

CAUSE NO. 2020-40598

STEVEN A. ROGERS, INDIVIDUALLY § IN THE DISTRICT COURT OF
AND ON BEHALF OF THE §
TURKEY LEG HUT & COMPANY, LLC, §
Plaintiff, §
v. § HARRIS COUNTY TEXAS
NAKIA PRICE, §
Defendant. § 333rd JUDICIAL DISTRICT

**DEFENDANT NAKIA PRICE'S ORIGINAL ANSWER, COUNTERCLAIM AND
REQUEST FOR INJUNCTIVE RELIEF**

Defendant Nakia Price, individually and on behalf of Turkey Leg Hut & Company, LLC, files this Original Answer, Counterclaim, and Request for Injunctive Relief in response to the Original Petition, Application for Declaratory Judgment, Application for Temporary Restraining Order, and Application for Temporary Injunction filed by Steven A. Rogers, Individually and on Behalf of The Turkey Leg Hut & Company, LLC, and shows the following:

I. INTRODUCTION

1. Ms. Nakia Price ("Price") principally operates and is the majority interest owner in The Turkey Leg Hut & Company, LLC ("TLH"), which owns a popular Houston restaurant.

2. Scorned by Price's refusal to pay him what he wants for his interest in TLH, Rogers filed this lawsuit in attempt to gain negotiating leverage and mask his own misdeeds against TLH.

For weeks now, Rogers and Price have been in heated negotiations for a buyout of Roger's interest. Price made a fair offer. In apparent disagreement, Rogers responded with this lawsuit. At the time he delivered the lawsuit, he also delivered a counteroffer—the timing was deliberate. This lawsuit, including its unsupported request for injunctive relief and appointment of a receiver, is a desperation move to squeeze money out of Price.

3. And while Rogers only now in this lawsuit alleges wrongdoing, he never did before—and there is none. At all times, Price has acted appropriately and in TLH’s best interest. Rogers, on the other hand, has not. Among other misdeeds, he has (1) embezzled thousands of dollars in payments made by a third-party company to TLH; (2) stolen money from TLH to pay for rent and equipment at two of his other business ventures or for a residence; (3) stolen TLH’s point-of-sale system valued at \$27,000 for use at one of his other business ventures; (4) hidden his scheme to avoid payment of sales and use tax at his other business ventures that has resulted in financial penalty to TLH; and (5) jeopardized TLH’s good standing under its lease by lying about securing a rent deferral agreement.

4. Further, although Rogers is not involved in TLH’s day to day operations, he is a signatory and has access to almost every financial and operating account of TLH. He is able to access, change, modify TLH’s account; immediately withdraw, transfer, dispose of, or make money unavailable in TLH’s accounts; and communicate with TLH’s bank, vendors, and counterparties. Based on his theft and embezzlement of TLH money and property as well as his ability to access TLH’s finances and operational assets, TLH is in danger of immediate theft or loss of its money and property by Rogers, which are critical to the continued operation of TLH.

5. Accordingly, in addition to damages and other requested relief, Price seeks injunctive relief individually and on behalf of TLH in order to preserve the status quo.

II. ANSWER

GENERAL DENIAL

6. Pursuant to Texas Rule of Civil Procedure 92, Price generally denies the allegations contained in Plaintiff's Petition, as well as any other amended or supplemental petition, and demands strict proof as required by the Constitution and the laws of the State of Texas.

DEFENSES, AFFIRMATIVE DEFENSES, AND OTHER RESPONSES

7. Plaintiffs have failed to state a claim upon which relief may be granted.

8. Plaintiffs' damages, if any, are a result of Rogers's own conduct, acts, omissions, negligence, or fault. Price pleads the provisions of Chapter 33 of the Texas Civil Practices and Remedies Code.

9. Plaintiffs' claims are barred in whole or in part to the extent the doctrines of waiver, estoppel, quasi-estoppel, and/or unclean hands are applicable.

10. Price's actions have not caused any damages to TLH or to Rogers. Section 6.10 of the Company Agreement expressly allows Members to engage in their own business ventures, whether or not such ventures compete with TLH, with no obligation to offer TLH or any other Member the right to participate in such ventures. Section 6.06 of the Company Agreement provides that Managers, such as Price, may receive compensation for their services.

11. Price denies that Rogers has standing to bring a derivative suit on behalf of TLH. Rogers does not adequately represent the interests of TLH because he is currently in breach of the Company Agreement and of his fiduciary duties owed to TLH.

III. COUNTERCLAIM

DISCOVERY CONTROL PLAN AND RULE 47 STATEMENT

12. Pursuant to Texas Rule of Civil Procedure 190.3, Price states discovery is intended

to be conducted under Level 2.

13. Pursuant to Texas Rule of Civil Procedure 47, Price states she is seeking monetary relief of \$100,000 or less and non-monetary relief.

PARTIES

14. Defendant/Counter-Plaintiff Price is an individual residing in Harris County, Texas.

15. Plaintiff TLH is a Texas limited liability company with its principal place of business in Harris County, Texas.

16. Plaintiff/Counter-Defendant Rogers is an individual residing in Harris County, Texas and may be served through counsel.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this controversy because the damages sought are within the jurisdictional limits of the Court. Venue is proper in Harris County, Texas pursuant to the contract between the parties. Further, the events and omissions giving rise to the claims stated below occurred in part in Harris County, Texas.

STATEMENT OF FACTS

18. Price is a managing member of TLH, along with Rogers and Carl Moore. Initially, membership interests in TLH were allocated as follows:

<u>Name and Address</u>	<u>Percentage</u>
Nakia Price	55%
Steven Rogers	15%
Mojeed Martins	10%
Carl Moore	10%
Jonathan Reitzell	10%

19. In April 2019, TLH purchased the membership interests of Mojeed Martins and Jonathan Reitzell, effectively achieving a redemption of those interests the result of which was a re-calculation of interests of Price, Rogers, and Moore pro rata according to Price's, Rogers's, and Moore's membership interests. Thus, Price received a 55/80 share of Martins' and Reitzell's 20% interest, or 13.75%, resulting in her current membership interest of 68.75%. Rogers received a 15/80 share of Martins' and Reitzell's 20% interest, or 3.75%, resulting in his current membership interest of 18.75%. Moore received a 10/80 share of Martins' and Reitzell's 20% interest, or 2.5%, resulting in his current membership interest of 12.5%.

20. Despite the simplicity of this calculation, Rogers claims that he owns 29% of TLH.

21. Further, under section 6.01(b) of the Company Agreement, "no Manager has the right, power, or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditure on behalf of the Company," except under the authority of a written consent or a resolution adopted in accordance with the Company Agreement. Yet, Rogers has repeatedly violated section 6.01(b) of the Company Agreement for his own financial benefit and to the detriment of TLH.

22. As example, across the street from TLH's restaurant is a valet parking lot for TLH customers, that is operated by a third-party company (the "Valet Company"). TLH and the Valet Company have an arrangement whereby TLH pays the rent for the parking lot and the Valet Company reimburses TLH in the amount of \$1,000 per month. For at least thirteen months, Rogers has been collecting \$1,000 per month from the Valet Company and keeping it for himself while lying to Price and Moore that those amounts were never paid.

23. Rogers also caused TLH to incur a \$40,000 obligation to Wells Fargo without authorization. TLH previously used the Clover point-of-sale system ("POS") for credit card

processing until, all of a sudden, Rogers signed a merchant services agreement with Wells Fargo on behalf of TLH. The Wells Fargo merchant services agreement caused TLH to owe approximately \$40,000 to Wells Fargo in credit card processing fees, which TLH did not have to pay using the Clover system. Upon information and belief, Rogers obtained a benefit personally and/or for his other businesses by bringing TLH as a customer to Wells Fargo.

24. Rogers has his own business ventures, including the restaurant Bar 5015. Rogers stole the POS from TLH and installed it at Bar 5015. The POS cost TLH \$27,000. On June 12, 2020, Bar 5015 exploded due to a fire which officials quickly determined was arson after a video surfaced showing four individuals pouring gasoline all over the restaurant. On information and belief, the POS was destroyed in the fire.

25. Rogers also has jeopardized TLH's relationship with its landlord and ability to keep its lease. Rogers represented to Price that the landlord had agreed to defer rent payment to the end of the lease term. Later, Price spoke to the landlord and discovered that no such agreement ever existed and that TLH was in default and needed to pay the past due rent.

26. Rogers also committed TLH to buy the company Scrappy Brown LLC without making any investigation into Scrappy Brown LLC's financial condition. Rogers knew that he was not authorized to enter into the transaction, but he acted on behalf of TLH anyway and made the purchase. Because Rogers failed to conduct any due diligence, TLH inherited a \$275,000 obligation to the Texas Comptroller of Public Accounts (the "Comptroller"). On information and belief, Rogers derived a personal benefit and/or benefit to his other business vendors by causing TLH to purchase Scrappy Brown LLC.

27. With respect to his other business ventures, on information and belief, Rogers repeatedly forms new limited liability companies and ditches the old entities to avoid paying taxes

to the Comptroller. The Comptroller recently caught on to Rogers's scheme and required every entity associated with Rogers, including TLH, to put up a bond to ensure payment of estimated taxes owed. Such condition is an unnecessary financial hardship to TLH. And Rogers failed to tell Price and Moore of his scheme and has refused to share any information that would help TLH avoid the bond requirement.

28. Rogers also misappropriated TLH's funds for his own purposes. In late 2019, Rogers used TLH money to pay rent for two of his other business ventures or for a residence and to purchase equipment for Bar 5015.

29. Rogers also is attempting to take a 2017 Ford F-450 (the "Truck") belonging to TLH. Although the Truck was purchased in Rogers' name, it was by agreement purchased for the benefit of TLH for use in its operations. In exchange, TLH agreed to pay—and has paid—the Truck's monthly loan payments and maintenance costs. Rogers' demand for the Truck is a breach of the agreement and an attempt to deprive TLH of the Truck's use and of the equity it owns in the Truck.

30. All conditions precedent to right of Price and/or TLH to recover against Rogers in this action have occurred, have been performed, or have been waived.

CAUSES OF ACTION

Breach of Contract

31. Rogers breached the Company Agreement by acting on behalf of TLH without the authorized consent. Rogers also breached the agreement concerning TLH's ownership and equity in the Truck. Rogers's breaches has caused Price and TLH damages by causing TLH to incur unnecessary liabilities and other damages.

Texas Theft Liability Act

32. Rogers unlawfully appropriated TLH's money and POS. Rogers's conduct

constitutes theft under section 31.03 of the Texas Penal Code. A violation permits Price and TLH to pursue a civil claim under the Texas Theft Liability Act (“TTLA”), Texas Civil Practices and Remedies Code Chapter 134 *et seq.*

33. Pursuant to the TTLA, Rogers is liable to TLH and Price for the actual damages resulting from the theft, plus additional damages, as well as their attorney fees, expenses, and costs.

Conversion

34. TLH owned the POS. Rogers wrongfully exercised dominion and control over it when he stole it from TLH and installed it at his restaurant, Bar 5015. Bar 5015 later burned down due to arson, destroying the POS.

35. TLH was entitled to possess the Valet Company rental reimbursements. Rogers wrongfully exercised dominion and control over the Valet Company rental reimbursements by taking the money for himself. Despite demand, Rogers refused to return the \$13,000 to TLH.

36. TLH owns the funds in its bank accounts. Rogers wrongfully exercised dominion and control over those funds when he used those funds to pay rent at his other businesses and/or a residence and to purchase equipment for Bar 5015.

Breach of Fiduciary Duty

37. As a Manager of TLH, Rogers owes fiduciary duties to TLH. Rogers breached his fiduciary duties by misappropriating TLH’s money and property; by causing TLH to incur unnecessary obligations and liabilities; by making material misrepresentations to Price and TLH that jeopardized TLH’s ability to operate its business; and by acting on behalf of TLH without authority in breach of the Company Agreement. Rogers’s breaches caused TLH damages. Upon information and belief, Rogers also benefitted from his wrongful conduct by getting a reward or

credit from Wells Fargo for committing TLH to the Wells Fargo merchant services agreement.

Declaratory Judgment

38. A justiciable controversy exists as to the allocation of membership interests in TLH and TLH's equitable ownership of the Truck.

39. Price asks that the Court enter a declaratory judgment that (a) Rogers owns an 18.75% membership interest in TLH; (b) Price owns a 68.75% membership interest in TLH; (c) Moore owns a 12.5% membership interest in TLH; and that (d) TLH is the equitable owner of the Truck and the equity, if any, associated with the Truck.

**IV. REQUEST FOR TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION**

40. The Sworn Declaration of Nakia Price is attached as Exhibit A and incorporated here by reference.

41. TLH and Price are entitled to the relief demanded and all or part of the relief requires the restraint of some act which is prejudicial to them. Specifically, as set forth above, Rogers has engaged in acts of deceit including theft and embezzlement of TLH money and property. He is unable to satisfy financial obligations to the Comptroller and has demonstrated a willingness to take creative and wrongful measures for his personal benefit. He has the ability to access TLH's finances and operational assets. These circumstances create a risk of irreparable harm in the form of immediate and permanent loss of money and property from TLH which are critical to the continued operation of TLH especially during the current downturn in TLH's business due to COVID-19.

42. TLH and Price, therefore, request that this Court enter a temporary restraining order and an injunction enjoining Rogers and his agents, servants, and employees from:

- a. Interfering with TLH's business operations;

- b. Withdrawing any funds from TLH's bank accounts;
- c. Opening any new bank accounts for TLH;
- d. Incurring any obligations on behalf of TLH;
- e. Transacting any business on behalf of TLH;
- f. Communicating with TLH's contractual counterparties, including but not limited to the Valet Company and TLH's landlord;
- g. Taking any action to injure, prejudice, or harm TLH; and
- h. Changing or modifying account terms or settings, including but not limited to changing or modifying terms of financial, payroll, or other vendors of TLH and the ownership records of the 2017 Ford F-450 referenced in the Petition.

43. Price further requests that the Court compel Rogers to appear for a deposition via Zoom in advance of any temporary injunction hearing and to respond in full to each of the requests for production set forth in Price's and TLH's motion for expedited discovery.

44. Price is willing to post a bond for the requested injunctive relief. Due to the egregious nature of Rogers's conduct, Price requests that the bond be nominal.

EXEMPLARY DAMAGES

45. Price is entitled to recover exemplary damages under chapter 41 of the Texas Civil Practice & Remedies Code. Rogers's actions were taken knowingly, recklessly, intentionally, willfully and/or with gross negligence. Price prays for exemplary damages in an amount assessed by the fact finder to punish Rogers for these actions.

ATTORNEYS' FEES

46. Rogers' refusal to abide by his contractual obligations has made it necessary for Price to employ the undersigned attorneys to file this lawsuit. As such, Price requests that this

Court, under chapters 37, 38, 134, and 143 of the Texas Civil Practices and Remedies Code, award a reasonable fee for services rendered and to be rendered by Price's attorneys in this matter as well as expenses and court costs.

JURY DEMAND

47. Price demands a jury on all issues to be tried in this matter and submits the jury fee.

REQUEST FOR DISCLOSURES

48. Price requests Rogers disclose the information required by Texas Rule of Civil Procedure 194.2(a)-(l).

PRAYER

WHEREFORE, Defendant/Counter-Plaintiff Nakia Price prays that upon trial of this matter Plaintiffs/Counter-Defendants Steven Rogers and The Turkey Leg Hut & Company, LLC take nothing by suit; that upon final trial Defendant/Counter-Plaintiff Nakia Price and The Turkey Leg Hut & Company, LLC be awarded judgment against Plaintiff/Counter-Defendant Steven Rogers for actual damages, exemplary damages, reasonable attorneys' fees, costs of suit, prejudgment interest and post-judgment interest at the highest legal rate; that the Court grant Defendant/Counter-Plaintiff Nakia Price's and The Turkey Leg Hut & Company, LLC's application for injunctive relief; and that Defendant/Counter-Plaintiff Nakia Price and The Turkey Leg Hut & Company, LLC be granted any such other and further relief, whether general or special, legal or equitable, to which she may be justly entitled.

Respectfully submitted,

JACKSON WALKER LLP

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**ATTORNEYS FOR NAKIA PRICE
INDIVIDUALLY AND ON BEHALF OF
THE TURKEY LEG HUT &
COMPANY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2020, a true and correct copy of the above document was served via email to:

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