

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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Chef Chloe LLC,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Index No. _____
	:	
Pryor Cashman LLP,	:	<b><u>COMPLAINT</u></b>
	:	
Defendants.	:	
	:	
	:	
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**INTRODUCTION**

1. Lawyers cannot be allowed to knowingly participate with their client to cheat their client's partner out of their business. But that is exactly what happened here. The Pryor Cashman law firm knowingly aided and abetted its client's breach of its fiduciary duty by stealing Chloe Coscarelli's business entity's 50% ownership interest in her restaurant business—a venture that Pryor Cashman's client valued at \$75 million.

2. Chloe Coscarelli is widely recognized as America's favorite vegan chef. Known for her creative, colorful, and delicious vegan cuisine, Chloe has transformed hearts and minds over what vegan food can be. "By Chloe" fast-casual vegan restaurants were in fact by Chloe to introduce vegan food to a broad base of people. But after the restaurant's immensely popular opening, Chloe's business partner—ESquared Hospitality—plotted and conspired to take her 50% ownership interest in CCSW LLC without paying her.

3. ESquared Hospitality did not act alone. It turned to its longtime legal counsel at Pryor Cashman for aid and assistance. But ESquared Hospitality's wholly-owned subsidiary

owed fiduciary duties to Chloe's business entity (Chef Chloe LLC) to act solely in the best and joint interest of the business, to avoid conflicts of interest, and not to engage in self-dealing or self-profit for itself or others. Even so, Pryor Cashman knowingly participated in assisting ESquared Hospitality to force a no cost repurchase of Chef Chloe's ownership in the By Chloe restaurant company in March 2017. That transaction immediately damaged and deprived Chef Chloe of her portion of the business valued at \$75 million.

4. Yet Pryor Cashman's efforts to seize Chef Chloe's interests were legally ineffective and Pryor Cashman knew it, as evidenced by the applicable contractual language over repurchase rights. Indeed, Pryor Cashman took the lead role in advising, structuring, and creating the transaction that vitiated any repurchase right, and the lead role drafting and signing the purported repurchase letter. More specifically, CCSW had no right to repurchase Chloe's interests in 2017 because an ESquared Hospitality Liquidity Event (as defined by contract) occurred in 2015 that prevented a repurchase right in the first place. Pryor Cashman was well aware of the 2015 liquidity event because it advised ESquared Hospitality to make the transaction for tax purposes. The Pryor Cashman partner who completed the transaction even advertises his expertise on "[a]dvising clients on planning for a liquidity event, such as the sale of a company[.]" Thus, Pryor Cashman knew that a liquidity event occurred, and thus no basis for repurchase existed in 2017 (or ever for that matter).

5. But there is more. The purported basis to try to direct CCSW to repurchase Chef Chloe's interest was an unconfirmed and inchoate arbitration award issued on March 21, 2017, which served as the predicate for Pryor Cashman to try to repurchase Chef Chloe's interest on ESquared Hospitality's behalf the following day. Put differently, Pryor Cashman's justification for its failed efforts to repurchase Chef Chloe's membership interest was that the March 21, 2017

*unconfirmed* arbitration award was immediately effective and enforceable. But since that purported repurchase, a second arbitrator—the Honorable Faith S. Hochberg (Ret.)—confirmed that the repurchase was in fact wrongful and ineffective. Yet Pryor Cashman on behalf of its clients has refused to recognize this binding arbitration award, now contending that arbitration awards are ineffective and “inchoate” until confirmed by a district court—taking the opposite position that it did with respect to the March 2017 award. Pryor Cashman cannot have it both ways: if arbitration awards are ineffective until confirmed, then Pryor Cashman’s purported repurchase was wrongful and ineffective in 2017 because the first arbitration award was unconfirmed when Pryor Cashman sent the repurchase letter; and if arbitration awards are effective only upon issuance, then Chloe was immediately restored as a 50% owner in 2020 and Pryor Cashman aided its clients in refusing to recognize Chef Chloe’s 50% membership interests. Pryor Cashman’s irreconcilable positions compel the inference that it acted with a bad-faith intent to deprive—and continually deny—Chef Chloe of her ownership interests to accomplish ESquared Hospitality’s self-interested transaction. In short, Pryor Cashman knowingly participated in its continuing efforts to deny Chloe her 50% ownership interests in 2017, 2018, 2019, and ultimately culminating in 2020.

6. Chloe files this Complaint to seek compensatory and punitive damages to hold Pryor Cashman accountable for aiding and abetting this misconduct.

### **PARTIES**

7. Plaintiff Chef Chloe LLC is a California Limited Liability Company wholly owned by Chloe Coscarelli (Chloe).

8. Defendant Pryor Cashman LLP is a law firm headquartered in New York City, New York, with offices in Los Angeles, California, and Miami, Florida.

## NON-PARTIES

9. James Haber and his many corporate entities are longtime clients of Pryor Cashman.

10. Haber has a history of sharp business practices that are relevant here. *See Humboldt Shelby Holding Corp. & Subsidiaries v. Comm’r of Internal Revenue*, 606 F. App’x 20, 21 (2d Cir. 2015) (affirming penalties for Haber artificially creating \$75,000,000 in tax losses, holding that Haber’s transactions amounted to a “sham,” “devoid of economic substance”); *Ironbridge Corp. v. C.I.R.*, 528 F. App’x 43, 44 (2d Cir. 2013) (affirming two separate U.S. Tax Court decisions charging Haber’s company Ironbridge Corp. “with a total of \$44,075,776.80 in unpaid taxes and related penalties”). For example, through his firm Diversified Group, Inc. (“DGI”), Haber devised and promoted tax shelters that the IRS found to be illegal and fined Haber and DGI \$25 million as a result. *See, e.g., Haber v. United States*, 823 F.3d 746 (2d Cir. 2016). Haber has repeatedly invoked his Fifth Amendment right against self-incrimination to avoid testifying on the subject. *See, e.g. AD Inv. 2000 Fund LLC v. IRS*, Nos. 9177-08, 9178-08, 2015 WL 7423367, at \*14 (T.C. Nov. 19, 2015); *Ironbridge Corp. v. IRS*, 528 Fed. App’x 43, 45 (2d Cir. 2013). The Second Circuit recently rejected his objection to the IRS’ investigation into whether he has hidden assets in his wife’s accounts. *Haber*, 823 F.3d at 746. As described in more detail below, Haber has relied for years on Pryor Cashman for tax advice, including over the ESquared-branded entities.

11. Nor was Chloe the first chef and business partner that Haber tried to cheat. Haber spent many years in litigation with Chef Laurent Tourondel, creator of the BLT line of restaurants, seeking to prevent Tourondel from opening restaurants under his own name or serving menu items that he created. Haber even bragged about forcing the chef out: “A celebrity

chef is not necessary for the life thereafter . . . They are useful for establishing a brand, but you're almost better off when they leave, since their egos don't get in the way."

12. This case is about Pryor Cashman's aiding and abetting Haber's unlawful strategy to force Chloe out of the company she founded.

### **JURISDICTION AND VENUE**

13. This Court has personal jurisdiction pursuant to CPLR Article 3 over Pryor Cashman because a substantial part of the events that gave rise to this matter occurred in the State of New York, and Pryor Cashman resides in and conducts business in the State of New York, and has systematic and continuous contacts with the State of New York.

14. Venue is proper pursuant to CPLR § 503 because Defendant maintains a principal place of business in New York County and the wrongful conduct primarily occurred in New York, New York.

### **BACKGROUND**

#### **Chloe**

15. Chloe has earned the recognition as "America's favorite vegan chef." After graduating from UC Berkeley, she attended culinary school at the prestigious Natural Gourmet Institute in New York City and received a plant based nutrition degree from Cornell University. At age 22, Chloe appeared on—and won—Food Network's hit television competition, Cupcake Wars.

16. After Cupcake Wars, mainstream America started to appreciate Chloe and her talent. The New York Times published its first feature article about Chloe and her success as a vegan chef. Chloe published three best-selling cookbooks with Simon & Schuster: Chloe's

Kitchen, Chloe's Vegan Italian Kitchen, and Chloe's Vegan Desserts. And Woman's World magazine featured Chloe on its cover and in a high-profile article.

17. Chloe also hosted the first ever sold out vegan dinner at the South Beach Wine & Food Festival. She collaborated with "Top Chef" Tom Colicchio for a vegan pop-up restaurant called Supernatural. And she cooked the first vegan dinner hosted at the James Beard House.

18. National and culinary media have showcased Chloe's success. The New York Times, Zagat, and Forbes have each profiled Chloe in their "30 under 30" series. Chloe makes frequent appearances on the Today Show, among other national television networks and shows.

### **The By Chloe Restaurants**

19. Based on Chloe's growing fame, she pursued her dream of opening her own restaurant in 2013. By age 26, Chloe had conceived of a fast-casual vegan restaurant concept. In January 2014, Chloe pitched her concept to the CEO of ESquared Hospitality—a hospitality company based in New York City, New York.

20. Chef Chloe and ESquared Hospitality established CCSW to launch Chloe's concept for fast-casual vegan restaurants. Chef Chloe and ESquared Hospitality as members each had a 50% membership interest in CCSW. CCSW was otherwise a manager-managed LLC. Each member was allowed to designate one manager. Chef Chloe designated Chloe as a manager, and ESquared Hospitality designated Wasser as a manager. The managers owed fiduciary duties to the members.

21. In July 2015, CCSW opened its first "By Chloe" restaurant on Bleecker Street in the West Village of New York City. It was a smash success with a crowd of Chloe's fans gathered around the block on opening day and rave press reviews.

22. The popularity of By Chloe continued to skyrocket. As the number of locations grew, for example, By Chloe has been called the “vegan McDonalds” and the “vegan Shake Shack.”

23. But as the success of By Chloe increased, Chloe’s business relationship with the CEO of ESquared Hospitality, James Haber, and his daughter, Samantha Wasser, deteriorated. Haber maintained an inappropriate and unprofessional work environment. And his overall greed led to a scheme to repurchase Chef Chloe’s 50% membership interest in CCSW for zero dollars. Haber planned to “milk” Chloe’s name “till we can’t!”

24. Haber and Wasser turned to Pryor Cashman for help.

#### **The Pryor Cashman Law Firm**

25. Pryor Cashman is a national law firm headquartered in New York City. In addition to New York, Pryor Cashman has offices in Los Angeles, California, and Miami, Florida. And the firm boasts on its website that it serves a client base around the globe.

26. According to Law.com, Pryor Cashman’s total revenue exceeded \$134 million in 2020 with over \$1.3 million in profits per partner.

27. Pryor Cashman touts a wide range of practices, including corporate and tax law.

28. Pryor Cashman’s corporate practice promotes the ability to assist companies “counter intense competition” and highlights the firm’s ability to advise companies in “everything from day-to-day issues to the most complex investments, mergers and acquisitions (M&A), and financings.” Pryor Cashman also touts its ability to devise a clear path to resolve issues. Indeed, the firm helps companies “leverage opportunities” and “execute strategy.”

29. Pryor Cashman also maintains that it offers elite tax advice, especially for high net worth individuals. The firm “help[s] clients take advantage of partnerships, limited liability

companies and other pass-through vehicles to further their business and investment objectives.”

Eric Woldenberg chairs Pryor Cashman’s Tax and Private Client Groups practice and serves on the firm’s Executive Committee. He offers “sophisticated counsel” to clients “with regard to wealth preservation, intra-family transfers and business succession planning” as well as “advising clients on planning for a liquidity event, such as the sale of a company, private equity transaction or an initial public offer.”

30. Pryor Cashman has represented ESquared Hospitality and Haber for years across practice areas. In particular, Pryor Cashman has advised ESquared Hospitality and Haber on a multitude of corporate and tax issues.

**Pryor Cashman Tried to Seize Chef Chloe’s Membership Interests in CCSW for Zero Dollars on Behalf of CCSW and ESquared Hospitality**

31. Pryor Cashman advised ESquared Hospitality and Haber throughout their effort to repurchase Chef Chloe’s membership interests for zero dollars.

32. For instance, as of August 9, 2016, ESquared Hospitality designated its wholly-owned subsidiary, ESquared CCSW Management LLC, as a manager of CCSW. Pryor Cashman advised and counseled ESquared Hospitality on this designation. Thus, from that date forward, ESquared CCSW Management owed fiduciary duties to Chef Chloe—and Pryor Cashman knew it. ESquared Hospitality managed ESquared CCSW Management as well.

33. The CCSW Operating Agreement set forth limited scenarios when CCSW could repurchase Chef Chloe’s membership interest. But under Section 19.5, the agreement makes clear that any repurchase right would “automatically terminate and be of no further force or effect upon the occurrence” of an ESquared Hospitality Liquidity Event.

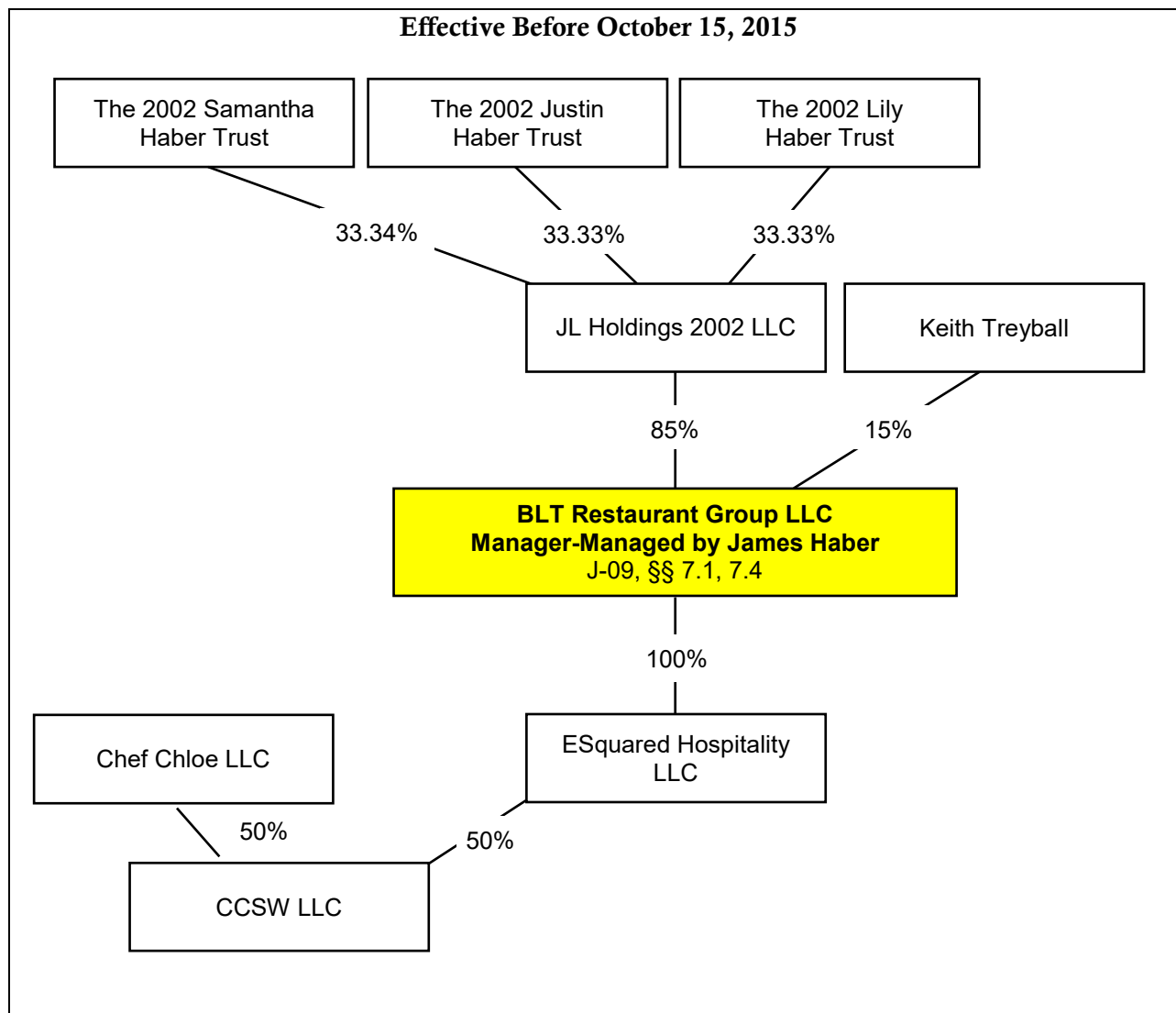
34. The Operating Agreement defined an “ESquared Hospitality Liquidity Event” as “a sale, financing, public offering or other change of control transaction involving ESquared



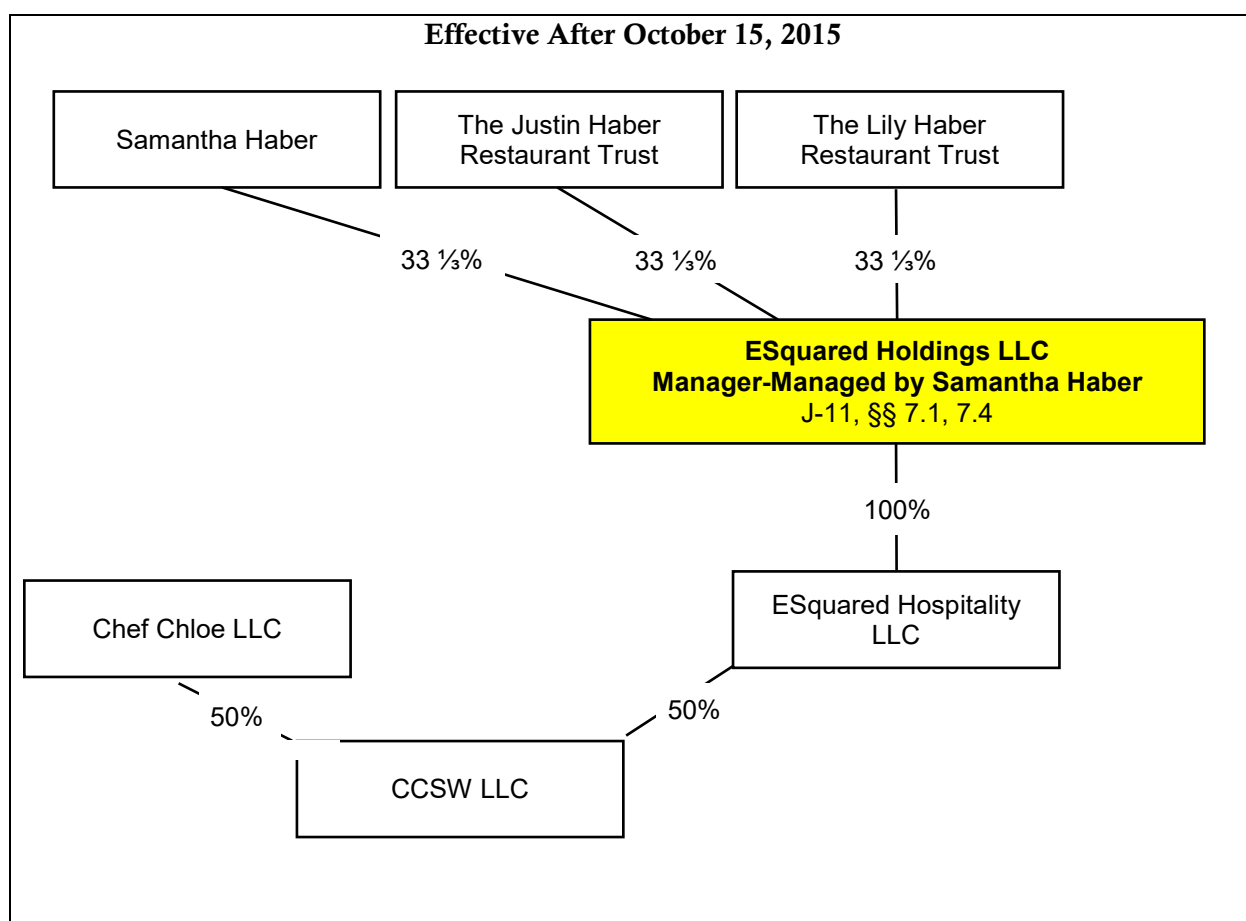
Hospitality (or its parent entity) and/or no less than a majority of the restaurants that ESquared Hospitality and its Affiliates have an ownership and/or management interest in.”

35. On October 15, 2015, Pryor Cashman advised and executed an ESquared Hospitality Liquidity Event.

36. Before October 15, 2015, BLT Restaurant Group LLC owned 100% of ESquared Hospitality:



37. On October 15, 2015, BLT Restaurant Group sold its 100% ownership interest in ESquared Hospitality to ESquared Holdings LLC for \$250,000. Pryor Cashman advised Haber on this transaction, and structured it as a sale “to be respected for sale purposes.” On October 15, 2015, Pryor Cashman knew that a sale of ESquared Hospitality—and thus an ESquared Hospitality Liquidity Event—took place because it advised and completed the transaction for ESquared Hospitality and Haber. Indeed, after October 15, 2015, ESquared Holdings LLC owned 100% of ESquared Hospitality:



38. The following year Pryor Cashman represented ESquared Hospitality and Haber in a contentious arbitration with Chef Chloe and Chloe. The arbitrator issued her final award on March 21, 2017. In that decision, the arbitrator confirmed that the managers of CCSW owe

fiduciary duties to its members—a finding advocated for by Pryor Cashman. Thus, no later than March 21, 2017, Pryor Cashman knew that ESquared Hospitality’s wholly-owned subsidiary ESquared CCSW Management, acting as manager of CCSW, owed Chef Chloe fiduciary duties as a 50% member of CCSW.

39. On March 22, 2017, Pryor Cashman—in aid and on behalf of its clients—drafted, structured, and signed the notice letter to Chef Chloe that purported to exercise CCSW’s alleged repurchase right of Chef Chloe’s 50% membership interest for zero dollars in reliance on the arbitration award. CCSW was valued at \$75 million at this time.

40. When Pryor Cashman sent this purported repurchase letter, the arbitration award was not confirmed by any court, nor had Pryor Cashman even filed a motion to confirm the award at this time.

41. Thus, when Pryor Cashman sent the purported repurchase letter, it knew of the sale of ESquared Hospitality in October 2015—and thus an ESquared Hospitality Liquidity Event. The firm also knew that its client owed Chef Chloe a fiduciary duty. And the firm knew that the arbitration award was unconfirmed. Yet it still devised, structured, and consummated the purported repurchase letter in an effort to maximize ESquared Hospitality’s equity interest in CCSW at the expense of Chef Chloe. In short, through its work to try to repurchase Chef Chloe’s interest for ESquared Hospitality’s benefit, Pryor Cashman knowingly participated in the breach of fiduciary duties owed to Chef Chloe.

### **The Pryor Cashman Opinion Letter**

42. After Pryor Cashman tried to repurchase Chef Chloe’s 50% ownership in CCSW, Pryor Cashman continued to advise ESquared Hospitality and Haber in their efforts to sell that interest in exchange for investment capital.

43. CCSW and ESquared Hospitality tried to solicit investments, including from Bain Capital, immediately after Pryor Cashman tried to repurchase Chef Chloe's membership interests. As part of these efforts, ESquared Hospitality purported to amend the CCSW operating agreement to reflect ESquared Hospitality's purported 99% ownership interest and Wasser's purported 1% ownership interest. On information and belief, Pryor Cashman advised on this amendment.

44. Pryor Cashman's advice and counsel to ESquared Hospitality and Haber culminated in an investment transaction on January 29, 2018. As part of this transaction, CCSW tried to change its name to BC Hospitality Group (BCHG) LLC and amend its operating agreement to transfer 100% ownership in the LLC to a new entity, BC Hospitality Inc. On information and belief, Pryor Cashman advised on this amendment and transaction.

45. Also as part of this transaction, BC Hospitality Group Inc. entered into a Series A Preferred Stock Purchase Agreement. As part of this stock purchase agreement, an investor group—including Bain Capital Double Impact Fund, Kitchen Fund, Qoot International, Lion Capital, and Collab+Consumer, among others (collectively, the Investor Group)—invested more than \$30 million for about 50% ownership in BCHG Inc. Pryor Cashman advised on this transaction.

46. In fact, as part of this transaction, Pryor Cashman provided an opinion of counsel for the Investor Group to rely on. As part of this opinion letter, Pryor Cashman opined that BCHG Inc. had the power and authority to execute the Transaction Agreements and to perform its obligations thereunder, including the issuance of the Series A Preferred Shares under the terms of the Transaction Agreements.

47. Under the terms of this transaction, all notices under the Series A Preferred Stock Purchase Agreement to BCHG Inc. must be sent to Pryor Cashman at Eric Woldenberg's attention.

48. When Pryor Cashman offered this opinion of counsel, Pryor Cashman knew that (1) Chef Chloe disputed CCSW's purported repurchase of her 50% membership interest, and (2) Pryor Cashman's efforts to repurchase Chef Chloe's 50% membership interest occurred before court confirmation of an arbitration award. Pryor Cashman did not disclose either of these facts in its opinion of counsel.

49. As part of this transaction, ESquared Hospitality received over \$15 million in consideration, including about \$10 million in cash and another \$5 million that was converted to stock in BCHG Inc.

50. Through its work on behalf of ESquared Hospitality and BCHG, Pryor Cashman continued to knowingly aid and assist ESquared Hospitality and BCHG to benefit from the 50% membership interest that rightfully belonged to Chef Chloe.

**Pryor Cashman Continued to Deny Chef Chloe Her 50% Membership Interest After a Second Arbitration**

51. In 2018, Chef Chloe sued BCHG LLC and ESquared Hospitality for ESquared Hospitality's ineffective repurchase of her 50% membership interest. Pryor Cashman, on behalf of BCHG and ESquared Hospitality, continued to deny Chef Chloe her 50% membership throughout the litigation.

52. After Chef Chloe's claim for 50% membership was stayed in district court for arbitration, Chef Chloe commenced arbitration in 2019. The Honorable Faith S. Hochberg (Ret.) presided as arbitrator. After a week-long final hearing in December 2019, Judge Hochberg issued her Partial Final Award in May 2020. As part of that award, Judge Hochberg declared that Pryor

Cashman's efforts to repurchase Chef Chloe's 50% membership interest on behalf of ESquared Hospitality was ineffective because the October 2015 sale that Pryor Cashman orchestrated was an ESquared Hospitality Liquidity Event which eliminated any repurchase right from arising in the future. Judge Hochberg therefore ordered Chef Chloe's membership interests to be restored. That Partial Final Award was included as part of a comprehensive final award in September 2020.

53. Even so, when Chef Chloe sought to exercise rights as a member of CCSW following the arbitration award, Pryor Cashman responded on behalf of ESquared Hospitality and BCHG and continued to deny Chef Chloe her 50% membership interest as ordered by Judge Hochberg. Pryor Cashman, on behalf of both ESquared Hospitality and BCHG, denied Chef Chloe her membership interest because it contended that Judge Hochberg's award was "inchoate" until confirmed by a district court. Put differently, Pryor Cashman on ESquared Hospitality and BCHG's behalf continued to deny Chef Chloe her 50% membership interest by representing that arbitration awards are ineffective—or "inchoate"—until reduced to judgment by a district court. That same position necessarily means that Pryor Cashman's attempted repurchase in March 2017 was per se ineffective because the first award was unconfirmed at that time.

54. Through its work on behalf of ESquared Hospitality and BCHG, Pryor Cashman continued to knowingly participate in the breach of fiduciary duties owed to Chef Chloe by continuing to aid and assist in the wrongful denial of Chef Chloe's 50% membership interest.

### **Count I**

#### **Pryor Cashman Aided and Abetted Breach of Fiduciary Duty Owed to Chef Chloe**

55. Chef Chloe incorporates each paragraph above here.

56. The managers of CCSW owed its member, Chef Chloe, fiduciary duties of care and good faith. These duties require fiduciaries to act solely in the best and joint interest of the business, to avoid conflicts of interest, and not to engage in self-dealing or self-profit for itself or others.

57. As of August 9, 2016, ESquared Hospitality designated its wholly-owned subsidiary, ESquared CCSW Management LLC, as a manager of CCSW. Pryor Cashman advised and counseled ESquared Hospitality on this designation. Thus, from that date forward, ESquared CCSW Management owed fiduciary duties to Chef Chloe.

58. Pryor Cashman knew of those fiduciary duties at least because the arbitrator confirmed that managers in CCSW owed fiduciary duties to the members of CCSW in the award on March 21, 2017.

59. This fiduciary duty was breached on March 22, 2017, through the attempted repurchase of Chef Chloe's membership interest for zero dollars. The attempted repurchase was a self-dealing and self-interested transaction, from which a conflict-of-interest existed as well, and, therefore, a breach of fiduciary duty of good faith because Pryor Cashman placed its clients' interests ahead of Chef Chloe's interests. No repurchase right existed because (1) an ESquared Hospitality Liquidity Event occurred in October 2015, and (2) the arbitration award from the day before on March 21, 2017—the basis for the attempted repurchase—was unenforceable and “inchoate” without court confirmation.

60. Pryor Cashman knowingly induced and participated in this breach of fiduciary duty through its substantial assistance in the breach. For instance, Pryor Cashman affirmatively assisted and enabled the breach to occur by authoring, signing, structuring, and ultimately consummating the purported repurchase on its client's behalf and to the detriment of Chef Chloe.

Put differently, the breach of fiduciary duty *only* occurred through Pryor Cashman's actions and assistance.

61. Nor was Pryor Cashman's actions purporting to exercise the repurchase right completely within the scope of its duty as lawyers. To the contrary, the attempted repurchase occurred through a notice letter—the same type of notice letter that the principals of the business often sent out as opposed to their lawyers. In fact, ESquared Hospitality's CEO, James Haber, sent similar notice letters about rights and issues arising from the Operating Agreement or the company to Chloe, including in September 2016 and shortly before the attempted repurchase in January 2017. Nothing about Pryor Cashman's purported repurchase letter required or called for duties of a lawyer.

62. And Pryor Cashman's actions were done knowingly and willingly. For instance, before March 22, 2017, Pryor Cashman knew about the ESquared Hospitality Liquidity Event because it advised ESquared Hospitality on the transaction, precisely so that it would be respected for "sale purposes." As a result, Pryor Cashman had actual knowledge of facts that prevented any repurchase right from existing in March 2017. Pryor Cashman also had actual knowledge of the fiduciary duty owed to Chef Chloe from the March 2017 arbitration decision. Yet Pryor Cashman aided and abetted its clients—through Pryor Cashman's knowing participation and substantial assistance by authoring, signing, and sending the purported repurchase letter—in their self-dealing efforts to try to repurchase Chef Chloe's membership interests for zero dollars in March 2017.

63. Also before March 22, 2017, Pryor Cashman knew that the arbitration award was not confirmed by a district court or reduced to judgment. Thus, Pryor Cashman had actual knowledge of facts that again prevented any repurchase right because the arbitration award was



unenforceable and inchoate until confirmed. Even so, Pryor Cashman aided and abetted its clients—through Pryor Cashman’s knowing participation—in their self-dealing efforts to try to repurchase Chef Chloe’s membership interests for zero dollars.

64. Pryor Cashman continued to aid and abet this breach of fiduciary duty through its continued efforts to deny Chef Chloe her 50% membership interest. For instance, in January 2018, Pryor Cashman issued an opinion letter to induce a \$30 million investment and purport to change ownership interests in CCSW, which included over \$15 million of consideration to ESquared Hospitality, while knowingly omitting that Chef Chloe disputed the repurchase that Pryor Cashman orchestrated.

65. Pryor Cashman continued to advise, aid, and abet its clients in their efforts to deny Chef Chloe her 50% membership interests later in 2018, 2019, and 2020. For instance, even after Judge Hochberg’s finding that an ESquared Hospitality Liquidity Event occurred and thus no repurchase right existed, Pryor Cashman continued to aid and abet its clients in their refusal to recognize Chef Chloe’s 50% membership interest. Throughout the summer and fall of 2020, for instance, Pryor Cashman on behalf of ESquared Hospitality and BCHG, refused to accept Judge Hochberg’s arbitration award because Pryor Cashman represented that arbitration awards are unenforceable until confirmed by a judgment. Such actions revealed and further evidence Pryor Cashman’s bad-faith, fraudulent, and intentional continuing effort to deny Chef Chloe her 50% membership interest to the benefit of the ESquared Hospitality entities.

66. Specifically, Pryor Cashman’s various positions over the attempted repurchase cannot all be true. If, as Pryor Cashman maintained in May 2020 and beyond, arbitration awards are not effective until confirmed by a court, then Pryor Cashman had actual knowledge that the attempted repurchase in March 2017 was in fact ineffective because the arbitration award that

served as the basis for the attempted repurchase was not confirmed when Pryor Cashman authored, signed, and sent the attempted repurchase letter. Conversely, if arbitration awards are effective and binding upon issuance, then Pryor Cashman's actions and assistance to continue denying and preventing Chef Chloe from her 50% membership interest after Judge Hochberg's award was, and is, wrongful. Under either scenario, Pryor Cashman has acted in bad faith and outside any honest efforts to protect ESquared Hospitality and its subsidiaries, but rather in an intentional manner to harm Chef Chloe.

67. Chef Chloe has been damaged by the breaches of fiduciary duty that Pryor Cashman aided and abetted. For instance, Pryor Cashman's aiding and abetting, described above, deprived Chef Chloe of the value of her 50% membership interest in CCSW. When Pryor Cashman induced and participated in the breach in March 2017, CCSW was valued at \$75 million, so that Chef Chloe's ownership interest was worth \$37.5 million. But-for Pryor Cashman's wrongful conduct, Chef Chloe could have had the opportunity to realize the value of her equity.

68. The value of Chef Chloe's interest continued to increase as Pryor Cashman continued to aid and abet the improper efforts to deny Chef Chloe her rightful ownership in the company she founded. For example, Pryor Cashman's aiding and abetting denied Chef Chloe the opportunity to obtain the value of her 50% ownership as BCHG expanded and grew in value. For background, the number of stores generally drives valuations for fast-casual restaurants. Back when only one By Chloe location existed, Haber valued CCSW at \$25 million alone. BCHG Inc. planned to open up to 50 locations by 2023, with valuations of the company projected at \$223 million. Thus, Chef Chloe's 50% interest in BCHG was worth between \$43.2 million and \$63.1 million in 2019. Alternatively, even ESquared Hospitality and BCHG—represented by Pryor

Cashman—valued Chef Chloe’s interest at \$7.9 million in a litigation-driven opinion to devalue her ownership, representing an absolute floor of the value of Chef Chloe’s interests. Pryor Cashman’s continuing efforts to deny Chef Chloe her 50% ownership interest in 2020 also prevented Chef Chloe from monetizing her ownership interests as the company struggled in the immediate aftermath of the coronavirus pandemic. Thus, but-for Pryor Cashman’s wrongful efforts to deny Chef Chloe her membership interests, Chef Chloe would have had the opportunity to monetize the value of her ownership interest at various points in time when a market existed for her equity.

69. In short, Pryor Cashman’s aiding and abetting denied Chef Chloe the ability to realize the value of her 50% interest, and Chef Chloe has been harmed as a result.

70. Chef Chloe has also been damaged in the amount of \$2.27 million—the confirmed attorney fee and cost award to Chef Chloe for the arbitration over her 50% interest in CCSW that remains unsatisfied.

71. In conjunction with compensatory damages, or in the alternative to, Chef Chloe seeks the equitable remedy of restitution.

72. Chef Chloe is also entitled to punitive and exemplary damages for Pryor Cashman’s willful misconduct. For example, if arbitration awards are unenforceable until confirmed (as Pryor Cashman has maintained for ESquared Hospitality and BCHG), then Pryor Cashman’s efforts to repurchase Chef Chloe’s interests in March 2017 were per se ineffective. Yet if arbitration awards are immediately enforceable without confirmation, then Pryor Cashman’s efforts to deny Chef Chloe her 50% membership interests since May 2020 were ineffective. Pryor Cashman’s “heads-I-win, tails-you-lose” efforts to deny Chef Chloe her

membership interests reveal and exemplify its bad faith, fraudulent, and intentional efforts to harm Chef Chloe.

73. Chef Chloe is also entitled to an award of attorneys' fees and costs, and prejudgment interest in an amount to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Chef Chloe, LLC requests the following relief:

- a. A finding that Pryor Cashman aided and abetted the breach of fiduciary duty owed to Chef Chloe.
- b. An award of compensatory damages in an amount greater than the monetary threshold in the Commercial Division, New York County, and to be determined at the trial of this action, and in no event less than \$37.5 million.
- c. An award of punitive and exemplary damages, and disgorgement of Pryor Cashman's profits in an amount no less than \$112.5 million (triple the minimum compensatory damages).
- d. An award of attorney's fees and costs.
- e. An award of prejudgment interest.
- f. Such other and further relief as the Court may deem just and proper.

Dated: May 14, 2021

Respectfully submitted,

By: /s/ Ronald J. Schutz

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