has shown immense patience in giving Arnould time to provide the
24 responses, only now to have Arnould seek to use that patience to avoid providing any
25 supplement at all. As Arnould has failed and refused to supplement requests served eight
26 months ago, and failed and refused to honor the terms agreed at the meet and confer held
27 over four months ago, Muney has given as much time as could reasonably be asked.

28
29 d. The Previous Discovery Responses Were Deficient

30 Arnould's responses to Muney's interrogatories and requests for production were
31 significantly deficient. Many objected on grounds that are no longer allowed under the
32 newer rules supplement, and then (in violation NRCP 34(b)(2)(c)) failed to identify whether
33 documents were being withheld pursuant to those objections. Many other responses refused

1 to answer based upon a claimed inability to understand basic terms such as
2 “communications”, “inventory”, “taken”, “access”, money “saved”, “price”, “refused” and
3 “market price”. For several other requests, Muney only required a statement as to whether
4 documents had been withheld or not, which Arnould refused to provide without “amended
5 requests”. The specific issues with each request are as follows:

6 Requests for Production of Documents:

7 **REQUEST NO. 1:**

8 Produce all documents within Your possession, custody, or control evidencing or constituting
9 communications between You and any third party, in any way regarding or relating to the sale
10 of your interest in Chef Exec, from 2017 to present.

11 **RESPONSE TO REQUEST NO. 1:**

12 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
13 would require Plaintiff to speculate as to the information requested by Defendant. Subject
14 to and without waiving the foregoing objections, Plaintiff responds as follows: *See* Bates Nos.
15 ARNOULD000074 – 75.

16
17 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
18 “communications” in a discovery request. Muney asked for an indication as to whether any
19 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
20 Arnould stated that no documents were withheld, Muney would rescind his objection to this
21 response. Arnould has still not provided such an indication.

22 **REQUEST NO. 2:**

23 Produce all documents within Your possession, custody, or control evidencing or constituting
24 Your efforts to seek financing for the purchase of Chef exec pursuant to the February 2020
25 settlement agreement. Include all applications and attachments as well.

26 **RESPONSE TO REQUEST NO. 2:**

27 Objection. This Request seeks to invade the privacy of individuals who are non-parties to
28

1 this action and requests production of information already produced in discovery. Subject to and
2 without waiving the foregoing objections, Plaintiff responds as follows: *See* Bates Nos.
3 ARNOULD000076 – 107.
4

5 **Issue with this response:** There is no explanation as to what third parties would be affected, or
6 how the requested information would improperly invade their privacy. Arnould also agreed to
7 supplement this response with the responsive emails that were referred to in some of the other
8 documents, but were not produced (Arnould00083 refers to email previously received from
9 Arnould00084 asks him to email back additional information, but does not show the email
10 Arnould sent back; in one of his motions, Arnould attached parts of multiple other emails that
11 would be responsive, but were not included here). Muney asked for an indication as to whether
12 any documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
13 Arnould stated that no documents were withheld, Muney would rescind his objection to this
14 response. Arnould has still not provided such an indication.
15

16 **REQUEST NO. 3:**

17 Produce all documents within your possession, custody, or control evidencing or constituting
18 communications or records related to use of the Chef Exec Los Angeles warehouse, including
19 all inventory records and invoices.

20 **RESPONSE TO REQUEST NO. 3:**

21 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
22 would require Plaintiff to speculate as to the information requested by Defendant. The request is
23 not proportional to the needs of the case because the requesting party has equal/similar access to
24 relevant information.

25 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
26 “communications” in a discovery request. Muney asked for an indication as to whether any
27 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
28

1 Arnould stated that no documents were withheld, Muney would rescind his objection to this
2 response. Arnould has still not provided such an indication.

3
4 **REQUEST NO. 4:**

5 Produce all documents within your possession, custody, or control evidencing or constituting
6 communications or records related to Chef Exec sales commissions, including record of all
7 commissions paid, and all information used to determine how commissions are attributed.

8 **RESPONSE TO REQUEST NO. 4:**

9 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
10 would require Plaintiff to speculate as to the information requested by Defendant. Subject to and
11 without waiving the foregoing objections, Plaintiff responds as follows: *See Bates Nos.*
12 *ARNOULD000108 – 248.*

13
14 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
15 “communications” in a discovery request. Muney asked for an indication as to whether any
16 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
17 Arnould stated that no documents were withheld, Muney would rescind his objection to this
18 response. Arnould has still not provided such an indication.

19 **REQUEST NO. 6:**

20 Produce all documents within your possession, custody, or control evidencing or constituting
21 communications or records that reflect upon or explain what happened to the inventory shown
22 as being sold to Paris Bakery and Bleu Blanc Rouge, but never delivered, as reflected in pages
23 18-37 of Defendants’ supplemental disclosures.

24 **RESPONSE TO REQUEST NO. 6:**

25 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
26 would require Plaintiff to speculate as to the information requested by Defendant. Subject to and
27 without waiving the foregoing objections, Plaintiff responds as follows: *See Bates Nos.*
28 *ARNOULD000249—257.*

1
2
3 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
4 “communications” in a discovery request. Muney asked for an indication as to whether any
5 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
6 Arnould stated that no documents were withheld, Muney would rescind his objection to this
7 response. Arnould has still not provided such an indication.

8 **REQUEST NO. 7:**

9 Produce all documents within your possession, custody, or control evidencing or constituting
10 communications or records of sales from Chef Exec to AAA or WoW (see definitions), or
11 purchases by Chef Exec from AAA or WoW.

12 **RESPONSE TO REQUEST NO. 7:**

13 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
14 would require Plaintiff to speculate as to the information requested by Defendant. Subject to and
15 without waiving the foregoing objections, Plaintiff responds as follows: *See* Bates Nos.
16 ARNOULD000258 – 546.

17
18 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
19 “communications” in a discovery request. Muney asked for an indication as to whether any
20 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
21 Arnould stated that no documents were withheld, Muney would rescind his objection to this
22 response. Arnould has still not provided such an indication.

23 **REQUEST NO. 8:**

24 Produce all documents within your possession, custody, or control evidencing or constituting
25 records or communications reflecting any and all business dealings between Chef Exec and
26 AAA or WoW. “Business dealings” here includes all transactions, arrangements and anything
27 else in which the one of the named businesses did anything to assist, benefit, or harm the other.

28 **RESPONSE TO REQUEST NO. 8:**

1 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
2 would require Plaintiff to speculate as to the information requested by Defendant. Plaintiff
3 responds as follows: *See* Bates Nos. ARNOULD000547 – 557.
4

5 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
6 “communications” in a discovery request. Muney asked for an indication as to whether any
7 documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)(c); if
8 Arnould stated that no documents were withheld, Muney would rescind his objection to this
9 response. Arnould has still not provided such an indication.
10

11 **REQUEST NO. 11:**

12 Produce all documents within your possession, custody, or control evidencing or constituting all
13 records from the Wells Fargo Account, including the initial application, all signature pages, all
14 communications with the bank regarding the account, and all account records.

15 **RESPONSE TO REQUEST NO. 11:**

16 Objection, this Request is vague and ambiguous as to the term(s) “communications” such that it
17 would require Plaintiff to speculate as to the information requested by Defendant. Subject to and
18 without waiving the foregoing objections, Plaintiff responds as follows: *See* Bates Nos.
19 ARNOULD000647 – 664.
20

21 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
22 “communications” in a discovery request. Muney noted that the documents provided do not
23 include any bank statements from the account in question. As “all account records” of a bank
24 account clearly include the bank statements, the bank statements must be included. Muney
25 asked for an indication as to whether any documents were withheld pursuant to this objection, as
26 required by NRCP 34(b)(2)(c); Arnould has still not provided such an indication.
27

28 **REQUEST NO. 12:**

1 Produce all documents within your possession, custody, or control evidencing or constituting
2 records of shipping/transporting chef Exec inventory between the LA and LV warehouses, for
3 the last ten (10) years. Include records of all shipments of inventory between the two
4 warehouses, invoices for shipping/transport, and all records showing what inventory was
5 transported and when.

6 **RESPONSE TO REQUEST NO. 12:**

7 Objection, the request is not proportional to the needs of the case because the requesting party
8 has equal/similar access to relevant information.

9
10 **Issue with this response:** Arnould improperly blocked Muney's access to the company's
11 records, thus Muney does not have equal access to this information. Muney asked for an
12 indication as to whether any documents were withheld pursuant to this objection, as required by
13 NRC 34(b)(2)(c); if Arnould stated that no documents were withheld, Muney would rescind
14 his objection to this response. Arnould has still not provided such an indication.

15
16 **REQUEST NO. 14:**

17 Produce all documents within your possession, custody, or control evidencing or constituting
18 communications between You or Chef Exec (or any agent thereof) and AAA or WoW.

19 **RESPONSE TO REQUEST NO. 14:**

20 Objection, this Request is vague and ambiguous as to the term(s) "communications" such that it
21 would require Plaintiff to speculate as to the information requested by Defendant. Subject to and
22 without waiving the foregoing objections, Plaintiff responds as follows: *See* Bates Nos.
23 ARNOULD000716 – 737.

24 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
25 "communications" in a discovery request. The documents provided in this response are about a
26 rented storage facility, and thus appear to be responsive to a different request. Nothing was
27 provided that could be considered "communications between You or Chef Exec and AAA or
28 WoW". Muney asked for an indication as to whether any documents were withheld pursuant to

1 this objection, as required by NRCP 34(b)(2)(c); if Arnould stated that no documents were
2 withheld, Muney would rescind his objection to this response. Arnould has still not provided
3 such an indication.
4

5 **REQUEST NO. 15:**

6 Produce all documents within your possession, custody, or control evidencing how the COVID-
7 19 pandemic affected Chef Exec prior to the filing of Your motion for partial summary
8 judgment on March 13, 2020.

9 **RESPONSE TO REQUEST NO. 15:**

10 Objection, the request is not proportional to the needs of the case because the requesting party
11 has equal/similar access to relevant information. This Request calls for a professional opinion
12 from a lay witness; consequently, the question is oppressive, harassing, and without a
13 foundational showing of competency.
14

15 **Issue with this response:** Arnould improperly blocked Muney's access to the company's
16 records, thus Muney does not have equal access to this information. Further, Muney is unaware
17 of any records indicating that the company was damaged by COVID prior to the motion for
18 summary judgment, but Arnould has alleged that this is the case, so it is appropriate to ask
19 Arnould to identify the records that lead to this conclusion. Muney asked for an indication as to
20 whether any documents were withheld pursuant to this objection, as required by NRCP 34(b)(2)
21 (c); if Arnould stated that no documents were withheld, Muney would rescind his objection to
22 this response. Arnould has still not provided such an indication.

23 Interrogatories

24 **INTERROGATORY NO. 10:**

25 Did you allow your partner (Clement Muney) access to the Wells Fargo Account you opened in
26 Chef Exec's name? Why or why not?

27 **ANSWER TO INTERROGATORY NO. 10:**
28

1 Objection, this Interrogatory is vague insofar as the term(s) "access" such that it would require
2 Plaintiff to speculate as to the information requested by Defendant. Also, it assumes facts not in
3 evidence as is assumes Plaintiff as not completely transparent about the account.
4

5 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
6 "access" in the context of access to a bank account. Only the persons listed as authorized are
7 given access of any sort whatsoever to a bank account, and people not so listed have no access
8 to the account whatsoever. Further, there is nothing in the request whatsoever indicating that
9 Arnould was not transparent, nor would such an indication exempt Arnould from having to
10 answer, unless the question was phrased in a way that any answer appeared to be an
11 inappropriate admission. There was clearly no appropriate objection to this request, and it thus
12 must be answered.
13

14 **INTERROGATORY NO. 11:**

15 What orders or customers required the specific inventory items you have taken from the LV
16 warehouse to LA (from initiation of this suit to present). Identify the customer/order for each
17 item type taken.

18 **ANSWER TO INTERROGATORY NO. 11:**

19 Objection, this Interrogatory is vague insofar as the term(s) "inventory" and "taken" such that it
20 would require Plaintiff to speculate as to the information requested by Defendant, moreover the
21 terms are undefined. Also, it assumes facts not in evidence as is assumes Plaintiff took items
22 from the LV Warehouse for himself rather than transferred items between Chef Exec
23 warehouses. Subject to and without waiving the foregoing objections, Plaintiff responds as
24 follows: Due to the COVID-19 pandemic there was a high degree of uncertainty as I was mainly
25 responsible for the shipping of the company's orders, it was prudent to transfer items between
26 Chef Exec warehouses so that the company would be prepared should the situation suddenly
27 change.
28

1 **Issue with this response:** There is nothing vague or ambiguous about the use of the terms
2 “taken” and “inventory” in the question of him taking inventory out of the Las Vegas
3 warehouse, and moving it to be stored in Los Angeles. This taking of inventory has been one of
4 the most discussed elements during the litigation, thus the claim to not know what is being
5 referred to is disingenuous. Nothing in the request requires any admission regarding the purpose
6 for which the inventory was taken – the only question is what orders or customers were the
7 reason for needing the inventory.

8 Arnould did provide an answer, however the answer clearly does not answer the
9 question. The question asks Arnould to identify the customers or orders that the inventory was
10 taken for. If the answer to the question is “none”, then “none” is the appropriate answer.

11
12 **INTERROGATORY NO. 16:**

13 Explain how (or if) you have determined that the Price charged by CMJJ to Chef Exec for the
14 Las Vegas warehouse is in excess of the market price for comparable properties and lease terms
15 in the area.

16 **ANSWER TO INTERROGATORY NO. 16:**

17 Objection, this Interrogatory is vague insofar as the term(s) “Price” and “market price” such that
18 it would require Plaintiff to speculate as to the information requested by Defendant, and the
19 term “Price” is capitalized as if it is defined yet the term is wholly undefined. Also, it assumes
20 facts not in evidence as it assumes Chef Exec entered into a lease or sublease with CMJJ which
21 has never been done to Plaintiff’s knowledge.

22 **Issue with this response:** There is nothing vague or ambiguous about the use of the term
23 “price” and “market price” in a litigation in which Arnould filed suit because he alleged the
24 *price* of the Las Vegas warehouse rent was too high, and was above the *market price*. Nothing
25 in the request (or its response) requires a determination of whether there is a formal lease
26 agreement in place. As Arnould filed the present suit primarily because he alleged CMJJ was
27 charging too much rent to Chef Exec for the warehouse, he can not dispute that he is aware that
28 CMJJ was charging rent to Chef Exec, and that Arnould believed the rent was excessive..

1 Nothing in the request requires Arnould to admit to any other fact, thus Arnould must answer as
2 to how he concluded that the price charged was too high.
3

4 **INTERROGATORY NO. 19:**

5 Explain the extent to which the COVID-19 pandemic economically affected Chef Exec prior to
6 the filing of Your motion for partial summary judgment on March 13, 2020. Cite to records
7 where applicable.

8 **ANSWER TO INTERROGATORY NO. 19:**

9 Objection. The request is not proportional to the needs of the case because the information
10 requested is not important to the present action and the requesting party has equal/similar access
11 to relevant information.

12 **Issue with this response:** Muney is unaware of any records indicating that the company was
13 damaged by COVID prior to the motion for summary judgment, but Arnould has alleged that
14 this is the case, so it is appropriate to ask Arnould to identify the records that lead to this
15 conclusion. Muney is unaware of any means to search the business records which would
16 identify which records Arnould subjectively believe lead to a particular conclusion.

17
18 **III. CONCLUSION**

19 Pursuant to NRCP Rule 37, Muney has made every effort to seek Plaintiff's
20 compliance with discovery requests, and Plaintiff, without excuse, has failed to cooperate.
21 Further, this delay has meant that although Muney issued discovery over seven months prior
22 to the close of discovery, Arnould has delayed his responses past the discovery deadline,
23 making any follow-up discovery based upon the information provided impossible. Muney
therefore requests that the Court grant the motion in full and enter an order requiring:

- 24 A. Plaintiff Arnould to answer all disputed discovery requests in full;
25 B. Award fees to Muney sufficient to compensate Muney for its continued efforts to
induce Plaintiff to comply with discovery requests;
26 C. Bar Plaintiff Arnould from using or referencing any evidence requested
27 and not provided in any portion of the present case, pursuant to NRCP Rule 37(c);
28 and

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D. Award any other sanctions or relief as this Court deems appropriate.

Respectfully submitted this 9th day of June, 2021

KERN LAW

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

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

I, Robert Kern, Esq., being first duly deposed states as follows:

1. I am an adult over the age of 18 and am competent to testify to the contents of this affidavit. I execute this affidavit in support of the foregoing motion. I have personal knowledge of the matters set forth herein, and all statements below are made from personal knowledge unless specifically indicated otherwise.
2. I am counsel for Defendants Clement Muney (“Muney”) and Chef Exec Suppliers, LLC (“Chef Exec” or “Company”) in the present matter.
3. Muney's requests for production and interrogatories to Arnould were served via Odyssey on October 28, 2020. Arnould's responses to were filed on December 7, 2020, after extension of time to answer was granted.
4. On February 12, 2021 counsel for Muney requested a meet and confer regarding the sufficiency of Arnould's responses. That day Arnould's counsel asked for a breakdown of the issues of concern, which were also sent the same day. On February 17, counsel for Muney followed up with an email, and counsel agreed to hold a meet and confer conference on February 18 at 2:00 p.m.. At that meet and confer conference, Muney's counsel identified several improper objections in the responses, which counsel for Muney indicated would not be an issue if no documents were withheld pursuant to the disputed objections. Also multiple interrogatories were identified which had not been substantively answered. Counsel for Arnould agreed to supplement the interrogatories, and to supplement specific requests for production. Counsel for Arnould also agreed to indicate that no documents were withheld pursuant to the other requests, however requested that the requests be re-worded to make them more clear. The parties agreed.
5. Following this time, counsel for Muney took time away to deal with his pending divorce and his mother's funeral arrangements, thus there was some delay before Muney's counsel was able to check on the status of the supplemental responses.
6. When counsel for Muney requested status on the supplemental responses (on April 12, 2021), and provided an email with the requested clarified wording on April 14, 2021, Arnould's counsel responded (on April 16) that he would require the wording of the requests to be amended prior to providing the agreed-upon supplementation (“please amend for clarity the following requests and we will subsequently amend our responses in pleading form”). This email from Arnould was written less than 30 days prior to the close of discovery, set for May 14. On May 13, counsel for Muney responded by emailing restated wording of the requests to assuage Arnould's concerns. The restated requests were prefaced by language stating that they were restatements for clarity, and not amended requests.
7. Arnould had only requested changed wording on two of the twelve requests for production, however Muney assumed Arnould was waiting to provide all supplements at the same time. As Arnould had promised to supplement once he received the clarified wording, Muney waited for the supplemental responses to be provided. After hearing nothing from Arnould, Muney inquired on June 23 when the supplemental responses would be provided. At that time,

Arnould's counsel stated that since the requests were not received more than 30 days prior to the close of discovery (despite their promise to supplement occurring less than 30 days before the close of discovery), that Arnould no longer had a duty to supplement. Arnould sought to classify the restated requests as new requests, and thus claimed no duty to respond. After significant discussion between counsel, counsel for Arnould made clear that he would not honor his previous commitment to supplement the requests as he had agreed in the meet and confer, and threatened sanctions for untimeliness if Muney attempted to compel responses. As the present dispute arose solely from a refusal to honor a previous meet and confer on the same issue, Muney's counsel did not deem a second meet and confer required.

8. True and correct copies of referenced email correspondence is attached hereto, with relevant portions highlighted (the highlighting did not occur in the originals).

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

DATED this 9th day of July, 2021

By: /s/ Robert Kern, Esq.
Robert Kern, Esq.

From: Robert Kern
Sent: Friday, February 12, 2021 2:34 PM
To: phil aurbach; Alex. K. Calaway
Subject: RE: [External] Meet and Confer Re Discovery Responses

Hi Phil,
Here is the unofficial, quick and dirty breakdown.

RFAs
Are you sure you want to stand by all these answers?

ROGS
10 – Does not answer at all – obj is frivolous
11 – Does not answer the question
16 – Does not answer question
19 – Does not answer

RFPs
1 – Is this saying that you cant disclose b/c of an agreement? If not, please explain how this is responsive
2 – Are any documents withheld pursuant to the objections? If so, whose privacy is alleged to be infringed?
 -098-107 – There are multiple emails from Dominique talking to the lender, and referring to his responses, but none of the email responses are included – please supplement
3 – Objection is not valid under new rules of civil procedure. “Communications” is not ambiguous. No indication of why not proportional. – Provide responsive docs
4 – Were any items withheld pursuant to objections? Specifically, communications regarding commissions, and all information used to determine how commissions are attributed
6 – What is this reference to a Small Claims Court action on Bates Arnould000250?
7 – Anything withheld?
8 – Anything withheld?
11 – Where are all the monthly bank statements for this account?
12 – Improper objection – Arnould cut off our access to company records on Oct 1, 2020. We do not have access. No explanation as to why non-proportional
14 – These records are about Northstar, not responsive to request about communications between AAA/WoW and Chef Exec
15 – This is directly about your explicit excuse for why you couldn’t comply with the settlement agreement. Thus not non-proportional. Nothing requires expert testimony.
16 – Invalid objection – also you have the exact same request you made. Does not require narrative, only providing the evidence, which would be required regardless. Identify if anything withheld pursuant to Objection.

Robert Kern, Esq.
Attorney
Kern Law, Ltd.

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From: [phil aurbach](#)
Sent: Friday, February 12, 2021 1:43 PM
To: [Robert Kern](#); [Alex. K. Calaway](#)
Subject: Re: [External] Meet and Confer Re Discovery Responses

Sure
which ones were deficient and why do you think? Maybe we can resolve it before the meet and confer.
Phil

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

From: "Robert Kern" <robert@kernlawoffices.com>
To: "Alexander K. Calaway" <acalaway@maclaw.com>; "Phillip Aurbach" <PSA@maclaw.com>
Sent: 2/12/2021 1:41:29 PM
Subject: [External] Meet and Confer Re Discovery Responses

Hi Alex and Phil,
We need to do a meet and confer about your responses to our discovery requests – several were deficient. When would be a good day and time?

Robert Kern, Esq.
Attorney
Kern Law, Ltd.

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From: Robert Kern
Sent: Tuesday, June 29, 2021 12:11 PM
To: Alexander K. Calaway
Cc: Phil Aurbach's Gmail
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Please let me know if you intend to provide the agreed-upon supplementation.

Robert Kern, Esq.
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From: [Robert Kern](#)
Sent: Friday, June 25, 2021 1:56 PM
To: [Alexander K. Calaway](#)
Cc: [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Hi Alex,
Here's what we are missing from what was agreed at the meet and confer:
RFPs:

We requested to know whether documents were withheld pursuant to your objections for RFPs 1, 2, 4, 7, 8, & 16 as required by the rules.

You agreed to supplement the missing email responses from RFP #2.

You agreed to provide responsive documents to RFP #3.

You agreed to provide monthly bank statements pursuant to RFP #11

You agreed to supplement RFP #15

ROGS:

You agreed to provide an answer to ROG #10

You agreed to provide an answer to ROG # 16

You agreed to provide an answer to ROG 19.

I reviewed the 3rd Supplemental Disclosure, and do not see anything responsive to the above.

Please let me know if you intend to provide the supplementation that you agreed to.

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From: [Alexander K. Calaway](#)
Sent: Friday, June 25, 2021 12:49 PM
To: [Robert Kern](#)
Cc: [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

First, as previously stated, **my client did supplement** by providing the documents you requested at the meet and confer. What more is your client requesting that my client did not provide? We would have been more than willing respond to additional discovery requests months ago, but we felt we already answered all of your clients' timely discovery requests and the issues you raised at your meet and confer.

Second, as to the meet and confer, I only agreed to supplement on the express condition that your client amend his vague requests, which your client failed to timely do. Again, why is it your client bringing this up now on the eve of trial preparation and after dispositive motions?

Third, a motion to compel written discovery after dispositive motions is untimely. *Phillips v. Clark County Sch. Dist.*, 2012 U.S. Dist. LEXIS 5309, 2012 WL 135705 (D. Nev. 2012) (citing *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999); *Thurston v. City of North Las Vegas*, 2011 U.S. Dist. LEXIS 96619, 2011 WL 3841110 (D. Nev. 2011); *Hall v. Schumacher*, 2011 U.S. Dist. LEXIS 108896, 2011 WL 4458845 (D. Nev. 2011) (P.S. there are more cases on point as recent as 2018, but I think you get the point). Therefore, please let this serve as notice that any motion to compel would be untimely, frivolous, and without any factual or legal basis. As such, my client retains all rights to seek his attorney's fees and costs incurred in defending against any motion your client chooses to bring.

Finally, if you would like to meet and confer to discuss what, if anything, you are asserting my client has not responded to in discovery, then I will try to make myself available next week to discuss. Just propose some times/dates so I can schedule (I have hearings and depositions set sporadically next week).

Regards,



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Friday, June 25, 2021 12:28 PM

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

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

He did conduct discovery, and you agreed to supplement insufficient responses, and failed to do as agreed.

Just save the time and tell me if you will provide the supplementation you agreed to at the meet and confer, so I can draft the motion if not.

Robert Kern, Esq.
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From: [Alexander K. Calaway](#)
Sent: Friday, June 25, 2021 12:11 PM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

Our Third Supplement served in March.

I disagree—authority?

A motion to compel would be untimely.

I reject your assertion that I am “playing games” your client had over a year to conduct discovery, did he not?



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From: Robert Kern <robert@kernlawoffices.com>
Sent: Friday, June 25, 2021 12:05 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

What Supplement are you referring to?

You realize that I can still enforce your initial failure to supplement right?

You will lose a motion to compel on this, so please stop playing games.

Robert Kern, Esq.
Attorney

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From: [Alexander K. Calaway](#)
Sent: Wednesday, June 23, 2021 2:44 PM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

As you know, under the rules governing written discovery, the responding party must be provided at least 30 days to respond i.e. at least 30 days before the discovery cutoff. The requests you are referring to were served 1 day before the discovery cut-off of 05/14/21 (see attached) and are therefore untimely.

Even if we disregarded the timeliness issue (which we are not waiving), we also provided a supplement to our initial disclosures as discussed at the meet and confer.

Let me know if you have any additional questions.

Regards,



Alexander K. Calaway, Esq.

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(702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Robert Kern <robert@kernlawoffices.com>
Sent: Wednesday, June 23, 2021 2:32 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

The restated requests were served on May 13

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From: [Alexander K. Calaway](#)
Sent: Wednesday, June 23, 2021 2:27 PM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

I recall the meet and confer, but we agreed to respond to amended requests. When did you serve the amended request?



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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, June 23, 2021 2:10 PM

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

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

I'm referring to the discovery requests that were filed months ago, which we held a meet and confer on, and you agreed to supplement, and insisted we file requests containing the re-stated definitions first, which we did, but you have thus far not supplemented as agreed.

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From: [Alexander K. Calaway](#)

Sent: Wednesday, June 23, 2021 1:56 PM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Hi Robert,

No, discovery closed on March 15th (see attached business court scheduling order). Which discovery requests are you referring to?



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, June 23, 2021 1:30 PM

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

Cc: Skylar P. Cataneo <scataneo@MACLAW.com>

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Hi Alex,

When can we expect the supplemental discovery responses pursuant to the re-issued discovery requests?

Robert Kern, Esq.
Attorney
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From: [Alexander K. Calaway](#)

Sent: Friday, April 16, 2021 11:58 AM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Cc: [Skylar P. Cataneo](#)

Subject: RE: Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

Thanks for reaching out. But, as discussed in our meet and confer, we will need clarifying language in the form of amended discovery pleadings. This is because it appears there will be discovery motions in this matter and we can only properly withdraw our objections in the event your client's requests are amended to conform to the language we discussed in the meet and confer. As discussed, please amend for clarity the following requests and we will subsequently amend our responses in pleading form:

1. ROGs 11, 16, & 19,
2. RFPs 1, 2, 3, 6, 7, 8, 12, 14, and 15.
3. ROG 10
4. RFP 4
5. RFP 11

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, April 14, 2021 2:22 PM

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

Subject: [External] Supplemental Discovery

Hi Alex,

Sorry I was away for a bit. Per our meet and confer regarding discovery responses, I've provided below the clarified wording of the requests you asked for. You may treat those requests as having the wording below.

Per my notes from our Meet and Confer, in addition to responding to the below requests once they were clarified, you were to provide supplemental responses for ROGs 11, 16, & 19, and RFPs 1 (only to indicate if there were any documents withheld pursuant to your objection), 2 (to supplement with the responses referred to, but not included in the provided emails, and to indicate if there were any documents withheld pursuant to your objection), 3, 6 (to see what the reference to the small claims action is referring to), 7 (only to indicate if there were any documents withheld pursuant to your objection), 8 (only to indicate if there were any documents withheld pursuant to your objection), 12, 14, and 15 (only to indicate if there were any documents withheld pursuant to your objection). Please let me know when to expect the supplemental responses, as well as responses to the requests that we have clarified at your request.

ROG #10 - Did you allow your partner (Clement Muney) access to the Wells Fargo Account you opened in Chef Exec's name? Why or why not? ("Access" in this context means the ability to log into the account online, as well as the ability to deposit and withdraw funds).

RFPs

4. Produce all documents within your possession, custody, or control evidencing or constituting communications or records related to Chef Exec sales commissions, including record of all commissions paid, and all information used to determine how commissions are attributed. This request is limited to the time period between 2010 and 2019. For purposes of this request, "communications" is to be interpreted broadly, as any "document" (per definition for that term already provided) whose purpose was to communicate between two persons or entities, or combination thereof. This would include (but not be limited to) for example all emails, voicemails, letters, written notes, chat transcripts, etc.

11. Produce all documents within your possession, custody, or control evidencing or constituting all records from the Wells Fargo Account, including the initial application, all signature pages, all communications with the bank regarding the account, and all account records. This request includes but is not limited to bank statements (all pages), and any other form of record from the account.

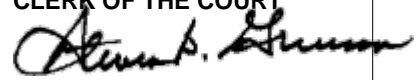
Robert Kern, Esq.
Attorney
Kern Law, Ltd.

601 S. 6th Street
Las Vegas, NV 89101
(702) 518-4529 - phone
(702) 825-5872 - fax
www.Kernlawoffices.com



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 paurbach@maclaw.com
 acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

DOMINIQUE ARNOULD,

Plaintiff,

vs.

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

Defendants,

And related counterclaims.

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

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL
RESPONSES TO DISCOVERY
REQUESTS AND COUNTER-MOTION
FOR SANCTIONS

Plaintiff DOMINIQUE ARNOULD (hereinafter "Arnould" or "Plaintiff"), by and through his attorneys, Marquis Aurbach Coffing, hereby files his Opposition to Defendants' Motion to Compel Responses to Discovery Requests ("Opposition") and Counter-Motion for Sanctions ("Counter-Motion"). This Opposition and Counter-Motion is made and based upon the pleadings and papers on file herein, the following points and authorities, and any argument allowed by the Court at the time of hearing.

Dated this 23rd day of July, 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
Attorneys for Plaintiff

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

Muney's motion to compel comes nearly 6 months after having Arnould's discovery responses and meet and confer efforts and nearly 3 months after the close of discovery. On this basis alone, this Court should deny Muney's motion as untimely, especially in light of the fact that trial is scheduled to commence in less than 3 months and the parties have fully briefed dispositive motions. Moreover, Muney's counsel failed to conduct, or even make attempts to conduct, a meet and confer regarding his amended discovery requests (which he served the day before discovery closed). Regardless, there is nothing to compel in this case. As Arnould's counsel repeatedly informed counsel: "[Arnould] did supplement by providing the documents [Muney] requested." *See Exhibit D.* Thus, even if this Court were to reach the merits of Muney's motion, it must nonetheless be denied. As discussed below, the requested documents have all been provided, and Arnould has not withheld responsive documents. Additionally, Arnould seeks sanctions for Muney's failure to meet and confer and for the significantly untimely filing of the motion. Accordingly, this Court should deny Muney's motion to compel in its entirety and award Arnould his attorney fees and costs in relation to the motion.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.**A. DISCOVERY REQUESTS AND SUBPOENAS.**

1. On December 7, 2020, Arnould timely served his Responses to Defendants' Requests for Production and Defendants' Interrogatories ("Responses").
2. On February 17, 2021, the Receiver's Final Report was approved by the Court and the Receiver was discharged. *See Order*, on file herein.
3. In early February 2021, Arnould and Muney agreed to meet and confer regarding discovery issues, specifically, issues related to: (a) Muney's objections to Arnould's third-party subpoenas (the "Subpoenas"); and (b) Arnould's Responses. *See Email Re: 2/18/21 Meet and Confer*, attached hereto as **Exhibit A**.

1 **B. THE MEET AND CONFER.**

2 4. After discussing these topics at a meet and confer, counsel for Arnould and Muney
3 agreed to do three (3) things with respect to the Subpoenas and Responses.

4 5. First, Muney's counsel agreed to discuss whether his clients would be complying
5 with the Subpoenas. *Id.* Second, Muney agreed to supplemented or amended requests for
6 production and interrogatories for specificity. *Id.* Third, Arnould agreed to supplement his
7 Responses by producing the QuickBooks in native format on a compact disc. *Id.*

8 6. Notably, Arnould's counsel sent an email shortly thereafter outlining these three
9 things as follow-up items from the meet and confer. *Id.*

10 **C. ARNOULD'S SUPPLEMENTS.**

11 7. On February 24, 2021, as agreed, Arnould served his Second Supplement to Initial
12 Disclosure of Witnesses and Documents Pursuant to NRCP 16.1, attached hereto as **Exhibit B** (the
13 "Second Supplement"). The Second Supplement contained the native QuickBooks file as promised
14 at the February 18, 2021 meet and confer. *Id.* at 10.

15 8. Although Muney already had online access to the QuickBooks file and could obtain
16 the information himself, the Second Supplement produced a native format of QuickBooks which
17 was apparently easier to navigate for Muney. Arnould produced the file by having an IT
18 professional burn the native file on a compact disc.

19 9. On March 11, 2021, Arnould served his Third Supplement to Initial Disclosure of
20 Witnesses and Documents Pursuant to NRCP 16.1, attached hereto as **Exhibit C** ("Third
21 Supplement"). The Third Supplement contained additional documents responsive to Muney's
22 requests, including Chef Exec Suppliers documents, payroll documents, invoices, and tax returns
23 from 2007 through 2019 for the company; as well as AAA Foods corporate documents.

24 **D. MUNEY'S NEW REQUESTS.**

25 10. On April 14, 2021, Muney's counsel emailed Arnould's counsel regarding the
26 Responses and claimed that Arnould had not complied with what was agreed to at the meet and
27 confer. In response, Arnould's counsel reiterated the points discussed at the February 18, 2021
28 meet and confer (*see Exhibit A*).

11. On May 13, 2021 (the day before discovery closed), Munev served amended requests for production and interrogatories on Arnould (the "New Requests").

E. THE DISPUTE AND REFUSAL TO MEET AND CONFER.

12. On May 14, 2021, discovery closed and on June 14, 2021, Arnould filed a timely Motion for Summary Judgment.

13. On June 23, 2021, Munev's counsel inquired about Arnould's responses to the New Requests, to which Arnould's counsel responded as follows:

Robert,

As you know, under the rules governing written discovery, the responding party must be provided at least 30 days to respond i.e. at least 30 days before the discovery cutoff. The requests you are referring to were served 1 day before the discovery cut-off of 05/14/21 (see attached) and are therefore untimely.

Even if we disregarded the timeliness issue (which we are not waiving), **we also provided a supplement to our initial disclosures as discussed at the meet and confer.**

Let me know if you have any additional questions.

Regards,

See June 25th Email Chain, attached hereto as **Exhibit D.**

14. On June 25, 2021, Munev's counsel refused to acknowledge Arnould's Third Supplement and continued to press for responses to the New Requests. *Id.*

15. Arnould's counsel reiterated that (1) Arnould did supplement the documents requested; (2) that the New Requests were untimely brought after dispositive motions; and (3) offered to meet and confer to resolve any issues with Arnould's New Requests. *Id.* The email in full says:

Robert,

First, as previously stated, **my client did supplement by providing the documents you requested at the meet and confer.** What more is your client requesting that my client did not provide? **We would have been more than willing respond to additional discovery requests months ago, but we felt we already answered all of your clients' timely discovery requests and the issues you raised at your meet and confer.**

Second, as to the meet and confer, I only agreed to supplement on the express condition that your client amend his vague requests, which your client failed to

1 timely do. **Again, why is it your client bringing this up now on the eve of trial**
2 **preparation and after dispositive motions?**

3 Third, a motion to compel written discovery after dispositive motions is untimely.
4 Phillips v. Clark County Sch. Dist., 2012 U.S. Dist. LEXIS 5309, 2012 WL 135705
5 (D. Nev. 2012) (citing Gault v. Nabisco Biscuit Co., 184 F.R.D. 620, 622 (D. Nev.
6 1999); Thurston v. City of North Las Vegas, 2011 U.S. Dist. LEXIS 96619, 2011
7 WL 3841110 (D. Nev. 2011); Hall v. Schumacher, 2011 U.S. Dist. LEXIS 108896,
8 2011 WL 4458845 (D. Nev. 2011) (P.S. there are more cases on point as recent as
9 2018, but I think you get the point). Therefore, please let this serve as notice that
10 any motion to compel would be untimely, frivolous, and without any factual or
11 legal basis. As such, my client retains all rights to seek his attorney's fees and costs
12 incurred in defending against any motion your client chooses to bring.

13 Finally, if you would like to meet and confer to discuss what, if anything, you are
14 asserting my client has not responded to in discovery, **then I will try to make**
15 **myself available next week to discuss. Just propose some times/dates so I can**
16 **schedule (I have hearings and depositions set sporadically next week).**

17 Regards,

18 16. Unfortunately, Muney's counsel refused to meet and confer.

19 17. On July 9, 2021, Muney filed the instant motion to compel to enforce responses.

20 **III. LEGAL ARGUMENT.**

21 **A. MUNEY'S MOTION IS UNTIMELY AND MUST BE DENIED.**

22 Muney has unduly delayed seeking to challenge Arnould's discovery responses. In addition
23 to his lengthy delay in raising these issues, Arnould also waited until after the close of discovery
24 to file a motion to compel and several months after it conducted a meet and confer. Now, after
25 summary judgment motions have been submitted to the Court, less than three months before trial,
26 Muney untimely seeks to compel the production of responses and documents. But case law shows
27 that untimely motions to compel made after the close of discovery should be denied based on
28 timing alone.

29 The Nevada case of *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999)
30 shows with particularity why Muney's Motion to Compel is untimely and must be denied. The
31 *Gault* Court denied as untimely a motion to compel that was filed 136 days after receipt of
32 allegedly deficient responses and 76 days after the close of discovery without a showing that delay
33 was caused by matters outside moving party's control. *Id.* Here, Muney had Arnould's responses
34 for much longer than the movant in *Gault* before filing his Motion to Compel. Muney waited until

1 nearly 3 months after the close of discovery to file his Motion to Compel, which is more egregious
2 than the 76 days the untimely movant in *Gault* delayed. And, as in *Gault*, it was entirely within
3 Muney's control when to file their Motion to Compel.

4 "If the moving party has unduly delayed, the court may conclude that the motion is
5 untimely." *Voter v. Avera Brookings Medical Clinic*, 2008 WL 4372707, 1 (D.S.D. 2008) (quoting
6 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure §
7 2285 (2d ed.1994)). Thus, courts have looked to the deadline for completion of discovery when
8 determining the timeliness of a motion to compel. *Id.*

9 Motions to compel filed after the discovery deadline have routinely been found to be
10 untimely by court, including courts in Nevada. *See e.g., Gault* at 622 (denying as untimely motion
11 to compel further responses when filed one hundred and thirty-six days after receipt of allegedly
12 deficient responses and seventy-six days after close of discovery, and no showing that delay was
13 caused by matters outside moving party's control); *see also Kalis v. Colgate-Palmolive Co.*, 231
14 F.3d 1049, 1058 (7th Cir. 2000) (finding no abuse of discretion in denying motion to compel filed
15 after discovery closed, summary judgment motion was filed, briefing schedule was set, and
16 plaintiffs response was due); *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 647 (7th Cir.2001)
17 (finding the district court did not abuse its discretion in denying a motion to compel discovery filed
18 after discovery closed and defendants had filed their summary judgment motion); *Ginett v. Federal*
19 *Express Corp.*, 1998 WL 777998, at 5 (6th Cir. Oct. 21, 1998) (finding the district court did not
20 abuse its discretion when it denied a motion to compel filed two months after the discovery
21 deadline, because the plaintiff knew of the document at issue long before the discovery deadline);
22 *Suntrust Bank v. Blue Water Fiber, L.P.*, 210 F.R.D. 196, 200-202 (E.D.Mich. 2002) (determining
23 plaintiff's motion to compel should be denied because the motion was filed approximately two
24 months after the discovery cut-off and although plaintiff knew of the document at issue long before
25 the discovery deadline, plaintiff failed to file a motion at that time).

26 Here, all the factors show that Muney's Motion to Compel is untimely and should be
27 denied. Muney's Motion to Compel was filed after the close of discovery, and Nevada courts have
28 determined that such a motion is untimely. *See e.g., Gault*, 184 F.R.D. at 622; *see also Voter v.*

1 *Avera Brookings Medical Clinic*, 2008 WL 4372707, 1 (D.S.D. 2008); *Packman v. Chicago*
2 *Tribune Co.*, 267 F.3d 628, 647 (7th Cir.2001). Muney had ample time prior to the close of
3 discovery to file a motion to compel, as he was in possession of Arnould's responses and objection
4 for nearly 6 months prior to bringing the instant motion (4 months after the close of discovery).
5 Courts have found that such delays demonstrate that a motion to compel was untimely. *Suntrust*
6 *Bank v. Blue Water Fiber, L.P.*, 210 F.R.D. 196, 200-202 (E.D.Mich. 2002); *Ginett v. Federal*
7 *Express Corp.*, 1998 WL 777998, at 5 (6th Cir. Oct. 21, 1998). Muney's Motion to Compel comes
8 after summary judgment motions have been filed in this case, which is yet another factor courts
9 have found shows that a motion to compel was untimely. *Kalis v. Colgate-Palmolive Co.*, 231 F.3d
10 1049, 1058 (7th Cir. 2000); *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 647 (7th Cir.2001).

11 Finally, Arnould would be prejudiced if compelled to produce further documents, and
12 therefore the Motion to Compel should be denied. *See Range v. Brubaker*, 2008 WL 524004, 3
13 (N.D.Ind. 2008) (motion to compel not filed within a reasonable time should be denied,
14 particularly if the non-moving party would be prejudiced). The parties must devote their time to
15 preparing for the trial in this matter. Arnould would be prejudiced to be forced to spend time
16 searching for irrelevant and voluminous records, which Muney only now have taken the time to
17 address.

18 Muney's Motion to Compel is facially untimely. Muney had Arnould's responses,
19 objections and stance on the issues for a significant amount of time before filing his Motion to
20 Compel, and he was well aware of the discovery deadline. The parties have already briefed
21 summary judgment motions. Muney has unduly delayed and waived any right it had to challenge
22 discovery related issues.

23 **B. MUNEY'S COUNSEL DID NOT ATTEMPT TO MEET AND CONFER**
24 **AFTER HIS NEW REQUESTS.**

25 Rule 2.34 governs motion to compel. Specifically, the Rule provides in pertinent part:

26 **Rule 2.34. Discovery disputes; conferences; motions; stays.**

27 ...

28 (d) Discovery motions may not be filed unless an affidavit of moving counsel
is attached thereto setting forth that after a discovery dispute conference or a good

1 faith effort to confer, counsel have been unable to resolve the matter satisfactorily.
2 ***A conference requires either a personal or telephone conference between or***
3 ***among counsel.*** Moving counsel must set forth in the affidavit what attempts to
4 resolve the discovery dispute were made, what was resolved and what was not
5 resolved, and the reasons therefor. If a personal or telephone conference was not
6 possible, the affidavit shall set forth the reasons.

7 If the responding counsel fails to answer the discovery, the affidavit shall set
8 forth what good faith attempts were made to obtain compliance. If, after request,
9 responding counsel fails to participate in good faith in the conference or to answer
10 the discovery, the court may require such counsel to pay to any other party the
11 reasonable expenses, including attorney's fees, caused by the failure. When a party
12 is not represented by counsel, the party shall comply with this rule.

13 EDCR 2.34(d)(emphasis added).

14 Here, the Motion should not be granted because Muney's counsel failed to conduct a
15 personal or telephone conference with Arnould's counsel regarding the New Requests. For this
16 reason alone, the Motion cannot be granted, as the recently amended rule specifically requires a
17 personal or telephonic conference. Furthermore, the affidavit of counsel does not set forth the
18 reasons as to why a telephonic or personal conference was not possible. Instead, counsel states
19 the dispute arose from a previous meet and confer – which is patently false in light of the fact that
20 the New Requests came several months after the parties February 18th meet and confer. *See*
21 **Exhibit A.** Accordingly, Muney's motion must be denied.

22 **C. EVEN ON THE MERITS, THE COURT MUST DENY MUNEY'S**
23 **MOTION BECAUSE THERE IS NOTHING TO COMPEL.**

24 After the February 18, 2021 meet and confer, Arnould supplemented his initial disclosures
25 twice and produced another 434 documents on top of the 811 documents he had already disclosed.
26 *Cf. Exhibits B and C.* Before discovery closed, Arnould provided all of the documents that may
27 be even *remotely responsive* to Muney's requests (even though Muney's requests were vague) and
28 provided a *courtesy copy* of the native file of QuickBooks (even though Muney had access to the
QuickBooks).

Had Muney's counsel made any effort to meet and confer, perhaps he would have realized
that Arnould has not withheld any responsive documents. *See Exhibit D.* Indeed, on June 23, 2021,
Arnould's counsel stated: "Even if we disregarded the timeliness issue (which we are not waiving),

1 we also provided a supplement to our initial disclosures as discussed at the meet and confer.” *Id.*
2 Then on June 25, 2021, Arnould’s counsel reiterated:

3 “Robert, ... as previously stated, *my client did supplement by providing the*
4 *documents you requested at the meet and confer.* What more is your client
5 requesting that my client did not provide? We would have been more than willing
6 respond to additional discovery requests months ago, but we felt *we already*
7 *answered all of your clients’ timely discovery requests and the issues you raised*
8 *at your meet and confer.” Id.* (emphasis added).

9 Put simply, there is nothing to compel in this case since Arnould has responded to all of
10 the requests and has produced all responsive documents in his possession. As such, Muney’s
11 Motion to Compel should be denied.

12 **D. ARNOULD’S COUNTERMOTION FOR SANCTIONS, INCLUDING**
13 **ATTORNEY FEES AND COSTS.**

14 Rule 37 provides:

15 **(4) Expenses and Sanctions.**

16 (A) If the motion is granted or if the disclosure or requested discovery
17 is provided after the motion was filed, the court shall, after affording an opportunity
18 to be heard, require the party or deponent whose conduct necessitated the motion
19 or the party or attorney advising such conduct or both of them to pay to the moving
20 party the reasonable expenses incurred in making the motion, including attorney’s
21 fees, unless the court finds that the motion was filed without the movant’s first
22 making a good faith effort to obtain the disclosure or discovery without court
23 action, or that the opposing party’s nondisclosure, response or objection was
24 substantially justified, or that other circumstances make an award of expenses
25 unjust.

26 Nev. R. Civ. P. 37 (a)(4)(A) (emphasis added). Here, Arnould requests his attorney fees and costs,
27 and any other sanctions warranted necessary by the Court, for Muney’s frivolous motion to compel
28 discovery responses when Muney refused to comply with discovery deadlines; ignored emails
from counsel explaining that no documents were being withheld; and refused to conduct a meet
and confer in accordance with EDCR 2.34. Likewise, Arnould’s Responses to the burdensome
discovery requests were substantially justified.

Finally, sanctions are warranted based on Muney’s untimely motion to compel. Despite
having Arnould’s position on Muney’s discovery requests in February, Muney waited nearly 6
months before filing a motion to compel. Muney’s motion is nearly 3 months after the close of

1 discovery and well after the filing of dispositive motions. Arnould should be awarded his attorney
2 fees and costs in relation to defending the instant frivolous motion.

3 **IV. CONCLUSION**

4 Based on the foregoing, Arnould respectfully requests the Court deny Muney's Motion to
5 Compel Responses grant Arnould's Countermotion for Sanctions.

6 Dated this 23rd day of July, 2021.

7
8 MARQUIS AURBACH COFFING

9
10 By /s/Alexander K. Calaway
11 Phillip S. Aurbach, Esq.
12 Nevada Bar No. 1501
13 Alexander K. Calaway, Esq.
14 Nevada Bar No. 15188
15 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS AND COUNTER-MOTION FOR SANCTIONS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 24th day of July, 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/Alexander Calaway
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).

EXHIBIT A

Alexander K. Calaway

From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Tuesday, February 23, 2021 4:31 PM
To: 'Robert Kern'
Cc: Phillip Aurbach; Jennifer P. Case
Subject: 2/18/21 Meet and Confer [IWOV-iManage.FID1085969]
Attachments: 2020-11-23 Non-Party CMJJ_s Objection to Amended Subpoena and Subpoena Duces Tecum.PDF; 2020-11-23 Non-Party Jeremy Muney_s Objection to Amended Subpoena and Subpoena Duces Tecum.PDF

Robert,

Per our meet and confer last week:

1. Will your clients be complying with the attached subpoenas as discussed (you said you wanted to discuss it with them first)?
2. We will put sending a disc with the native format QuickBooks file as requested—we will put the disc in the mail tomorrow.
3. You will be amending your first set of requests to Domonique Arnould as discussed.

Thanks,

Alex



Alexander K. Calaway, Esq.

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Las Vegas, NV 89145
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f | 702.382.5816
acalaway@maclaw.com
maclaw.com



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EXHIBIT B

MARQUIS AURBACH COFFING

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

Marquis Aurbach Coffing
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paurbach@maclaw.com
acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff/ Counter-Defendant,

vs.

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

Defendants/Counterclaimant.

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

**PLAINTIFF'S SECOND SUPPLEMENT TO INITIAL DISCLOSURE OF WITNESSES
AND DOCUMENTS PURSUANT TO NRCP 16.1**

In compliance with NRCP 16.1, Plaintiff Dominique Arnould, by and through his attorneys of record, Marquis Aurbach Coffing, hereby produces the attached witness list and documents related to this matter. **Supplemental information to appear in bold.**

WITNESSES

The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information – NRCP 16.1(a)(1)(A)

- 1 1. Dominique Arnould
2 c/o Marquis Aurbach Coffing
3 10001 Park Run Drive
4 Las Vegas, NV 89145
5 702-328-0711

6 Mr. Arnould is expected to testify regarding all facts and circumstances of which the
7 witness has personal knowledge, including but not limited to those involving Chef Exec
8 Suppliers, LLC (“hereinafter “LLC”), the operations of the LLC, the negotiations of the LLC,
9 LLC documents, LLC sales, the LLC’s warehouses including the Las Vegas warehouse, the
10 LLC’s prior history of rents for warehouses and buildings, communications and negotiations
11 with Clement Muney, the corresponding dispute with Mr. Muney, and the facts and
12 circumstances surrounding the allegations in the Complaint.

- 13 2. Clement Muney
14 c/o Kern Law, LTD
15 601 S. 6th Street
16 Las Vegas, NV 89101
17 702-518-4529

18 Mr. Clement is expected to testify regarding all facts and circumstances of which the
19 witness has personal knowledge, including but not limited to those the LLC, the operations of
20 the LLC, the negotiations of the LLC, LLC documents, LLC sales, the LLC’s warehouses
21 including the Las Vegas warehouse, the LLC’s prior history of rents for warehouses and
22 buildings, communications and negotiations with Mr. Arnould, the corresponding dispute with
23 Mr. Arnould, and the facts and circumstances surrounding the allegations in the Complaint.

24 Mr. Clement is also expected to testify regarding all facts and circumstances of which the
25 witness has personal knowledge, including but not limited to those related to CMJJ Gourmet,
26 Inc. (hereinafter “CMJJ”), the operations of the CMJJ, the negotiations and formation of CMJJ,
27 the financial documents of CMJJ, CMJJ sales and revenues, CMJJ’s leases including the Las
28 Vegas warehouse lease with the LLC, CMJJ’s prior history of rents for warehouses and
29 buildings, communications and negotiations with Mr. Arnould and the LLC, the corresponding
30 dispute with Mr. Arnould, and the facts and circumstances surrounding the allegations in the
31 Complaint.

1 3. Sylvie Muney
2 c/o Kern Law, LTD
3 601 S. 6th Street
4 Las Vegas, NV 89101
5 702-518-4529

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15 CMJJ, CMJJ sales and revenues, CMJJ's leases including the Las Vegas warehouse lease with
16 the LLC, CMJJ's prior history of rents for warehouses and buildings, communications and
17 negotiations with Mr. Arnould and the LLC, the corresponding dispute with Mr. Arnould, and
18 the facts and circumstances surrounding the allegations in the Complaint.

19 4. NRCP 30(b)(6) of CMJJ Gourmet, Inc.
20 151 Augusta Street
21 Henderson, NV, 89074

22 This witness is expected to testify regarding any and all topics to be formulated and
23 properly served at a later date in accordance with NRCP 30(b)(6), which may include but are not
24 limited to the facts and circumstances involving CMJJ Gourmet, Inc. (hereinafter "CMJJ"), the
25 operations of the CMJJ, the negotiations and formation of CMJJ, the financial documents of
26 CMJJ, CMJJ sales and revenues, CMJJ's leases including the Las Vegas warehouse lease with
27 the LLC, CMJJ's prior history of rents for warehouses and buildings, communications and
28 negotiations with Mr. Arnould and the LLC, the corresponding dispute with Mr. Arnould, and
the facts and circumstances surrounding the allegations in the Complaint.

- 1 5. Custodian of Records of CMJJ Gourmet, Inc.
2 151 Augusta Street
3 Henderson, NV, 89074

4 This witness is expected to testify regarding, for example, but not limited to, the contents,
5 authenticity, and other issues surrounding the lease and financial documents of CMJJ, and any
6 other documents, writings, or communications created by, executed by, or in the possession of
7 CMJJ that are discoverable under the Nevada Rules of Civil Procedure. Plaintiff reserves the
8 right to call and examine any witnesses listed by any other party. Further, Plaintiff reserves the
9 right to amend/supplement their disclosure of witnesses as the same become known to Plaintiff
10 through the discovery process, including expert witnesses.

- 11 6. NRCP 30(b)(6) of Harsch Investment Properties, LLC
12 701 S CARSON ST STE 200,
13 Carson City, NV, 89701

14 This witness is expected to testify regarding any and all topics to be formulated and
15 properly served at a later date in accordance with NRCP 30(b)(6), which may include but are not
16 limited to the facts and circumstances involving Harsch Investment Properties, LLC's
17 relationship with CMJJ, its operations with CMJJ, negotiations with CMJJ, the financial
18 documents and lease documents with CMJJ, its CMJJ leases including the Las Vegas warehouse
19 lease, Harsch Investment Properties, LLC's prior history of rents for warehouses and buildings,
20 communications and negotiations with Mr. Clement and the LLC, the corresponding dispute with
21 Mr. Arnould, and the facts and circumstances surrounding the allegations in the Complaint.

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26 authenticity, and other issues surrounding the lease and financial documents involving CMJJ,
27 and any other documents, writings, or communications created by, executed by, or in the
28 possession of Harsh Investment Properties, LLC that are discoverable under the Nevada Rules of
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party. Further, Plaintiff reserves the right to amend/supplement their disclosure of witnesses as
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1 8. Mike Murphy
2 3111 Valley View Blvd. Suite K-101
3 Las Vegas, NV 89102

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5 witness has personal knowledge, including but not limited to Harsch Investment Properties,
6 LLC's leases with CMJJ and the LLC, operations with CMJJ and the LLC, negotiations with
7 CMJJ and the LLC, the financial documents and lease documents with CMJJ and the LLC,
8 CMJJ's leases including a Las Vegas warehouse lease, Harsch Investment Properties, LLC's
9 prior history of rents for warehouses and buildings, communications and negotiations with Mr.
10 Clement and the LLC, the corresponding dispute with Mr. Arnould, and the facts and
11 circumstances surrounding the allegations in the Complaint.

12 9. Gene Proctor
13 8290 W. Sahara Avenue Suite #100
14 Las Vegas, NV 89117

15 Mr. Proctor is expected to testify regarding all facts and circumstances of which the
16 witness has personal knowledge, including but not limited to Harsch Investment Properties,
17 LLC's leases with CMJJ and the LLC, operations with CMJJ and the LLC, negotiations with
18 CMJJ and the LLC, the financial documents and lease documents with CMJJ and the LLC,
19 CMJJ's leases including a Las Vegas warehouse lease, Harsch Investment Properties, LLC's
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22 circumstances surrounding the allegations in the Complaint.

23 10. Veronique Humbert
24 5830 Green Valley Circle #312
25 Culver City, CA 90230
26 310-293-6200

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28 witness has personal knowledge, including but not limited to those relating to the LLC, the
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and buildings, communications and negotiations with Mr. Clement and with Mr. Arnould, the

1 corresponding dispute with Mr. Arnould, and the facts and circumstances surrounding the
2 allegations in the Complaint.

3 11. Sergio Rosales
4 7001 West Charleston Blvd #1071
5 Las Vegas, NV 89117
6 702-524-9093

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11 and buildings, communications with Mr. Clement and with Mr. Arnould, the corresponding
12 dispute with Mr. Arnould, and the facts and circumstances surrounding the allegations in the
13 Complaint.

14 12. Jean-Phillippe Dufoin
15 4575 S. Procyon Street Suite G,
16 Las Vegas, NV 89103

17 Mr. Proctor is expected to testify regarding all facts and circumstances of which the
18 witness has personal knowledge, including but not limited to Bleu Blanc Rouge, LLC's
19 relationship with the LLC, its operations with the LLC, negotiations with the LLC, the financial
20 documents and sales documents with the LLC, prior history and business dealings with the LLC,
21 communications and negotiations with Mr. Clement, Mr. Arnould, and the LLC, the
22 corresponding dispute with Mr. Arnould, and the facts and circumstances surrounding the
23 allegations in the Complaint.

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25 4575 S. Procyon Street Suite G,
26 Las Vegas, NV 89103

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28 properly served at a later date in accordance with NRCP 30(b)(6), which may include but are not
limited to the facts and circumstances involving Bleu Blanc Rouge, LLC's relationship with the
LLC, its operations with the LLC, negotiations with the LLC, the financial documents and sales
documents with the LLC, prior history and business dealings with the LLC, communications and

1 negotiations with Mr. Clement, Mr. Arnould, and the LLC, the corresponding dispute with Mr.
2 Arnould, and the facts and circumstances surrounding the allegations in the Complaint.

3 14. Custodian of Records of Bleu Blanc Rouge, LLC
4 4575 S. Procyon Street Suite G,
5 Las Vegas, NV 89103

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7 authenticity, and other issues surrounding the sales and financial documents involving the LLC,
8 and any other documents, writings, or communications created by, executed by, or in the
9 possession of Bleu Blanc Rouge, LLC that are discoverable under the Nevada Rules of Civil
10 Procedure. Plaintiff reserves the right to call and examine any witnesses listed by any other
11 party. Further, Plaintiff reserves the right to amend/supplement their disclosure of witnesses as
12 the same become known to Plaintiff through the discovery process, including expert witnesses.

13 15. Laurent Caraco
14 500 N. Flores
15 West Hollywood, CA 90048
16 310-923-4004

17 This witness is expected to testify regarding the facts and circumstances giving rise to
18 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
19 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

20 16. Larry L. Bertsch, CPA, CFF
21 c/o Carlyon Cica CHTD
22 265 East Warm Springs Road Suite 107,
23 Las Vegas, Nevada 89119
24 (702) 685-4444

25 This witness is expected to testify regarding the facts and circumstances giving rise to
26 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
27 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

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1 17. Jeremy Muney
2 c/o Kern Law, LTD
3 601 S. 6th Street
4 Las Vegas, NV 89101
5 702-518-4529

6 This witness is expected to testify regarding the facts and circumstances giving rise to
7 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
8 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

9 18. Michelle Giffen
10 1403 9th St.
11 Las Vegas, Nevada 89104

12 This witness is expected to testify regarding the facts and circumstances giving rise to
13 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
14 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

15 19. Jhohan Juarez
16 17644 Welby Way
17 Van Nuys, CA 91406

18 This witness is expected to testify regarding the facts and circumstances giving rise to
19 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
20 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

21 20. Zsolt Baylor
22 7095 Hollywood Blvd. #417
23 Los Angeles, CA 90028
24 844-449-4224

25 This witness is expected to testify regarding the facts and circumstances giving rise to
26 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
27 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

28 Plaintiff reserves the right to amend or supplement their disclosure of witnesses as
discovery progresses, including expert witnesses. Plaintiffs also reserve the right to call any
other witness identified by any other party to this action.

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DOCUMENTS

A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b) – NRCP 16.1(a)(1)(B)

1. Gershuni & Goldstein Letter (ARNOULD 000001-000010);
2. Kern Letter Re: Chef Exec Suppliers, LLC (ARNOULD 0000011);
3. Mobile Shark Invoice (ARNOULD 0000012);
4. Harsch Investment Properties Charge Schedule (ARNOULD 000013-000017);
5. CMJJ Invoice to Chef Exec Suppliers, LLC (ARNOULD 000018);
6. Caldwell Banker Letter Re: Proposal to Renew (ARNOULD 000019-000020);
7. Chef Exec Letters to Harsch Investment Properties (ARNOULD 000021-000022);
8. Harsch Investment Properties Letter of Intent (ARNOULD 000023-000024);
9. Chef Exec Suppliers, LLC Sales by Rep Summary January – December 2018 (ARNOULD 000025);
10. Chef Exec Suppliers, LLC Sales by Rep Summary January – December 2019 (ARNOULD 000026); and
11. Various Email Correspondence (ARNOULD 000027-00073);
12. Dan Vardanian - Mutual Non-Disclosure Agreement (ARNOULD000074 - 75);
13. Funding Documents (ARNOULD000076 - 107);
14. Sales Rep Detail Reports and Commissions (ARNOULD000108 - 248);
15. Paris Bakery Invoices and Documents (ARNOULD000249 - 257);
16. Records of sales between Chef Exec, AAA, and WOW (ARNOULD000258 - 546);
17. Rent Roll AAA and WOW Square Footage (ARNOULD000547 - 557);
18. CMJJ Rental Comparison Documents (ARNOULD000558 - 577);
19. Copy of all checks deposited in CES WF Account (ARNOULD000578 - 646);
20. Opening bank account documents (ARNOULD000647 - 664);
21. Correspondence with Landlord since 2018 (ARNOULD000665 – 715);

22. Communication with CES, AAA and WOW (ARNOULD000716 - 737);
23. Secretary of State Dissolution Documents (ARNOULD000738 – 740);
24. Letter to CES Clients Re: Dissolution (ARNOULD000741);
25. Chef Exec Suppliers Inventory Per Territory (ARNOULD000742 – 765);
26. Initial Obsolete Inventory (ARNOULD000766 – 767);
27. Initial Obsolete Inventory Revised Per Territory (ARNOULD000768 – 769);
28. Las Vegas Dead Inventory (ARNOULD000770);
29. Invoices Re: Las Vegas Dead Inventory (ARNOULD000771 – 792);
30. Deliveries for AAA and WOW (ARNOULD000793 – 794);
31. Kelly Blue Book for 2012 Mercedes Sprinter 3500 (ARNOULD000795 – 798);
32. Website Expenses (ARNOULD000799 – 803);
33. Telephone Accounting (ARNOULD000804);
34. Verizon Phone Bill (ARNOULD000805);
35. Jhohan Declaration (ARNOULD000808);
36. Jhohan Text Messages (ARNOULD000807 – 811); and
37. **Native Chef Exec Supplier's QuickBook file (ARNOULD000812).**

Plaintiff reserves the right to amend or supplement their disclosure of documents as discovery progresses, including expert witness reports and opinions. Plaintiff reserves the right to use or offer into evidence any documents listed by any other party to this action. Plaintiff also reserves the right to use or offer summaries, compilations, or demonstrative exhibits of the identified documents.

COMPUTATION OF DAMAGES

A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered – NRCP 16.1(a)(1)(C)

RESPONSE: At the present time, without the benefit of discovery and expert analysis, Plaintiff is unable to estimate and compute its damages; however, Plaintiff anticipates that the

1 general categories of damages flowing from its direct and derivative causes of action in the
2 Complaint are as follows:

- 3 • Compensatory, expectation, consequential, actual, general, reliance,
4 restitutionary, disgorgement, special, and other damages;
- 5 • Punitive and exemplary damages;
- 6 • Declaratory relief, appointment of a receiver, and judicial dissolution as requested
7 in the Complaint;
- 8 • An accounting as requested in the Complaint;
- 9 • Pre-judgment interest;
- 10 • Attorney fees and costs.

11 INSURANCE

12 *For inspection and copying as under Rule 34 any insurance agreement under which any*
13 *person carrying on an insurance business may be liable to satisfy part or all of a judgment which*
14 *may be entered in the action or to indemnify or reimburse for payments made to satisfy the*
15 *judgment and any disclaimer or limitation of coverage or reservation of rights under any such*
16 *insurance agreement – NRCP 16.1(a)(1)(D)*

17 **RESPONSE:** Not applicable.

18 Dated this 24th day of February, 2021.

19 MARQUIS AURBACH COFFING

20
21 By /s/ Alexander K. Calaway
22 Phillip S. Aurbach, Esq.
23 Nevada Bar No. 1501
24 Alexander K. Calaway, Esq.
25 Nevada Bar No. 15188
26 *Attorneys for Plaintiff*
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S SECOND SUPPLEMENT TO INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP**

16.1 (supplemental bated stamped documents will be provided on disc via US mail) was submitted electronically for service with the Eighth Judicial District Court on the 24th day of February, 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

Robert Kern, Esq.
KERN LAW, Ltd.
601 S. 6th Street
Las Vegas, NV 89101

/s/J. Case
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).

EXHIBIT C

MARQUIS AURBACH COFFING

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

DOMINIQUE ARNOULD,

Plaintiff/ 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

**PLAINTIFF'S THIRD SUPPLEMENT TO INITIAL DISCLOSURE OF WITNESSES
AND DOCUMENTS PURSUANT TO NRCP 16.1**

In compliance with NRCP 16.1, Plaintiff Dominique Arnould, by and through his attorneys of record, Marquis Aurbach Coffing, hereby produces the attached witness list and documents related to this matter. **Supplemental information to appear in bold.**

WITNESSES

The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information – NRCP 16.1(a)(1)(A)

1. Dominique Arnould
c/o Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
702-328-0711

Mr. Arnould is expected to testify regarding all facts and circumstances of which the witness has personal knowledge, including but not limited to those involving Chef Exec Suppliers, LLC (“hereinafter “LLC”), the operations of the LLC, the negotiations of the LLC, LLC documents, LLC sales, the LLC’s warehouses including the Las Vegas warehouse, the LLC’s prior history of rents for warehouses and buildings, communications and negotiations with Clement Muney, the corresponding dispute with Mr. Muney, and the facts and circumstances surrounding the allegations in the Complaint.

2. Clement Muney
c/o Kern Law, LTD
601 S. 6th Street
Las Vegas, NV 89101
702-518-4529

Mr. Clement is expected to testify regarding all facts and circumstances of which the witness has personal knowledge, including but not limited to those the LLC, the operations of the LLC, the negotiations of the LLC, LLC documents, LLC sales, the LLC’s warehouses including the Las Vegas warehouse, the LLC’s prior history of rents for warehouses and buildings, communications and negotiations with Mr. Arnould, the corresponding dispute with Mr. Arnould, and the facts and circumstances surrounding the allegations in the Complaint.

Mr. Clement is also expected to testify regarding all facts and circumstances of which the witness has personal knowledge, including but not limited to those related to CMJJ Gourmet, Inc. (hereinafter “CMJJ”), the operations of the CMJJ, the negotiations and formation of CMJJ, the financial documents of CMJJ, CMJJ sales and revenues, CMJJ’s leases including the Las Vegas warehouse lease with the LLC, CMJJ’s prior history of rents for warehouses and buildings, communications and negotiations with Mr. Arnould and the LLC, the corresponding dispute with Mr. Arnould, and the facts and circumstances surrounding the allegations in the Complaint.

1 3. Sylvie Muney
2 c/o Kern Law, LTD
3 601 S. 6th Street
4 Las Vegas, NV 89101
5 702-518-4529

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23 10. Veronique Humbert
24 5830 Green Valley Circle #312
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26 310-293-6200

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and buildings, communications and negotiations with Mr. Clement and with Mr. Arnould, the

1 corresponding dispute with Mr. Arnould, and the facts and circumstances surrounding the
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4 7001 West Charleston Blvd #1071
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12 dispute with Mr. Arnould, and the facts and circumstances surrounding the allegations in the
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14 12. Jean-Phillippe Dufoin
15 4575 S. Procyon Street Suite G,
16 Las Vegas, NV 89103

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14 500 N. Flores
15 West Hollywood, CA 90048
16 310-923-4004

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18 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
19 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

20 16. Larry L. Bertsch, CPA, CFF
21 c/o Carlyon Cica CHTD
22 265 East Warm Springs Road Suite 107,
23 Las Vegas, Nevada 89119
24 (702) 685-4444

25 This witness is expected to testify regarding the facts and circumstances giving rise to
26 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
27 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

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1 17. Jeremy Muney
2 c/o Kern Law, LTD
3 601 S. 6th Street
4 Las Vegas, NV 89101
5 702-518-4529

6 This witness is expected to testify regarding the facts and circumstances giving rise to
7 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
8 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

9 18. Michelle Giffen
10 1403 9th St.
11 Las Vegas, Nevada 89104

12 This witness is expected to testify regarding the facts and circumstances giving rise to
13 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
14 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

15 19. Jhohan Juarez
16 17644 Welby Way
17 Van Nuys, CA 91406

18 This witness is expected to testify regarding the facts and circumstances giving rise to
19 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
20 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

21 20. Zsolt Baylor
22 7095 Hollywood Blvd. #417
23 Los Angeles, CA 90028
24 844-449-4224

25 This witness is expected to testify regarding the facts and circumstances giving rise to
26 claims in Plaintiff's Complaint, the defenses, the counter-claims, and as to any other matter
27 relevant to this action which may be elicited by counsel at deposition, arbitration or trial.

28 Plaintiff reserves the right to amend or supplement their disclosure of witnesses as
discovery progresses, including expert witnesses. Plaintiffs also reserve the right to call any
other witness identified by any other party to this action.

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DOCUMENTS

A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b) – NRCP 16.1(a)(1)(B)

1. Gershuni & Goldstein Letter (ARNOULD 000001-000010);
2. Kern Letter Re: Chef Exec Suppliers, LLC (ARNOULD 0000011);
3. Mobile Shark Invoice (ARNOULD 0000012);
4. Harsch Investment Properties Charge Schedule (ARNOULD 000013-000017);
5. CMJJ Invoice to Chef Exec Suppliers, LLC (ARNOULD 000018);
6. Caldwell Banker Letter Re: Proposal to Renew (ARNOULD 000019-000020);
7. Chef Exec Letters to Harsch Investment Properties (ARNOULD 000021-000022);
8. Harsch Investment Properties Letter of Intent (ARNOULD 000023-000024);
9. Chef Exec Suppliers, LLC Sales by Rep Summary January – December 2018 (ARNOULD 000025);
10. Chef Exec Suppliers, LLC Sales by Rep Summary January – December 2019 (ARNOULD 000026); and
11. Various Email Correspondence (ARNOULD 000027-00073);
12. Dan Vardanian - Mutual Non-Disclosure Agreement (ARNOULD000074 - 75);
13. Funding Documents (ARNOULD000076 - 107);
14. Sales Rep Detail Reports and Commissions (ARNOULD000108 - 248);
15. Paris Bakery Invoices and Documents (ARNOULD000249 - 257);
16. Records of sales between Chef Exec, AAA, and WOW (ARNOULD000258 - 546);
17. Rent Roll AAA and WOW Square Footage (ARNOULD000547 - 557);
18. CMJJ Rental Comparison Documents (ARNOULD000558 - 577);
19. Copy of all checks deposited in CES WF Account (ARNOULD000578 - 646);
20. Opening bank account documents (ARNOULD000647 - 664);
21. Correspondence with Landlord since 2018 (ARNOULD000665 – 715);

22. Communication with CES, AAA and WOW (ARNOULD000716 - 737);
23. Secretary of State Dissolution Documents (ARNOULD000738 – 740);
24. Letter to CES Clients Re: Dissolution (ARNOULD000741);
25. Chef Exec Suppliers Inventory Per Territory (ARNOULD000742 – 765);
26. Initial Obsolete Inventory (ARNOULD000766 – 767);
27. Initial Obsolete Inventory Revised Per Territory (ARNOULD000768 – 769);
28. Las Vegas Dead Inventory (ARNOULD000770);
29. Invoices Re: Las Vegas Dead Inventory (ARNOULD000771 – 792);
30. Deliveries for AAA and WOW (ARNOULD000793 – 794);
31. Kelly Blue Book for 2012 Mercedes Sprinter 3500 (ARNOULD000795 – 798);
32. Website Expenses (ARNOULD000799 – 803);
33. Telephone Accounting (ARNOULD000804);
34. Verizon Phone Bill (ARNOULD000805);
35. Jhohan Declaration (ARNOULD000808);
36. Jhohan Text Messages (ARNOULD000807 – 811);
37. Native Chef Exec Supplier's QuickBook file (ARNOULD000812);
- 38. AAA Food Share Certificates (ARNOULD000813-814);**
- 39. Articles of Organization for AAA Food (ARNOULD000815-827);**
- 40. 10-26-2020 - Payroll Service Fee (ARNOULD000828);**
- 41. Win Distribution Invoices (ARNOULD000829-881);**
- 42. Chef Exec Suppliers Tax Returns 2007 – 2019 (ARNOULD000882-1246);**

Plaintiff reserves the right to amend or supplement their disclosure of documents as discovery progresses, including expert witness reports and opinions. Plaintiff reserves the right to use or offer into evidence any documents listed by any other party to this action. Plaintiff also reserves the right to use or offer summaries, compilations, or demonstrative exhibits of the identified documents.

COMPUTATION OF DAMAGES

A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered – NRCP 16.1(a)(1)(C)

RESPONSE: At the present time, without the benefit of discovery and expert analysis, Plaintiff is unable to estimate and compute its damages; however, Plaintiff anticipates that the general categories of damages flowing from its direct and derivative causes of action in the Complaint are as follows:

- Compensatory, expectation, consequential, actual, general, reliance, restitutionary, disgorgement, special, and other damages;
- Punitive and exemplary damages;
- Declaratory relief, appointment of a receiver, and judicial dissolution as requested in the Complaint;
- An accounting as requested in the Complaint **and in accordance with the Receiver's Final Report and Recommendations;**
- Pre-judgment interest;
- Attorney fees and costs.

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INSURANCE

For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment and any disclaimer or limitation of coverage or reservation of rights under any such insurance agreement – NRCP 16.1(a)(1)(D)

RESPONSE: Not applicable.

Dated this 11th day of March, 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
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S THIRD SUPPLEMENT TO INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1** was submitted electronically for service with the Eighth Judicial District Court on the 11th day of March, 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

Robert Kern, Esq.
KERN LAW, Ltd.
601 S. 6th Street
Las Vegas, NV 89101

/s/ Skylar P. Cataneo
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).

EXHIBIT D

Alexander K. Calaway

From: Alexander K. Calaway <acalaway@maclaw.com>
Sent: Friday, June 25, 2021 12:50 PM
To: 'Robert Kern'
Cc: Phil Aurbach's Gmail
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

First, as previously stated, ***my client did supplement*** by providing the documents you requested at the meet and confer. What more is your client requesting that my client did not provide? We would have been more than willing respond to additional discovery requests months ago, but we felt we already answered all of your clients' timely discovery requests and the issues you raised at your meet and confer.

Second, as to the meet and confer, I only agreed to supplement on the express condition that your client amend his vague requests, which your client failed to timely do. Again, why is it your client bringing this up now on the eve of trial preparation and after dispositive motions?

Third, a motion to compel written discovery after dispositive motions is untimely. *Phillips v. Clark County Sch. Dist.*, 2012 U.S. Dist. LEXIS 5309, 2012 WL 135705 (D. Nev. 2012) (citing *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999); *Thurston v. City of North Las Vegas*, 2011 U.S. Dist. LEXIS 96619, 2011 WL 3841110 (D. Nev. 2011); *Hall v. Schumacher*, 2011 U.S. Dist. LEXIS 108896, 2011 WL 4458845 (D. Nev. 2011) (P.S. there are more cases on point as recent as 2018, but I think you get the point). Therefore, please let this serve as notice that any motion to compel would be untimely, frivolous, and without any factual or legal basis. As such, my client retains all rights to seek his attorney's fees and costs incurred in defending against any motion your client chooses to bring.

Finally, if you would like to meet and confer to discuss what, if anything, you are asserting my client has not responded to in discovery, then I will try to make myself available next week to discuss. Just propose some times/dates so I can schedule (I have hearings and depositions set sporadically next week).

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: Friday, June 25, 2021 12:28 PM

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

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

He did conduct discovery, and you agreed to supplement insufficient responses, and failed to do as agreed. Just save the time and tell me if you will provide the supplementation you agreed to at the meet and confer, so I can draft the motion if not.

Robert Kern, Esq.
Attorney
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From: [Alexander K. Calaway](#)

Sent: Friday, June 25, 2021 12:11 PM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

Our Third Supplement served in March.

I disagree—authority?

A motion to compel would be untimely.

I reject your assertion that I am “playing games” your client had over a year to conduct discovery, did he not?



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From: Robert Kern <robert@kernlawoffices.com>

Sent: Friday, June 25, 2021 12:05 PM

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

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

What Supplement are you referring to?

You realize that I can still enforce your initial failure to supplement right?

You will lose a motion to compel on this, so please stop playing games.

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From: [Alexander K. Calaway](#)

Sent: Wednesday, June 23, 2021 2:44 PM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

As you know, under the rules governing written discovery, the responding party must be provided at least 30 days to respond i.e. at least 30 days before the discovery cutoff. The requests you are referring to were served 1 day before the discovery cut-off of 05/14/21 (see attached) and are therefore untimely.

Even if we disregarded the timeliness issue (which we are not waiving), we also provided a supplement to our initial disclosures as discussed at the meet and confer.

Let me know if you have any additional questions.

Regards,



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, June 23, 2021 2:32 PM

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

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

The restated requests were served on May 13

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From: [Alexander K. Calaway](#)

Sent: Wednesday, June 23, 2021 2:27 PM

To: [Robert Kern](#); [Phil Aurbach's Gmail](#)

Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

I recall the meet and confer, but we agreed to respond to amended requests. When did you serve the amended request?



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From: Robert Kern <robert@kernlawoffices.com>
Sent: Wednesday, June 23, 2021 2:10 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

I'm referring to the discovery requests that were filed months ago, which we held a meet and confer on, and you agreed to supplement, and insisted we file requests containing the re-stated definitions first, which we did, but you have thus far not supplemented as agreed.

Robert Kern, Esq.
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From: [Alexander K. Calaway](#)
Sent: Wednesday, June 23, 2021 1:56 PM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Hi Robert,

No, discovery closed on March 15th (see attached business court scheduling order). Which discovery requests are your referring to?



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>
Sent: Wednesday, June 23, 2021 1:30 PM
To: Alexander K. Calaway <acalaway@maclaw.com>; Phil Aurbach's Gmail <paurbach@gmail.com>
Cc: Skylar P. Cataneo <scataneo@MACLAW.com>
Subject: RE: [External] Supplemental Discovery [IWOV-iManage.FID1085969]

Hi Alex,
When can we expect the supplemental discovery responses pursuant to the re-issued discovery requests?

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From: [Alexander K. Calaway](#)
Sent: Friday, April 16, 2021 11:58 AM
To: [Robert Kern](#); [Phil Aurbach's Gmail](#)
Cc: [Skylar P. Cataneo](#)
Subject: RE: Supplemental Discovery [IWOV-iManage.FID1085969]

Robert,

Thanks for reaching out. But, as discussed in our meet and confer, we will need clarifying language in the form of amended discovery pleadings. This is because it appears there will be discovery motions in this matter and we can only properly withdraw our objections in the event your client's requests are amended to conform to the language we discussed in the meet and confer. As discussed, please amend for clarity the following requests and we will subsequently amend our responses in pleading form:

1. ROGs 11, 16, & 19,
2. RFPs 1, 2, 3, 6, 7, 8, 12, 14, and 15.
3. ROG 10
4. RFP 4
5. RFP 11

Thanks,

Alex



Alexander K. Calaway, Esq.

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From: Robert Kern <robert@kernlawoffices.com>

Sent: Wednesday, April 14, 2021 2:22 PM

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

Subject: [External] Supplemental Discovery

Hi Alex,

Sorry I was away for a bit. Per our meet and confer regarding discovery responses, I've provided below the clarified wording of the requests you asked for. You may treat those requests as having the wording below.

Per my notes from our Meet and Confer, in addition to responding to the below requests once they were clarified, you were to provide supplemental responses for ROGs 11, 16, & 19, and RFPs 1 (only to indicate if there were any documents withheld pursuant to your objection), 2 (to supplement with the responses referred to, but not included in the provided emails, and to indicate if there were any documents withheld pursuant to your objection), 3, 6 (to see what the reference to the small claims action is referring to), 7 (only to indicate if there were any documents withheld pursuant to your objection), 8 (only to indicate if there were any documents withheld pursuant to your objection), 12, 14, and 15 (only to indicate if there were any documents withheld pursuant to your objection).

Please let me know when to expect the supplemental responses, as well as responses to the requests that we have clarified at your request.

ROG #10 - Did you allow your partner (Clement Muney) access to the Wells Fargo Account you opened in Chef Exec's name? Why or why not? ("Access" in this context means the ability to log into the account online, as well as the ability to deposit and withdraw funds).

RFPs

4. Produce all documents within your possession, custody, or control evidencing or constituting

communications or records related to Chef Exec sales commissions, including record of all commissions paid, and all information used to determine how commissions are attributed. This request is limited to the time period between 2010 and 2019. For purposes of this request, "communications" is to be interpreted broadly, as any "document" (per definition for that term already provided) whose purpose was to communicate between two persons or entities, or combination thereof. This would include (but not be limited to) for example all emails, voicemails, letters, written notes, chat transcripts, etc.

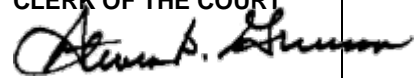
11. Produce all documents within your possession, custody, or control evidencing or constituting all records from the Wells Fargo Account, including the initial application, all signature pages, all communications with the bank regarding the account, and all account records. This request includes but is not limited to bank statements (all pages), and any other form of record from the account.

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Attorney
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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 MUNEY,) DEPT. XXVII
11 Defendant.)
12

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14 THURSDAY, JULY 29, 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, JULY 29, 2021 10:31 a.m.

3 * * * * *

4
5 THE COURT: On the 10:30 calendar, it's 10:44.

6 Let's take appearances, please. Starting first with
7 the plaintiff.

8 MR. CALAWAY: Good morning, Your Honor. This is Alex
9 Calaway, appearing on behalf of the plaintiff.

10 THE COURT: Thank you.

11 MR. KERN: Good morning, Your Honor. This is Robert
12 Kern, on behalf of Clement Muney and Chef Exec.

13 THE COURT: Thank you. All right. So we've got a
14 motion -- the plaintiff's Motion for Summary Judgment, and
15 then the defendant did a motion to compel discovery.

16 Let's take the summary judgment motion first.

17 MR. CALAWAY: Sure, Your Honor.

18 Plaintiffs are moving for summary judgment because
19 there are no disputed facts in this case.

20 As you know, Your Honor, this case is about the
21 breakup of a two-member Nevada LLC called Chef Exec Suppliers.
22 My client, Dominique Arnould, has two derivative claims for
23 relief: One, a dec relief for dissolution and appointment of
24 a receiver; and two, an accounting of the company.

25 On the first claim, Your Honor, Mr. Arnould has

1 already prevailed on this claim. The Court judicially
2 dissolved the company. In September, the Court appointed a
3 receiver who already accounted for the assets and liabilities
4 of the company, distributed the assets to each member
5 according to his capital account, and then wound up the
6 company.

7 So Arnould, at this point, has prevailed on his first
8 a claim for relief. There has been no legitimate fact or
9 legal dispute on this issue, and it's all around settled.

10 So we would just request an order stating that he has
11 prevailed on these derivative claims, so that he can move on
12 and file his motion for fees and costs pursuant to the same.

13 On the second cause of action, Your Honor, the
14 accounting -- in a word, Your Honor, there's absolutely no
15 reason to have a jury trial on an accounting that is
16 undisputed at this point. NRCP 56(c)(4) requires a party
17 that's opposing summary judgment, set out the facts that would
18 be admissible in evidence and show that an affiant or
19 declarant, a potential witness, is competent to testify on
20 those matters at a trial.

21 But in this case, Your Honor, the entity has provided
22 no evidence in opposition. He didn't even provide a
23 declaration. There was no affidavit, no exhibits, and no
24 competent witness that he can point to that could provide any
25 accounting evidence in this case. Nothing. It's just

1 argument of counsel and noise.

2 The entity claims that there are facts in dispute as
3 to the actual accounting. But as you know, Your Honor, the
4 Court appointed a receiver in this case to [indiscernible]
5 accounting of the company. We're in no way saying that that
6 was a final order or anything like that. We're just saying,
7 you know, that was evidence that was put forth by the Court.
8 It was comprehensive -- or to the Court. It was
9 comprehensive. And it was -- it was done by someone who is a
10 certified public accountant and undisputably qualified to
11 conduct an accounting. It was Mr. Larry Bertsch.

12 Mr. Bertsch was timely designated by Mr. Arnould as an
13 expert. His final report was timely disclosed as an expert
14 report. And so at this point, that's the only accounting
15 expert or person that would be competent to testify on
16 accounting matters in this case. And there has been no other
17 expert disclosed by Mr. Muney that would refute testimony by
18 Mr. Bertsch.

19 So in support of his opposition, Your Honor, the only
20 thing Muney really points to is his written objections to the
21 receiver's accounting, which he's entitled to raise, and he
22 did. And those objections were threefold. They came right
23 after the receiver's final report.

24 The first objection was that the Las Vegas warehouse
25 rent that the receiver accounted for wasn't the reasonable

1 rent in that market. I think the quote is reasonable in that
2 market is the phrase that Muney used in his objection.

3 But again, Muney provides no expert evidence or
4 anybody qualified to opine on what the reasonable rent would
5 be in the marketplace. That is definitely a specialized,
6 highly technical subject that expert testimony would be
7 required to do.

8 The second issue that Muney raises in its objection is
9 how certain expenses should have been booked by the receiver.
10 Again, Muney provides no expert or support on how he claims
11 these books, these expenses should have been booked. He
12 just -- apparently he -- he is saying that these expenses
13 should have been categorized definitely. He is not a CPA.
14 He's not qualified to say that and nor has one been disclosed.

15 Finally, Your Honor, the major objection that
16 Mr. Muney raises is the fair value or how the receiver
17 appraised for a used delivery truck in a company, which
18 boiling all things down to consider it, is a very, very small
19 issue.

20 But again, what the fair value of a -- of how to value
21 a delivery truck, a used delivery truck, Mr. Bertsch, in his
22 accounting, provided a fair analysis on what the value was,
23 and I think he believed he used Kelley Blue Book which is
24 common and commonly accepted for valuation. And again, there
25 was no evidence opposing that that's been presented.

1 So in sum, Your Honor, each of these objections and
2 accounting issues would require a specialized knowledge. The
3 objection itself had no declaration, had no support; it was
4 just an opinion of counsel. There was no evidence that could
5 rebut the actual report and accounting that was already done.

6 And in this case, Your Honor, Mr. Muney has failed to
7 disclose an expert or report. And so there would be -- it
8 would be impossible for him at this point and would highly
9 prejudice the plaintiffs and to be able to go back and reopen
10 discovery so that he could go and get an expert.

11 Discovery went on for a year, Your Honor. There's
12 1200 documents that Mr. Arnould disclosed, lots of accounting
13 documents, tax returns going back to the inception of the
14 company. And Mr. -- Mr. Muney had an opportunity to refute
15 those if he so choses.

16 The remaining issues, Your Honor, are the
17 counterclaims, six counterclaims brought by Mr. Muney against
18 Mr. Arnould. Those claims are breach of fiduciary duty,
19 conversion, money had and received, unjust enrichment,
20 constructive fraud, and fraudulent concealment.

21 But again, Your Honor, he doesn't raise any facts that
22 would be in dispute as to these claims. And in fact, most of
23 the arguments that he raised are pointing back to this
24 objection to the receiver's report, which in and of itself is
25 not evidence.

1 The first one for breach of fiduciary duty can be
2 easily decided by this Court. There has been recent Supreme
3 Court rulings in Nevada that have added to the case law in
4 forming what the duties are owed or would be owed by a member
5 of an LLC, or a manager of an LLC, or members to each other.

6 And that case is the Israelian case that came out last
7 year, midyear. And you know, that case basically says that if
8 you don't have an operating agreement, you don't owe any
9 fiduciary duties as a member of an LLC. And so, as a matter
10 of law, Your Honor, the breach of fiduciary duty claim fails.

11 The other issues in this case, conversion, money
12 haven't received, and unjust enrichment are problematic for a
13 couple reasons. Those claims -- his claims, and the way that
14 he pled those claims, are that Mr. Arnould allegedly took
15 money from the company, which has been refuted by the
16 accounting, but nonetheless, those are his claims.

17 The problem is he doesn't have standing to recover on
18 behalf of the company. Even if all of the relief -- the
19 relief that he's asking is essentially that Mr. Arnould put
20 money back into the company. There is no claim that
21 Mr. Arnould took Muney's money, his partner's money. It was
22 just that there was some sort of diversion of assets within
23 the company, allegedly. So aside from the fact that there's
24 no evidence to support that claim at this point, and it's all
25 been resolved with the accounting through the settling of

1 capital accounts, the conversion -- money hadn't received and
2 unjust enrichment claims are claims that would have to have
3 been brought derivatively to have standing. And they weren't
4 brought in that way, and so they have to fail as a matter of
5 law.

6 And the final two claims, Your Honor, are constructive
7 fraud and fraudulent concealment. One, there's no evidence of
8 fraudulent concealment; and two, constructive fraud requires
9 some sort of duty to disclose things. Again, going back to
10 the original point about breach of fiduciary duty, no duties
11 are owed in Nevada. And you know, all of those issues, even
12 if there had been some sort of, you know -- some sort of
13 nondisclosure by Mr. Arnould, which there wasn't, those have
14 all been accounted for and worked out factually by the
15 receiver.

16 He did a forensic accounting. He looked at all of the
17 books. You know, Mr. Arnould and Mr. Muney both provided
18 evidence, and accounting evidence due to the receiver. And he
19 considered that. He heard arguments from both side. And he
20 looked at a lot of data and provided a very comprehensive
21 report that looked at to whether either partner had concealed
22 or failed to disclose assets or disbursements from the
23 company. And those have all been resolved.

24 So, in sum, Your Honor, we would request that a Motion
25 for Summary Judgment would be granted. You know, again, we're

1 going back to -- we're facing a jury trial, Your Honor. And
2 really what this is is an accounting case. All of the issues
3 that have been raised are accounting issues. There's only
4 been one accounting in this case. Now it's undisputed at this
5 point. It can't be disputed at trial. And so we would
6 request that our Motion for Summary Judgment be granted,
7 Your Honor.

8 Thank you.

9 THE COURT: Thank you.

10 Mr. Kern, the opposition, please.

11 MR. KERN: Good morning, Your Honor.

12 We believe that summary judgment is absolutely
13 inappropriate here.

14 To begin with, their allegation that they have won a
15 derivative claim and are entitled to fees is defeated simply
16 by the fact that they didn't win a derivative claim.

17 A derivative claim is specifically when a shareholder
18 files suit in the name of the company when they are not able
19 to do so in their own name; or you know, when it's not
20 indirectly in the name of the company, when they don't have
21 that authority. It gives them that assumed authority that's
22 the definition of a derivative action.

23 Yet, the claim they're talking about here is the one
24 that was brought specifically in their own name and is
25 specifically authorized under 86-495 to be brought by a

1 member. That makes it absolutely by definition not a
2 derivative claim because they are authorized -- it's not the
3 company that's authorized to bring that claim for dissolution,
4 it is a member that is authorized to bring that. So by
5 definition it can't be a derivative action, and the regular
6 rules for costs and fees apply, and those wouldn't be invoked
7 in this case and they haven't made that claim.

8 So their claim for fees based on the derivative action
9 fail there; as well as the fact that the acts -- their claimed
10 victory on that claim is almost a year old now. And there's a
11 21-day limit for filing for fees on that.

12 Moving on to accounting, they're again confusing this
13 idea that the receiver's report was essentially an
14 adjudication on the merits, which is a power that the receiver
15 was not given in this case.

16 The receiver's report, as I'm sure Your Honor
17 understands, is a recommendation. It is an expert review of
18 things to simplify the matters and give an expert's opinion on
19 how to calculate the accounting. But it is not an
20 adjudication of the remaining issues in this case, and it is
21 not an adjudication even of the issues that he's reviewed.

22 So there are many issues of facts still remaining
23 [indiscernible] under accounting -- issues like, specifically,
24 the Las Vegas warehouse rent, which although it was included
25 in that report, Your Honor specifically instructed him was not

1 part of the accounting that he was instructed to review,
2 because it's a legal issue in dispute and it depends on issues
3 that he was not reviewing.

4 There is issues of reasonableness and of the
5 appropriate rent in Las Vegas. And that is something that he
6 is not an expert in and not qualified to determine. And it's
7 also a legal issue that he was not authorized to make a
8 decision on.

9 So we're looking at issues of fact for whether the
10 Las Vegas warehouse rent was reasonable, whether there was bad
11 faith. There was conflicting testimony regarding how much
12 space was used by Arnold's company in the Los Angeles
13 warehouse -- which is also an issue of fact to be determined;
14 whether the disputed amounts charged to the billing of the
15 company by Muney, whether those were proper as an issue of
16 fact; whether the disputed accounts charged the company by
17 [indiscernible] proffered is a disputed amount.

18 And, of course, the valuation of the LA truck is
19 certainly a disputed claim, although that's maybe a little bit
20 more in the realm of the expert to resolve.

21 And the breach of fiduciary duty claim, which is their
22 claim, is also a -- involves issues of fact. And it's
23 interesting that they were still claiming to win on the breach
24 of fiduciary duty, when it is -- they are claiming that there
25 can't be a fiduciary duty owed between members of an LLC

1 without an operating agreement.

2 But they have made that argument, so I think maybe we
3 can agree that the breach of fiduciary duty claim fails.

4 But as far as the accounting, there is simply many
5 issues that rely on issues of fact. And as much as those may
6 be informed and strongly influenced at trial by the receiver's
7 report, they -- that can't cover and foreclose the disputes of
8 fact on that issue, because he is not a finder of fact --

9 THE COURT: So --

10 MR. KERN: [Indiscernible] on the counterclaims --

11 THE COURT: Sorry I interrupted. Okay.

12 MR. KERN: -- with regard to standing, as we discussed
13 in the -- in our opposition, this -- we brought our answer and
14 our counterclaims in the name of Chef Exec and Clement Muney.
15 So the claims belonging to Clement Muney are his and clearly
16 have standing for those.

17 The claims belonging to Chef Exec are not derivative
18 claims, because again derivative claims are claims that are
19 brought in the name of the company by a member in their -- by
20 themselves, through the specific authorization of a derivative
21 claim.

22 But a company is allowed to bring a claim under its
23 own name, without it being a derivative claim, because that's
24 how companies always do that.

25 If Mr. Arnould wished to oppose our representation of

1 Chef Exec in this matter, you know, two years ago would have
2 been the appropriate time to do that. However, they have
3 consented to that representation over this time. And now that
4 Chef Exec is no longer around, and Muney is now the owner of
5 50 percent of Chef Exec's interests, as is Mr. Arnould.

6 So Mr. Muney, certainly does have the authority to
7 maintain those claims that he is the owner of and are -- and
8 as Chef Exec, Chef Exec has the authority to maintain the
9 claims [indiscernible] the owner.

10 Moving on to the individual claims, first, I would
11 like to point out that with regard to a lot of these claims
12 that's in regard to the receiver's report, a lot of these were
13 simply not refuted by the receiver. The receiver simply
14 concluded that he was only reviewing -- and he explicitly said
15 this -- that he was only reviewing claims up until -- back
16 until the last tax return was filed and he was not reviewing
17 anything before that. So anything before that is simply not
18 subject to his report by its own language and by what he
19 states directly. So none of those are covered or foreclosed
20 by the conclusions in his report.

21 With regard to breach of fiduciary duty, you know,
22 whether -- you know, there's already been a determination by
23 this Court that there are issues of material fact in
24 determining whether there was a breach of fiduciary duty and
25 whether those duties are owed, and that was found in the first

1 [indiscernible] summary judgment on that issue. And so that
2 finding happening, that should preclude summary judgment at
3 this stage, as well.

4 As far as conversion, you know, Arnould's admitted to
5 taking funds and putting them in his name, and not in giving
6 access to the 50 percent partner. That's the definition of
7 conversion. Whether there are facts that moderate that or
8 change that, that's an issue of fact. Muney had received
9 essentially the same element, same issues of fact.

10 Unjust enrichment is, you know, related to taking the
11 company funds that we alleged was wrongful -- and, again,
12 which the receiver excluded from his report because he said
13 that it was too far back for him to consider.

14 Constructive fraud, same issues. It's outside -- most
15 of that is outside the receiver's report time frame. And
16 their argument here that it's resolved by unclean hands is
17 sort of self-defeating, because unclean hands, by definition,
18 requires a determination of fact. It's never an issue of law.

19 And same thing for fraudulent concealment.

20 So honestly there's nothing here that should or could
21 be resolved on summary judgment, Your Honor.

22 THE COURT: So Mr. Kern, a couple of questions.
23 Did --

24 MR. KERN: Sure.

25 THE COURT: -- the defendant designate an expert to

1 rebut the receiver's accounting?

2 MR. KERN: We initially did. But we are not planning
3 to have an expert for the accounting itself.

4 THE COURT: And if you went forward on your
5 counterclaims, how -- what evidence did you have to support
6 them? And who would be able to testify to that?

7 MR. KERN: Well, we have direct accounting evidence.
8 We have witnesses from the company, and you know, we do have a
9 motion to compel where we're hoping to get the remaining
10 evidence that we have requested in our initial discovery.

11 THE COURT: And is there some reason why no affidavit
12 or evidence was attached to the opposition?

13 MR. KERN: An affidavit was attached to the
14 opposition, Your Honor. We are -- the attorney affidavit was
15 sworn and attached and supported --

16 THE COURT: But the attorney is not a witness.

17 MR. KERN: -- the factual elements.

18 THE COURT: The attorney is not a witness.

19 MR. KERN: Right. Well, you know, the other issues
20 weren't necessarily disputes of fact because disputes of fact
21 weren't really raised. They more raised the issues of
22 standing and everything else.

23 But none of the arguments we had were based on
24 disputing any facts that they had raised by affidavit or any
25 other method. Under Rule 56, we're only required to have

1 affidavits or admissible evidence opposing theirs, when they
2 are affidavits or admissible evidence on an issue of fact
3 that's disputed that we need to oppose. Most of these were
4 arguments of law as to whether they are legal issues or
5 factual issues.

6 THE COURT: Thank you.

7 MR. KERN: So this wasn't a situation where we had
8 them showing that they -- the facts that they win on and us
9 failing to have facts on the other side. These were
10 situations where they're saying the receiver's report wins
11 everything, so nothing has to be decided; or them saying
12 there's no standing. And again, because they're saying the
13 receiver's report decided everything.

14 THE COURT: Thank you.

15 And the reply, please.

16 And you may be brief.

17 MR. CALAWAY: Yeah, I'll be very brief, Your Honor.
18 Thank you.

19 The derivative claim, just to touch on that very
20 briefly, 86.495, there's nothing that would preclude that
21 claim or first claim from relief of being a derivative claim.
22 In fact, the statute itself contemplates that when it's not
23 reasonably practical to carry on the company in conformity
24 with the company's operating agreement and articles, judicial
25 dissolution is appropriate.

1 The member had standing to bring the action on behalf
2 of the company, but ultimately, it's to benefit and to make
3 sure that there is a conformity with the company's operating
4 agreement and article. So inherently, actually, I believe
5 it's a derivative claim. There's no law to support that it
6 wouldn't be. And it was properly pled. There's no dispute
7 that we properly pled a derivative claim. So those issues are
8 aside.

9 And you know, I'll just be very brief, boiling down
10 what I believe to be Mr. Kern's argument is essentially that,
11 you know, trust us, there's some facts that we need to put in
12 in front of a jury. Trust us, there might be some. They have
13 no expert. Apparently they're -- he said there is some direct
14 accounting evidence that he wants to present at trial. He
15 hasn't provided any.

16 They've had the books. They've had everything that we
17 had. We haven't withheld any documents in this case. We --
18 there has been a forensic accounting. But still they didn't
19 provide us with no fact and point to no fact that would be
20 triable on their counterclaims or that would preclude the
21 receiver's accounting in this case.

22 And so for that reason, Your Honor, we would ask for
23 summary judgment, as there are no disputed facts in this case.

24 Thank you.

25 THE COURT: Thank you.

1 This is the plaintiff's Motion for Summary Judgment --
2 previously granted summary judgment as to dissolution. This
3 would be as to the accounting cause of action. Due to the
4 failure of the defendant to hire an expert to rebut the
5 receiver's accounting, the motion will be granted.

6 There was just no evidence attached to the opposition
7 to this motion.

8 The counterclaims wouldn't be able to proceed without
9 an expert. I do find that there -- in this LLC, there was no
10 fiduciary duty, because there was no operating agreement and
11 one does not arise as a matter of law.

12 I do find that the -- all causes of action on the
13 counterclaim have failed for lack of any evidence. And I
14 agree with the plaintiff with regard to the argument on the
15 derivative cause of action.

16 So Mr. Calaway, you'll be directed to do findings of
17 fact and conclusions of law, consistent with your papers.

18 Mr. Kern, you'll have the ability to review and
19 approve the form only of that. If you object, file an
20 objection. And I'll take it from there.

21 And the last thing is the defendant had a motion to
22 compel discovery on this morning. I did review it in the --
23 because I kept an open mind as to the summary judgment, but
24 this was a meet and confer in February of 2021. The motion
25 was filed well after the discovery cutoff of May 14th. So

1 I -- even if Mr. Kern, we had gotten there, I would have
2 denied your motion to compel.

3 MR. KERN: Thank you, Your Honor.

4 THE COURT: Thank you, both.

5 [Proceeding adjourned at 11:11 a.m.]

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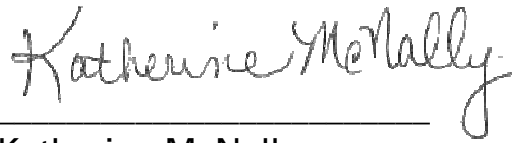
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
3 to the best of my ability.

4 

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