SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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PETER LENGYEL-FUSHIMI,

Plaintiff,

v.

ANTHONY BELLIS, ZACHARY KINNEY, and
KINGS COUNTY BREWERS COLLECTIVE, LLC

Defendants.

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**Index No.: 512764/2021**

**AFFIDAVIT IN OPPOSITION TO te *EX PARTE* SIGNING OF TRO and OSC**

STATE OF NEW YORK ::
SS::
COUNTY OF NASSAU ::

ZACHARY KINNEY having been duly sworn, states or affirms the following under penalties of perjury:

1. I am a member of the Defendant corporation, KINGS COUNTY BREWERS COLLECTIVE, LLC ("KCBC") and an individual defendant in this action. I am fully aware of all facts relevant to this action.

2. I make this affidavit in opposition to the Court signing an Order to Show Cause filed today that would grant a Temporary Restraining Order ("TRO") or preliminary injunction, as such would be damaging to KCBC, which is operated by Mr. BELLIS and me, the sole Class "A" Managing Members and holders of 50.66% of the equity.

3. Plaintiff, PETER LENGYEL-FUSHIMI, a founder of KCBC, is a Class "D" member with 25.33% of the equity. After 6 years, Plaintiff ceased to work regularly at KCBC starting in December 2020 and has not been there since January 2021 at the latest. Plaintiff resigned and stopped working completely for the LLC (back office) or at the brewery, at a time when due to COVID-19, we needed available employees and free hands more than ever.

4. However, due to his personal issues and his overall disruptive nature which affected our business, we let him resign and KCBC continued to pay him and paid for his benefits and telephone bills, while we did not pay ourselves.

5. Mr. BELLIS and I having a majority of the Class "A" equity, which is required by any version of the operating agreement to take action, approved his termination and allowed his resignation.

6. Plaintiff asked us to pay for a lawyer to look into other opportunities, including a brewery venture upstate, and requested use of some of our intellectual property. We assisted as we could. He demanded a valuation and a buyout, which was at a ridiculous rate of many millions of dollars, when we are not profitable.

7. He then demanded we allow him to sell his equity to a third-party, which we did not believe was in the best interest of the LLC, so we refused.

8. In the meantime, we redrafted the original Operating Agreement (Exhibit "1") with a First Amended and Restated Operating Agreement ("FAROA") which cleaned up a lot of issues in the original version, including a number of changes were made with the consent of Plaintiff. This was necessary for a number of reasons, including Pete's resignation, and to move Plaintiff to Class "D" with special rights no other member has.

9. We signed the FAROA on April 20, 2021. It is Exhibit "3" to the moving papers. It was effective that day when signed by all the Class "A" members. There was no objection made by Plaintiff to the FAROA and we consider it valid and effective.

10. We then sent Plaintiff his formal Termination Notice and Offer on April 26, 2020 through our attorney. (Exhibit "2"). At no time did Plaintiff nor anyone else object to the termination.

11. We believed that Pete accepted the Termination Offer, since he also accepted

the severance package we offered. There was no rejection of the offer and we contacted him multiple times to arrange for transfer of bills and benefits.

12. After 30 days went by, we finalized the Second Amended and Restated Operating Agreement ("SAROA") on May 21, 2021, since we believed Pete has accepted our Termination Offer and was now a Class "D" equity holder, still with 25.33% of all equity. (Note that Class B and C cannot hold more than 8% total in any one household).

13. The SAROA was essentially a more formal restatement of the FAROA, and since Plaintiff had not objected in over 30 days to the FAROA, and had accepted our Termination Offer, we see no reason this is not effective.

14. That said, it is the belief of the LLC and the Defendants that no approvals or signatures beyond a majority of the Class "A" are required under any version of the operating agreement, and since Mr. BELLIS and I make up 50.66%, any action taken is appropriate when approved by both of us. As a courtesy, we waited 30 days for any objections. As a further courtesy, we asked the other members to sign. All other members have approved this – except for the two gentlemen whose transparently fishing emails were annexed as exhibits – Mr. Jeffrey Lengyel (a relation of Plaintiff) and his friend, Mr. Pefanis.

15. There is no merit to the claims. Pete wants a buyout and we cannot afford to give it to him. He wants us to approve a sale of his equity, but we do not want that valuation and do not want another equal partner who would likely have more equity than either of us individually.

16. This is a bad faith filing made as leverage on KCBC and seeking the Court's intervention to compel a sale. This is sharp practice and improper to involve the Court by feigning an immediate harm to seek a TRO just to hurt a company and force a settlement.

17. For any of the reasons herein the Court should decline to sign this Order to

Show Cause. Plaintiff resigned and has not appeared at work since December 2020 and accepted the termination offer and its benefits over a month ago, in April 2021.

18. The Court is asked not to harm the LLC and its members in the meantime, and to maintain the *status quo*. Plaintiff has not worked or been involved since December 2020, he should remain uninvolved.

19. The balance of equities favors the LLC and the Defendants. Plaintiff has no likelihood of success on the merits and if he is wronged, he can recover with a financial remedy that does not require a TRO. The Company is being operated as it has been and no immediate harm or danger is about to befall the LLC.

20. No changes are on the horizon. The LLC continues to operate normally. If Plaintiff is found to have been wronged, he can recover monetarily (which is what this action is ultimately about – a bad faith forced-buyout). In revenge and due to bitterness at his failure to get a new venture going, and because the LLC refuses to pay the millions of dollars he believes he should be paid, Plaintiff now lashes out to harm the LLC with a TRO filing.

21. The Operating Agreement, now the SAROA, is not required to be signed by any of the Class "B", Class "C" or Class "D" members, as none of these members have any voting rights pursuant to Article 6 of the original agreement (Exhibit 1) and as later ratified by the FAROA (Article 6, 6.1 and 6.4, *et seq*) and SAROA (Article 5, 5.7; Article 7, 7.1, *et seq*).

22. The TRO should be denied.

23. I swear the above is true to the best of my knowledge and belief.

Dated: May 27, 2021
Huntington, New York

ZACHARY KINNEY

NOTARY PUBLIC

KEVIN SEAN O'DONOGHUE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01OD6127208
Qualified in Nassau County
Commission Expires September 8, 2024