

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

5501 NE 2ND AVENUE, LLC,
a Florida limited liability company,

CIVIL DIVISION

Plaintiff,

CASE NO.:2020-018438-CC-05

vs.

DISTRICT LIVE AGENCY, LLC,
a Florida limited liability company,
and all others in possession,

Defendant.

--and--

DISTRICT LIVE AGENCY, LLC,
a Florida limited liability company; and
THE BEVERAGE GROUP, LLC
a Florida limited liability company

Counter-Plaintiffs,

vs.

5501 NE 2ND AVENUE, LLC,
A Florida limited liability company;
LITTLE HAITI DEVELOPMENT PARTNERS, LP,
A Florida limited partnership;

Counter-Defendants.

_____/

**DEFENDANT DISTRICT LIVE AGENCY, LLC'S ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIM IN RESPONSE TO COMPLAINT FOR
POSSESSION**

COMES NOW the Defendant District Live Agency, LLC ("Defendant"), by and through its undersigned counsel, hereby files this Answer and Affirmative Defenses to Plaintiff, 5501 NE 2nd Avenue, LLC's Complaint and states the following with respect to the correspondingly numbered paragraphs below:

VENUE AND JURISDICTION

1. In response to paragraph 1 of the Complaint Defendant admits for jurisdictional purposes only that this purports to be an action for possession of non-residential property located in Miami-Dade County, Florida, pursuant to the summary procedure prescribed by Florida Statutes §51.11 and Chapter 83. Defendant further admits that this Court has subject matter jurisdiction over this action, however, Defendant denies that Plaintiff is entitled to possession of the subject non-residential property.

2. In response to paragraph 2 of the Complaint, Defendant admits that Plaintiff purports to be authorized to do business in Miami-Dade County.

3. In response to paragraph 3 of the Complaint, Defendant admits the allegations.

COUNT I – EVICTION

4. In response to paragraph 4 of the Complaint, Defendant admits to the allegations.

5. In response to paragraph 5 of the Complaint, Defendant admits to the allegations.

6. In response to paragraph 6 of the Complaint, Defendant admits to the allegations.

7. In response to paragraph 7 of the Complaint, Defendant admits that it agreed to pay the Landlord a base rent under the Lease, however Defendant denies that the “agreements between the Parties” did not include credits and consideration to set-off and/or abate rent during the subject periods. Indeed, during the subject periods it was expressly agreed that rent would be reduced, abated and/or set-off pursuant to the realities of the business relationship of the party and also pursuant to monies owed to Defendant for the provision of services and improvements to the property, based on express written and oral agreements of the Parties.

8. In response to paragraph 8 of the Complaint, Defendant admits that Section 23 of the Lease describes the circumstances in which Defendant would be in default under the Lease,

however Defendant denies that it failed to pay rent and therefore denies that it was ever in default under the Lease.

9. In response to paragraph 9 of the Complaint, Defendant denies the allegations.

10. In response to paragraph 10 of the Complaint, Defendant denies that it was properly served with a Three-Day Notice to Pay Rent pursuant to Florida Statutes § 83.20 and therefore denies the allegations contained therein.

11. In response to paragraph 11 of the Complaint, Defendant denies that it was informed of anything pursuant to the defective Three Day Notice purported served and further denies in any event that the sum of \$105,864.03 or any monies for that matter were past due as of that date.

12. In response to the allegations contained in paragraph 12 of the Complaint, Defendant denies that it was subject to any default that needed curing, and further denies that it was obligated to pay Plaintiff any amounts for unpaid rent.

13. In response to paragraph 13 of the Complaint, Defendant admits that Section 24 of the Lease contains an attorneys' fees and costs provision, however, Defendant denies that Plaintiff has any just cause to enforce rights under the Lease and to evict Defendant as alleged herein.

14. Defendant is without knowledge as to the allegations contained in paragraph 14 of the Complaint and accordingly denies same.

15. In response to paragraph 15 of the Complaint, Defendant denies the allegations contained therein because Plaintiff has not performed a number of its obligations under the Lease.

16. In response to paragraph 16 of the Complaint, Defendant denies the allegations.

17. To the extent an answer is required to Plaintiffs' prayer for relief, Defendant denies that Plaintiffs are entitled to any of the remedies, damages or other relief requested.

DEMAND FOR ATTORNEYS' FEES

Defendant is entitled to recover its attorneys' fees pursuant to 42 U.S.C. §1988.

WHEREFORE, Defendant District Live Agency, LLC demands judgment in its favor and against Plaintiff 5501 NE 2ND AVENUE, LLC on Count I of its Complaint and respectfully requests award of attorneys' fees and costs, and such other and further relief as this Court deems just and proper.

AFFIRMATIVE DEFENSES

Without waiving the right to assert other affirmative defenses that may become available or apparent during the course of this proceeding, Defendant asserts the following defenses:

First Affirmative Defense
All Rent Paid

18. Plaintiff's claims are barred because Defendant paid rents owed pursuant to the Lease and superseding agreements between the parties, including the agreement to reduce and/or abate the payment of rent while the premises are closed for business because of the COVID-19 pandemic. Accordingly, properly assessed rent credits reflect that Defendant owes no rent to Plaintiff. Inherent in a determination as to whether the tenant defaulted in the payment of rent is a determination of the extent of the tenant's rent obligation. Tenant's claims and affirmative defenses as alleged herein are inextricably interwoven into the issues that must be decided in the eviction action, and therefore it would be in error to rule upon the Plaintiff's eviction claim without resolving the matters raised herein by the tenant. *Maida Vale, Inc. v. Abbey Road Plaza Corp.*, 96 So. 3d 1027, 1031 (Fla. 4th DCA 2012).

Second Affirmative Defense
Defective Three-Day Notice

19. Without any admission, Plaintiff's claims are barred because the purported Three-Day Notice is defective in a variety of ways including (but not necessarily limited to) that it demands more than is deemed to be "rent" under the Lease. The purported Three-Day Notice provides no amounts, which could even conceivably be deemed to be rent owed under the Lease. In fact, Plaintiff knows that it and its principal, instead owe large sums of money to it. The Three-Day Notice and corresponding action were filed in response to Defendant's claims and are purely retaliatory in nature. Furthermore, Plaintiff fails to apply the Security Deposit to any calculations considered in the posting of the Three-Day Notice. In any event, the Three Day Notice is grossly deficiently, because it demands more than could ever conceivably be deemed "rent" under the Lease.

Third Affirmative Defense
Unclean Hands

20. Plaintiff's claims are barred by the doctrine of unclean hands. Plaintiff's principal Mallory Kauderer ("Kauderer") has perpetrated and continues to perpetrate a fraud against Defendant, which scheme sets out to undermine the CARES Act program and misappropriate such disaster relief funding for its own personal gain, contrary to the spirit and letter of the law governing such funds. Kauderer and Plaintiff have fraudulently induced Defendant to provide financial statements for the business of the subject property, which Kauderer submitted in support of his unlawful application for government disaster relief funds. Moreover, Defendant has repeatedly made demand for payment owed to its parent company and the instant eviction action is a transparently retaliatory response to same.

Fourth Affirmative Defense
Unlawful Self-Help

21. Plaintiff's claims are barred due to unlawful self-help. Plaintiff cannot extra-judiciously engage in self-help in the ways that it has, which include but are not limited to failing to renew the liquor license leased by Defendant with the state of Florida; improperly denying Defendant access to its email accounts, which Defendant paid for and has always paid for; improperly denying access to the administration of www.Churchillspub.com, which Defendant paid for and has always paid for; hacking into the Business' social media accounts and posting derogatory comments against Defendant and its owners; de-activating access to point of sale (POS) payment systems, removing access to QuickBooks financial/accounting reporting; and cutting off both phone and internet service.

Fifth Affirmative Defense
Failure to Make Adequate Demand for Rent Owed

22. Plaintiff's claims are barred because it failed to make adequate demand pursuant to prior practice of providing monthly invoices. During the subject period Plaintiff stopped providing such because it was agreed that rent was paid. The reason Plaintiff failed to make adequate demand for rent owed is that it knew that it was beyond question that there was no rent owed under the Lease.

Sixth Affirmative Defense
Promissory Estoppel

23. Plaintiff's claims are barred under the doctrine of promissory estoppel, insofar as Plaintiff and its principal induced Defendant to rely on its false representations concerning the application of monies toward the Rent owed under the Lease. Plaintiff and its principal Mallory Kauderer, made affirmative representations, actually relied upon by Defendant, and the failure to enforce such promises and representations would sanction fraud and other injustices. Instead, in

response to Defendant's good faith reliance on the representations made by Plaintiff, Plaintiff has only restrained Defendant's trade, fraudulently undermined strict governmental processes for the receipt of disaster relief funds and sued Defendant for possession without any just cause.

COUNTERCLAIM

Counter-Plaintiffs, District Live Agency, LLC ("DLA"), and The Beverage Group LLC ("TBG") (collectively "Plaintiffs") by and through undersigned, hereby files its Counterclaim against Counter-Defendants 5501 NE 2ND AVENUE, LLC ("5501 NE 2 LLC"), Little Haiti Development Partners LLC ("LHDP") and Mallory Kauderer ("Kauderer") (collectively "Defendants" and with Plaintiffs collectively the "Parties") and states as follows:

TBG and its principal, Franklin Dale ("Dale") provided business management advisory services to Churchill's Pub LLC, owned by Defendant Kauderer, from April 2014 until April 1 2019. In 2015, Dale develops a vision for a "Live Music District" in the area. Indeed, the area known historically as Lemon City/Little Haiti, was a vibrant dining and entertainment district in the 1950s and 60s. Over the years, Dale's vision was to bring the entire district back to its former prominence and Kauderer seemed not only supportive of this vision but Dale and Kauderer made agreements concerning the treatment of monies owed to Dale for purposes of empowering Dale to execute his vision. Understanding both the zoning and development potential of an entertainment district with multiple bars and stages, Dale made long-term commitments to Kauderer. Without question, the agreements between Dale and Kauderer were dependent upon their landlord/tenant relationship.

However, in 2016 Kauderer took several hard money, high interest rate loans against the Business's revenues (revenues which had been soaring under Dale's leadership). The Business suffered terribly. At this time, Dale began noticing a pattern of Kauderer making promises for

improvements, not making good on such promises and instead draining the Business of its growth capital. At this time, it is clear that Dale needed a bookkeeping assistant to help him keep the books honest so that he could do his job and continue to help the Business succeed and so Dale hired a bookkeeper for the Business.

Despite the overwhelming success of Churchill's Pub under Dale's leadership over the years, Kauderer continued to take advantage of their business relationship and continued to rack up debts owed to Dale. Ultimately an agreement was made that upon signing of a new lease in 2019, Dale would own the Business of the Pub 100%. On April 1, 2019, DLA signed a lease agreement with 5501 NE 2 LLC and per the Parties' agreement the Business was owned 100% by DLA.

When the COVID-19 pandemic hit South Florida, not dissimilar from countless entertainment venues and businesses nationwide, DLA and TBG's businesses, including as operator of Churchill's Pub through the entity it owns, Churchill Beverage LLC was (and continues to be) devastated. However, as explained herein, notwithstanding the difficulties of the circumstances, DLA consistently paid 5501 NE 2 LLC and to date, no Rent is owed by DLA under the Lease.

Throughout the pandemic, DLA and TBG worked in consistent contact with the 5501 NE 2 LLC and its principal, Kauderer. Despite the fact that the Business was unable to operate pursuant to eminent domain, Plaintiffs ensured that the rent under the lease for 5501 NE 2nd Avenue, LLC (the "Property" or "Churchill's Pub") was paid. Additionally, TBG, a parent company of DLA, was effectively patient with Kauderer regarding vast sums of money that continue to be owed. TBG and DLA, acting in good faith relied on Kauderer's promises of a collaborative and fair business relationship.

However, Kauderer took things beyond the pale when he effectively defrauded Plaintiffs and also an additional entity co-owned by DLA, (Churchill Beverage LLC) by fraudulently applying for

CARES Act funds and taking away DLA and/or Churchill Beverage LLC's ability to apply for the funds for the benefit of the Business. Indeed, Kauderer – who has no ownership interest in the Business – applied for the CARES Act funds, in violation of the law and principles of good faith and fair dealing under Florida law to the detriment of Counter-Plaintiffs. The result was the unjust enrichment of Kauderer and LHDP to the tune of hundreds of thousands of dollars that are owed to Counter-Plaintiffs and the Business. As explained herein, DLA raised each of these issues to Defendants and rather than working with Counter-Plaintiffs collaboratively, instead greed, lawlessness and malicious retaliation was Kauderer's response.

In fact, Kauderer responded by summarily posting a defective three-day notice at 175 NE 55th Street, Miami, FL 33137, which space DLA utilizes. Counter-Plaintiff DLA responded by providing a comprehensive letter addresses its grievances and making demand for monies owed to it. DLA's letter in this regard was sent in good faith, notwithstanding Kauderer's attempts to leverage his role as landlord to the improperly put his thumb on the scale during what should have been fair dealings and negotiations.

On or about August 17, 2020 Plaintiff posted a defective Three-Day Notice (the "Three-Day Notice") reflecting that \$92,838.02 (the "Claimed Amount Due"), an outrageous amount, is due and owing from DLA to 5501 NE 2 LLC for non-payment of rent.¹ The Three-Day Notice provided no specifics concerning the basis of the Claimed Amount Due and leaves to the imagination, which months of allegedly unpaid rent under the Lease it seeks. Because DLA has paid rent for all months upon which it would be obligated, despite the fact that the Business, a historic pub located in Little Haiti, has been closed since March pursuant to the Covid-19 pandemic, there can be no question that

¹ As asserted in the Answer and Affirmative Defenses to the Complaint filed in this matter, the defect-laden Three-Day Notice is just cause for the dismissal of this action, however, DLA files this Motion and its contents, in an abundance of caution, reserving all rights.

the Three-Day Notice and subsequent eviction proceedings are without merit, representing an unlawful act and also representing continuation of Kauderer's restraint of Counter-Plaintiff's trade.

This Counterclaim is brought to recover damages including monies owed and reliance damages pursuant to the unlawful and fraudulent conduct of Kauderer. As pled herein, 5501 NE 2 LLC nor Kauderer can support any actionable basis to institute an eviction action against DLA for the Claimed Amount Due. DLA has unambiguously paid what is owed, and in-fact well-beyond what is owed, under the subject lease ("Lease").

Kauderer, LHDP and 5501 NE 2 LLC are in the process of effectuating an unlawful conspiracy for purposes of retraining Plaintiff's trade and breaching the implied covenant of good faith and fair dealing, pursuant to Florida law. In light of the evictions being done across properties leased by Plaintiffs for which Kauderer is the landlord and monies owed for hundreds of thousands of dollars' worth of improvements and consulting services made to Kauderer, it is beyond question that Kauderer's acts have severely damaged Plaintiffs.

By way of this Counterclaim, Counter-Plaintiffs seek justice against Counter-Defendants and their schemes to defraud not only Counter-Plaintiffs but also the federal government, vis-a-vis the CARES Act.

PARTIES

1. Counter-Plaintiff DLA is a Florida Limited Liability company with its principal place of business in Miami, Florida. DLA is the hospitality management group that oversees all aspects of the Churchill's Pub Business, located in Little Haiti. Having vast experience in the industry, DLA is an established agency specializing in operations, financial performance and business development.

2. Counter-Plaintiff TBG is a Florida Limited Liability company with its principal place of business in Miami, Florida. TBG owns an 80% stake in DLA. TBG also owns 100% of Churchill

Beverage LLC or the Business.

3. Counter-Defendant Kauderer owns and operates 5501 NE 2 LLC and LHDP. Kauderer is also a landlord of multiple commercial properties in Little Haiti and other parts of Miami-Dade County. Kauderer is a resident of Miami, Florida, is over eighteen years of age and is otherwise *sui juris*.

4. Counter-Defendant 5501 NE 2 LLC is a Florida limited liability company with its principal place of business in Miami, Florida.

5. Counter-Defendant LHDP is a Florida limited liability company with its principal place of business in Miami, Florida.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this Counterclaim pursuant to Fla. R. Civ. P., 1.170. The amount in controversy exceeds \$30,000 and requires that this matter be heard in Miami-Dade Circuit Court, however, Counter-Plaintiffs request that the Judge in this matter retain the case, sitting in Circuit Court, so that all claims arising out of the same general set of facts can be heard by the same Judge.

7. Venue is proper in this action as the claims at-issue arose in Miami-Dade County.

FACTUAL BACKGROUND

8. For years, TBG and DLA has outlaid significant monies and provided extensive services to Counter-Defendants resulting in large sums of monies owed to TBG and DLA.

9. It was agreed between and amongst the Parties in exchange for the services rendered and to Kauderer and his companies, that Dale would be compensated pursuant to the value of those services and the overall relationship of the Parties.

10. Counter-Defendants, Kauderer and NE 5501 2 LLC agreed that upon the signing of a

lease (“Lease”) at the subject property, TBG would own the Business of Churchill’s Pub.

11. On or about April 1, 2019, DLA entered into the Lease with Plaintiff. The terms therein required that rent in the amount of (the “Rent”) be paid on the first of every month, without notices. At the time of the signing of the Lease, DLA paid \$10,500.00 as a security deposit (the “Security Deposit”).

12. Despite the Lease’s term not requiring notices, from April, 2019 to March, 2020 Plaintiff provided monthly invoice notices to DLA for the Rent payments. To-date, the Rent has been paid consistently.

13. DLA’s continued timely payment of all Rent obligations under the Lease and under Florida law is despite the fact that on July 1, 2019, the City of Miami posted building code violation (“Code Violation”) on the Property, which DLA informed Plaintiff of and for which DLA demanded remedy. Prior to receiving the July 1, 2019 Code Violation notice, Plaintiff had received a building Code Violation for the Property on May 23, 2018.

14. As explained herein, to date the Code Violations have not been remedied.

15. Leading up to the Covid-19 pandemic, under Dale and DLA’s leadership the pub was doing well and rent was being paid, timely and pursuant to invoices provided on a monthly basis.

The COVID-19 Pandemic Shuts Down the Business From Lawfully Operating

16. On March 1, 2020 the Governor of Florida issued Executive Order 20-51, declaring a state of emergency pursuant to the Covid-19 pandemic.

17. On March 12, 2020 the Mayor of Miami-Dade County declared a local state of emergency to respond to the threat posed by the Covid-19 pandemic.

18. Bars were officially closed pursuant to local law mid-March, 2020.

19. The Coronavirus Aid and Relief and Economic Security Act (the “CARES Act”) was

passed into law on March 27, 2020.

20. On March 31, 2020 Plaintiff violated the terms of the Lease by summarily and intentionally failing to renew the Business's liquor license, which DLA was leasing. Under the Lease, at Section 3.1, it was a requirement that the liquor license stay active and it states as follows:

“[s]aid use of the liquor license shall run for the entire life of this Lease and any Lease Renewal Terms outlined herein. At no point during the entirety of the Lease Term may Tenant be permitted to obtain a separate liquor license for use on the premises. Any violation of this provision shall constitute a default of the Lease and be subject to the default provisions herein.

See Liquor License; Portion of Lease addressing Section 3.1 and Notice of Liquor License being set to Expire March 31, 2020, attached hereto as Composite Exhibit “A”.

21. Under the CARES Act business owners could apply for relief pursuant to a set of application rules, strictly enforced by the regulatory body governing the CARES Act. The CARES Act included the Paycheck Protection Program (the “PPP”).

22. The PPP established by the CARES Act, was implemented by the Small Business Administration with support from the Department of the Treasury. This program provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities.

COVID-19, The CARES ACT and the Rent Reduction Agreement

23. On or about April 8, 2020 Dale and Plaintiff's principal, Mallory Kauderer (“Kauderer”) agreed that while the Pub was closed, DLA would owe a reduced rent in the amount of \$5,000 per month (the “Rent Reduction Agreement”). *See* correspondence between Dale and Kauderer attached hereto as Exhibit “B”. According to Kauderer, the “[3,000] difference is deferred to be worked out later.” *Id.*

24. Under the CARES Act, the Pub was entitled to PPP funds. It was further agreed

that because all government funding relied upon Churchill Beverage LLC's financial information, upon receipt of the PPP money from the government, funds covering an indefinite number of months' of DLA's rent would be applied directly to amounts owed under the Lease, on behalf of DLA., until the PPP funds were completely consumed.

25. In early May, 2020 Kauderer (purportedly on behalf of the Business) received a sum of \$42,551.00 in PPP funds, which were required to be applied to the Business of the Pub. Approximately \$14,000 of the PPP funds went to pay payroll. Therefore, it was agreed by Kauderer and Dale that the remaining approximately \$27,500 was to be applied to the Rent. Under the PPP program, because only \$14,000 of the PPP funds went to payroll, it is required that the remaining \$27,500 be applied to either the Rent, mortgage interest or utilities, in order to be forgivable as a grant, which was the Business's intention (for it to be forgivable).

26. It was therefore agreed that the remaining \$27,500 would be applied to the Rent, as is required by law. This is particularly true in this instance, where none of the PPP funds were applied to mortgage interest (the Business does not have a mortgage) or utility payments.

DLA Makes All Subject Rent Payments

27. Following the timely payment of the March, 2020 Rent payment, Plaintiff continued to maintain possession of the Security Deposit.

28. On April 10, 2020, \$4,400 was transferred from the Churchill Beverage bank account and was applied to the rent DLA owed under the Lease pursuant the Temporary Rent Reduction Agreement. For all intents and purposes, this payment was made for purposes of paying the April rent, while the Pub remained closed. A copy of the Churchill Beverage LLC banking statement for the month of April, 2020, reflecting the April rent payment is attached hereto as Exhibit "C".

29. On May 26, 2020, \$10,020.20 in rent payments were transferred from the Churchill's

Beverage bank account and was applied to the rent DLA owed under the Lease pursuant the Temporary Rent Reduction Agreement. For all intents and purposes, this payment was made for purposes of paying the May and June rent, while the Pub remained closed. A copy of the Churchill's Beverage LLC banking statement for the month of May, 2020, reflecting the May and June rent payments is attached hereto as Exhibit "D".

30. On June 4, 2020, \$4,900.01 was transferred from the Churchill's Beverage bank account and was applied to the rent DLA owed under the Lease pursuant the Temporary Rent Reduction Agreement. For all intents and purposes, this payment was made for purposes of paying the July rent, while the Pub remained closed. A copy of the Churchill's Beverage LLC banking statement for the month of June, 2020, reflecting the July rent payment is attached hereto as Exhibit "E".

31. Going into the month of August, \$19,300.03 had been paid by DLA to the Landlord pursuant to the PPP funds and Temporary Rent Reduction Agreement for the months of April – July (four months of rent payments). At this point, \$8,179.80 of PPP funds remained, which, if not applied to utilities, must be applied to the Rent. Therefore, after the August Rent is applied from the PPP funds, there would still be a balance of \$3,179.80 to be applied to the September Rent.

32. At no point in time from March through the time of the posting of the Three-Day Notice, did Plaintiff make any demand for unpaid rents in any way. The reason for this fact is that the Plaintiff knew that the Rent had been paid, in accordance with the facts as provided herein above.

33. Additionally, beginning in June of 2020, Plaintiff knew that it had misappropriated and seemingly absconded with nearly \$150,000.00 of Government funding that was required to be applied expressly for the benefit of the Pub's business, which would include at a minimum, the Operator's Rent when considering the fact that Plaintiff's application on behalf of the Business,

eliminated, as a matter of law, DLA or Churchill Beverage LLC's ability to apply for such funds with respect to the Business.

34. On July 15, 2020, Kauderer locked Dale and DLA out of the shared QuickBooks account, effectively crippling DLA for accessing all financial information relating to the Business. This is despite the fact that Kauderer does not own the Business as discussed in further detail directly below. Kauderer locked Dale and DLA out of the QuickBooks for purposes of furthering and perpetrating the fraud and unlawful eviction discussed herein.

Further CARES Act Funding is Applied for by Kauderer and Approved by (Under Penalty of Perjury) by the Government for the Express Benefit of the Pub's Business – Not for Purposes of Personally Enriching the Landlord

35. To be clear, Kauderer is not an owner of Churchill Beverage LLC (the Operator of Churchill's Pub), nor any entity that has an ownership interest in the Pub, other than the fact that he is the mortgagee of the land where the Pub sits. Kauderer formerly held the lease at the Property through the business Churchill's Pub LLC but that leasehold interest expired upon the signing of the Lease with DLA. Kauderer merely owns the liquor license at the Pub through Churchill's Pub LLC but maintains no personal ownership interest in the Pub. When DLA signed the Lease, it assumed full ownership of the Business, pursuant to the agreement of the Parties. *See* Correspondence reflecting the parties' agreement considering the ownership of the Business attached hereto as Exhibit "F".

36. Therefore, it is beyond question that when Kauderer applied for CARES Act in his own individual name, using his own social security number but using the Pub's (Churchill Beverage LLC) Financial Information (including *revenue, costs of goods, accounts payable*, etc.), such funds were required to be applied solely to the Pub's business.² Kauderer was not entitled to

² In an attempt to facilitate this fraud, Kauderer represented to Dale that these funds were applied for by Churchill's Pub LLC, rather than in his own name. Kauderer utilized the Pub's financial information but listed himself as a

personally enrich himself based on the Businesses' financials.

37. Had Kauderer wanted to appropriately apply for such funding he would have needed to do so using the financial information of his company, the Plaintiff entity or its parent – not the financial information of the Pub. By applying using the Pub's financial information Kauderer created an obligation to use the funds expressly for the Pub's business.

38. Furthermore, in applying for these further CARES Act funds, Kauderer listed accounts payable in the application to include TBG (the parent company of DLA) in the amount of \$128,000.00, pursuant to professional consulting services rendered to Churchill's Pub LLC (during the prior time when that entity owned the Pub), among other vendors. It was expressly agreed that the \$128,000.00 owed to TBG would either be paid by Kauderer or serve to off-set any Rent ever owed. Notwithstanding this fact, DLA was current with its Rent payments.

39. On June 12, 2020, \$149,900.00 in SBAD Treas 310 funds (the "Economic Impact Disaster Loan" or the "EIDL") pursuant to the CARES Act were deposited into the Churchill Beverage LLC bank account. According to Kauderer's accountant, Manal Oliver ("Oliver"), Kauderer applied to the EIDL funds using Churchill Beverage LLC's bank statements under the name Churchill's Pub LLC, because Kauderer had given Oliver this impression. In reality, Kauderer fraudulently applied for the EIDL using Churchill Beverage LLC's bank statements, but under his own personal name and social security number. However, Kauderer does not own the Business and this was thus fraudulent.

40. It had not only been agreed upon by Dale and Kauderer that these funds would exclusively be used for the Pub, but as a matter of law, the SBAD Treas 310 funds must be used solely for the Pub's benefit. This is particularly true in this instance when considering the fact that the

personal guarantor, however, irrespective of this, any funds applied for in the name of the business of the Pub must be applied to the Pub.

entirety of the SBAD Treas 310 funds were predicated on the Pub's financial statements. In fact, it is a requirement that accounts payable vendors (such as TBG/DLA) listed on the application, must be paid if such disaster assistance funds were obtained after being predicated on such debts.

41. Incredibly, on that very same day, June 12, 2020, the SBAD Treas 310 funds were entirely, fraudulently transferred out of the Churchill Beverage LLC bank account to an entity called Little Haiti Development Partners, LP ("LHDP"), which is unrelated to the Business but the owner of Plaintiff. The \$149,000 (out of the total of \$149,900) and its application to the Pub's direct benefit was not a matter of negotiation following Kauderer's application of the funds on behalf of the Pub (a business for which he has no ownership interest and is merely the mortgagee on the land). *See* Churchill Beverage LLC bank account statement reflecting June, 2020 transactions attached hereto as Exhibit "G".

42. Nonetheless, Kauderer transferred the \$149,000 (leaving \$900 in the Churchill Beverage LLC account) under the auspices that it was a loan provided by Churchill Beverage LLC to LHDP. Churchill Beverage LLC and the Business, never made any agreement to loan LHDP any money. Moreover, to do so with CARES Act funds reflects a felony because such was not the purpose for which the ones were applied.

43. Kauderer, who is the sole owner of the Plaintiff entity seeking to evict DLA has misappropriated these SBAD Treas 310, disaster assistance funds in violation of internal agreements but more consequentially in violation of his sworn oaths, subject to penalty of perjury and beyond pursuant to the CARES Act application process.

44. In a nutshell, the Rent has been paid, Plaintiff owes DLA's parent company \$128,000.00 and Plaintiff's principal has to date absconded with \$149,000.00 in disaster assistance funds that are required to be applied directly to the business and pursuant to the financial information

and specifically accounts payable, listed in Kauderer's application, made under penalty of perjury.

45. On June 12, 2020 Dale and DLA first complained about the misappropriation of the funding from the Churchill Beverage bank account. Kauderer conceded that he had misappropriated the funds but rather than following the law and the parties' agreements, Kauderer attempted to leverage his possession of the CARES Act funds for purposes of trying to re-negotiate established lease terms across multiple properties so that he could further enrich himself personally.

46. To be clear, Kauderer and Plaintiff actually owe Churchill Beverage LLC, the Business, the \$149,000 of SBAD Treas 310 Funds, which was it was agreed would be applied to any Rent ever owed, if needed. Furthermore, because Kauderer listed TBG as an account payable in his application for the SBAD Treas 310 Funds, such accounts payable are required to be paid under the terms of the CARES Act.

47. Irrespective, DLA has paid all monies owed under the Lease. It is therefore 1) outrageous; 2) retaliatory; and 3) unlawful that Plaintiff would institute this eviction action.

The Eviction is Unlawfully Retaliatory in Response to DLA's Objection to Kauderer's Fraud and No Rent is Owed.

48. It is beyond question that the instant eviction action has been prosecuted in retaliation for DLA's communications objecting to Kauderer's absconding with the SBAD Treas 310 Funds in violation of federal law.

49. On July 31, 2020, Francisco Herretes ("Herretes"), a business partner and representative of Kauderer and Leavitt, sent correspondence conceding that:

It's fair to say that this office has not been an acceptable communicator or facilitator for you or any of our Tenants, and I know we failed at walking you through complex lease issues during crazy times. We still have a way to go to get through this, but now with the experience of Midgard, hopefully we should be able to work things out – at least hear what you have in mind and start a talk

See screenshot of text message from Herretes to Dale, attached hereto as Exhibit "H".

50. More particularly, DLA sent Kauderer and his business partner, Donita Leavitt a letter dated August 17, 2020 (the “August 17, 2020 Letter”), reflecting DLA’s objection with the misappropriation of the SBAD Treas 310 Funds; Plaintiff’s Failure to disclaim the City’s demands for 40/50 year building recertifications; Plaintiff’s failure to adhere to its agreement to demolish an unsafe structure; remedy the kitchen roof leak; remedy restroom roof leak; and remedy kitchen gas leak. The August 17, 2020 Letter is attached hereto as Exhibit “I”.

51. The August 17, 2020 Letter also provided notice sufficient under Florida Law that the Property had building code violations and 40/50 year Recertification issues but more importantly advises Plaintiff’s certain prior (mis)representations that fraudulently induced DLA to enter into the Lease (such as Plaintiff’s prior commitment to demolishing the unsafe structure, remedy the kitchen roof leak, remedy the restroom roof leak and remedy the kitchen gas leak).

52. Critically, Plaintiff represented that it would accomplish these improvements through the use of Opportunity Zone funds, for which it utilized DLA and Churchill Beverage LLC to financial statements for application purposes.

53. Therefore, in exchange for DLA and Churchill Beverage LLC’s financial information relative to the Business, Plaintiff had agreed to remedy the aforementioned unsafe structure, kitchen roof, restroom roof and kitchen gas leak issues.

54. To date Plaintiff has not 1) remedied these unsafe structure, roof or gas leak issues; 2) returned any of the CARES Act funds that were misappropriated from the Churchill Beverage LLC bank account, and which by agreement should have been applied to the Rent OR in the alternative applied to the accounts payable owed to TBG; or provided any accounting whatsoever to support its

unsupportable Three-Day Notice.³

55. Plaintiff, through its principal Kauderer, has perpetrated a fraud not only on DLA in a variety of manners consistent with the foregoing and beyond, but also seeks to perpetrate a fraud on the SBA's CARES Act program and this honorable Court. Indeed, there is no Rent that is owed and to the extreme contrary TBG/DLA is owed hundreds of thousands of dollars.

56. Counter-Plaintiffs have retained the law firm of Genovese Joblove & Battista, P.A. for legal services for purposes of representing Counter-Plaintiffs in this action and has agreed to pay reasonable attorney's fees in exchange for the representation.

57. All conditions precedent to filing suit have been performed or otherwise waived.

COUNT I
QUANTUM MERUIT
[as to all Defendants]

58. Counter-Plaintiffs adopt and re-allege the allegations in paragraphs 1 – 57 as if fully set forth herein.

59. This is an action for quantum meruit.

60. Over the years Counter-Plaintiffs have performed services under circumstances where Counter-Defendants have understood and intended that Counter-Plaintiffs be compensated.

61. Counter-Defendants were aware that Counter-Plaintiffs expected to be compensated.

62. In not compensating Counter-Plaintiffs with amount of monies owed, Counter-Defendants have been unjustly enriched.

63. Examples of this conduct include monies owed for services rendered as well as monies owed pursuant to the fraudulent misappropriation of the Economic Disaster Relief Funds,

³ It is remarkable that the Three-Day Notice reflects \$92,838.08 in allegedly unpaid rent but the Complaint filed in this action reflects the sum of \$105,864.03. Such repugnancy alone is grounds for dismissal of the Complaint.

which were based on the Churchill Beverage LLC financial information.

64. The Parties, by their conduct, have formed a relationship which is contractual nature, even though an enforceable contract (in some instances) may never have been created.

65. Indeed, the dealings between the Parties have created the basis for the contractual relationship to be implied-in-fact.

66. Therefore, as a direct and proximate result of Counter-Defendants' breaches of implied-in-fact contracts, Counter-Plaintiffs have suffered damages.

WHEREFORE, Counter-Plaintiffs, TBG and DLA demand judgment against Defendants Damages including but not limited to, compensatory and special damages, together with prejudgment interest, costs, and attorney's fees and such further relief as this Court deems just and proper.

COUNT II
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
[as to all Defendants]

67. Counter-Plaintiffs adopt and re-allege the allegations in paragraphs 1 – 57 as if fully set forth herein.

68. This is an action for breach of implied covenant of good faith and fair dealing.

69. The Lease contained an implied covenant of good faith and fair dealing with respect to its terms.

70. The contract is silent about the permissibility or scope of Counter-Defendants' conduct as described herein above.

71. Counter-Defendants, through conscious, deliberate and retaliatory acts, have failed or refused to discharge their contractual responsibilities, which unfairly frustrates the contract's purpose.

72. Counter-Defendants' breaches under the contract deprive Counter-Plaintiffs of their contractual benefits.

73. Counter-Defendants, acting individually and in concert with each other, have breached the implied covenant of good faith and fair dealing concerning the Lease.

74. Therefore, as a direct and proximate result of Counter-Defendants' breaches of implied-in-fact contracts, Counter-Plaintiffs have suffered damages.

WHEREFORE, Counter-Plaintiffs, TBG and DLA demand judgment against Counter-Defendants for damages including but not limited to, compensatory and special damages, together with prejudgment interest, costs, and attorney's fees and such further relief as this Court deems just and proper.

COUNT III
ACCOUNTING

[against both of the corporate Defendants]

75. Counter-Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 – 57 above, as if fully set forth herein.

76. This is an action to enforce the right of Counter-Plaintiffs to inspect the corporate books and records and for an accounting of the Counter-Defendants with respect to the Business and transactions relating to Counter-Plaintiffs and the Economic Disaster Relief Funds as defined herein.

77. Following the improper eviction proceedings purported under the Lease, and despite demands before prior to that time, Counter-Plaintiffs have not received any financial information relating to the Business or Counter-Defendants following Counter-Plaintiffs being locked out of the QuickBooks account for the Business.

78. The records of NE 5501 2 LLC and LHDP pertaining to the Business that Counter-Plaintiffs seeks to review include the QuickBooks records and a tracing of all Funds received

pursuant to the CARES Act where the Business's financial information was used to obtain such Funds.

79. The demand by Counter-Plaintiffs for inspection of these items is made in good faith and not for an improper purpose. Further, Counter-Plaintiffs have no remedy at law available within which to fully redress its injuries without such relief.

WHEREFORE, Counter-Plaintiffs, TBG and DLA demand judgment against Counter-Defendants for damages including but not limited to, compensatory and special damages, together with prejudgment interest, costs, and attorney's fees and such further relief as this Court deems just and proper.

RESERVATION OF RIGHTS

80. Counter-Plaintiffs are continuing to investigate the underlying facts of this controversy and reserves all rights to amend this Counterclaim to add parties or causes of action.

DEMAND FOR JURY TRIAL

81. Counter-Plaintiffs demand a trial by jury as to all claims and issues so triable as a matter of right.

Dated this 22nd day of September, 2020.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Defendant
Miami Tower
100 Southeast Second Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

By: /s/ Omar K. Bradford
Omar K. Bradford, Esq.
Florida Bar No.: 90444
obradford@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Florida Courts e-filing portal to Hilary R. Zalman, Esq., eService@ZalmanLawFirm.com, Zalman Law, P.A. 7050 Montrico Drive, Boca Raton, FL 433, on this 22 day of September, 2020.

By /s/ Omar K. Bradford
Omar K. Bradford, Esq.

EXHIBIT “A”



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

DIV OF ALCOHOLIC BEVERAGES & TOBACCO
2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

850.487.1395

CHURCHILLS PUB LLC
CHURCHILLS PUB
300 NE 71 STREET
MIAMI FL 33138

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION**

BEV2300396 ISSUED: 03/25/2019
TOB-DUAL LICENSE
RETAILER OF ALCOHOLIC BEVERAGES
CHURCHILLS PUB LLC
CHURCHILLS PUB

IS LICENSED under the provisions of Ch. 565 FS.
Expiration date : MAR 31, 2020 L1903250001033

DETACH HERE

RON DESANTIS, GOVERNOR

HALSEY BESHEARS, SECRETARY

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIV OF ALCOHOLIC BEVERAGES & TOBACCO**

LICENSE NUMBER	SERIES	TOBACCO
BEV2300396	4COP	DUAL LICENSE

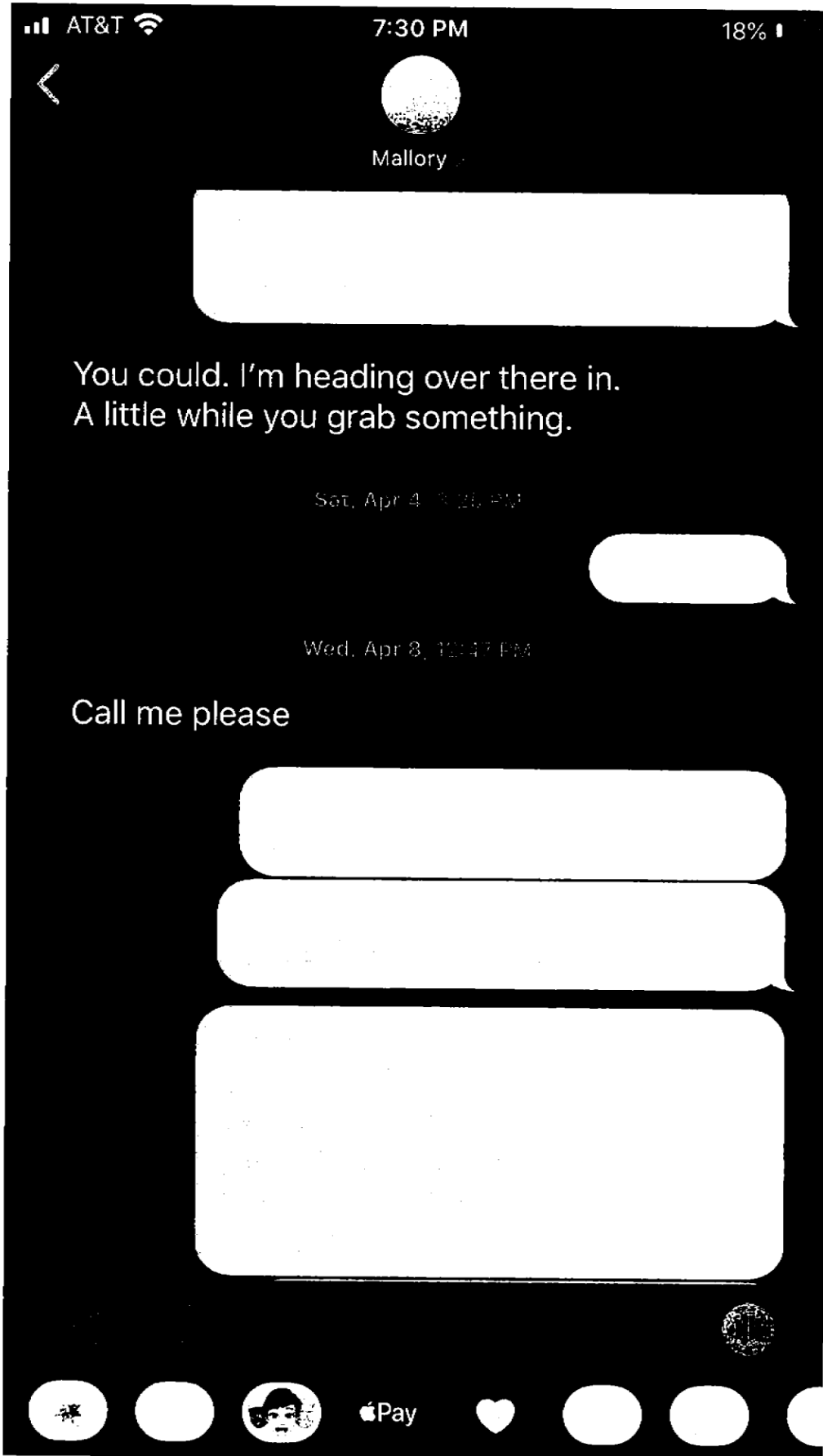
The RETAILER OF ALCOHOLIC BEVERAGES
Named below IS LICENSED
Under the provisions of Chapter 565 FS.
Expiration date: MAR 31, 2020



CHURCHILLS PUB LLC
CHURCHILLS PUB
5501 NE 2ND AVENUE
MIAMI FL 33137



EXHIBIT “B”



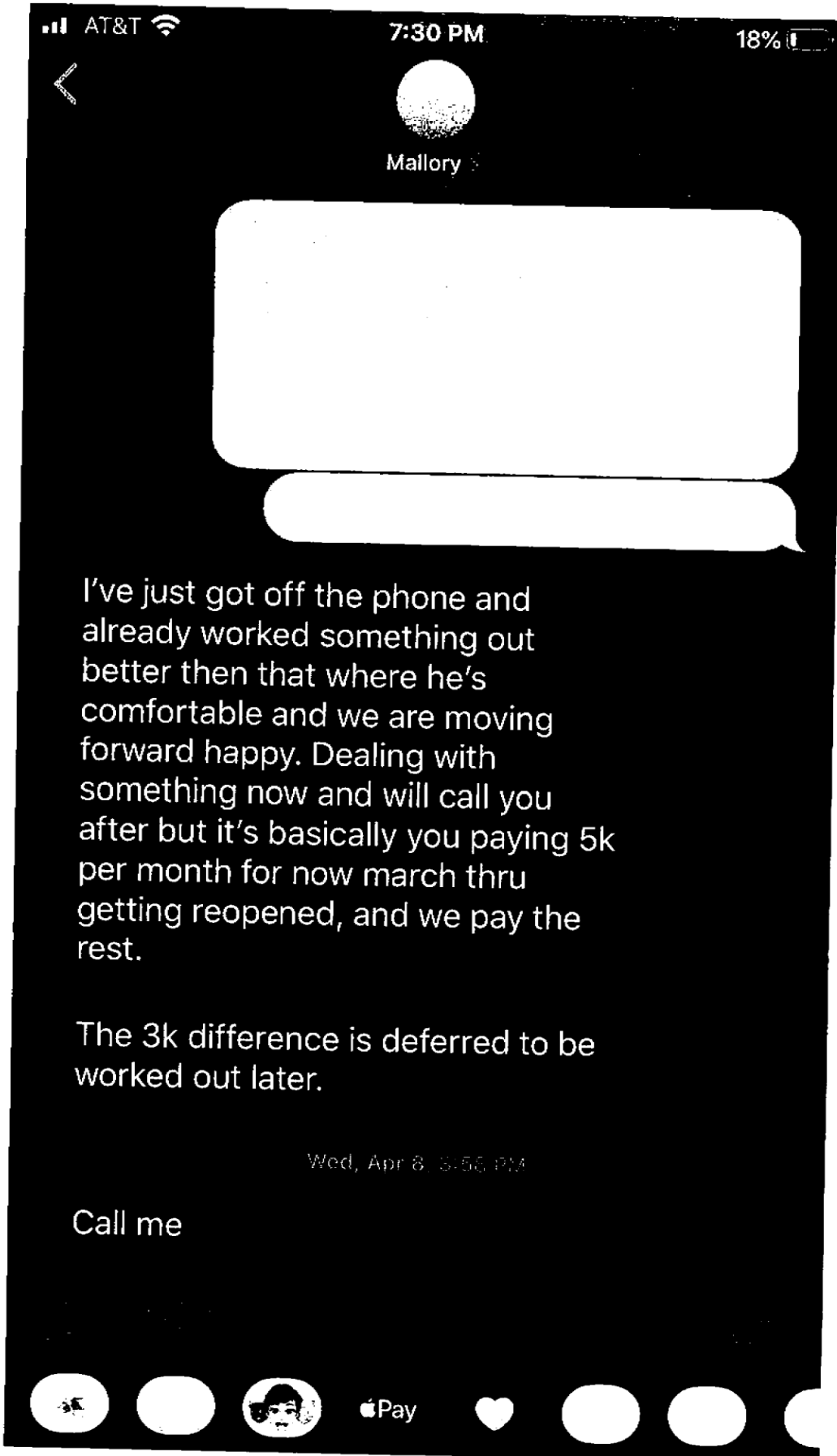


EXHIBIT “C”



JPMorgan Chase Bank, N.A.
 P O Box 182051
 Columbus, OH 43218 - 2051

April 01, 2020 through April 30, 2020

Account Number: [REDACTED]

CUSTOMER SERVICE INFORMATION

Web site: **Chase.com**
 Service Center: **1-800-242-7338**
 Deaf and Hard of Hearing: **1-800-242-7383**
 Para Espanol: **1-888-622-4273**
 International Calls: **1-713-262-1679**

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CHURCHILL BEVERAGE, LLC
 300 NE 71ST ST
 MIAMI FL 33138-5530



CHECKING SUMMARY

Chase Total Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$6,207.17
Deposits and Additions	5	791.93
Checks Paid	2	-930.85
ATM & Debit Card Withdrawals	5	-420.47
Electronic Withdrawals	5	-5,020.03
Fees	1	-15.00
Ending Balance	18	\$612.75

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
04/06	Online Transfer From Chk ...9575 Transaction#: [REDACTED]	\$136.00
04/10	ATM Cash Deposit 04/10 9556 Harding Ave Surfside FL Card 3776	600.00
04/29	Kabbage Micro Dpst 2000628 CCD ID: 4264438761	0.71
04/29	Kabbage Micro Dpst 2000628 CCD ID: 4264438761	0.67
04/30	ATM Check Deposit 04/30 6800 Biscayne Blvd Miami FL Card 3776	54.55
Total Deposits and Additions		\$791.93

CHECKS PAID

CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
1292 ^		04/08	\$530.85
1293 ^		04/09	400.00
Total Checks Paid			\$930.85

If you see a description in the Checks Paid section, it means that we received only electronic information about the check, not the original or an image of the check. As a result, we're not able to return the check to you or show you an image.

^ An image of this check may be available for you to view on Chase.com.



April 01, 2020 through April 30, 2020

Account Number: [REDACTED]

ATM & DEBIT CARD WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
04/01	Card Purchase With Pin 04/01 Silver Paint & Hardwar Miami Beach FL Card 3776	\$117.95
04/02	Card Purchase 04/01 Ordyx 561-807-1502 FL Card 3776	20.00
04/06	Card Purchase 04/02 Jetro Cash & Carry Miami FL Card 3776	248.34
04/10	Recurring Card Purchase 04/09 Apple.Com/Bill 866-712-7753 CA Card 3776	12.99
04/29	Card Purchase With Pin 04/29 Lhp Group Miami FL Card 3776	21.19
Total ATM & Debit Card Withdrawals		\$420.47

ATM & DEBIT CARD SUMMARY

Franklin Griffith Dale Card 3776

Total ATM Withdrawals & Debits	\$0.00
Total Card Purchases	\$420.47
Total Card Deposits & Credits	\$654.55

ATM & Debit Card Totals

Total ATM Withdrawals & Debits	\$0.00
Total Card Purchases	\$420.47
Total Card Deposits & Credits	\$654.55

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
04/02	Paymentech Fee 6354561 CCD ID: 1020401225	\$526.65
04/03	Manal Oliver & A Sale CCD ID: 9215986202	80.00
04/10	04/10 Online Transfer To Chk [REDACTED] Transaction#: [REDACTED]	4,400.00
04/13	04/13 Online Transfer To Chk ...6121 Transaction#: [REDACTED]	12.00
04/29	Kabbage Micro Dbt 2000628 CCD ID: 4264438761	1.38
Total Electronic Withdrawals		\$5,020.03

FEES

DATE	DESCRIPTION	AMOUNT
04/30	Monthly Service Fee	\$15.00
Total Fees		\$15.00

You were charged a monthly service fee of \$15.00 this period. You can avoid this fee in the future by maintaining a minimum daily balance of \$1,500.00. Your minimum daily balance was \$573.20.

DAILY ENDING BALANCE

DATE	AMOUNT
04/01	\$6,089.22
04/02	5,542.57
04/03	5,462.57
04/06	5,350.23
04/08	4,819.38
04/09	4,419.38
04/10	606.39
04/13	594.39
04/29	573.20
04/30	612.75

SERVICE CHARGE SUMMARY

TRANSACTIONS FOR SERVICE FEE CALCULATION		NUMBER OF TRANSACTIONS
Checks Paid / Debits		10
Deposits / Credits		0
Deposited Items		0
Transaction Total		10

SERVICE FEE CALCULATION		AMOUNT
Service Fee		\$15.00
Service Fee Credit		\$0.00
Net Service Fee		\$15.00
Excessive Transaction Fees (Above 100)		\$0.00
Total Service Fees		\$15.00



IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS: Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.

For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS: Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account. Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC



JPMorgan Chase Bank, N.A. Member FDIC

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EXHIBIT “D”



JPMorgan Chase Bank, N.A.
 P O Box 182051
 Columbus, OH 43218 - 2051

May 01, 2020 through May 29, 2020

Account Number: [REDACTED]

CUSTOMER SERVICE INFORMATION

Web site: **Chase.com**
 Service Center: **1-800-242-7338**
 Deaf and Hard of Hearing: **1-800-242-7383**
 Para Espanol: **1-888-622-4273**
 International Calls: **1-713-262-1679**

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CHURCHILL BEVERAGE, LLC
 300 NE 71ST ST
 MIAMI FL 33138-5530



We updated the Funds Availability Policy in the Deposit Account Agreement

We increased the minimum amount of funds that we make available to you the next business day when you deposit a check. For more information, please see the Funds Availability Policy in the Deposit Account Agreement at chase.com/disclosures.

Please call the number on your statement if you have questions. We accept operator relay calls.

CHECKING SUMMARY

Chase Total Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$612.75
Deposits and Additions	2	10,033.61
ATM & Debit Card Withdrawals	5	-288.13
Electronic Withdrawals	3	-10,129.10
Fees	3	-55.00
Ending Balance	13	\$174.13

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
05/01	Paymentech Fin ADJ 6354561 CCD ID: 1020401225	\$13.59
05/22	Fedwire Credit Via: First American Bank/071922777 B/O: Churchill's Pub, LLC Miami, FL 33138- Ref: Chase Nyc/Ctr/Bnf=Churchill Beverage, LLC Miami FL 33138-5530 US/Ac-00 0000003567 Rib=O/B Fst Amer Bk Imad: 0522G1Qx220C000193 Tr: 7688209143F1	10,020.02
Total Deposits and Additions		\$10,033.61

ATM & DEBIT CARD WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
05/04	Card Purchase 05/01 Ordyx 561-807-1502 FL Card 3776	\$20.00
05/04	Card Purchase 05/01 Silver Paint & Hardwar Miami Beach FL Card 3776	160.77
05/06	Recurring Card Purchase 05/06 Apple.Com/Bill 866-712-7753 CA Card 3776	12.99
05/14	Card Purchase With Pin 05/14 Silver Paint & Hardwar Miami Beach FL Card 3776	44.29
05/29	Card Purchase With Pin 05/29 Lhp Group Miami FL Card 3776	50.08
Total ATM & Debit Card Withdrawals		\$288.13

ATM & DEBIT CARD SUMMARY



May 01, 2020 through May 29, 2020

Account Number: [REDACTED]

Franklin Griffith Dale Card 3776

Total ATM Withdrawals & Debits	\$0.00
Total Card Purchases	\$288.13
Total Card Deposits & Credits	\$0.00

ATM & Debit Card Totals

Total ATM Withdrawals & Debits	\$0.00
Total Card Purchases	\$288.13
Total Card Deposits & Credits	\$0.00

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
05/04	Manal Oliver & A Sale CCD ID: 9215986202	\$80.00
05/04	Paymentech Fee 6354561 CCD ID: 1020401225	29.08
05/26	05/26 Online Domestic Wire Transfer Via: Bankunited NA FL/267090594 A/C: Dave Daniels Miami FL 33132 US Ref: Mortgage Payment Imad: 0526B1Qgc02C003263 Trn: [REDACTED] Es	10,020.02
Total Electronic Withdrawals		\$10,129.10

FEES

DATE	DESCRIPTION	AMOUNT
05/22	Domestic Incoming Wire Fee	\$15.00
05/26	Online Domestic Wire Fee	25.00
05/29	Monthly Service Fee	15.00
Total Fees		\$55.00

You were charged a monthly service fee of \$15.00 this period. You can avoid this fee in the future by maintaining a minimum daily balance of \$1,500.00. Your minimum daily balance was \$239.21.

DAILY ENDING BALANCE

DATE	AMOUNT
05/01	\$626.34
05/04	336.49
05/06	323.50
05/14	279.21
05/22	10,284.23
05/26	239.21
05/29	174.13

SERVICE CHARGE SUMMARY

TRANSACTIONS FOR SERVICE FEE CALCULATION	NUMBER OF TRANSACTIONS
Checks Paid / Debits	8
Deposits / Credits	0
Deposited Items	0
Transaction Total	8
SERVICE FEE CALCULATION	AMOUNT
Service Fee	\$15.00
Service Fee Credit	\$0.00
Net Service Fee	\$15.00
Excessive Transaction Fees (Above 100)	\$0.00
Total Service Fees	\$15.00

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS: Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.

For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS: Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account. Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC



JPMorgan Chase Bank, N.A. Member FDIC

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EXHIBIT “E”



JPMorgan Chase Bank, N.A.
 P O Box 182051
 Columbus, OH 43218-2051

May 30, 2020 through June 30, 2020

Account Number: [REDACTED]

CUSTOMER SERVICE INFORMATION

Web site: **Chase.com**
 Service Center: **1-800-242-7338**
 Deaf and Hard of Hearing: **1-800-242-7383**
 Para Espanol: **1-888-622-4273**
 International Calls: **1-713-262-1679**

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CHURCHILL BEVERAGE, LLC
 300 NE 71ST ST
 MIAMI FL 33138-5530



CHECKING SUMMARY

Chase Total Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$174.13
Deposits and Additions	4	158,600.01
ATM & Debit Card Withdrawals	3	-46.44
Electronic Withdrawals	5	-156,735.45
Fees	3	-55.00
Ending Balance	15	\$1,937.25

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
06/04	Fedwire Credit Via: First American Bank/071922777 B/O: Churchill's Pub, LLC Miami, FL 33138- Ref: Chase Nyc/Ctr/Bnf=Churchill Beverage, LLC Miami FL 33138-5530 US/Ac-00 0000003567 Rfb=O/B Fst Amer Bk Imad: 0604G1Qx220C000092 Trn: 6224509156Ff	\$4,900.01
06/12	Orig CO Name:Sbad Treas 310 Orig ID:9101036151 Desc Date:061220 CO Entry Descr: Misc Paysec:CCD Trace#:101036151312994 Eed:200612 Ind ID:181559790673000 Ind Name:Mallory Kauderer Rmt*CT*1815597906 200 70265 F8103** *****\ Trn: 1641312994Tc	149,900.00
06/25	Online Transfer From Chk [REDACTED] Transaction#: [REDACTED]	2,800.00
06/26	Orig CO Name:Sbad Treas 310 Orig ID:[REDACTED]1 Desc Date:062620 CO Entry Descr: Misc Paysec:CCD Trace#[REDACTED] Eed:200626 Ind ID:Eidg:[REDACTED] Ind Name:Churchills Pub LLC Nte*Pmt*Eidg:3302138112\ Trn: 1787535849Tc	1,000.00
Total Deposits and Additions		\$158,600.01

ATM & DEBIT CARD WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
06/02	Card Purchase 06/01 Ordyx 561-807-1502 FL Card 3776	\$20.00
06/05	Card Purchase With Pin 06/05 Usps PO 11585904 250 9 Surfside FL Card 3776	13.45
06/08	Recurring Card Purchase 06/05 Apple.Com/Bill 866-712-7753 CA Card 3776	12.99
Total ATM & Debit Card Withdrawals		\$46.44

ATM & DEBIT CARD SUMMARY

Franklin Griffith Dale Card 3776

Total ATM Withdrawals & Debits

\$0.00



May 30, 2020 through June 30, 2020

Account Number: [REDACTED]

Total Card Purchases	\$46.44
Total Card Deposits & Credits	\$0.00
ATM & Debit Card Totals	
Total ATM Withdrawals & Debits	\$0.00
Total Card Purchases	\$46.44
Total Card Deposits & Credits	\$0.00

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
06/02	Orig CO Name:Paymentech Orig ID:1020401225 Desc Date:200602 CO Entry Descr:Fee Sec:CCD Trace#:021000025320149 Eed:200602 Ind ID:6354561 Ind Name:Churchill's Pub Trn: 1545320149Tc	\$11.44
06/04	06/04 Online Domestic Wire Transfer Via: Bankunited NA FL/267090594 A/C: Dave Daniels Miami FL 33132 US Ref: Mortgage Payment Imad: 0604B1Qgc01C008487 Trn: 6572620156Es	4,900.01
06/12	06/12 Online Transfer To Chk [REDACTED] Transaction#: [REDACTED]	149,000.00
06/18	06/18 Online Transfer To Chk [REDACTED] Transaction#: [REDACTED]	24.00
06/25	06/25 Online Transfer To Chk [REDACTED] Transaction#: [REDACTED]	2,800.00
Total Electronic Withdrawals		\$156,735.45

FEES

DATE	DESCRIPTION	AMOUNT
06/04	Online Domestic Wire Fee	\$25.00
06/04	Domestic Incoming Wire Fee	15.00
06/30	Monthly Service Fee	15.00
Total Fees		\$55.00

You were charged a monthly service fee of \$15.00 this period. You can avoid this fee in the future by maintaining a minimum daily balance of \$1,500.00. Your minimum daily balance was \$76.25.

DAILY ENDING BALANCE

DATE	AMOUNT
06/02	\$142.69
06/04	102.69
06/05	89.24
06/08	76.25
06/12	976.25
06/18	952.25
06/25	952.25
06/26	1,952.25
06/30	1,937.25

SERVICE CHARGE SUMMARY

TRANSACTIONS FOR SERVICE FEE CALCULATION	NUMBER OF TRANSACTIONS
Checks Paid / Debits	5
Deposits / Credits	0
Deposited Items	0
Transaction Total	5
SERVICE FEE CALCULATION	AMOUNT
Service Fee	\$15.00
Service Fee Credit	\$0.00
Net Service Fee	\$15.00

SERVICE CHARGE SUMMARY (continued)

SERVICE FEE CALCULATION	AMOUNT
Excessive Transaction Fees (Above 100)	\$0.00
Total Service Fees	\$15.00

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS: Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.
 For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

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JPMorgan Chase Bank, N.A. Member FDIC





May 30, 2020 through June 30, 2020

Account Number: [REDACTED]

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EXHIBIT “F”



Mallory

206. Now I know the expectation to 5501.

One text, 2 issues. Current rents in 1. Your partners are to do with the new lease I assume and that new lease is number 2z

I'm not understanding. I deposited money today to make initial payment, 8k. That's good. You want \$5419.74 for 206 regarding 5501. I'm incurring 15k of real accounts payable due with transfer. I have to own the business in order to have my new partners come in. I'm agreeing on a lease that will make this transition smoothly. Am I wrong?

The new lease means you own the business FD!

For April 1 and that's not playing April fools on you.



EXHIBIT “G”

Main: Reports

Print Later
 Print
 Create a Log
 Delete
 Save
 New
 Attach
 File
 Select PO
 Enter Time
 Clear Splits
 Recalculate
 Reorder Reminder
 Order Checks

CHASE CB 1760 **Chase CB 1760** **674.75**
 TYPE: ACH
 DATE: 06/12/2020
 AMOUNT: 149,000.00
 TO: Little Haiti Development Partners, LP
 FROM: One hundred forty-nine thousand and 00/100..... DOLLARS

MEMO: SBA Funds

Expenses \$149,000.00 Items \$0.00
 Loans Payable: Due to / (from) LHDP LP 149,000.00

Save & Close Save & New Revert

1:28 PM 7/9/2020

qb Churchill's Pub

Home My Company Income Tracker Bill Tracker Calendar Snapshots My Shortcuts View Balances Run Favorite Reports Open Windows
 COVID-19 Resources Turn on Payroll Accept Credit Cards Order Checks & Supplies Upload to QuickBooks 2020 Advice 13books

Previous Next Save Print Payments History Attach

Deposit To **Chase CB 1760** Date 06/08/2020 Memo Deposit

Click Payments to select customer payments that you have received. List any other amounts to deposit below.

ACCOUNT	AMOUNT
SBAD Treas 310	149,900.00
Loans Payable:SBAD Treas 310	

To get cash back from this deposit, enter the amount below. Indicate the account where you want this money to go, such as your Petty Cash account.

Cash back goes to Cash back memo Cash back amount

Deposit Subtotal 149,900.00

Deposit Total 149,900.00

Save & Close Save & New Revert

My Shortcuts

- Home
- My Company
- Income Tracker
- Bill Tracker
- Calendar
- Snapshots
- My Shortcuts
- View Balances
- Run Favorite Reports
- Open Windows

COVID-19 Resources

- Run on Payroll
- Accept Credit Cards
- Order Supplies & Supplies
- Upgrade to QuickBooks 2020
- Activate Features

EXHIBIT “H”

2



Francisco Herretes

Hi FD, hope you are good. Jim asked me to reach out and see if we could work to fix things, without Mallory or Donita involved. I also spoke to Mallory and explained it's how it had to be, and he understands.

It's fair to say that this office has not been an acceptable communicator or facilitator for you or any of our Tenants, and I know we failed at walking you through complex lease issues during crazy times. We still have a way to go to get through this, but now with the experience of Midgard, hopefully we should be able to work things out - at least hear what you have in mind and start a talk...

EXHIBIT “I”

Franklin Dale

Email: fd@districtliveagency.com

Phone: 305.733.5061

District Live Agency LLC

175 NE 55 St.

Miami, FL 33137

Via Email

Mallory Kauderer, Manager
Little Haiti Development Partners LP
300 NE 71 St.
Miami, FL 33138

Donita Leavitt, Manager
Churchill's Pub LLC
300 NE 71 St.
Miami, FL 33138

Mallory and Donita:

The purpose of this letter is to express concern over your recent actions that have called the underlying business agreements between your companies and mine, both as your hospitality advisor and as your tenant, into question. Our company, District Live Agency LLC ("DLA"), its partners, affiliates, and subsidiaries (including Churchill Beverage LLC, The Beverage Group LLC, Atlas Catering Group LLC, and others) hereby demand an immediate plan and expeditious action to remedy all grievances according to previously agreed upon criteria so that we can resume normal business relations. Most important for the fair continuation of our business arrangements is the issue of the SBAD Treas 310 funds (\$149,000 USD) that were inappropriately withdrawn from the Churchill Beverage LLC business account and misappropriated to the unrelated Little Haiti Development Partners LP ("LHDP") account, in violation of SBA rules regulating such CARES ACT funds. Your pattern of misrepresentations as it relates to Churchill's Pub LLC's involvement with Churchill's Pub, in particular the misappropriation of the Emergency Funds (SBAD Treas 310), which you represented to the federal government as being designated to Churchill's business, for your personal enrichment, under false pretense.

Please be advised that we are prepared to defend our right to the full, unbridled management of these funds, consistent with the SBA rules regulating these Emergency Funds in front of the courts and the community. Additionally, your duties as landlord require 1) the long-overdue rectification of open violations on properties we lease; 2) a commitment to an

improvement schedule on the outstanding issues (of which you are well-aware) for properties we lease; and 3) a coordination of lease terms across all rentals in consideration of our time and money invested in properties we lease. To be clear, attention to and resolution of these issues are in all of our shared interests and it is in that spirit that we are providing this opportunity for you to address these matters before any further escalation.

Issue 1: SBA Loan Appropriation (SBAD Treas 310)

Following our anonymous discussions with experts in the matter, including but not limited to the Small Business Administration, it is clear that you procured SBAD Emergency Relief funds for Little Haiti Development Partners LP under false and illegal pretenses. On June 12, 2020, SBAD Treas 310 Funds (\$149,900 USD) were deposited into Churchill Beverage LLC. Later that same day, those funds were wired from Churchill Beverage LLC, to LHDP, and recorded to Churchill's Pub LLC accounting records as "loans payable." Furthermore, Churchill's Pub LLC misrepresented Churchill Beverage LLC's revenue and cost of goods on the Emergency Injury Disaster Loan application. Thus, after initially being credited with emergency funds, they were then surreptitiously wired, by Donita, in violation of the law, to a business wholly owned by Mallory (Little Haiti Development Partners LP). It is clear that the two of you acted in concert to effectuate this unlawful scheme.

As you know, LHDP has never had any business relationship with Churchill's Pub. Neither of you have any roles or responsibilities in the operation of the business, nor did LHDP have any formal or informal business relationship with Churchill's Pub LLC or Churchill Beverage LLC. Given the current circumstances created by Covid-19, our business is relying on these government support funds. Furthermore, your decision to obtain emergency relief for Churchill's Pub LLC using Churchill Beverage LLC's financials prohibits Churchill Beverage LLC from applying for subsequent pandemic/recession-related funding. Your decision to secretly wire \$149,000 out of Churchill Beverage LLC's rightful custodianship to yourself, without action to remedy, was fraudulent as a matter of law. In any event, pursuant to this correspondence, we are offering you the opportunity to return these funds, or in the alternative, agree to a formal Use of Funds agreement. These are the only two alternatives the circumstances allow for without further escalation.

Issue 2: 40 year Recertification Negligence, Material Omissions, Delay, and Lost Revenue

When the lease of Churchill's Pub was assumed by District Live Agency in April 2019, it was understood that the teardown of office (Building 1) was critical to the business' future prospects, creating a substantial new line of revenue. The mutually stated objective was to demolish Building 1, which was being used as offices and storage, in order to create a large backdoor patio as critical to the business' future. DLA as the tenant had offered to both lead and finance this improvement, and so it assumed all architectural costs for the demolition plans and restroom renovations immediately after commencement of the lease for the property at 5501 NE 2nd Ave. However, the Landlord did not disclaim the City's demands for 40 year building recertifications for folio 01-3218-027-0010, Building 1, Building 2, Building 3. The failure to communicate this material fact delayed the demolition and pushed construction into a window that was unacceptable for the business. Instead of activating the additional square footage, this omission resulted in significant loss of revenue from the months of September 2019 through March 2020.

Additionally, you omitted material information regarding the condition of the buildings, primarily that Building 1 - which was being used as offices and product storage - had been deemed an "Unsafe Structure" by The City of Miami. Rent was paid on a portion of the property deemed unsafe, and as tenants we were allowed to occupy this space for months without your disclaimer. This action also delayed the permit with the building department. Despite our offer to address the violation immediately with our own funds (Landlord's obligation) to put ourselves in a condition to capture the additional revenue, you advised that we should delay construction and take advantage of capital improvements from your group and its purported Opportunity Zone dollars. This forced delay, caused by your omission of the Building Code violations with the City (which was the initial cause in construction delays) has resulted in budgeted pro forma revenue loss of approximately \$100,000 over the time period of September 2019-March 2020.

Issue 3: Failure to Remedy

Since April of 2019, your group has yet to remedy the violations including:

- Demolish Unsafe Structure (Building 1 office),
- Kitchen Roof Leak
- Restroom Roof Leak
- Kitchen Gas Leak

Although we provided all requested supporting documentation regarding improvements, contacted multiple vendors for quotes, and invested an additional \$30,000 of operating capital into the business as a backstop to your promises, 15 months have passed without resolution. This has handcuffed the business without use of proper offices, storage, and kitchen - materially damaging the business' revenue. This is particularly true during the ongoing pandemic, which would require an operational kitchen in order to open its doors as a restaurant.

In summary, your misrepresentations, building violations, eminent repair funding, and Covid Emergency Funds have caused material damages and your illegal actions are denying the business critical funds during a pandemic. This is unacceptable to our group and we expect it to be remedied without further delay. With total damages nearing \$250,000, our objectives are simple - to negotiate long-term lease agreements in good faith, to expeditiously remedy the building violations, and for Small Business Administration funds to be placed in our custody, consistent with the representations you made under penalty of perjury in the application for said funds.

We expect remedy according to the following schedule:

- 1) August 21, 2020: Return of ALL SBAD Treas 310 to **Churchill Beverage LLC** (\$149,000 USD) with personal guarantee from Franklin Dale which will be used according to program guidelines, as follows:
 - Any additional loans that have been procured or in the process of being procured on behalf of the business and/or stating its operating financials must be placed in Churchill's custodianship

- 2) September 1, 2020: Initiate Demolition of Condemned Building 1
 - SBA Treas 310 cannot be utilized for this obligation (under program regulations)

- 3) September 1, 2020: Commitment to fix kitchen roof leak, restroom leaks, and kitchen gas leak.

- 4) September 15, 2020: Letter of Intent and Commitment of Improvements to the following properties.
 - 5501 NE 2 Ave
 - 5524 NE 2 Ave
 - 5528 NE 2 Ave
 - 175 NE 55 St

- 5) September 15, 2020: New, long-term, synchronized leases across properties that reflect past conversations.
 - 5501 NE 2 Ave
 - 5524 NE 2 Ave
 - 5528 NE 2 Ave
 - 175 NE 55 St
 - 186 NE 56 Ave

We look forward to reengaging in a cordial manner and reestablishing long-held commitments and shared goals.

Franklin Dale
Managing Partner, District Live Agency