

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

-----X
ABC,

Plaintiff,

- against -

XYZ,

Defendants,
-----X

Index No. _____

**DEFENDANTS'
VERIFIED
RESPONSE TO
BILL OF
PARTICULARS AS
TO
COUNTERCLAIMS**

Defendants herein respond to plaintiff's Demand for Verified Bill of Particulars as follows:

1. Set forth the date and place that it is alleged that the plaintiff and defendant entered into an oral agreement as set forth in paragraph 32 of the plaintiff's pleadings.
 - a. Set forth the monetary investment of each party.
 - b. Set forth the specific services or labor to be performed by each party of said agreement.

RESPONSE: Plaintiff and defendants XYZ first agreed to form the business in May of _____. It is difficult to establish the exact date and place where the agreement was finalized, since after the three identified a suitable premises for the business, plaintiff told the others on two or three occasions that he had changed his mind and did not want to be part of the new business. Each time, however, he reversed position and told them within a day or two that he had decided to go through with the deal. Then, in early June _____, just before a final decision was made on the location, plaintiff definitively informed XYZ that he had definitely decided to join them in the business. In that month the three formed their corporation, _____

Inc., agreeing that their commitment of money, time and labor would be equal (but did not specify as part of their agreement exactly what tasks each person would handle). They also entered into a lease as of _____ for the premises that would become the _____.

The approximate monetary investments of the parties are as follows: _____:
\$ _____; _____: \$ _____; _____: \$ _____.

2. Set forth the date on which plaintiff stopped contributing his labor as set forth in paragraph 33 of defendant's pleadings.

RESPONSE: Plaintiff spent very little time on company business or on the business premises during the buildout phase during which the premises were being readied for opening in _____. After the opening, plaintiff did come to work more regularly. After _____, however, plaintiff began spending less and less time working for the business, or even showing up at the _____. By _____, his inattention to the business -- partially due to the fact that plaintiff continued to work at _____ (a _____ where defendant XYZ had previously worked with plaintiff), even though he and XYZ had mutually pledged to quit working there once _____ opened for business, and even though XYZ had in fact quit _____ as promised -- was becoming a drain on _____ business and _____ Inc. It soon became apparent to XYZ that plaintiff was showing up only when salaries were being distributed. This continued through _____. By early _____, plaintiff was barely ever at _____, and the others had not seen him in approximately 3 months. XYZ wrote plaintiff a memo demanding that plaintiff change his behavior or leave the business. In response, plaintiff resumed work at _____, but after about only three weeks stopped showing up again. In _____, the company, at the direction of XYZ, dismissed plaintiff.

3. Set forth the labor that the plaintiff did contribute until it is alleged he stopped.

RESPONSE: Plaintiff did various tasks, primarily ordering supplies and managing inventory. For a period of about 1 year he assisted with _____. See also response to question 2 above.

4. Set forth the date, hours, place and nature of the extra labor defendants XYZ contributed as set forth in paragraph 34 of defendants' pleadings.

RESPONSE: Beginning in early _____, XYZ were forced to be at _____ virtually every day due to plaintiff's absences. In addition, they were compelled to spend a larger proportion of their time on managing the business, on tasks including but not limited to ordering supplies, managing inventory, keeping licenses up to date, complying with various tax requirements, managing payroll and employee relations, paying bills, maintaining the property, planning and overseeing capital improvements, renovating the garden, meeting and greeting customers, and participating in community events. Given the increased amount of time that they were forced to spend on such activities, they were able to spend much less time marketing and growing the business in the manner that they had planned.

5. Set forth the specific monetary damages that the defendants allege as set forth in paragraph 35 of defendants' pleadings.

RESPONSE: Defendants estimate that their inability to rely on plaintiff absences cost the business (at least) between \$_____ and \$_____ in revenues on an annual basis between _____ and _____ and during the first four months of _____.

6. State the basis on which it is alleged that a loss was suffered by defendants.

RESPONSE: The entire theory and business plan of the corporation was that the three shareholders would share not only the monetary investment, but the labor and management of _____. Within less than two years of the _____ opening, however, plaintiff's appearances at _____ were generally limited to once every two weeks, to collect wages. Other than on such occasions, plaintiff did not help _____, _____, order supplies, engage in marketing activities for _____, or handle any other responsibilities, at the same time that XYZ were working as many as 80 hours a week to try to make _____ a success. XYZ found that they had to hire and pay employees to do some of the work that plaintiff should have been doing. Other management-oriented tasks, such as marketing efforts, often could not be done at all because _____ was essentially operating shorthanded.

7. Provide the basis and calculation of the _____ (\$_____.00) dollars alleged by defendants XYZ as set forth in the first and second counterclaims.

RESPONSE: See response to questions 5 and 6 above.

Attorneys for Defendants

New York, New York _____

By: _____

Dated: New York, New York

_____, _____