

CAUSE NO. _____

OMAR JOSE PERENEY,

Plaintiff,

VS.

CEVICHE TRAINERA, L.L.C.
and TRAINERA ENTERPRISES,
L.L.C.,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Omar Jose Pereney ("Pereney") files this Original Petition against Defendants Ceviche Trainera, L.L.C. and Trainera Enterprises, L.L.C. ("Trainera") and would respectfully show the Court as follows:

I.

PRELIMINARY MATTERS

1. Pereney is an individual resident of Texas.
2. Defendant Ceviche Trainera, L.L.C. is a Texas limited liability company with its principal place of business at 1700 Post Oak Blvd., Suite 1-190, Houston, Texas 77056. It may be served with process via its registered agent, Jaime Isita, at 1700 Post Oak Blvd., Suite 1-190, Houston, Texas 77056.
3. Defendant Trainera Enterprises, L.L.C. is a Texas limited liability company that has forfeited its existence and that has a principal place of business at 1700 Post Oak

Blvd., Suite 1-190, Houston, Texas 77056. It may be served with process via its registered agent, Jaime Isita, at 1700 Post Oak Blvd., Suite 1-190, Houston, Texas 77056.

4. This Court has jurisdiction over this matter because the amount in controversy exceeds its minimum jurisdictional requirements. Venue is proper under Sections 15.002 and 15.005 of the Texas Rules of Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas, and because the contracts at issue were negotiated in and performable in Harris County.

5. Pereney requests that the Court order a Level 2 Discovery Control Plan.

6. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Pereney is seeking damages within the jurisdictional limits of this Court, including monetary relief under \$100,000.

7. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Pereney requests a trial by jury and pays the appropriate fee.

II. **FACTS**

8. Pereney is a world-famous chef. His rise to fame began when, as only a 15-year-old child, he starred in a cooking show on the Latin American network *El Gourmet*—the Latin-American equivalent of the Food Network.

9. In 2010, when Pereney was 16, he became the executive chef of the Dalai Restaurant & Lounge in Caracas, the capital city of his native Venezuela. At age 18, he

became an instructor at the Cancun, Mexico location of the renowned Parisian culinary school, *Le Cordon Bleu*.

10. In or around 2013, in light of his culinary prowess, Pereney accepted a chef position at one of Mexico City's most well-known seafood restaurants, *La Trainera*.

11. In 2014, the owners of *La Trainera* decided to open an upscale seafood restaurant in Houston, Texas. Knowing that they would need a talented chef to lead the restaurant, *La Trainera's* owner, Maite Ysita ("Ysita"), offered to move Pereney to Houston to be the restaurant's executive chef. Pereney accepted.

12. Ysita's new restaurant, *Peska Seafood Culture*, opened in April 2015 in a coveted location in the Galleria area. Under Pereney's guidance, *Peska Seafood Culture* garnered significant press coverage, rave reviews, and was soon named as one of Houston's top restaurants. For example, Allison Cook of the Houston Chronicle listed *Peska Seafood Culture* as #37 in her 2015 list of Houston's Top 100 restaurants.

13. As part of his employment, Pereney and Ysita's company, Ceviche Trainera, executed an at-will employment agreement ("Employment Agreement"). In the Employment Agreement, Ceviche Trainera agreed, among other things, to provide Pereney with (i) a salary, (ii) bonuses, and (iii) other benefits, including health insurance. The parties also agreed to refrain from disparaging each other.

14. The Employment Agreement also contained the following non-competition clause:

As part of the consideration for the covenants and promises of the Company under this Agreement, during the Employment Term and for a period of two (2) years following the Termination Date, regardless of the

reason for termination, Employee shall not, except as agreed to in writing by the Company, directly or indirectly engage, in Harris County, Texas or within (20) miles thereof, in any business that is in direct competition with the Company, for the benefit of Employee or for the benefit of any other Person other than the Company.

15. Shortly before the restaurant's opening, and in order to capitalize on Pereney's fame and persona, Ysita solicited Pereney to execute a "Name and Likeness Agreement" with her other company, Trainera Enterprises. Ysita initially wanted a "worldwide" license to Pereney's name and likeness for a period of ten years, with 80% of the profits going to Trainera Enterprises. After further negotiation, Pereney agreed to grant Trainera Enterprises the exclusive right to license and market Pereney's name and likeness in the "entertainment, amusement, comedy, motion picture, television, music, and print publishing industries" for a period of only five years within the United States and its territories, and with a 50/50 profit split. The parties also agreed not to disparage each other in any way.

16. In late 2016 and early 2017, Ysita decided to change *Peska Seafood Culture*'s direction from an upscale international seafood restaurant to a restaurant that would serve more traditional Tex-Mex and American fare in an effort to attract a wider range of diners. While sympathetic and understanding of Ysita's business goals, Pereney—understandably so—did not support the change. After all, Pereney was one of Latin America's most prestigious chefs and would now oversee a new menu that included dishes like macaroni and cheese and onion rings.

17. Accordingly, the parties decided to part ways. Pereney's last day of employment with *Peska Seafood Culture* was February 1, 2017.

18. Almost immediately thereafter, Ysita and her business partner, Adrian Hembree, gave interviews with reporter Eric Sandler of CultureMap Houston regarding *Peska Seafood Culture*'s new direction and new menu, and regarding Pereney's departure. Hembree, on behalf of Ysita, Ceviche Trainera, and Trainera Enterprises—and with Ysita's full knowledge and approval—openly criticized Pereney's food as being so artistic that it was inedible:

I look at a plate [Pereney] puts out, and it looks like art. I know he put every ounce of passion into putting out that dish. I think when something came out, a beautiful piece of fish that was sauced just right, it felt absolutely incredible. **You take that same fish and you overdress it and over-decorate it and put some twist to it and get really creative with it, that feeling of “I want to dig into that fish” really went away.**

(emphasis added).

19. Again, Pereney harbored no ill-feelings toward Ysita and simply wanted to move on with his career. Indeed, shortly after his resignation, Pereney posted the following statement on his Facebook account that praised his time as *Peska*'s chef:

[These] last two years have been a great experience working with an amazing group of professionals. Awesome friendships and relations that will last a lifetime. Also have some big announcements coming soon! Hit me up with new collaborations.

20. In order to facilitate his post-*Peska* career, Pereney reached out to Ysita regarding the mutual termination of the Name and Likeness Agreement and the non-competition agreement. Although Ysita initially seemed agreeable to terminating the Name and Likeness Agreement and the non-competition agreement, Ysita had an abrupt change of heart. Through her attorney, Ysita claimed that she would not sign any agreement that would release Pereney from his non-competition agreement or that would

give up Ysita's rights to Pereney's name and likeness. Ysita's motivation in doing so is nothing more than greed, ill-will, and revenge for Pereney's understandable reluctance to continue as *Peska Seafood Culture's* chef.

III.

CLAIMS AGAINST DEFENDANTS

(i) *Breach of Contract against Defendants*

21. Ceviche Trainera and Pereney had a valid, at-will Employment Agreement. In this Employment Agreement, Ceviche Trainera agreed, among other things, (i) to provide Pereney with health insurance; and (ii) not to disparage Pereney either during or after Pereney's employment.

22. Ceviche Trainera breached the Employment Agreement by refusing to provide Pereney with health insurance and by disparaging Pereney by issuing a statement in the news media criticizing Pereney's cooking.

23. Pursuant to the Employment Agreement and pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Pereney is entitled to his attorney's fees in the prosecution of this matter.

24. Pereney also had a Name and Likeness Agreement with Trainera Enterprises, in which Trainera Enterprises agreed to market Pereney's name for profit. Additionally, Trainera Enterprises agreed to refrain from disparaging Pereney either during or after the term of the agreement.

25. Trainera Enterprises breached the Name and Likeness Agreement by openly disparaging Pereney in the news media and by failing to make any attempt to market his name and likeness for profit.

26. Pursuant to the Name and Likeness Agreement and pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Pereney is entitled to his attorney's fees in the prosecution of this matter.

(ii) Declaratory Judgment/Suit for Reformation Pursuant to Tex. Bus. & Com. Code §15.50

27. Pereney is entitled to a declaration of his rights, status, and other legal relations with regard to the Employment Agreement and Name and Likeness Agreement.

28. Namely, Pereney is entitled to a judicial declaration that his obligations under both of those agreements have been terminated due to Defendants' prior material breaches. Additionally, Pereney seeks a judicial declaration that the Name and Likeness Agreement was terminated due to Trainera Enterprises' prior material breach.

29. Pereney also seeks a judicial declaration pursuant to either Tex. Civ. Prac. & Rem. Code §37.001 et. seq. or Tex. Bus. & Com. Code §15.50 and §15.51 that Pereney's non-competition agreement (i) is unenforceable due to lack of consideration; and (ii) overbroad.

30. Pereney is entitled to his reasonable and necessary attorney's fees in connection with this matter pursuant to Tex. Civ. Prac. & Rem. Code §37.009 and Tex. Bus. & Com. Code §15.51.

IV.
CONDITIONS PRECEDENT

31. All conditions precedent have been performed or have occurred.

V.
REQUEST FOR DISCLOSURES

32. Under Texas Rule of Civil Procedure 194, Pereney requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

VI.
CONCLUSION

33. Pereney prays that Defendants be commanded to appear and answer, and that Pereney have and recover the following from Defendants:

- a. A judicial declaration of his rights;
- b. Actual damages;
- c. Attorney's fees; and
- d. Any and all other relief Pereney may be entitled to at law or in equity.

Dated: May 18, 2017

Respectfully submitted,

MAHENDRU, P.C.



By: _____

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