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April 26, 2017

Via Email and CM/RRR No. 9414 7266 9904 2059 2894 79

D Magazine Partners, Inc.
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**NOTICE OF PENDING LITIGATION &
REQUEST FOR CORRECTION**

Re: Brewed+Pressed, LLC (the "Company")
Brewed+Pressed, LLC et al v. Zachary B. Adell (DC-17-01840)
SettlePou File No. 17-0081

Ms. Agnus:

Please be advised that this Firm is litigation counsel for Zachary B. Adell ("Adell"), the founder of Brewed+Pressed, LLC and the owner of various trademarks and copyrights related to the name, branding, artwork, logos, menus, recipes, and designs for the restaurant Brewed+Pressed (collectively, "Adell Intellectual Property"). Please immediately cease all communication with Adell and direct all further correspondence in connection with this matter to me.

Adell has been made aware of an article ("Article") published on DMagazine.com concerning Brewed+Pressed, a restaurant concept created by Adell and currently the subject of pending litigation in the 193rd Judicial District Court in Dallas, Cause No. DC-17-01840. A copy of the First Amended Counterclaim is attached.¹

The Article contains various misstatements of fact and objectively misleading information. Specifically, the Article fails to acknowledge Brewed+Pressed founder Adell, who owns all trademarks and servicemarks to Brewed+Pressed, who owns all copyrighted material relating to the Brewed+Pressed name, logo, designs, packaging, trade dress, websites, and menus. Even a cursory review of the Brewed+Pressed website, to which you link in the Article, would have demonstrated that Adell is the founder of Brewed+Pressed and the creator, along

¹ The Article may be retrieved at: <https://www.dmagazine.com/food-drink/2017/04/first-look-brewed-pressed/>

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with Rosmery Menendez, of the Brewed+Pressed menu. Additionally, contrary to the statements in your Article, Ms. Menendez has not returned to California, but remains in Dallas. She voluntarily quit her employ with Brewed+Pressed as a result of philosophical differences with Sohail Dar and Michael Heffelfinger, including their attempted ouster of Adell from Brewed+Pressed.

As set forth in more detail in the attached Counterclaim, Adell remains a 1/3rd owner of Brewed+Pressed along with Messrs. Dar and Heffelfinger, and any statements made by Counter-Defendants Dar and Heffelfinger to the contrary constitute actionable misstatements of fact under Texas law.

The Article should be immediately removed until such time as all statements contained therein have been confirmed, and only in the event that the Article is updated to correct such false and misleading information, as well as the inclusion of Adell as a founder and owner of Brewed+Pressed, and the co-creator of the Brewed+Pressed menu.

Should you wish to discuss this with me please contact me directly.

Best,

A handwritten signature in blue ink, appearing to be 'Braden M. Wayne', is written over the printed name. The signature is stylized with a large loop and a horizontal line across the middle.

Braden M. Wayne

BMW/slo
Enclosure

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CAUSE NO. DC-17-01840

BREWED+PRESSED, LLC; SOHAIL;	§	IN THE DISTRICT COURT
DAR and MICHAEL HEFFELFINGER,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	193 RD JUDICIAL DISTRICT
	§	
ZACHARY ADELL,	§	
	§	
<i>Defendant.</i>	§	DALLAS COUNTY, TEXAS

**DEFENDANT / COUNTER-PLAINTIFF ZACHARY ADELL'S
FIRST AMENDED COUNTER-CLAIM**

Defendant/Counter-Plaintiff Zachary Adell ("Adell") files this First Amended Counter-Claim and would respectfully show the Court as follows:

COUNTERCLAIMS AGAINST PLAINTIFFS

1. Counter-Plaintiff Adell seeks monetary relief in excess of \$100,000 and non-monetary relief.
2. Adell intends to conduct discovery under Level 3, Rule 190.3 of the Texas Rule of Civil Procedure.

PARTIES

3. Counter-Plaintiff Adell is an individual residing in Dallas County, Texas.
4. Counter-Defendant Brewed+Pressed, LLC, has appeared in this suit and may be served through its attorney of record.
5. Counter-Defendant Sohail Dar has appeared in this suit and may be served through its attorney of record.
6. Counter-Defendant Michael Heffelfinger has appeared in this suit and may be served through its attorney of record.

JURISDICTION AND VENUE

7. This court has jurisdiction in that Adell seeks relief in excess of the minimum jurisdictional limits of this court.

8. Venue is proper in Dallas County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) and (2) because all or a substantial part of the acts or omissions giving rise to this suit occurred in Dallas County, Counter-Defendants Dar and Heffelfinger reside in Dallas County, and Counter-Defendant Brewed+Pressed, LLC's principal office in this state is in Dallas County.

FACTS

9. This dispute – and the need for declaratory relief – arises out of Counter-Defendants' continuing and alarming pattern of self-dealing and fraud, perpetrated by unsophisticated and ego-driven dentists unhappy with the deal they structured and signed with Adell.

10. Counter-Plaintiff Zachary Adell is a young and promising entrepreneur, with a talent for branding and a passion for wellness. At only eighteen, Adell became the youngest trainer at the world-famous Equinox Fitness Club. After traveling the world studying the art of nourishment, Adell, along with a classically trained plant-based chef, created the concept of Brewed+Pressed, a fast-casual juice and coffee bar featuring innovative recipes incorporating the finest quality powerful herbs and superfoods.

11. In need of capital to fund the restaurant, Adell partnered with Counter-Defendants Dar and Heffelfinger, two dentists who flaunted their supposed business acumen and touted their matching red Ferraris as evidence of same.

12. Dar, Heffelfinger, and Adell agreed that they would each be equal one-third members of the LLC, with Dar and Heffelfinger contributing \$50,000.00 for their Units, and Adell receiving his Units in exchange for his development of the Brewed+Pressed concept and \$1,000.00.

13. Dar and Heffelfinger also agreed that in addition to his one-third share of the equity, Adell would be paid an annual salary of \$30,000.00 to manage the retail operations of Brewed+Pressed. Adell offered to temporarily defer his salary during the first few months of operation to help reduce overhead for the young Brewed+Pressed.

14. The restaurant launched successfully in June 2016, receiving rave reviews and quickly gaining a loyal cult following.

15. Admittedly unfamiliar with the restaurant industry, Counter-Defendants, as early as September 2016 – three months after launch and having provided no business support – feigned dissatisfaction with Adell's management and questioned why the restaurant was not already spitting off cash for their use.

16. In reality, on information and belief, Counter-Defendants Dar and Heffelfinger, behind Adell's back, had reached an agreement to sign a lucrative international franchising and expansion agreement with Imran Sheikh and Saad Aslam, who planned on opening additional Brewed+Pressed locations in Europe. Hoping to increase their share of the franchise proceeds, Counter-Defendants Dar and Heffelfinger hatched a plan to dilute Adell out of his shares. Counter-Defendants Dar and Heffelfinger contributed additional capital to Brewed+Pressed thinking this would increase their equity in the Company and dilute Adell. Unfortunately, the Brewed+Pressed Operating Agreement intentionally prohibited such activity, and instead only entitled Counter-Defendants Dar and Heffelfinger to priority repayment of the additional capital.

17. Counter-Defendants Dar and Heffelfinger became incredulous upon learning that the Operating Agreement did not allow for dilution, and instead required unanimous consent of the Members to issue additional equity. As such, they demanded that Adell execute an amended Operating Agreement eliminating all unanimous consent requirements, giving Counter-Defendants Dar and Heffelfinger additional equity, and providing Counter-Defendants Dar and Heffelfinger the right to unilaterally dilute Adell at any time.

18. Adell refused to sign the amended Operating Agreement, citing his bargain for the unanimous consent provisions and his concerns about dilution. In response, Counter-Defendants Dar and Heffelfinger, committed to eliminating Adell from Brewed+Pressed and stealing his equity, returned to the drawing board.

19. Counter-Defendants Dar and Heffelfinger decided the only way to eliminate Adell from Brewed+Pressed was to exercise the Disruptive Member Provisions of the Company Agreement, which provided that a disruptive member could be unilaterally forced out and paid only 80% of the value of the member's units. As such, Counter-Defendants Dar and Heffelfinger reached out to numerous current and former employees of Brewed+Pressed, encouraging them to sign written statements or provide testimony unfavorable to Adell sufficient to satisfy the evidentiary obligations of disruptive behavior under the Operating Agreement. Each of the employees refused and Counter-Defendants Dar and Heffelfinger were left with no evidence of any disruptive conduct.

20. Undeterred, Counter-Defendants Dar and Heffelfinger, without the requisite notice to Adell, secretly held a special meeting of the members on Saturday, January 14, 2017, during which they signed documents indicating they were in possession of evidence of Adell's disruptive conduct (evidence which was never documented, produced, or even identified),

purported to unilaterally exercise the Disruptive Member Provisions of the Company Agreement, and the following Monday morning issued a check to Adell for \$6,000.00 (despite a previous valuation of Adell's equity at \$50,000.00), informed Adell that he was no longer a member of Brewed+Pressed, and that Adell would be arrested for trespassing if he ever stepped foot in Brewed+Pressed.

21. Intentionally or unwittingly, Counter-Defendants Dar and Heffelfinger failed to read the Operating Agreement before taking action, failing to comply with numerous requirements set forth therein:

a. First, Counter-Defendants Dar and Heffelfinger failed to issue Notice of the Special Meeting as required under Sections 4.3(a) and (b) of the Agreement. Specifically, Special Meetings require written notice of at least 10 and not more than 60 days. The notice is required to set forth the place, day, and hour of the meeting, as well as the purpose for which the special meeting was called:

4.3(a). Special meetings of Members may be called by the Managers, the President or the holders of at least ten percent (10%) of the Units of all the Members. The business transacted at any special meeting of Members shall be limited to the purposes stated in the notice thereof.

4.3(b). Written or printed notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 nor more than 60 days before the date of the meeting.

b. Second, Counter-Defendants Dar and Heffelfinger failed to identify any evidence in support of their eighteen allegations of misconduct on the part of Adell, as required by Section H(1)(iii) of the Company Agreement.

c. Additionally, seventeen of the eighteen allegations of misconduct were categorized as violations of Section H(1)(iii) of the Agreement, a breach of which requires ten days' notice of the allegedly disruptive conduct to the member. No such notice was ever given.

d. Even further, Counter-Defendants Dar and Heffelfinger failed to obtain a valid appraisal as required by the Company Agreement, which pursuant to Section A of Exhibit C of the Company Agreement requires that all involuntary transfers of Membership Interests require a written agreement of value or the appointment of a certified appraiser to value the Membership Interests prior to transfer.

e. Finally, Counter-Defendants Dar and Heffelfinger conflated Adell's role as a manager of the restaurant (for which he was an employee paid a regular salary), with his role as a Member of the Company. Even if the allegations of improper management were true, which they are not and for which there is no evidence, such conduct would merely make Adell a poor restaurant manager, for which he could be terminated, not a Disruptive Member for which his equity could be stripped.

22. Because Counter-Defendants Dar and Heffelfinger failed to properly exercise the Disruptive Member provisions of the Company Agreement, the transfer of equity was improper and was therefore void ab initio:

Improper Transfer. Any attempt to Transfer any Units (or other rights or obligations) other than in compliance with this Agreement, including any Involuntary Transfer, shall be null and void ab initio and without any force or effect whatsoever, and neither the Company nor any transfer agent shall give any effect in the Company's records to any such attempted Transfer.

23. Despite notice of such deficiencies, Counter-Defendants Dar and Heffelfinger refused to rescind their actions, and continue to insist that that Adell is no longer a Member.

24. Despite basing their improper ouster of Adell from Brewed+Pressed on the basis of his alleged incapacity as an operator, and despite their improper contention that Adell is no longer a Member of the Company, Counter-Defendants Dar and Heffelfinger take the absurd and contradictory position that Adell is nonetheless bound by the Non-Compete provisions of the Company Agreement, which purport to limit competition by Adell *anywhere in the world*.

25. Tellingly, since Adell's improper ouster from Brewed+Pressed, numerous first day employees, including the executive chef, have voluntarily terminated their employment in protest of Adell's treatment by Brewed+Pressed, Dar, and Heffelfinger.

26. Finally, despite acknowledging that Adell is owed more than \$8,000.00 in wages, Counter-Defendants have refused to remit such wages and have agreed to release the wages only in the event that Adell voluntarily relinquishes his ownership in Brewed+Pressed.

27. Counter-Defendants Dar and Heffelfinger's conduct is reckless, abhorrent, and anathema to the notions of fair play and substantial justice that govern our legal system, illustrative of their ego-driven approach to business, and indicative of their malintent.

**FIRST CAUSE OF ACTION:
FRAUD (AGAINST DAR AND HEFFELFINGER)**

28. Adell re-alleges and incorporates by reference herein all of the allegations set forth above.

29. Counter-Defendants Dar and Heffelfinger made the following material representations to Adell, each of which were false or made with reckless indifference to the truth:

- a. That the Company was in possession of evidence of Adell's alleged disruptive conduct;
- b. That the Company had properly exercised the Disruptive Member provisions of the Company Agreement;
- c. That Spillers Works blamed Adell for the lack of institutional controls;

- d. That Counter-Defendants Dar and Heffelfinger had not reached any agreements for an international franchising or licensing deal.

30. In fact, upon information and belief, Counter-Defendants Dar and Heffelfinger knew, at the time that the statements were made, that the above representations were false.

31. Each of the above representations was made with the intent to induce Adell to refrain from pursuing its challenge of the improper competition, and with the intent to induce Adell to contribute capital that could be used to fund a competing entity.

32. Adell justifiably acted or refrained from acting in reliance on these representations, and suffered damages as a result.

33. Adell is entitled to his actual damages as well as exemplary damages pursuant to §41.003(a)(1) of the Texas Civil Practice & Remedies Code.

**SECOND CAUSE OF ACTION:
BREACH OF CONTRACT (AGAINST B+P, DAR, AND HEFFELFINGER)**

34. Adell re-alleges and incorporates by reference herein all of the allegations set forth above.

35. Based on the above and foregoing allegations, Adell would show that Counter-Defendants Brewed+Pressed, Dar, and Heffelfinger breached the Company Agreement by failing to comply with the Company Agreements terms regarding notice, disruptive members, involuntary transfers, appraisal rights, and actions in the event of dispute or gridlock.

36. Specifically, Counter-Defendants Brewed+Pressed, Dar, and Heffelfinger breached Sections 22, 2.7, 4.1, 4.3, and 8.3 of the Company Agreement, as well as Section 2.1(b) of Exhibit B to the Company Agreement, and Sections A, H, and I of Exhibit C to the Company Agreement.

37. Adell is entitled to his actual damages as well as his attorneys' fees pursuant to the Company Agreements and applicable law.

38. Additionally, despite having acknowledged their contractual requirement to pay Adell his deferred wages, totaling \$8,904.00, Counter-Defendants have failed and refused to tender payment of the deferred wages despite repeated demands and requests for same.

39. Adell is entitled to his actual damages as well as his attorneys' fees pursuant to §38.001(1), (2), and (8) of the Texas Civil Practice & Remedies Code.

**THIRD CAUSE OF ACTION:
TEXAS THEFT LIABILITY ACT (AGAINST B+P, DAR, AND HEFFELFINGER)**

40. Adell re-alleges and incorporates by reference herein all of the allegations set forth above.

41. Based on the above and foregoing allegations, Adell would show that prior to the formation of Brewed+Pressed, Adell developed all of the design, branding, recipes, and collateral for the Company. Upon formation of Brewed+Pressed, Counter-Defendants Dar and Heffelfinger failed to obtain an assignment of such intellectual property from Adell or a license for its use by the Company. As such, all Brewed+Pressed designs, branding, recipes, and collateral are the sole property of Adell, and have been stolen and are being used by Counter-Defendants in violation of Section 134 of the Texas Civil Practice & Remedies Code (Texas Theft Liability Act).

42. Adell is entitled to monetary damages and attorneys' fees for the misappropriation of such trade secrets and intellectual property pursuant to § 134A.003, 134A.004 of the Texas Civil Practice & Remedies Code.

**FOURTH CAUSE OF ACTION:
DECLARATORY JUDGMENT (AGAINST B+P, DAR, AND HEFFELFINGER)**

43. Adell re-alleges and incorporates by reference herein all of the allegations set forth above.

44. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Adell seeks declarations regarding the rights, status, and legal relations of Adell, Brewed+Pressed, Dar, and Heffelfinger based on written contracts, or other writings constituting contracts, namely, the Brewed+Pressed Operating Agreement and the Written Consent of the Majority Members of Brewed+Pressed, LLC dated January 14, 2016.

45. A justiciable controversy exists among Adell, Brewed+Pressed, Dar, and Heffelfinger as to the ownership of Brewed+Pressed, the propriety of Counter-Defendants Dar and Heffelfinger's exercise of the Disruptive Member provisions of the Company Agreement, the sufficiency of the payment for Adell's Membership Interest, and the reasonableness and enforceability of the worldwide non-compete attempting to be enforced by Counter-Defendants.

46. Accordingly, Adell seeks declaratory judgment that (a) Adell is a Member in Brewed+Pressed; (b) that Counter-Defendants Dar and Heffelfinger improperly exercised the Disruptive Member provisions of the Company Agreement; (c) Adell was not paid a reasonable sum for his Membership interests, and (d) that the non-compete contained in the Company Agreement is unreasonable and unenforceable as drafted.

JURY DEMAND

47. Adell demands trial by jury.

48. Adell requests that all sessions of court be recorded by a court reporter.

PRAYER

For these reasons, Adell asks that Counter-Defendants be required to answer, and that Adell be awarded judgment against Brewed+Pressed, Sohail Dar, and Michael Heffelfinger, jointly and severally as applicable, for the following:

a. Actual damages, additional statutory damages, exemplary damages under the Texas Damages Act, pre-judgment and post-judgment interest, costs of court, and reasonable and necessary attorneys' fees against Brewed+Pressed, Dar, and Heffelfinger;

b. Declaratory judgment against Brewed+Pressed, Dar, and Heffelfinger that that (a) Adell is a Member in Brewed+Pressed; (b) that Counter-Defendants Dar and Heffelfinger improperly exercised the Disruptive Member provisions of the Company Agreement; (c) Adell was not paid a reasonable sum for his Membership interests, and (d) that the non-compete contained in the Company Agreement is unreasonable and unenforceable as drafted; and reasonable and necessary attorneys' fees and costs of court against Brewed+Pressed, Dar, and Heffelfinger, jointly and severally;

c. Actual and statutory damages, pre-judgment and post-judgment interest, costs of court, and reasonable and necessary attorney's fees under Section 134 of the Texas Civil Practice & Remedies Code;

d. All pre-judgment and post-judgment interest at the maximum rates allowed by law as otherwise available;

e. All court costs as otherwise available;

f. All reasonable and necessary attorneys' fees as otherwise available; and

g. All other and further relief to which Adell is entitled by law or equity.

Respectfully Submitted,

/s/Braden M. Wayne

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ATTORNEYS FOR DEFENDANT /
COUNTER-PLAINTIFF ZACHARY ADELL

Certificate of Service

I certify that this document was served in accordance with the Texas Rules of Civil Procedure on April 4, 2017, by the manner indicated upon the following persons:

Via E-File

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ATTORNEY FOR PLAINTIFFS

/ COUNTER-DEFENDANTS

/s/Braden M. Wayne

Braden M. Wayne

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