STATE OF NORTH CAROLINA

File No. 16CV 05135

BUNCOMBE County

In The General Court Of Justice
☐ District ☒ Superior Court Division

FILED
2016 NOV 30 P 1:36
BUNCOMBE CO., C.S.C.
BY

Name And Address Of Plaintiff 1
TAMMY CALLOWAY

Name And Address Of Plaintiff 2
JAIMIE GREEN

VERSUS

Name Of Defendant 1
GUDRUN CASPER-LEINENKUGEL

Summons Submitted ☒ Yes ☐ No

Name Of Defendant 2
PATTON PUBLIC HOUSE, INC.

Summons Submitted ☒ Yes ☐ No

GENERAL
CIVIL ACTION COVER SHEET
☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), General Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)
Brian W. Sharpe, Esq.
and David R. Payne, Esq.
7 North Main Street
Marshall NC 28753

Telephone No.	Cell Telephone No.
(828) 649-8322	(828) 258-0076
NC Attorney Bar No.	**Attorney E-Mail Address**
51203 and 19945	bsharpe@drplawfirm.com

☒ Initial Appearance in Case ☐ Change of Address

Name Of Firm: DAVID R. PAYNE, P.A.
FAX No.: (828) 649-8377

Counsel for ☒ All Plaintiffs ☐ All Defendants ☐ Only *(List party(ies) represented)*

☒ Jury Demanded In Pleading
☐ Complex Litigation
☐ Amount in controversy does not exceed $15,000
☐ Stipulate to arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND) *Assess Motions Fee* (SEE NOTE)
- ☐ Amended Answer/Reply (AMND-Response) *Assess Motions Fee* (SEE NOTE)
- ☐ Amended Complaint (AMND) *Assess Motions Fee*
- ☐ Answer/Reply (ANSW-Response) (SEE NOTE)
- ☐ Change Venue (CHVN) *Assess Motions Fee*
- ☒ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL) *Assess Motions Fee*
- ☐ Contempt (CNTP) *Assess Motions Fee*
- ☐ Continue (CNTN) *Assess Motions Fee*
- ☐ Compel (CMPL) *Assess Motions Fee*
- ☐ Counterclaim (CTCL) *Assess Court Costs*
- ☐ Crossclaim (List On Back) (CRSS) *Assess Court Costs*
- ☐ Dismiss (DISM) *Assess Court Costs*
- ☐ Exempt/Waive Mediation (EXMD) *Assess Motions Fee*
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL) *Assess Motions Fee*
- ☐ Extend Time For Complaint (EXCO) *Assess Motions Fee*

NOTE: *See Side Two for a list of motions not subject to the motions fee.*

(check all that apply)

- ☐ Failure To Join Necessary Party (FJNP) *Assess Motions Fee*
- ☐ Failure To State A Claim (FASC)
- ☐ Improper Venue/Division (IMVN) *Assess Motions Fee*
- ☐ Intervene (INTR) *Assess Motions Fee*
- ☐ Interplead (OTHR) *Assess Motions Fee*
- ☐ Lack Of Jurisdiction (Person) (LJPN) *Assess Motions Fee*
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM) *Assess Motions Fee*
- ☐ Rule 12 Motion In Lieu of Answer (MDLA) *Assess Motions Fee*
- ☐ Sanctions (SANC) *Assess Motions Fee*
- ☐ Set Aside (OTHR) *Assess Motions Fee*
- ☐ Show Cause (SHOW) *Assess Motions Fee*
- ☐ Transfer (TRFR) *Assess Motions Fee*
- ☐ Third Party Complaint (List Third Party Defendants on Back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD) *Assess Motions Fee*
- ☐ Withdraw as Counsel (WDCN) *Assess Motions Fee*
- ☐ Other *(specify and list each separately)*

NOTE: *Assess fee only if court permission is required to amend.*

CLAIMS FOR RELIEF

- ☐ Administrative Appeal (ADMA)
- ☐ Appointment Of Receiver (APRC)
- ☐ Attachment/Garnishment (ATTC)
- ☐ Claim And Delivery (CLMD)
- ☐ Collection On Account (ACCT)
- ☐ Condemnation (CNDM)
- ☐ Contract (CNTR)
- ☐ Discovery Scheduling Order (DSCH)
- ☐ Injunction (INJU)
- ☐ Medical Malpractice (MDML)
- ☐ Minor Settlement (MSTL)
- ☐ Money Owed (MNYO)
- ☐ Negligence - Motor Vehicle (MVNG)
- ☐ Negligence - Other (NEGO)
- ☐ Motor Vehicle Lien G.S. 44A (MVLN)
- ☐ Limited Driving Privilege - Out-Of-State Convictions (PLDP)
- ☐ Possession Of Personal Property (POPP)
- ☐ Product Liability (PROD)
- ☐ Real Property (RLPR)
- ☐ Specific Performance (SPPR)
- ☒ Other (specify and list separately)
  Dissolution of Business; Breach of Fid. Duties; Fraud; UDTPA; Unjust Enrichment

Date

Signature Of Attorney/Party

NOTE: *All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752) or Court Action (AOC-CV-753) cover sheet.*

(Over)

DO NOT CHARGE MOTIONS FEE

Assess Costs (COST) Including Attorney's Fees (ATTY)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)

DO NOT CHARGE MOTIONS FEE. FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Forclosure) (RSOT)
Supplemental Procedures (SUPR)

DO NOT CHARGE MOTIONS FEE. OTHER FEES APPLY

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out Of State Attorney/Pro Hac Vice Fee)
Request For Subpoena By Out-Of-State Attorney

No.	☒ Additional Plaintiff(s)
3	VICTORIA LANCASTER-AMES

No.	☐ Additional Defendant(s) ☐ Third Party Defendant(s)	Summons Submitted
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

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FILED
2019 OCT 21
BUNCOMBE CO., C.S.C.
BY

STATE OF NORTH CAROLINA

BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL and PATTON PUBLIC HOUSE, INC.,

Defendants.

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

NOW COMES the Plaintiffs, Tammy Calloway, Jaimie Green, and Victoria Lancaster-Ames, through counsel and pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, and hereby dismisses their Complaint filed in this action without prejudice.

This the 21st day of October 2019.

WITH PERMISSION FOR

Brian W. Sharpe
SHARPE & BOWMAN, PLLC
7 North Main Street
Marshall, NC 28753
Telephone: (828) 649-8322
Facsimile: (828) 649-8377
brian@avl-law.com
N.C. Bar No. 51203

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has this day served the foregoing PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE to counsel of record for the Defendants in the manner as indicated below:

By facsimile transmission, with confirmation of receipt by 5:00 PM EST, addressed to:

Paul L. Bidwell, Esq.
BIDWELL & WALTERS, P.A.
207 Hillside Street
Asheville, NC 28801
fax no. (828) 412-4390

By depositing a copy into a post office or depository maintained under the exclusive custody of the U.S. Postal Service, and also by e-mail, addressed to:

Marjorie R. Mann, Esq.
LAW OFFICES OF MARJORIE ROWE MANN
46 Haywood Street, Suite 200
Asheville, NC 28801
mrowemann@gmail.com

This the 21st day of October 2019.

Brian W. Sharpe

STATE OF NORTH CAROLINA

BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL and PATTON PUBLIC HOUSE, INC.,

Defendants.

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

NOW COMES the Plaintiffs, Tammy Calloway, Jaimie Green, and Victoria Lancaster-Ames, through counsel and pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, and hereby dismisses their Complaint filed in this action without prejudice.

This the 21st day of October 2019.

Brian W. Sharpe
SHARPE & BOWMAN, PLLC
7 North Main Street
Marshall, NC 28753
Telephone: (828) 649-8322
Facsimile: (828) 649-8377
brian@avl-law.com
N.C. Bar No. 51203

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has this day served the foregoing PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE to counsel of record for the Defendants in the manner as indicated below:

By facsimile transmission, with confirmation of receipt by 5:00 PM EST, addressed to:

Paul L. Bidwell, Esq.
BIDWELL & WALTERS, P.A.
207 Hillside Street
Asheville, NC 28801
fax no. (828) 412-4390

By depositing a copy into a post office or depository maintained under the exclusive custody of the U.S. Postal Service, and also by e-mail, addressed to:

Marjorie R. Mann, Esq.
LAW OFFICES OF MARJORIE ROWE MANN
46 Haywood Street, Suite 200
Asheville, NC 28801
mrowemann@gmail.com

This the 21st day of October 2019.

Brian W. Sharpe

STATE OF NORTH CAROLINA

FILED

2019 OCT -8 P 2:49

BUNCOMBE CO., C.S.C.

BY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE

FILE NO.: 16 CVS 5135

TAMMY CALLOWAY, JAIMIE GREEN and VICTORIA LANCASTER-AMES,

Plaintiffs,

v.

GUDRUN CASPER-LEINENKUGEL,

Defendant.

NOTICE OF HEARING

TO: Mr. Brian W. Sharpe, Attorney for Plaintiffs
7 North Main Street
Marshall, North Carolina 28753

Ms. Marjorie Rowe Mann, Attorney for Defendant
46 Haywood Street, Suite 200
Asheville North Carolina 28801

PLEASE TAKE NOTICE that the undersigned attorney for Defendant will appear in Superior Court Courtroom 710 at the Buncombe County Courthouse in Asheville, North Carolina on the 21st day of October, 2019, at 10:00 a.m. or as soon thereafter as counsel may be heard on Defendant's Motion to Withdraw as Counsel of Record.

THIS, the 8th day of October, 2019.

BIDWELL & WALTERS, P.A.

PAUL LOUIS BIDWELL
NC Bar #: 12868
Attorney for Defendant
207 Hillside Street
Asheville, North Carolina 28801
(828) 252-0490

BUNCOMBE COUNTY CLERK OF COURT

N273939 10/08/19 14:51:21

PAYOR: CALLOWAY,TAMMY
PAYEE: PD BY BIDWELL & WALTERS
CASE#: 16CVS005135 VCAP:Y
CITA#:

21450 MOTION FEE	20.00
TOTAL PAID	20.00
CO TENDERED	20.00
CHANGE	.00

1597 ID C10KFB

CERTIFICATE OF SERVICE

THIS is to certify that I have this day served the following counsel of record:

To: Mr. Brian W. Sharpe, Attorney at Law, counsel for Plaintiffs
7 North Main Street
Marshall, North Carolina 28753

Ms. Marjorie Rowe Mann, Attorney for Defendant
46 Haywood Street, Suite 200
Asheville North Carolina 28801

in this matter, with a copy of the foregoing, "**NOTICE OF HEARING"** by

[X] First Class Mail by depositing in the United States Postal Service, a copy of same in a properly addressed envelope with adequate postage thereon.

THIS the 8th day of October, 2019.

BIDWELL & WALTERS, P.A.

PAUL LOUIS BIDWELL
NC Bar #: 12868
Attorney for Defendant
207 Hillside Street
Asheville, North Carolina
(828) 252-0490

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF USTICE
SUPERIOR COURT DIVISION
FILE NO.: 16 CVS 5135

FILED
2019 OCT -3 P 3:24
BUNCOMBE CO., C.S.C.
BY

TAMMY CALLOWAY;
JAIMIE GREEN and
VICTORIA LANCASTER-AMES,
Plaintiffs,

v.

GUDRUN CASPER-LEINENKUGEL,
Defendant.

MOTION TO WITHDRAW
AS COUNSEL OF RECORD

NOW COMES co-counsel for Defendant, Paul L. Bidwell, and moves to be allowed to withdraw from further representation of Defendant, and shows to the Court as follows:

1. That Defendant retained the undersigned and Marjorie R. Mann to represent her in the matter captioned above.

2. That Defendant consents to the withdrawal of the undersigned and will continue to be represented by Marjorie R. Mann.

3. Counsel does not make this Motion for the purpose of delay, and it does not prejudice the Plaintiff nor the Defendant in this action.

WHEREFORE, the undersigned respectfully requests the court to be permitted to withdraw from this matter.

THIS 30 day of September, 2019.

BIDWELL & WALTERS

PAUL L. BIDWELL
NC Bar #12868
ATTORNEY OF RECORD
207 Hillside Street
Asheville, North Carolina 28801
828-252-0490

Consented to by:

GUDRUN CASPER-LEINENKUGEL
Defendant

CERTIFICATE OF SERVICE

THIS is to certify that I have this day served counsel for the Plaintiff:

Mr. Brian W. Sharpe, Attorney at Law
7 North Main Street
Marshall, North Carolina 28753

Ms. Margie Rowe Mann
46 Haywood Street, Suite 200
Asheville, North Carolina 28801

in this matter, with a copy of the foregoing: "**MOTION TO WITHDRAW"**

[x] Via First Class Mail by depositing in the United States Postal Service, a copy of same in a properly addressed envelope with adequate postage thereon.

THIS the 7th day of October, 2019.

PAUL LOUIS BIDWELL
Attorney for Defendant

STATE OF NORTH CAROLINA FILED **IN THE GENERAL COURT OF USTICE**
SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE **FILE NO.: 16 CVS 5135**

2018 APR 24 P 4:25

TAMMY CALLOWAY; BUNCOMBE CO., C.S.C.
JAIMIE GREEN and
VICTORIA LANCASTER-AMES,
Plaintiffs,

NOTICE OF APPEARANCE

vs.

GUDRUN CASPER-LEINENKUGEL,
Defendant.
_____/

NOW COMES the undersigned counsel, Marjorie Rowe Mann entering her appearance in this case as co-counsel for the Defendant, GUDRUN CASPER-LEINENKUGEL.

THIS, the 24th day of April, 2018.

Marjorie R. Mann

Marjorie Rowe Mann
NC Bar # 13202
Co-Attorney for Defendant
207 Hillside Street
Asheville, North Carolina 28801
(828) 252-0490

CERTIFICATE OF SERVICE

THIS is to certify that I have this day served the following counsel of record:

Brian W. Sharpe
Attorney at Law
7 North Main Street
Marshall, North Carolina 28753

in this matter, with a copy of the foregoing **"Notice of Appearance:"**

[X] First Class Mail by depositing in the United States Postal Service, a copy of same in a properly addressed envelope with adequate postage thereon, or

[ ] By facsimile to _____, or

[ ] By leaving same at his/her office with a responsible partner or employee, or

[ ] By Sheriff Service.

THIS the 24th day of April, 2018.

Marjorie R. Mann

Marjorie Rowe Mann
Co-Attorney for Defendant

STATE OF NORTH CAROLINA **IN THE GENERAL COURT OF USTICE**
SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE **FILE NO.: 16 CVS 5135**

FILED
2018 APR 24 P 4:25
BUNCOMBE CO., C.S.C.
BY

TAMMY CALLOWAY;
JAIMIE GREEN and
VICTORIA LANCASTER-AMES,
Plaintiffs,

NOTICE OF APPEARANCE

vs.

GUDRUN CASPER-LEINENKUGEL,
Defendant.
_____/

NOW COMES the undersigned counsel, BIDWELL & WALTERS, P.A., entering its appearance in this case as counsel for the Defendant, GUDRUN CASPER-LEINENKUGEL.

THIS, the 24th day of April, 2018.

BIDWELL & WALTERS, P.A.

PAUL LOUIS BIDWELL
NC Bar #12868
JESSICA A. WALTERS
NC Bar #34901
Attorneys for Defendant
207 Hillside Street
Asheville, North Carolina 28801
(828) 252-0490

CERTIFICATE OF SERVICE

THIS is to certify that I have this day served the following counsel of record:

Brian W. Sharpe
Attorney at Law
7 North Main Street
Marshall, North Carolina 28753

in this matter, with a copy of the foregoing **"Notice of Appearance:"**

[X] First Class Mail by depositing in the United States Postal Service, a copy of same in a properly addressed envelope with adequate postage thereon, or

[ ] By facsimile to _____, or

[ ] By leaving same at his/her office with a responsible partner or employee, or

[ ] By Sheriff Service.

THIS the 24th day of April, 2018.

BIDWELL & WALTERS, P.A.

PAUL LOUIS BIDWELL
JESSICA A. WALTERS
Attorneys for Defendant

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

FILED
2018 APR 16 P 2:51
BUNCOMBE CO., C.S.C.
BY

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL and PATTON PUBLIC HOUSE, INC.,

Defendants.

NOTICE OF HEARING ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT GUDRUN CASPER-LEINENKUGEL

PLEASE TAKE NOTICE that the undersigned attorney for Plaintiffs Tammy Calloway, Jaimie Green, and Victoria Lancaster-Ames, will appear for a hearing on the *PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT GUDRUN CASPER-LEINENKUGEL* at **10:00 AM** on Monday, **April 23, 2018**, in Courtroom 710 at the Buncombe County Courthouse, located in Asheville, North Carolina, to be held as soon thereafter as the Court and calendar will allow.

This the 13th day of April 2018.

SHARPE & BOWMAN, PLLC

Brian W. Sharpe
7 North Main Street
Marshall, NC 28753
Phone: (828) 649-8322
Fax: (828) 649-8377
N.C. Bar No. 51203
brian@avl-law.com

Attorney for Plaintiffs

BUNCOMBE COUNTY CLERK OF COURT

N246087 04/16/18 14:51:09

PAYOR: CALLOWAY,TAMMY
PAYEE: PD BY SHARPE & BOWMAN
CASE#: 16CVS005135 VCAP:Y
CITA#:

21450	MOTION FEE	20.00

TOTAL PAID	20.00
CO TENDERED	20.00
CHANGE	.00

0542 ID C10KFB

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the opposing parties with the foregoing NOTICE OF HEARING ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT GUDRUN CASPER-LEINENKUGEL by depositing a copy into an official depository or post office maintained under the exclusive custody and control of the U.S. Postal Service, contained in a wrapper with adequate postage affixed thereon, and addressed as follows:

Gudrun Casper-Leinenkugel
15 Schmidt Terrace
Hendersonville, NC 28739

Patton Public House, Inc.
Post Office Box 6530
Asheville, NC 28816

This the 13th day of April 2018.

Brian W. Sharpe

FILED
2018 JAN 25 P 4:39
BUNCOMBE CO., C.S.C.
BY

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL and PATTON PUBLIC HOUSE, INC.,

Defendants.

PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT GUDRUN CASPER-LEINENKUGEL

Plaintiffs Tammy Calloway, Jaimie Green, and Victoria Lancaster-Ames, through counsel and pursuant to Rule 37 of the North Carolina Rules of Civil Procedure, hereby move this Honorable Court for entry of an Order compelling the Defendant to fully respond to the Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant Gudrun Casper-Leinenkugel. In support of this motion, Plaintiffs respectfully show unto the Court the following:

1. This lawsuit arises out of a joint business venture known as "Patton Public House," which began construction in 2013 and finally opened its doors in 2016, using the well-known restaurant space that formerly housed the Barbeque Inn, located at 1341 Patton Avenue in Asheville, Buncombe County, North Carolina. Plaintiffs contend that Patton Public House was established and operated as a partnership between each of them and the Defendant Gudrun Casper-Leinenkugel, the latter of whom would later deny such arrangement and seek to oust Plaintiffs from the business.

2. In their Complaint, the Plaintiffs assert eight claims for relief against Ms. Casper-Leinenkugel, as well as the alleged sham corporation that she formed using the partnership's business name. These claims include: (1) dissolution of business partnership; (2) breach of fiduciary duties of good faith, loyalty, and due care; (3) fraud, misrepresentation, and/or fraud in the inducement; (4) unfair and/or deceptive trade practices; (5) unjust enrichment; (6) resulting trust; (7) constructive trust; and (8) punitive damages pursuant to Chapter 1D of the N.C. General Statutes.

3. Plaintiffs served their First Set of Interrogatories and Requests for Production of Documents upon Defendant Gudrun Casper-Leinenkugel by regular U.S. Mail on October 16, 2017.

4. A true and accurate copy of the Plaintiffs' unanswered discovery requests is attached hereto as **Exhibit A**.

5. Pursuant to Rules 26, 33, and 34 of the North Carolina Rules of Civil Procedure, the Defendant's interrogatory answers and production of documents and other tangible things were due to be served upon Plaintiffs' counsel no later than November 20, 2017.

6. Defendant Gudrun Casper-Leinenkugel has not served any answers to the Plaintiffs' interrogatories, nor has she lodged any objections thereto. Likewise, the Defendant has never produced nor permitted inspection of any documents in response to Plaintiffs' requests for production thereof.

7. A mediated settlement conference was initially scheduled to be held in this matter on November 15, 2017. However, on the evening prior to mediation, Plaintiffs' counsel received an e-mail message from the court-appointed mediator, Ms. Kathy Gleason, Esq., who advised that she had received an e-mail that arrived moments ago from the Defendant requesting to postpone mediation because Casper-Leinenkugel had just retained counsel to represent her in this action, and her attorney could not attend the settlement conference under such short notice.

8. At all times prior to requesting that mediation be postponed, the Defendant had appeared without an attorney and had proceeded *pro se*. However, based solely on the Defendant's assertion that she had retained counsel on the very eve of mediation, the mediator explained to the parties that she had agreed to accommodate Defendant's request, and for this same reason had also decided, in her discretion, not to bill any extra fees to the Defendant for her last-minute cancellation.

9. The rescheduled mediation was held on December 13, 2017. Prior to the beginning of settlement negotiations, the Defendant again informed Ms. Gleason, along with the undersigned attorney for Plaintiffs, that an attorney was representing her in the case, but that her counsel was away on a previously-scheduled overseas trip and could not attend the mediated settlement conference for this reason. When asked who her attorney was, the Defendant named Ms. Ellen Bluestone, Esq., whom the undersigned confirmed to be an actively-licensed attorney per the online membership directory published by the North Carolina State Bar, which said directory further lists her as holding active membership with the local bar for Buncombe County. Despite the absence of her purported counsel, Defendant Casper-Leinenkugel requested to participate in the mediation anyway, which ultimately concluded with the parties reaching an impasse.

10. At no time in this action has Ms. Bluestone or any other attorney ever entered an appearance for or made any court filings on behalf of the Defendants, Gudrun Casper-Leinenkugel and Patton Public House, Inc.

11. Written correspondence was sent to Ms. Bluestone on January 8, 2018, inquiring as to whether she planned to appear in this case as counsel for the Defendants or either of them. Additionally, this letter demanded that the Defendant Gudrun Casper-Leinkugel supply her interrogatory answers and responses to Plaintiffs' document production. In an attempt to secure Defendant's compliance with her discovery obligations short of seeking intervention by this Court, the Plaintiff's counsel extended an invitation for Defendant or her attorney to confer with the undersigned attorney no later than ten (10) days after the date of the aforesaid letter. Moreover, the written notice to Defendant states in specific terms, and makes it abundantly clear, that any further refusal by Defendant to produce the requested discovery responses will be met with a motion to compel the same. Exact copies of this letter were mailed directly to each of the Defendants, along with Ms. Bluestone.

12. A true and accurate copy of the letter from Plaintiffs' counsel is attached hereto as **Exhibit B**.

13. In response to this letter, Ms. Bluestone contacted the Plaintiffs' counsel by telephone on the evening of January 12, 2018, at which time she informed the undersigned attorney that she would not be making any appearances in this proceeding, that she had never implied nor made any suggestion to Defendant Casper-Leinenkugel that she would represent her in this case, and had instead informed Defendant that her law practice did not include litigation matters.

14. Plaintiffs' counsel has not received any contact from Defendant Casper-Leinenkugel in response to his January 8, 2018 letter.

15. The undersigned attorney certifies that, prior to the filing of this motion, he has in good faith conferred or attempted to confer with Defendant Casper-Leinenkugel in an effort to secure the requested discovery material without court action.

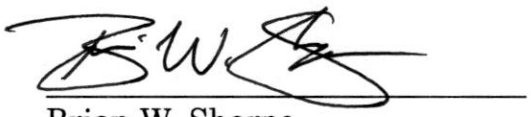
WHEREFORE, Plaintiffs respectfully move the Court to:

1. Enter an Order compelling the Defendant Gudrun Casper-Leinenkugel to fully respond to the discovery served by the Plaintiffs within 10 days thereof, and taxing the Defendant with the reasonable expenses and attorney's fees that have been incurred by the Plaintiffs in bringing this motion and obtaining such Order; and

2. Grant the Plaintiffs such other relief as the Court deems just and proper.

This the 25th day of January, 2018.

SHARPE & BOWMAN, PLLC



Brian W. Sharpe
7 North Main Street
Marshall, NC 28753
Phone: (828) 649-8322
Fax: (828) 649-8377
N.C. Bar No. 51203
brian@avl-law.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the opposing parties with the foregoing PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT GUDRUN CASPER-LEINENKUGEL by depositing a copy in the U.S. Mail addressed as follows:

Gudrun Casper-Leinenkugel
15 Schmidt Terrace
Hendersonville, NC 28739
Defendant pro se

Patton Public House, Inc.
Post Office Box 6530
Asheville, NC 28816
Defendant pro se

This the 25th day of January, 2018.

Brian W. Sharpe

EXHIBIT A

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL, and PATTON PUBLIC HOUSE, INC.,

Defendants.

PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT GUDRUN CASPER-LEINENKUGEL

Plaintiffs, through counsel and pursuant to Rules 26, 33, and 34 of the North Carolina Rules of Civil Procedure, hereby submit the following interrogatories and requests for production of documents to Defendant Gudrun Casper-Leinenkugel.

DEFINITIONS AND INSTRUCTIONS

A. You are required to answer the following interrogatories separately and fully in writing, **under oath**, and to serve a copy of your answers on the undersigned attorney for the Plaintiffs within **thirty (30) days** after the service hereof.

B. You are requested to produce copies of the requested documents and tangible things by making them available for inspection and copying at the office of Plaintiffs' attorney, Sharpe & Bowman, PLLC, 7 North Main Street, Marshall, NC 28753. You are required to serve your responses to the following requests for production of documents within **thirty (30) days** after the service hereof. Your response to these requests for production must state that inspection, copying, and related activities will be permitted promptly and as requested with respect to each item or category of document, unless the request is objected to, in which event, the reasons for the objection must be stated with particularity.

C. In answering the following interrogatories and requests for production of documents, you are required to furnish all information available to you, including information in the possession of your attorney or any person acting in your or his/her behalf, and not merely such information as is known to you or of your own personal knowledge. If you cannot answer any particular interrogatory or request for production in full, after exercising due diligence to secure the information sought, so

state and answer to the extent possible, specifying the reason for your inability to answer the remainder.

D. These interrogatories and requests for production of documents are continuing in nature until the date of trial, and you are required to amend a prior answer or response if you obtain information upon the basis of which (a) you know that the answer or response was incorrect when made, or (b) you know that the answer or response, though correct when made, is no longer true, and circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

E. Any such supplemental answer or response is to be filed and served upon the counsel of record for these Plaintiffs within fifteen (15) days after your receipt of such information responsive to these interrogatories and requests for production of documents.

F. If any interrogatory or request for production calls for information which is not in your possession or subject to your control or ascertainable by you, your attorneys, or others on your behalf upon reasonable inquiry, then, if known, identify the custodian or possessor of such information.

G. If you refuse to answer any of the following interrogatories or requests for production in whole or in part, describe the factual and legal basis for your refusal to answer in sufficient detail to permit the court to adjudicate the validity of your refusal to answer or respond. If any information called for by an interrogatory or request for production is withheld on the basis of a claim of privilege or attorney work product, please state the claimed basis for withholding the information and the nature of the information withheld, together with a statement of all of the circumstances relied upon to support such a claim. Whenever these interrogatories or requests for production of documents seek information as to a document claimed to be privileged, please include a statement as the identity of each such document, the fact of such claim of privilege, and the basis for such claim of privilege.

H. In lieu of answering any interrogatories which require the identification of documents, you may attach copies of such documents to your answers, provided that you identify which documents are responsive to which interrogatories, and state whether you are supplying all or only part of the documents sought by the interrogatory.

I. Where appropriate in these interrogatories and requests, the use of the singular shall include the plural, and the use of the plural shall include the singular, and the use of the masculine shall include the feminine or neuter, and vice versa.

J. When an interrogatory asks for specific information, such as a date or any amount, and the specific information requested is not known to you, such interrogatory shall be deemed to ask you to approximate the information requested

as best you can, provided that you indicate in your response that the information being provided is an approximation or is incomplete in certain specific respects.

K. "Defendant", "you", and "your" means Gudrun Casper-Leinenkugel, and includes her employees, agents, representatives, and, unless privileged, attorneys in this action.

L. "Patton Pub" means Defendant Patton Public House, Inc.

M. "Identify," "identification" or "identity," when used in reference to an individual person, means to state his full name, his present home address, his present home telephone number, his present business address, his present business telephone number, and his present or last known position and business affiliation.

N. The use of the word "or" shall mean "and", as well as "or".

O. As used herein, the term "document" shall mean the embodiment, in any form, of any attempt, by any means, to utilize, memorialize, or communicate thoughts or information. It includes originals or drafts of any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including all outlines and proposals of any such documents (whether or not actually used), and all copies thereof which are different in any way from the original, to which you have or have had access or which may be in your possession, custody, or control, or of which you have knowledge. As such, "document" includes, but is not limited to, any paper, contract, policy, endorsement, book, account, video, photograph, agreement, correspondence, memorandum, letter telegram, facsimile, telecopy, object, report, record, notes, intra-office communication, invoice, pamphlet, log, periodical, cable, study, diary, working paper, chart, graph, index, tape, data sheet or data processing care, floppy disk, disk, printed circuit, check, time sheet, ledger, bill computation, schedule, analysis, summary, instruction, computer memory bank, brief, pleading or other litigation paper, as well as any other tangible thing on which thoughts or information are recorded in writing, sound, pictures, punches, videos, circuits, programs, or other written, recorded, transcribed, filmed, or graphic matter however produced or reproduced.

INTERROGATORIES

1. Please state your full name, date of birth, driver's license number, social security number, current mailing address and street address, and list any other names you have gone by during your lifetime.

ANSWER:

2. Identify each partnership agreement, whether written or oral, to which you have been a party at any time since January 1, 2013, by stating (a) the name of the partnership, (b) the name and address of each partner, (c) the inclusive dates during which the partnership has been in effect, (d) the form (oral, written, etc.) of the partnership agreement, (e) the terms of the partnership, and (f) the location of any real property owned by the partnership or in which each partner owns an interest.

ANSWER:

3. Please state as to each corporation or limited liability company in which you have been a shareholder, director, officer, member and/or manager since January 1, 2013, (a) its name and the location of its principal office; (b) your ownership and roles in the company; (c) the name and address of each other shareholder, director, officer, member and/or manager of the company; (d) the inclusive dates during which the company has been doing business; and (e) each reason for any dissolution or cessation of doing business by the company.

ANSWER:

4. Please itemize the date, amount, source, form (*e.g.*, cash, check, electronic transfer, etc.), purpose, and justification for each commission, compensation, salary, wage, payment, or reimbursement made or credited to you from or in connection with Patton Pub.

ANSWER:

5. Identify all persons who you believe have knowledge of any relevant facts in this case, including, but not limited to, facts concerning Patton Pub and the partnership business that is the subject of the Complaint, and describe the facts of which you believe each person has knowledge.

ANSWER:

6. If you contend that any other person or legal entity is, in whole or in part, liable to the Plaintiffs for the matters alleged in the Complaint, identify that person or legal entity, and describe in detail, as to each person or entity identified, the reason or reasons upon which you base your belief of such liability.

ANSWER:

7. If you have selected any expert, identify each person whom you expect to call as an expert witness at any hearing or trial in this case; and, as to each expert so identified, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which he/she is expected to testify, and a summary of the grounds for each opinion. If you have not at this time selected an expert witness, or if you hereinafter select any other or additional expert witness, then state the subject matter on which the expert is expected to testify, the substance

of the facts and opinions to which he/she is expected to testify, and a summary of the grounds for each opinion.

ANSWER:

8. Please state whether you have a copy of any witness statement, howsoever denominated, concerning any fact or observation relating to the subject matter of this action or Patton Pub. If so, please identify each such statement by providing the name of the person making the statement, the date of the statement, and the content of the statement.

> For the purpose of this question, a statement is (1) a written statement signed or otherwise adopted or approved by the person making it; or (2) a stenographic, mechanical, electrical, typewritten transcription, or other recording that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

ANSWER:

9. State whether you co-mingled the income or revenues from Patton Pub with your own funds or bank account, and explain why such co-mingling occurred.

ANSWER:

10. List all bank accounts that were used in connection with Patton Pub, and include in your answer the account number, the date that the account was opened, the date that the account was closed (if the account was closed), the names of each person authorized to use or access the account, the type of account (*e.g.*,

checking, savings, etc.), and the name and address of the financial institution where the account is held and/or maintained.

ANSWER:

11. Please itemize the capital contributions that you made to Patton Pub and/or to the alleged partnership referenced in the Complaint and Answer filed in this case, and include in your answer the date, amount, value, recipient or payee, type of contribution (*e.g.*, real property, personal property, cash, etc.), and, if real or personal property, a description of what was contributed.

ANSWER:

12. State each month during 2013, 2014, 2015, 2016, and 2017, for which you did not provide Plaintiffs, or any one of them, with an accounting or accounting spreadsheet showing the income and expenses associated with Patton Pub.

ANSWER:

13. Please provide separately, as to each defense alleged in your Answer and response to the Complaint, a summary of the facts and expected testimony supporting the defense.

ANSWER:

14. Please itemize the date, amount, source, form (*e.g.*, cash, check, electronic transfer, etc.), and purpose for each commission, compensation, salary, wage, payment, or reimbursement made or credited to Tammy Calloway from or in connection with Patton Pub.

ANSWER:

15. Please itemize the date, amount, source, form (*e.g.*, cash, check, electronic transfer, etc.), and purpose for each commission, compensation, salary, wage, payment, or reimbursement made or credited to Jaimie Green from or in connection with Patton Pub.

ANSWER:

16. Please itemize the date, amount, source, form (*e.g.*, cash, check, electronic transfer, etc.), and purpose for each commission, compensation, salary, wage, payment, or reimbursement made or credited to Victoria Lancaster-Ames from or in connection with Patton Pub.

ANSWER:

17. Within the past 10 years, have you been tried or convicted of any felony or criminal offense punishable by more than 60 days in jail or pled guilty to or have forfeited bond on any felony or criminal charge punishable by more than 60 days in jail? If so, state the exact nature and date of each charge, along with the county, state, and court where the conviction, charge, or bond forfeiture occurred.

ANSWER:

18. If you are separated or divorced, state the name and last known address of your estranged or former spouse(s), and give the dates of each marriage and divorce or separation.

ANSWER:

19. Aside from the present action, are you currently, or have you ever been, a party to a civil lawsuit? If so, and as to each such lawsuit, state the court in which the action was brought, state the nature of the legal action and whether the action is still pending and, if not pending, the final resolution of the action.

ANSWER:

20. If you are employed, state where and what length of time you have been employed at your present job, your employer's full business name, what your position is, and what your job duties generally involve.

ANSWER:

21. List all of the places at which you have been employed since January 1, 2011, the dates of said employments, and the address and telephone number for each employer.

ANSWER:

22. Have you or any of your businesses ever been the subject of any claim, dispute, litigation, wage complaint, proceeding, investigation, or action involving the North Carolina Department of Labor and/or United States Department of Labor? If so, and as to each such matter, state the names of the employees, contractors, or other persons who were involved, the date and nature of the claim or complaint, the amount of wages or compensation that were disputed, and whether the matter is still pending and, if not pending, the final resolution thereof.

ANSWER:

23. State whether any current or former employees of Patton Pub have ever made any claims or complaints, whether official or unofficial, concerning any unpaid wages. If so, and as to each such matter, state the names of the employees, contractors, or other persons who were involved, the reason each person was not paid timely and in-full, the date of each claim or complaint, the amount of wages or compensation that were claimed to have been unpaid, and whether the claim or complaint is still pending and, if not pending, the final resolution thereof.

ANSWER:

24. Describe in detail all photographs, videos, or motion pictures taken of Patton Pub or of any renovations, repairs, or improvements that occurred with respect to the restaurant space or leased premises. Please provide the name and address of the person who now has custody and possession of the photographs, videos, or motion pictures.

ANSWER:

25. For each person who was ever employed by Patton Pub, please state the employee's name, job title(s), job duties, rate of pay, average number of hours worked per week, hiring date, date of termination, reason for termination, last known mailing address, and telephone number.

ANSWER:

26. State whether Patton Pub ever held any license or permit for the sale of beer, wine, liquor-by-the-drink, or other alcoholic beverage, and for each license or permit please state the date of its issuance, the date of its termination, the name of the licensee or permittee, the nature of the license or permit, and the name and address of the agency, bureau, commission, or licensing authority that issued the license or permit.

ANSWER:

27. State whether Patton Pub was ever investigated, charged, cited, fined, or otherwise involved in any official action concerning alleged violations of rules, regulations, standards, and/or laws associated with any license or permit identified in your answer to Interrogatory 26, and for each such incident describe the date, nature, and outcome thereof.

ANSWER:

28. For each and every lease agreement entered with respect to Patton Pub, please describe the beginning date, ending date, and terms and conditions, and also identify the lessor and lessee, including in your answer their names, addresses, and telephone numbers.

ANSWER:

29. For each and every contractor, sub-contractor, laborer, and/or tradesman who was involved in renovating, repairing, and/or improving Patton Pub's restaurant space, please state the individual contractor's name, their company name, last known address, telephone number, dates of service, total compensation paid, and the scope and nature of their work.

ANSWER:

30. State whether each and every contractor, sub-contractor, laborer, and tradesman identified in your answer to Interrogatory 29 was paid timely and in-full. If any such person was ever paid late or paid less than the amount he or she billed to Patton Pub or you, then please include in your answer the name of each such person, the number of days in which payment was late, the amount of the underpayment, and the reason or reasons that each such contractor was paid late or was not paid-in-full.

ANSWER:

31. Identify each food supplier that was used by Patton Pub, and include in your answer the types of food that were supplied, the dates or date ranges in which the supplier sold or delivered food to Patton Pub, and the names of the employees or representatives who served as Patton Pub's main source of contact for such supplier.

ANSWER:

32. For each food supplier identified in your answer to Interrogatory 31, please state whether you and/or Patton Pub ever failed to pay any invoice, bill, or request for payment on time and/or in-full. If you and/or Patton Pub failed to pay any food supplier in-full or on time, please state the name of the supplier, the due date of

the supplier's invoice, the date that payment was made, the amount of the underpayment, and the reason or reasons why the supplier was not paid on time or in-full.

ANSWER:

33. For each person whom you allege to be a current or former owner, shareholder, member, partner, corporate official, director, or manager of Patton Pub, please state their name, official title, ownership percentage, number of shares held, date or dates on which they acquired shares or ownership, and the amount paid for their shares or ownership.

ANSWER:

34. List all debts owed by Patton Pub, and include in your answer the date that the debt was incurred, the name and address of the person or entity to which the debt is owed, the original amount of the debt at the time it was incurred, the current amount of the debt, the total amount paid on the debt through the present date, the reason or reasons that the debt was incurred, and the name of the corporate official or other person who incurred the debt on behalf of Patton Pub.

ANSWER:

35. Identify all investors who have ever contributed any loans, capital, cash, labor, goods, services, or anything else of value to Patton Pub, and state whether each investor received any shares, ownership, or other entitlement to income generated by Patton Pub, and the amounts of such ownership, shares, or entitlement. and the date acquired.

ANSWER:

36. Have you, since May 1, 2014 until the present time, maintained or published an account, profile, or blog on a social networking website (*e.g.*, Facebook, Myspace, LinkedIn, Twitter, Instagram, etc.)? If so, for each such account or profile identify your user name and all photographical or textual communications made by you or directed to you which reference Patton Pub or any of the Plaintiffs.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All state and federal tax returns, including any schedules, addendums, and attachments thereto, that were prepared and/or filed for Patton Pub.

RESPONSE:

2. All state and federal tax returns that were prepared and/or filed by you, whether individually or in connection with any business that you were involved in, for the following tax years: 2013, 2014, 2015, and 2016.

RESPONSE:

3. Any witness statements identified in your answers to the foregoing interrogatories.

RESPONSE:

4. Any recorded or transcribed statements identified in your answers to the foregoing interrogatories.

RESPONSE:

5. Any photographs of Plaintiffs, Patton Pub, or you, relating to the facts and claims described in the Complaint.

RESPONSE:

6. Any documents, photographs, videotapes, audiotapes, diagrams, drawings, or other written or recorded items in your possession which relate to Patton Pub or to Plaintiffs.

RESPONSE:

7. All documents in your possession, custody, or control, which you sent to or received from any expert witness, or private investigator, whom you have designated or will designate to give expert testimony during the course of the trial in this case, and any private investigator whom you or anyone acting on your behalf has employed related to this litigation.

RESPONSE:

8. A current copy of the curriculum vitae of each expert witness whom you either have designated or will designate to give expert testimony during the course of the trial in this case.

RESPONSE:

9. All communications and photographs, whether in electronic or printed format, identified in your answers to the foregoing interrogatories.

RESPONSE:

10. All profit and loss statements for Patton Pub.

RESPONSE:

11. All communications, correspondence, and text messages with any other persons or entities, excluding privileged communications between you and your attorneys, relating to Patton Pub.

RESPONSE:

12. All contracts, agreements, and leases between Patton Pub and any other person or entity.

RESPONSE:

13. Any agreements between Patton Pub and you.

RESPONSE:

14. Any agreements between Patton Pub and Plaintiffs.

RESPONSE:

15. Any agreements between Plaintiffs and you.

RESPONSE:

16. Any partnership agreement in which you have been a party since January 1, 2013.

RESPONSE:

17. Records of all expenses incurred and/or paid relating to Patton Pub.

RESPONSE:

18. Records of all income received from and/or by Patton Pub.

19. Records of any payments, reimbursements, distributions, salary, and/or wages paid to you by, from, or on behalf of Patton Pub.

RESPONSE:

20. Records of any payments, reimbursements, distributions, salary, and/or wages paid to Plaintiffs by or from Patton Pub.

RESPONSE:

21. Records of any payments, reimbursements, distributions, salary, and/or wages paid to any investors by, from, or on behalf of Patton Pub.

RESPONSE:

22. Records of any payments, reimbursements, distributions, salary, and/or wages paid to any creditors by, from, or on behalf of Patton Pub.

RESPONSE:

23. Records regarding or reflecting any complaint filed against you, Patton Pub, or Plaintiffs with the North Carolina Alcoholic Beverage Commission.

RESPONSE:

24. Records regarding or reflecting any complaint filed against you, Patton Pub, or Plaintiffs with the North Carolina Department of Labor and/or United States Department of Labor.

RESPONSE:

25. Any contracts, agreements, proposals, estimates, invoices, receipts, or other records pertaining to any repairs, renovations, or improvements made to the restaurant space occupied by Patton Pub.

RESPONSE:

26. Each accounting or accounting spreadsheet that were prepared and/or maintained with regard to Patton Pub.

RESPONSE:

27. All documents reflecting the nature, amount, date incurred, or calculation of damages that you seek to recover by counterclaim in this action.

RESPONSE:

28. All corporate filings prepared for Patton Pub.

RESPONSE:

29. Records of any shareholder agreements and/or stock ownership involving Patton Pub.

RESPONSE:

30. All corporate books for Patton Pub.

RESPONSE:

31. All bank statements for any accounts held in the name of Patton Pub or on its behalf from May 1, 2013 until the present date.

RESPONSE:

32. All bank statements for any accounts in which you deposited any income generated by Patton Pub from May 1, 2013 until the present date.

RESPONSE:

33. All bank statements for any account from which you made any payments or expenditures for or on behalf of Patton Pub from May 1, 2013 until the present date.

RESPONSE:

34. All payroll records for Patton Pub.

RESPONSE:

35. All employee records for Patton Pub.

RESPONSE:

36. All records maintained by you and/or by Patton Pub pertaining to the Plaintiffs.

RESPONSE:

37. Records of all corporate meetings, minutes, operating agreements, and by-laws for Patton Pub.

RESPONSE:

38. Records regarding or reflecting any debts or financial obligations incurred by Patton Pub from May 1, 2013 until the present date.

RESPONSE:

39. Records regarding or reflecting any debts or financial obligations incurred by you in connection with Patton Pub from May 1, 2013 until the present date.

RESPONSE:

40. All documents, correspondence, and records generated by any accountants, attorneys, tax professionals, advisors, and/or business planners for or with respect to Patton Pub.

RESPONSE:

This the 16th day of October, 2017.

SHARPE & BOWMAN, PLLC

Brian W. Sharpe
7 North Main Street
Marshall, N.C. 28753
Phone: (828) 649-8322
Fax: (828) 649-8377
brian@avl-law.com
N.C. Bar # 51203

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that, on the date listed below, he has served the opposing parties with the foregoing PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT GUDRUN CASPER-LEINENKUGEL by U.S. Mail, postage prepaid, addressed as follows:

Gudrun Casper-Leinenkugel
15 Schmidt Terrace
Hendersonville, NC 28739
Pro se Defendant

Patton Public House, Inc.
P. O. Box 6530
Asheville, NC 28816
Pro se Defendant

This the 16th day of October, 2017.

Brian W. Sharpe
N.C. Bar No. 51203

EXHIBIT B

ASHEVILLE AREA ATTORNEYS

BRIAN W. SHARPE - *brian@avl-law.com*
JOSEPH C. BOWMAN - *bowman@avl-law.com*

January 8, 2018

COPY

Ms. Ellen Bluestone, Esq.
3 Crescent Lane
Asheville, NC 28804

Re: *Calloway vs. Casper-Leinenkugel*, 16 CvS 5135 - Buncombe County; status of appearance and Rule 37 notice concerning overdue discovery.

Dear Ms. Bluestone:

I represent the plaintiffs in the above litigation. At our mediated settlement conference conducted on December 13, 2017, defendant Gudrun Casper-Leinenkugel, informed me that she had retained you to represent her in this case. So far, I have not received a notice of appearance or any other correspondence from you confirming such representation. Since your involvement in this case remains uncertain, please note that I have also mailed copies of this letter to each of the defendants directly. At your earliest convenience, I would kindly ask that you let me know whether you will be entering an appearance for Ms. Casper-Leinenkugel and/or Patton Public House, Inc. This information will enable me to serve court papers and address future letters to the proper parties or attorney.

Also, I am writing to inquire as to when I can expect to receive the defendants' responses to my clients' *First Set of Interrogatories and Requests for Production of Documents*, which were sent by mail on October 16, 2017. Because the time to respond to plaintiffs' interrogatories has now expired without the defendants having served any objections, motions for protective order, or answers thereto, all of defendants' potential objections are therefore waived as a matter of law. See

BUNCOMBE COUNTY OFFICE:
One Oak Plaza, Suite 307
Asheville, NC 28801
Phone: (828) 258-0076
Fax: (828) 281-2873

MADISON COUNTY OFFICE:
7 North Main Street
Marshall, NC 28753
Phone: (828) 649-8322
Fax: (828) 649-8377

SHARPE & BOWMAN, PLLC
www.ashevilleareaattorneys.com

Golding v. Taylor, 19 N.C. App. 245, 198 S.E.2d 478, cert. denied, 284 N.C. 121, 199 S.E.2d 659 (1973). For this reason, I respectfully request that the defendants provide complete, objection-free answers to plaintiffs' interrogatories. Furthermore, demand is hereby made for defendants to produce all documents, records, and other tangible materials that are responsive to plaintiffs' requests for production.

Please accept this letter as constituting my invitation for you to contact me so that we may confer about the overdue discovery responses. If I do not hear from you or receive full responses within the next ten (10) days, then be advised that I will proceed with applying to the Court for an order compelling the defendants to answer and provide the requested information and material. Should it become necessary for plaintiffs to file a motion to compel, then they will also seek to recover their reasonable expenses, including attorney's fees, incurred in obtaining any order thereon. Please note that you may reach me by telephone at (828) 649-8322 or by e-mail at brian@avl-law.com.

Assuming that you do intend to appear for the defendants in this case, then I look forward to discussing these matters with you and to, hopefully, receiving defendants' discovery responses so as to avoid the necessity of Court action.

With best regards, I am

Very truly yours,

BRIAN W. SHARPE
Attorney at Law

cc: Ms. Gudrun Casper-Leinenkugel, *defendant*
Patton Public House, Inc., *defendant*

STATE OF NORTH CAROLINA

File No.
16 CVS 5135

Buncombe County

In The General Court Of Justice
Superior Court Division

Name Of Plaintiff(s)
Tammy Calloway, et. al.

FILED
2017 DEC 18 A 10:06
BUNCOMBE CO., C.S.C.
BY

VERSUS

Name Of Defendant(s)
Gudrun Casper-Leinenkugel, and Patton Public House, Inc.

Name And Address Of Mediator
Kathy Gleason
P.O. Box 2598
Candler NC 28715

REPORT OF MEDIATOR IN SUPERIOR COURT CIVIL ACTION

G.S. 7A-38.1; Rule 6.B(4) of the Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions

Telephone No. Of Mediator	Fax No. Of Mediator (If Applicable)
828 215 9614	828 667 9958

1. The undersigned mediator reports the following results of a mediation settlement conference either ☒ ordered or ☐ voluntarily conducted in this case:
   a. Conference ☒ was held. ☐ was not held.
   b. If held, date conference was completed: 12/13/2017
   c. If not held, the reasons were: _____
2. If the case was reported settled prior to or during a recess of the conference, provide the name(s) of the person(s) who reported the case settled: _____
3. The parties reached an: ☐ agreement on all issues. ☒ impasse.
4. ☐ If the case was settled, then, as required by MSC Rule 6.B(4)(b), the mediator has advised the parties that MSC Rule 4.C requires that closing documents be filed with the court within 30 days of settlement (or 90 days if a State or political subdivision is involved) or before expiration of the mediation deadline, whichever is longer. The following closing document is to be filed:
   a. ☐ consent judgment. ☐ voluntary dismissal with prejudice. ☐ voluntary dismissal without prejudice.
   b. Name, address, email, and telephone number of party or attorney who is to file the closing document:
      Name: _____
      Address: _____
      Telephone number: (_____) _____ - _____ Email Address: _____
5. Names of those who attended the conference:

Name	Affiliation (e.g., party, attorney, insurance company representative, lienholder, or other)
Victoria Lancaster	party
Brian Sharpe	attorney
Gudrun Casper-Leininkugel	party

Original-File Copy-Senior Resident Superior Court Judge or his/her designee Copy-Plaintiff Copy-Defendant
(Over)

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Name	Affiliation (e.g., party, attorney, insurance company representative, lienholder, or other)

MEDIATOR'S FEE

	Court-Appointed Mediator	Party-Selected Mediator
ADMINISTRATIVE FEE (MSC RULE 7.B *or as privately agreed with party-selected mediator*)	$ 150.00	$
MEDIATION FEE (MSC RULE 7.B: *$150.00 per hour for time spent in conference for court-appointed mediator, billed in quarter hour segments, or privately set fee for party-selected mediator*) Total Time Spent in Mediated Settlement Conference(s): 5 Hours 30 Minutes	$ 825.00	$
POSTPONEMENT/CANCELLATION FEE (MSC RULE 7.E *or as privately agreed with party-selected mediator*)	$	$
TOTAL FEE	$ 975.00	$

All fees of the mediator have been paid, except as follows:

Name Of Party Owing Balance	Address Of Party	Amount Of Balance
Gudrun Casper-Leininkugel	15 Schmidt Terrace, Hendersonville, NC 28739	$ 487.50
Plaintiff paid in full		$
		$
		$

Name of any party filing Petition For Relief From Obligation To Pay Mediator's Fee: ***(Please attach Petition For Relief.)***

I have filed this report with the Court as required within ten (10) days after conclusion of the conference or within ten (10) days of being advised by a party that this case settled before the date scheduled for mediation or during a recess of the conference.

Date	*Name Of Mediator (Type Or Print)*	*Signature Of Mediator*
12/17/2017	Kathy Gleason	

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STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

FILE NO. 16-CVS-5135

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

***Plaintiff(s)* Attorney(s)** **Tommy Galloway, ET AL** FILED 2017 AUG -1 A 11:48 **David R. Payne, Esquire** **Local Box # 118** BUNCOMBE CO., C.S.C. BY	**APPOINTMENT OF MEDIATOR** ***NOTE TO ATTORNEYS*:** Plaintiff 's counsel or pro se plaintiff should check and fill out only one of the two sections, sign and return to the **Trial Court Administrator, Buncombe Courthouse, Asheville, NC 28801-3574 within 21 days** of the date shown on the order for Mediated Settlement Conference
Defendant(s) Attorney(s) **Gadrum Casper-Leinenkugel, Pro,Se**	
Patton Public House Inc., Pro, Se	***Deadline for Completion of Mediated Settlement Conference:*** **December 22, 2017**
	Trial Date: **January 22, 2018**

_____ **SECTION 1 - NOTICE OF SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT**

The above-named case was referred to a mediated settlement conference. The parties have selected the mediator named below who has agreed to serve in this case and is certified pursuant to the Rules of Mediated Settlement Conferences.

Name and Address of Certified Mediator	

The parties and the mediator have agreed upon the mediator's rate of compensation as follows: *(specify all terms of the compensation agreement):*

_____

_____

NOTE: As an aid to mediator selection, the NC Dispute Resolution Commission maintains a list of certified superior court mediators on its web site at: www.ncdrc.org. Click on "List of Mediators" from the left-hand menu then click on "Mediated Settlement Conference Program". You may search for mediators by name of mediator, by city, or by court district. Once a mediator's name appears on your screen, click on it for a complete contact and availability listing.

_____ **SECTION 2: MOTION FOR COURT APPOINTMENT OF MEDIATOR**

The above case was referred to a mediated settlement conference. After a full and frank discussion, the parties have been unable to agree upon the selection of a mediator and move the Senior Resident Superior Court Judge to appoint a certified mediator to conduct their conference.

Date	**Name of Plaintiff's Attorney (Or pro se plaintiff)**	**Signature of Plaintiff's Attorney (Or pro se plaintiff)**
_____	_____	_____

ORDER OF APPOINTMENT

The parties having reported their failure to agree upon the selection of a mediator, or the parties having failed to notify the Court of their selection of a mediator within twenty-one (21) days after this case was ordered to mediation, the Court appoints the following certified mediator to conduct the mediated settlement conference.

Name and Address of Mediator: Kathy Gleason, Esquire, 27 Robinhood Rd., Asheville, NC 28804

NOTICE TO MEDIATOR: The mediator shall be responsible for reserving a place and making arrangements for the conference and giving timely notice to all attorneys and unrepresented parties of the time and location of the conference. The mediated settlement conference shall be completed by the completion deadline set forth above, and the mediator shall report the results of the conference to the **Trial Court Administrator** with ten (10) days after the conference is completed.

Date: August 1, 2017

Resident Superior Court Judge by Marc Shimberg, Trial Court Administrator

_____

STATE OF NORTH CAROLINA	FILE NO. 16-CVS-5135
COUNTY OF BUNCOMBE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
Name of Plaintiff(s)Attorney(s) **Tammy Calloway;** **Jaimie Green and Victoria Lancaster-Ames** FILED 2017 APR 11 A 11:48 **David R. Payne, Esquire** **Local Box # 118** BUNCOMBE CO., C.S.C. BY	**ORDER FOR MEDIATED SETTLEMENT CONFERENCE TRIAL CALENDAR NOTICE** **AND** **SCHEDULING ORDER**
Name of Defendant(s) **Gudrun Casper-Leinenkugel , Pro,Se**	G.S. 7A-38.1; Rules of Mediated Settlement Conference
	Deadline: **December 22, 2017**
Patton Public House Inc., Pro,Se	***Trial Date:*** **January 22, 2018**

In accordance with the Rules Implementing Mediated Settlement Conferences, it is **ORDERED** that this case be referred to a mediated settlement conference, which shall be completed before the deadline shown above.

Within twenty-one (21) days after the date of this Order, the parties may, by agreement, select a certified mediator to conduct their mediated settlement conference. Within twenty-one (21) days after the date of this Order, the plaintiff or plaintiff's attorney shall notify the **Trial Court Administrator of the selection of a certified mediator. Notice shall be on form AOC-CV-812 (Fillable form http://www.nccourts.org/Forms/Documents/313.pdf)**

As an aid to mediator selection, the NC Dispute Resolution Commission maintains a list of certified superior court mediators on it web site: www.nccourts.org/Citizens/Cprograms/MSC/Mediators/Default.asp (You may search for mediators by name of mediator, by city, or by court district. Once a mediator's name appears on your screen, click on it for a complete contact and availability listing.)

A mediator selected by agreement of the parties shall be compensated at a rate agreed upon between the mediator and the parties. A court-appointed mediator shall be compensated at the rate of $150 per hour for time spent in the mediated settlement conference, to be billed in quarter hour segments. The conference fee shall be paid as provided for in Rule 7.F. In addition, a $150 administrative fee shall be paid pursuant to Rule 7.B.

All persons required by Rule 4.A(1) to attend the conference shall be physically present unless such presence is excused pursuant to the agreement of all parties and persons required to attend and the mediator, or by an order of the Senior Resident Superior Court Judge, upon motion of a party and with notice to all parties and persons required to attend and to the mediator.

The mediator shall schedule the date, time and location of the conference and timely notify all attorneys and unrepresented parties. The conference shall be completed by the deadline for completion set forth above and the mediator shall report the results of the conference to the Court within **10** days after the conference is completed.

The parties may, within 30 days of this Order, move to amend this Order by contacting the Trial Court Administrator. Final calendar notices will be provided through a published calendar. The mediated settlement conference shall not delay other proceedings, including trial (Rule 3).

Date: April 11, 2017

Marc L. Shimberg, Trial Court Administrator
Buncombe County Courthouse, Asheville, N C 28801-3574

Copies have been sent to attorneys and pro se litigants named above

State of North Carolina
County of Buncombe

FILED
2017 FEB -3 P 12:13
BUNCOMBE CO., C.S.C.
BY

In the General Court of Justice
Superior Court Division

Tammy Calloway, Jaimie Green and Victoria Lancaster Ames,

Plaintiffs,

vs.

Gudrun Casper Leinenkugel, and Patton Public House, Inc.,

Plaintiffs,

Case No, : 16 CV 05135

....MOTION TO DISMISS WITH PREJUDICE

The Defendant hereby moves the Court to dismiss Plaintiff's Complaint with prejudice. The basis for this Motion is set forth in the accompanying Memorandum.

Dated this 2nd day of February, 2017

Gudrun Casper-Leinenkugel and
Patton Public House, Inc
PO Box 6530
Asheville, NC 28816

State of North Carolina
County of Buncombe

In the General Court of Justice
Superior Court Division

Tammy Calloway, Jaimie Green and Victoria Lancaster Ames,	)	
	)	Case No, : 16 CV 05135
Plaintiffs,	)	
vs.	)	
	)	...MEMORANDUM IN SUPPORT
	)	... OF MOTION TO DISMISS
Gudrun Casper-Leinenkugel, and Patton Public House, Inc.,	)	
Plaintiffs,	)	

FACTS

The Plaintiffs have falsified much of the information stated in their complaint, which can be verified through simple Secretary of the State of North Carolina searches and resulting verdicts from the Department of Labor resulting from additional vindictive actions and complaints taken by the Plaintiffs with this State agency. Each item is addressed in the accompanying Response to Complaint. Some of the claims of the Plaintiffs, such as those by Plaintiff Victoria Lancaster-Ames owning Tolliver's Cross, LLC and restaurant equipment, are legally fraudulent. The majority of the remainder of the Plaintiffs complaint is hearsay and cannot be verified and becomes a he said she said situation in the context of the law.

The Plaintiffs Tammy Calloway and Jaimie Green's neglect to fulfill their duties within their roles as managers lead to the misuse of company funds and the collapse of said business. The Plaintiffs' overstaffing and nepotism was not rectified after multiple times of being addressed by owners and investors over the 3-4 weeks prior to walking off the job, demonstrating a lack of respect and a disregard for company policy, investors and ownership. Their failure to follow ABC laws resulted in penalties and reprimands to the business as related

to inventory of alcohol, nonfulfillment of required ABC liquor control audits, removal of alcohol receipts from the business premises, which is illegal under state law, and filing false complaints with the North Carolina Department of Labor related to a labor audit are all blatant examples of this neglect.

ARGUMENT

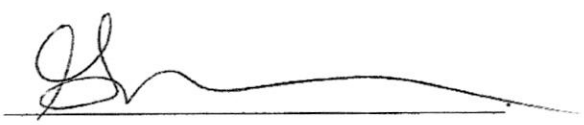
I. Plaintiffs' Complaint Fails To State a Claim Upon Which Relief May Be Granted

Plaintiffs' claim must be dismissed because their legal claims are without merit. The Plaintiffs falsified claims that are easily proven false. The Plaintiffs never met their responsibility to operate the business properly and within a reasonable budget and walked off the job less than the 90 day after opening probationary timeframe, therefore were not able to receive shares. Though, as stated in the Defendants Response to Complaint, the Defendant would be happy to give them their shares in the company as long as they take all applicable ownership responsibility and liabilities associated with ownership.

CONCLUSION

For the reasons stated above and the facts stated in the Response to Complaint, Defendant's Motion to Dismiss should be granted.

Dated this 2nd day of February, 2017



Gudrun Casper-Leinenkugel and
Patton Public House, Inc.
PO Box 6530
Asheville, NC 28816

State of North Carolina
County of Buncombe

In the General Court of Justice
Superior Court Division

Tammy Calloway, Jaimie Green and Victoria Lancaster Ames,	)	Case No. : 16 CV 05135
Plaintiffs,	)	
vs.	)	
	)	...RESPONSE TO COMPLAINT AND MOTION TO DISMISS WITH PREJUDICE
Gudrun Casper Leinenkugel, and Patton Public House, Inc.,	)	
Plaintiffs,	)	

Response to Facts

#7 : Incorporation for the business had occurred prior to any discussion with Plaintiff Parties as it was formed and recorded on 08/13/2013 with the NC Secretary of State.

#8 : Gudrun didn't even know about the property on Patton Avenue until July of 2013. As the first meeting related to the Patton Avenue property with the owner to look at leasing the property was July 3, 2013. Any discussion at the time of May 2013 would have been related to Tolliver's Cross, LLC and would have been with Tom Ames not Victoria as there was a potential of moving that business at the time.

#9 : Victoria Ames was never a shareholder for Tolliver's Cross, LLC she and her husband Tom Ames were a note holder for that business. Gudrun Casper-Leinenkugel was never an accountant for Tolliver's Cross, LLC.

#10 : Victoria's husband Tom Ames was assisting, as any contractor does, with discussion of a project to be built out. Though Tom, as a note holder for Tolliver's, was assisting in possibly finding a location to move that business to, and provided leads on buildings related to that move.

#11 : Realtor John Fisher was the person who contacted Gudrun Casper-Leinenkugel about the space at 1341 Patton Avenue, Asheville, NC creating the primary point of contact. No other party assisted in finding the space for Gudrun Casper-Leinenkugel.

#12 : There was never a 25 year lease negotiated for the property. It was a 10 year lease with three 5 year renewals possible. $5,200 per month lease + taxes ($815.91 per month) + insurance ($3,000+ every six months) + any additional taxes, etc = total lease payment.

#13 : Gudrun Casper-Leinenkugel did not initially contact Jaimie Green. Will Rees contacted Jaimie Green in order to locate her mother Tammy Calloway, whom Gudrun Casper-Leinenkugel was searching for to discuss coming on board with the restaurant venture as General Manager with opportunity to earn ownership shares once a probationary period was fulfilled.

#14 : Gudrun Casper-Leinenkugel would not have needed Jaimie Green to provide contacts in vendor or local bar/restaurant industry for West Asheville area of town as she already knew the contacts in that area. The only contact brought in by Tammy Calloway was a specific wine rep from a vendor that was already known and used by Gudrun Casper-Leinenkugel.

#15 : Jaimie Green never worked full time from October 2013 – November of 2015 as for the first 3 months there was not the ability to even enter the property as no permits were available or issued by the city of Asheville until January of 2014, at which time construction work was being started. Prior to 2016 Jaimie Green would stop by periodically during construction. A W-4 form was filled out and signed by Jaimie Green in January of 2014. Therefore it would have been on an hourly basis not a partnership basis.

#16 : Contacts with local food and beverage suppliers were already known by Gudrun Casper-Leinenkugel as she directed Jaimie Green in who to contact when needed. Partners do not get wages partners get a share of the profit of a business.

#17: Victoria Ames never owned any commercial restaurant equipment to Gudrun Casper-Leinenkugel's knowledge. Tolliver's Cross, LLC's equipment was sold to Gudrun Casper-Leinenkugel in July of 2013, for original cost of $8,000 by Tolliver's Cross LLC to provide capital to that business to pay the NCDOR by Landon Phillips a partner for that business.

#18 : Jaimie Green provided the contact for her mother Tammy Calloway who was the individual Gudrun Casper-Leinenkugel was looking for at the time Jaimie Green made initial contact with Gudrun. Victoria had no input or decision as to whom was approached to work with the restaurant in any capacity. Crown Plaza personnel department verified that Tammy Calloway was employed from December of 2013 thru end of September of 2014. She was NOT employed as Hotel or Bar Manager. She was employed as Restaurant Manager.

#19 : Shares were only to be given after a 90 probationary day period once the restaurant was running and Tammy Calloway proved that she could run the business as stated to Gudrun Casper-Leinenkugel.

#20 : Tammy was paid $500 per week full time pay 40 hours per week. For the weeks she worked 40 hours and the weeks she did not work at all.

#21 : Victoria never signed the documents related to the business. The incorporation had been filed in August 13 of 2013, at which time none of the Plaintiffs listed were involved with the business at that time. Tammy Calloway and Jaimie Green signed paperwork for the North Carolina ABC Commission and background checks. Since the restaurant was not opened yet and the 90 days probationary period was not up, no paperwork for issuing shares was completed.

#22 : Opening dates were not delayed at the bequest of Gudrun Casper-Leinenkugel they were dictated by the City of Asheville Planning and inspection department related to occupancy, and build out. Delays by the city are unavoidable as the city determines when a structure is available to be occupied. Also on the final opening date it was delayed due to Tammy Calloway and Jaimie Green who requested to delay the opening by an additional 2 weeks.

#23 : Tammy stated that she was making $500 per week and would have to be guaranteed that $500 per week to change jobs. The business was expected to open in 6-8 weeks until the city of Asheville decided that the building needed a new hood system to be installed for the kitchen. The hood installation was further delayed by Tammy Calloway stating that her construction contact could install the hood system in 3 weeks though it took an additional 8 months and ran over budget by $28,000.

#24 : At no point was $500.00 in shares per week promised on top of the pay requested of $500.00 per week by Tammy Calloway. After a discussion a salary of $750.00 was agreed upon for the role of Restaurant Manager once the business was open and in operation.

#25 : Tammy Calloway's first week of work was October 6-10, 2014 to which she was paid her first check of $500 on October 10, 2014 with check no. 1045 cleared out of the Patton Public House, Inc main checking account. Tammy Calloway's payments for all pay from the date of starting with Patton Public House, Inc until she walked off the job on August 9, 2016 have all been verified and substantiated through a North Carolina Department of Labor complaint filed by Tammy Calloway. Tammy Calloway's complaint was denied by the Department of Labor. She was found to be overpaid by $1000.00 to which the Plaintiffs were informed we can file a countersuit for restitution for this overpayment if we so choose.

#26 : Tammy and Jaimie were never instructed to give up tips or any other items to the business. They made the rules and were instructed to let staff handle the floor and them to handle the management as is typical in the industry.

#27 : Management typically has the responsibility for hiring, holding staff meetings, and setting in place policies and procedures as outlined by the owner of such business. This was not over and above their typical responsibilities within the industry.

#28 : Alcohol and food vendors are regional and territorial and therefore contacts are available for any individual or business to procure. The only vendor brought in was by Tammy Calloway for the wine rep that was not already known to Gudrun Casper-Leinenkugel.

#29 : Tammy Calloway was a co-signer on the credit / debit card processing service. No other personal credit was used from Tammy Calloway. Gudrun Casper-Leinenkugel was upfront about having difficult credit and therefore Tammy Calloway volunteered her ability to Co-sign.

#30 : Tammy Calloway was listed as the licensee because state law requires the manager and an individual who is on premise daily or regularly to be on the license and hold responsibility for such license. Tammy Calloway did not complete the required work for the NC ABC which led to

a warning from NC ALE due to Tammy Calloway and Jaimie Green taking the alcohol paperwork away from the building which is not allowed under NCABC rules and regulations.

#31 : Victoria Ames as she would not complete the stockholder paperwork, on behest of her husband not to put her social security number on or sign for anything, was never assigned a office or role within the company. Until the 90 day after opening probationary period was up, the board of Patton Public House, Inc consisting of Gudrun Casper-Leinenkugel would have met according to corporate rules and regulations set out by the State of North Carolina to vote on assigning roles at that time to the Plaintiffs or anyone else qualified at that time.

#32 : If management responsibilities had been completed to satisfaction and fulfilled by the 90 day after opening probationary period, shares would have been issued and roles would have been in place as stated.

#33 : Gudrun's Role initially was to be sole-owner until 90 day period of probation for Tammy, Victoria and Jaimie were complete and they had obtained shares.

#34 : 07/13/2016 was the date that Tammy Calloway was to receive $750.00 per week going forward as a contract manager. Victoria Ames would not provide her social security number for payment or shares. Jaimie Green was paid per time worked. No partner or owner took any of the profit sharing of the company at any time as the company has yet to ever make a profit.

#35 : Yes Cellphones were provided as long as under contract for work by the business.

#36 : The opening date for September 2014 was delayed due to city of Asheville planning and Inspections requirements and was unavoidable. The business had been called Patton Public House, Inc. as recorded with the North Carolina Secretary of State in August of 2013 prior to any contact with Tammy or Jaimie.

#37 : Yes the business was planned to be open 24 hours a day. Though Tammy and Jaimie at the time of actual opening requested that it not be open except for from 11am-2am as they had not hired staff for a 24 hour a day operation.

#38 : Grand Opening was postponed due to:

-Tammy and Jaimie refusing to hire any staff at anticipated opening in 2016 at time of receiving certificate of occupancy.

-Tammy and Jaimie stating they needed 4 weeks to train staff prior to opening after not hiring staff after certificate of occupancy

-Not documenting staff or providing to the company any training materials they planned to use.

A) It is not known what funds the plaintiffs are talking about being siphoned off of operating or company accounts.
B) Contractors were paid as required by law and timing of completion of projects.
C) Key staff members walked out and resigned of their own volition they were not fired.

D) Again no description of misappropriation of partnership capital. As this is not a partnership there was no partnership capital and capital provided was by investors and Gudrun Casper-Leinenkugel only.

#39 : again the City of Asheville determines readiness of a structure to be occupied not an individual this is unavoidable. Soft opening was May 23, 2016 nearly 3 weeks prior to actual opening per Tammy and Jaimie's request for additional time.

#40 : The initial revenue stream was between $10,000.00 and $11,000.00 and at one week went as high as $13,000. Tammy Calloway and Jaimie Green scheduled 12-15 front of the house staff and 10-14 kitchen staff for each day with less than $1200.00 in daily revenue. The payroll totaled $7,000 to $9,000 during the period that the restaurant was managed by Tammy Calloway and Jaimie Green. This isn't taking into account that the food purchases alone were between $6000.00 and $8000.00 per week under their management not accounting for any alcohol purchases or overhead costs of the building. Without the basic overhead costs of rent and utilities, taking everything into account they were spending 150% or more of the income per week on labor, food and alcohol costs. This proves Tammy Calloway and Jaimie Green falsified their knowledge of restaurant management and disregarded tools and words of warning given to them by Ownership and Investors week after week.

#41 : Finances were managed effectively from Gudrun's side as the staffing should have been much lower, the managers Tammy & Jaimie should have staffed according to income and should have managed orders of food, alcohol and other items within the income of the business though they chose not to.

Payroll was late due to having issues with Intuit the payroll processing company as information was not provided by managers on time and in a readable format as requested either in Email or text. It was provided in handwritten form that was difficult for anyone to read. Though payroll was submitted on time by Gudrun to the payroll company,

Insufficient funds were due to having to go to investors to request more money after the management over extended and spent 2 months of payroll on training and the first week of opening. After which time they continued to spend payroll at the rate of 2-3 weeks of payroll for 1 week of the businesses operation. As was explained to them on a meeting in July of 2016 with investors present.

When management (Tammy Calloway GM, and Jaimie Green BM) cannot manage to stay within the income generated by a business there will be financial issues. When the burn rate of cash is 3 times what it should be investors have to be called on more frequently to subsidize unskilled unprofessional management of their funds.

#42 : Hours of employees were submitted by Tammy Calloway as General Manager and therefore any issues with such hours should have been addressed by Tammy Calloway and corrected before being submitted to Gudrun to submit to payroll.

The payroll company was contacted weekly by Gudrun Casper-Leinenkugel to correct shortages of hourly pay.

Which could have been avoided if Tammy Calloway and Jaimie Green had staffed the business correctly and people were making typical wage.

Because when servers are not able to make enough tips to qualify as minimum wage pay when included with their hourly pay, they must be paid the difference between minimum wage for a server + tips and federal minimum wage.

The local news story was unavoidable as management would not show up for a meeting to discuss the issue on the day. And instead of showing up for the meeting decided to send the staff to the meeting and managers to go to an investors business establishment once they had sent staff to meeting with Gudrun. This news story due to their lack of taking responsibility and showing up for a business meeting, creating a mob scene at another business by sending the staff there with no due cause impacted not only the restaurant but also a non-related business. And also impacted the investors businesses due to the Management not being willing to discuss the over expenditures, over staffing, and over ordering which lead to the need after only 4 weeks of operation having spent over 6 months of reserve capital.

This was also compounded by Tammy and Jaimie hiring friends and family over qualified individuals who could have been hired had they taken the time to actually interview after business received Certificate of Occupancy.

#43 : The negative press did tarnish and destroy the businesses reputation locally and therefore has yet to ever recoup any of the loans, debts, etc… from investors. Had management Tammy Calloway and Jaimie Green done their job this negative press would have never happened. As the business would not have been exceeding the typical 1 week ahead investment by the investors needed to operate a restaurant. As no investor is going to give a lump sum to a business without knowing the need as to keep from over extending capital to a new company. Investors were dumbfounded at the burn rate of this business and expressed their displeasure in the meeting the week prior to the news story.

#44 Gudrun Casper-Leinenkugel did not fire any staff over the news story. Claims from North Carolina Department of Labor are only from Tammy Calloway and Jaimie Green and were started after they quit the company in August 9, 2016. Tammy Calloway gave verbal notice on July 19, 2016 of her wish to resign as manager. Gudrun Casper-Leinenkugel requested 1 month reprieve on resignation to find another manager at which time Tammy agreed.

#45 The mass walkout by employees was lead by Jaimie Green due to numerous family members and friends having been hired as employees by Tammy Calloway and Jaimie Green this impacted the business greatly and damaged its reputation further.

Operating funds at this time had been extinguished by Jaimie and Tammy's inability to manage the business within the income it produced or within a reasonable percentage above its income. At times the business was spending over 3 times its actual income which no investor is going to support or provide a blank check when the management team has proven they cannot operate within any budget.

There was available to them software that had been provided by an investor of the business incase they were not capable of estimating staffing or expenses on their own. This software was available from day one of training for them to use. The investor who provided it was in town for 2 weeks during training and offered to show them at that time.

Funds were available had the management team of Tammy Calloway and Jaimie Green been willing to operate within a budget and within investors requests for responsibility (payroll, inventory, cost sheets, daily totals, etc…) As can be seen the business has continued to attempt to

recover from the damage caused by Jaimie Green's walkout with the staff. Though the damage created by Jaimie Green, Tammy Calloway, and their friends and family's slandering on social media extended beyond their time period at the business.

#46 : Again there were no partnership finances as this business is a corporation. Suppliers have been paid. No suppliers have discontinued business with Patton Public House over non-payment though some have been let go due to not needing their product or service. At no time was there an inventory shortage because on the day Jaimie Green and Tammy Calloway left the business there was over a 1 month supply of everything.

#47 : Tammy & Jaimie were paid for every week they worked. Payment was never refused. Cellphones were demanded back as they were no longer a portion of the business and were not being used for business purposes. The phones were returned wiped clean to factory reset though employers have the right to see what a company phone has been used for.

#48 : Gudrun Casper-Leinenkugel would be happy to provide all three plaintiffs ownership shares in the business. They were never denied shares. Though they would have to become responsible for the over $200,000 in debt to investors related to the business. As the investors who were on board at the day of creation of the company with NC Secretary of State had a provision that all owners sign personally for the funds given to the company.

#49 No mismanagement occurred with the business.

A) No other shares have been promised or negotiated , all investors were current investors at the time of formation of the business before plaintiffs were even involved with the company
B) The business did not own any appliances, metal, etc… the appliances, metal, etc… are owned by the investors to secure their debt on the business. What items were sold were at the discretion of the owner of such equipment and any proceeds were put back into the company to cover Tammy Calloway and Jaimie Green's mismanagement of the business and its budget.
C) Only four (4) checks were issued to Gudrun Casper-Leinenkugel on 2-19-14 for $375.00 to pay for the cash deposit required to turn on electric service at the location, 11-14-14 for $2600.00 to pay for materials that were required to be paid on a credit card which only Gudrun Casper-Leinenkugel's personal card was available at the time since a company card had not yet been issued, 6-6-15 for $299.00 to pay for items purchased on eBay for the restaurant and would not take a company check for the purchase, and 6-6-15 for $2485.40 to pay for the equipment purchased at auction for the restaurant (some of the same equipment that the Plaintiffs are claiming in Item #17 of this Complaint.) Receipts have been available in the corporate files.
D) No lies to employees were told as to wages or payroll. Information was provided to Tammy Calloway to prove payroll was withdrawn by the payroll company and the fact that the payroll company did not provide checks as they stated was beyond Gudrun Casper-Leinenkugel's control.
E) Unknown items that were supposedly comingled will need to be clarified.
F) All funds went into the business and have been accounted for by the investors.

G) This is a blatant false statement. As owner and not on the clock Gudrun Casper-Leinenkugel has consumed alcohol on the premises. As have Tammy Calloway, Jaimie Green, and Victoria Ames. Jaimie and Tammy posted a non-payment of bar tab notice due to Victoria Ames not paying her bar tab which is still due to be paid.

#50 : No outreach by Tammy Calloway, Jaimie Green or Victoria Lancaster Ames has been attempted in solution for this matter. Therefore It would be difficult to agree on terms. Though if they would like to be partners in the business if they are willing to fill out the paperwork and be financially liable for the liabilities of the business, Gudrun Casper-Leinenkugel would be happy to allow them to take a portion of the responsibilities for their actions and the benefits associated with such actions.

#51 : True

#52 : True

#53 : True

#54 : True

#55 : True

#56 : True

#57 : False Tammy Calloway as General Manager was responsible for notifying Gudrun Casper-Leinenkugel of employees relation to the business (hired, fired, etc…) and also collecting all tax related paperwork from all employees as was the managers responsibility.

#58 : False

#59 : False

Claims for Relief

#60 a continuing disagreement means that the parties have communicated in some form. There has been no communication between parties to this point since separation.

#61 Again there has been no communication between parties to request dissolution.

#62 Again there is no partnership it is a corporation. And the business only owns food and alcohol which is very limited in shelf life and value. Remodeled premises belongs to the landlord upon vacating the premises. Equipment is held by investors to back loans to business and loaned to the business for operation.

Business has no monetary value as was assured by the damage done from the news story and Jaimie Green's leading of a walkout of employees and their disparaging remarks. Good will does not translate to financial gain or loss.

The great sacrifice and loss has already occurred with the business while it was under their management as they walked out 3 weeks after the story was in the news, taking staff with them to further damage the business.

#63 August 9, 2016 Tammy Calloway and Jaimie Green walked out of the business and made no attempt to contact or discuss any partnership, books, accounts, or assets with Gudrun Casper-Leinenkugel. Had they made attempts they would have been offered their shares in the company if they were willing to take on the responsibility of ownership as Gudrun Casper-Leinenkugel has born since that date solely. Access to the premises can be limited even to owners or investors of a business due to issues beyond the scope of business.

#64 If shares were given as stated by the plaintiffs they would have each had a 10% vote and therefore Gudrun Casper-Leinenkugel still would have held 70% of the vote and therefore been able to make decisions based upon majority ownership interest in the business. This occurs with any shareholder vote in any company. No willful or deceitful disposition was given.

#65 at no point has violence occurred within this business. Disputes arise in any business. Selection of stock and policy decisions are determined by finances available at the time and investors willingness to invest in such policies and stock.

#66 The only license that has a Plaintiff's name on it was the alcohol license. Which at the time of her terminating becomes void according to NC ABC Law. The alcohol license is in a warning stage due to Tammy Calloway as GM and Jaimie Green as the Bar Manager not fulfilling their obligation prior to leaving the company to leave the alcohol records on premises, and not completing audits and inventory as required by the NC ABC.

Second Claim for Relief

#67: True

#68: True

#69: False

#70: Breach of fiduciary duties did not occur;

A) Payments have been made and at current do not affect Plaintiff's as they have not accepted their shares or the financial responsibility for such payments.
B) Could not have done this because the plaintiffs did not provide records as requested of revenue generated or attempt to use tools provided to them to keep within a reasonable budget.
C) See answers for 49 a-g

#71 Plaintiffs and parties partnership business, have not been damaged by Gudrun Casper-Leinenkugel as no fiduciary duties have been breached;

A) No wages owed to past or current employees
B) No penalties or interest currently owed

C) No past bills owed to anyone
D) Diminution of value of the partnership business does not exist as it is a corporation though the diminution of value occurred under the watch and management of Tammy Calloway and Jaimie Green as managers.
E) This was tarnished under the Management of Tammy Calloway and Jaimie Green
F) Jaimie Green lead a walkout creating this issue.
G) Tammy Calloway and Jaimie Green signed all checks and their mismanagement of use of operating capital created the short fall as investors were not going to fund their mismanagement at the time. Funds have been available since they left and the investors felt more comfortable that their money was not being misused.
H) Please Clarify
I) Please Clarify
J) Only Tammy Calloway and Jaimie Green have claimed the business to be liable through the NC Department of Labor. No third party beyond the investors is the business liable to.
K) How was this damage as the restaurant is open, and the delays were not damaging as Tammy Calloway and Jaimie Green were compensated for their time during the delayed openings.
L) Negative media attention was propagated by their mismanagement of the business and employees.
M) The business had a negative value at opening due to debts. It is impossible to dilute such value as it had none. The major dilution in value occurred under Tammy Calloway and Jaimie Green's management period. The business has not recovered at this point.

#72 False

#73 False, The breach of fiduciary duty by the Plaintiff's Tammy Calloway and Jaimie Green lead to the damage to the business and is actually damaging to Gudrun Casper-Leinenkugel who at this point holds full financial responsibility for Tammy and Jaimie's actions that were detrimental to the business.

Third Claim for Relief

#74 There was no intent to defraud. At no point was Gudrun Casper-Leinenkugel the accountant to Tolliver's Cross, LLC. That debt was not Gudrun Casper-Leinenkugels to resolve or promise to pay as she was not a partner with that business.

Victoria refused to provide her social security number which is legally required to have ownership shares in any business.

Again if this were provided Gudrun Casper-Leinenkugel would be happy to provide Victoria Ames the ownership shares and share the financial responsibility of Patton Public House, Inc.

#75 There was no intent to defraud, Gudrun Casper-Leinenkugel would be happy to give ownership shares and a share of the financial responsibility to Jaimie Green.

#76 There was no intent to defraud, Gudrun Casper-Leinenkugel would be happy to give ownership shares and a share of the financial responsibility to Tammy Calloway.

#77 As it would have been impossible to provide people ownership shares when they were not present or even thought of at the time the company was created it would be difficult to defraud. As the company was created 2 months prior to any contact with Tammy Calloway or Jaimie Green. If Victoria Ames would have provided her social security number she would have had ownership interest.

#78 False as stated previously all plaintiffs can still be issued their shares if they are willing to take ownership responsibilities.

#79 Need to know what false representations the plaintiff's allege

#80 False

#81 False

#82 Plaintiffs have always had their ability to request ownership shares and accept ownership responsibilities.

Fourth Claim of Relief

#83 False

#84 Clarify

#85 False, Gudrun Casper-Leinenkugel has been damaged by the Plaintiffs inability to manage a restaurant as they claimed they could and has been damaged by their vitriol. Specifically Tammy Calloway and Jaimie Green's actions, inactions, and lack of knowledge of the industry.

#86 Please Clarify such actual damages as to this point they have accepted no responsibility for their actions.

Fifth Claim for Relief

#87 Again all plaintiffs are still eligible for shares in the business as long as they accept the responsibilities of ownership which is currently born by Gudrun Casper-Leinenkugel.

#88 There has been no enrichment of Gudrun Casper-Leinenkugel. Plaintiffs at this point bear all responsibility for the Plaintiffs actions as management and would be happy to share the responsibility with the plaintiffs as business partners.

Sixth Claim for Relief

#89 Please Clarify. If plaintiffs wish to bear responsibility for the funds, debts, damages to the business they are more than welcome to get their shares of the company.

#90 Plaintiffs are welcome to share responsibilities of pseudo-entity referenced. As it was an attempt to reestablish a reputation and business after Tammy Calloway and Jaimie Green left the business in shambles.

Seventh Claim for Relief

#91 False

#92 Gudrun Casper-Leinenkugel is willing to provide ownership shares to all plaintiffs if they willingly accept the responsibilities of ownership.

#93 no need for a constructive trust as Gudrun Casper-Leinenkugel is willing to allow plaintiffs to have an ownership stake in the company as long as they accept willingly the responsibilities of ownership.

#94 no need for a constructive trust as Gudrun Casper-Leinenkugel is willing to allow plaintiffs to have an ownership stake in the company as long as they accept willingly the responsibilities of ownership.

Eighth Claim for Relief

#95 False

#96 False

#97 False

Prayer for Relief

#1 That the court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#2 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#3 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#4 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#5 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#6 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#7 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit And that the plaintiffs be responsible for payment of Plaintiffs costs related to this action.

#8 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#9 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#10 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

#11 The Court dismiss the case on the grounds that the Plaintiffs have falsified information and have not communicated in relation to this prior to this lawsuit

VERIFICATION

Gudrun Casper-Leinenkugel, being duly sworn, deposes and says that the contents of the foregoing Response to Complaint and Motion to Dismiss With Prejudice are true to her own knowledge, except to matters stated on information and belief, and as to those matters, she believes them to be true.

Gudrun Casper-Leinenkugel

State of WI.

County of Sawyer, to wit:

Before me, a Notary Public in and for the State and County aforesaid, on this 2nd day of February, 2017, personally appeared Gudrun Casper-Leinenkugel, who first being duly sworn, says that the foregoing Response to Complaint and Motion to Dismiss With Prejudice is true and correct.

Melissa N Warner
NOTARY PUBLIC

My commission expires: 9-11-17.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

FILED
2017 JAN 17 A 10:45
BUNCOMBE CO., C.S.C.
BY

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL, and PATTON PUBLIC HOUSE, INC.,

Defendants.

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL ON DEFENDANT PATTON PUBLIC HOUSE, INC.

The undersigned, Brian W. Sharpe, first being duly sworn, deposes and says:

1. I am the attorney for the Plaintiffs in this action, and I am providing this affidavit in accordance with N.C. Gen. Stat. §§ 1-75.10(a)(4) and 1A-1, Rule 4.

2. A copy of the Complaint and Summons in this matter were deposited in the United States Post Office for mailing by certified mail, return receipt requested, addressed to the Defendant, Patton Public House, Inc., c/o James Gary Rowe, Registered Agent, at P.O. Box 2865, Asheville, North Carolina 28802.

3. The copy of said Complaint and Summons were in fact received on the date indicated on the genuine registry receipt, a true and accurate copy of the original of which is attached hereto and incorporated herein by reference, whereby service of process was perfected on Defendant and obtained by certified mail pursuant to the provisions of Rule 4(j) of the North Carolina Rules of Civil Procedure.

This the 16th day of January, 2017.

Brian W. Sharpe, Esq.
N.C. Bar No. 51203
DAVID R. PAYNE, P.A.
7 North Main Street
Marshall, N.C. 28753
Telephone: (828) 649-8322
Fax: (828) 649-8377
bsharpe@drplawfirm.com

Attorney for Plaintiff

BUNCOMBE COUNTY, NORTH CAROLINA

Sworn to and subscribed before me on this 16th day of January, 2017, by Brian W. Sharpe.

(Official Seal)

TERESA S WILLIAMS NOTARY PUBLIC BUNCOMBE COUNTY, NC
8/3/2018
MY COMM. EXPIRES

Teresa S Williams
NOTARY PUBLIC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patton Public House, Inc.
c/o James Gary Rose, Agent
P.O. Box 2865
Asheville, N.C. 28802

9590 9403 0537 5173 3050 02

2. Article Number (Transfer from service label)

7013 3020 0000 4262 7096

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [signature] C. Date of Delivery JAN - 3 2017

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

UNITED STATES POSTAL SERVICE

03 JAN 17

PM 11

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

JAN 3 2017

USPS

• Sender: Please print your name, address, and ZIP+4® in this box•

David R. Payne
7 North Main Street
Marshall, N.C. 28753

RE: Trademark Cancellation

USPS TRACKING#

9590 9403 0537 5173 3050 02

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

FILED
2017 JAN 17 A 10:45
BUNCOMBE CO., C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CvS 5135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL, and PATTON PUBLIC HOUSE, INC.,

Defendants.

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL ON DEFENDANT GUDRUN CASPER-LEINENKUGEL

The undersigned, Brian W. Sharpe, first being duly sworn, deposes and says:

1. I am the attorney for the Plaintiffs in this action, and I am providing this affidavit in accordance with N.C. Gen. Stat. §§ 1-75.10(a)(4) and 1A-1, Rule 4.

2. A copy of the Complaint and Summons in this matter were deposited in the United States Post Office for mailing by certified mail, return receipt requested, addressed to the Defendant, Gudrun Casper-Leinenkugel, at 15 Schmidt Terrace, Hendersonville, North Carolina 28739.

3. The copy of said Complaint and Summons were in fact received on the date indicated on the genuine registry receipt, a true and accurate copy of the original of which is attached hereto and incorporated herein by reference, whereby service of process was perfected on Defendant and obtained by certified mail pursuant to the provisions of Rule 4(j) of the North Carolina Rules of Civil Procedure.

This the 16th day of January, 2017.

Brian W. Sharpe, Esq.
N.C. Bar No. 51203
DAVID R. PAYNE, P.A.
7 North Main Street
Marshall, N.C. 28753
Telephone: (828) 649-8322
Fax: (828) 649-8377
bsharpe@drplawfirm.com

Attorney for Plaintiff

BUNCOMBE COUNTY, NORTH CAROLINA

Sworn to and subscribed before me on this 16th day of January, 2017, by Brian W. Sharpe.

(Official Seal)

TERESA S WILLIAMS NOTARY PUBLIC BUNCOMBE COUNTY, NC MY COMM. EXPIRES 4/3/2018

NOTARY PUBLIC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gudrun Casper-Leivenkugel
15 Schmidt Terrace
Hendersonville, NC 28739

9590 9403 0537 5173 3049 75

2. Article Number *(Transfer from service label)*

7013 3020 0000 4262 7072

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☒ Addressee

B. Received by *(Printed Name)* [illegible] C. Date of Delivery 12-31

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ [illegible] Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

UNITED STATES POSTAL SERVICE

SC 296
03 JAN '17
PM 1 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

David R. Byrne
7 North Main Street
Marshall, N.C. 28753

RE: Tammy Calloway

USPS TRACKING#

3-00407

9590 9403 0537 5173 3049 75

STATE OF NORTH CAROLINA

File No. 16 CvS 5135

BUNCOMBE County

In The General Court Of Justice

FILED
2017 JAN 17 A 10:45
BUNCOMBE CO., C.S.C.
BY

Name And Address Of Plaintiff	
TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES, c/o David R. Payne, P.A. 7 N. Main Street, Marshall, NC 28753	**SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT**
VERSUS	
Name And Address Of Defendant: GUDRUN CASPER-LEINENKUGEL, 15 Schmidt Terrace, Hendersonville, NC 28739	50 U.S.C. 3901 to 4043

NOTE: *This form is not for use in Chapter 45 Foreclosure actions.*

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date: *(check one of the following)*
   - ☐ a. the defendant named above is in military service.*
   - ☐ b. the defendant named above is **not** in military service.*
   - ☒ c. I am unable to determine whether the defendant named above is in military service.*
2. *(check one or more of the following)*
   - ☒ a. I ☒ have ☐ have not used the Servicemembers Civil Relief Act Website (https://www.dmdc.osd.mil/appj/scra/) to determine the defendant's military status. ☐ The results from my use of that website are attached.
     (**NOTE:** *The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. DoD security certificates were automatically added to the computers of all Judicial Branch users, such that these users should not expect security alerts to appear with this website after July of 2015. As of December 14, 2015, the Servicemembers Civil Relief Act Website includes the following advice: "Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser."*)
   - ☐ b. The following facts support my statement as to the defendant's military service: *(State how you know the defendant is not in the military. Be specific.)*

_____

_____

_____

_____

_____

_____

***NOTE:** The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).*

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date: 1-16-2017

Signature Of Person Authorized To Administer Oaths: Teresa S Williams

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Magistrate

SEAL ☒ Notary

Date My Commission Expires: 08/03/2018

Date: 01/16/2017

Signature Of Affiant: Brian W. Sharpe

Name Of Affiant (type or print): Brian W. Sharpe, Esq.

TERESA S WILLIAMS NOTARY PUBLIC BUNCOMBE COUNTY, NC MY COMM. EXPIRES

NOTE TO COURT: ***Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.***

(Over)

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Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2). State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).

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STATE OF NORTH CAROLINA

File No. 16CV 05135

BUNCOMBE County

FILED

2016 NOV 30 P 1:36

BUNCOMBE CO., C.S.

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff	
TAMMY CALLOWAY, et al.	
Address	
City, State, Zip	
VERSUS	
Name Of Defendant(s)	Date Original Summons Issued
GUDRUN CASPER-LEINENKUGEL, and PATTON PUBLIC HOUSE, INC.	Date(s) Subsequent Summons(es) Issued

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1	Name And Address Of Defendant 2
GUDRUN CASPER-LEINENKUGEL	PATTON PUBLIC HOUSE, INC.
	c/o James Gary Rowe, registered agent
15 Schmidt Terrace	P.O. Box 2865
Hendersonville NC 28739	Asheville NC 28802

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)	Date Issued	Time	
Brian W. Sharpe, Esq. DAVID R. PAYNE, P.A. 7 North Main Street Marshall NC 28753	11-30-16	1:36	☐ AM ☑ PM
	Signature		
	☑ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		

☐ ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement	Time	
		☐ AM ☐ PM
Signature		
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		

NOTE TO PARTIES: *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

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(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	*Time Served* ☐ AM ☐ PM	*Name Of Defendant*

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	*Time Served* ☐ AM ☐ PM	*Name Of Defendant*

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason.

Service Fee Paid	*Signature Of Deputy Sheriff Making Return*
$	
Date Received	*Name Of Sheriff (Type Or Print)*
Date Of Return	*County Of Sheriff*

© 2011 Administrative Office of the Courts

FILED
2016 NOV 30
BUNCOMBE CO., C.S.C.
BY

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16CV 05135

TAMMY CALLOWAY, JAIMIE GREEN, and VICTORIA LANCASTER-AMES,

Plaintiffs,

vs.

GUDRUN CASPER-LEINENKUGEL, and PATTON PUBLIC HOUSE, INC.,

Defendants.

VERIFIED COMPLAINT

Plaintiffs, complaining of Defendants, say and aver as follows:

PARTIES, JURISDICTION, & VENUE

1. Plaintiff Tammy Calloway is a resident and citizen of Buncombe County, North Carolina.

2. Plaintiff Jaimie Green is a resident and citizen of Buncombe County, North Carolina.

3. Plaintiff Victoria Lancaster-Ames is a resident and citizen of Buncombe County, North Carolina.

4. Upon information and belief, Defendant Gudrun Casper-Leinenkugel is a resident and citizen of Henderson County, North Carolina.

5. Defendant Patton Public House, Inc. is a North Carolina corporation with its principal place of business located in Buncombe County, North Carolina.

6. This Court has personal jurisdiction over the Defendants pursuant to N.C. Gen. Stat. § 1-75.4.

BUNCOMBE COUNTY CLERK OF COURT

Q163039 11/30/16 13:40:41

PAYOR: CALLOWAY,TAMMY
PAYEE: PD BY PAYNE,DAVID ATTY
CASE#: 16CVS005135 VCAP:Y
CITA#:

21120 SC-CIVIL FEES	177.55
21121 SC-CV LAA FEES	2.45
24681 JUD TECH & FAC	4.00
22120 CO FAC FEE S CV	16.00
TOTAL PAID	200.00
CO TENDERED	200.00
CHANGE	.00

9534 ID C10JMW

FACTS

7. The individuals who are parties to this action, including the Plaintiffs and Defendant Gudrun Casper-Leinenkugel (hereinafter "Gudrun"), formed a business partnership by oral agreement for the purpose of establishing and operating a restaurant and bar in Asheville, North Carolina.

8. Gudrun first approached Plaintiff Victoria Lancaster-Ames (hereinafter "Victoria") in May of 2013 with the idea of starting a restaurant and bar business together. Consequently, Gudrun met with Victoria at Denny's Restaurant in Asheville to discuss certain preliminary details of the proposed business.

9. Upon information and belief, Gudrun sought a partnership with Victoria because Victoria had previously been a shareholder in another restaurant and bar in Asheville called Tolliver's Pub, where Gudrun worked as an accountant and bookkeeper.

10. Subsequently, Victoria's husband, Tom Ames, assisted Gudrun with scouting potential locations for the restaurant, whereby Tom relied on his expertise as a construction contractor to assess target buildings and their structural conditions.

11. Soon thereafter, Tom Ames and Gudrun found commercial restaurant space for lease at 1341 Patton Avenue, Asheville, North Carolina 28806.

12. Upon information and belief, Gudrun negotiated with the building owner for a 25-year lease term at $5,700.00 per month.

13. In October of 2013, Gudrun contacted Plaintiff Jaimie Green (hereinafter "Jaimie") in order to convince her to join the restaurant partnership.

14. Upon information and belief, Gudrun sought Jaimie's participation in the partnership based on Jaimie's experience as a bar manager and in order to gain access to her vendor contacts in the local bar and restaurant industry.

15. Thereafter, from approximately October 2013 to November 2015, Jaimie worked full-time for the partnership, while Victoria worked anywhere from 2 to 8 hours each day. Both of them worked without any pay, performing substantial repairs, construction, and renovations to the leased building space.

16. Jaimie used her own professional contacts among local food and beverage suppliers to establish supply contracts for the partnership business. She also created the business's wine and beer lists. All of this work was performed with no pay until November 2015, when Jaimie began receiving a partner's wage of $12.00 per hour.

17. Victoria contributed valuable capital to the partnership in the form of commercial kitchen appliances and cookware, which she brought over to the restaurant from her prior venture at Tolliver's Pub.

18. With Jaimie and Victoria's approval, Gudrun approached a fourth person, Plaintiff Tammy Calloway (hereinafter "Tammy"), about joining the partnership during the fall of 2013. At this time, Tammy was working as a hotel and bar manager at the Crowne Plaza Resort in Asheville, North Carolina, where she earned a salary of $1,000.00 per week.

19. As an inducement for Tammy coming onboard as a partner, Gudrun promised her a weekly salary of $500.00 during the renovation and staff-training

phases, which was to be further supplemented with ownership shares in the partnership business once the restaurant was up and running.

20. While still working at her job at Crowne Plaza Resort, Tammy also performed work renovating the partnership's lease space on her evenings and days off, all for no pay or compensation aside from her ownership stake in the partnership.

21. In October 2013, Gudrun presented Tammy, Victoria, and Jaimie with documents purportedly drawn for the partnership by Gudrun's attorney. Gudrun requested that each of the Plaintiffs sign these documents memorializing the partnership's agreement, and Plaintiffs proceeded in doing so with the reasonable belief and understanding that Gudrun would register any necessary incorporation documents with the Office of the Secretary of State and that she would maintain, safeguard, and honor their partnership and/or operating agreements.

22. For a period of several months, the partnership spent substantial time and effort in preparing Patton Public House for its grand opening. Multiple opening dates were scheduled, but each scheduled opening was eventually cancelled at the bequest of Gudrun. This pattern of Gudrun scheduling openings and then cancelling them persisted for many months.

23. In July 2014, Gudrun telephoned Tammy and pleaded with her to quit her lucrative, salaried job at Crown Plaza Resort, so that Tammy could come on board full-time with the partnership's restaurant venture and help get the building, dining space, and kitchen ready for its opening, which was at that time scheduled to occur in 6 to 8 weeks.

24. Tammy was insistently reluctant to leave her job at Crowne Plaza Resort, particularly given its stable salary, paid time-off and health insurance benefits, but Gudrun assured Tammy that their restaurant venture would be opening in no later than 6 to 8 weeks, and that in the meantime, the partnership business would pay Tammy a salary of $500.00 per week and would also issue her shares in the partnership valued at $500.00 per week, this totaling $1,000.00 in weekly compensation.

25. Based on Gudrun's promises and inducements, Tammy then left her job at Crowne Plaza Resort and she started working full-time on the partnership's business on or about September 22, 2014. For the first month, Tammy worked for no pay. After that, she started receiving a salary of $500.00 per week as agreed upon.

26. As further agreed upon by the partnership, neither Jaimie nor Tammy were allowed to keep the tips that they earned from patrons because of their status as partners in the business. Instead, these monies were placed back into the partnership's operating funds. Victoria was not permitted to earn any tips either.

27. Tammy then began creating employee handbooks, various bar worksheets, and employee contracts for the partnership business. She and Jaimie also hired a staff for the restaurant and conducted all interviews and staff meetings.

28. Along with Jaimie, Tammy provided the partnership business with her own contacts for alcohol and food vendors.

29. Tammy also used her own personal credit in order to obtain utilities, credit / debit card processing services, and inventory at the partnership's restaurant.

According to Gudrun's statements to Victoria, Jaimie, and Tammy, Gudrun lacked the necessary creditworthiness to obtain these accounts on her own.

30. Tammy assisted Gudrun with applying for an alcoholic beverage sale permit and license from the North Carolina ABC Commission. Accordingly, Tammy was listed as a licensee on the business's ABC license.

31. The partners all agreed that the Plaintiffs would have the following corporate roles and titles in the business: Victoria, vice president; Tammy, vice president; and Jaimie, secretary.

32. The partners all agreed that the Plaintiffs would have the following working titles at the restaurant: Victoria, events coordinator; Tammy, general manager, and Jaimie, bar manager.

33. As for Gudrun's role in the partnership business, she was to be its president and financial manager.

34. The partners further agreed that they would not engage in any profit sharing until their business venture became sufficiently profitable, but that they would initially receive only a small, modest wage for their work as follows: beginning in November 2015, Jaimie received $12.00 per hour; from October 2014 through June 2015, Tammy received $500.00 per week, and then $750.00 per week from July 2015 through August 9, 2016; and Victoria received no pay whatsoever.

35. The partnership also provided Jaimie and Tammy with company cell phones.

36. The partnership decided to call their restaurant business "Patton Public House," and they initially planned their grand opening for late September 2014. In fact, this open-date was publicized in an *Asheville Citizen-Times* newspaper article, dated August 26, 2014, which interviewed two of the partners, Gudrun and Victoria.

37. The partnership planned for Patton Public House to be open 24 hours a day, serving breakfast, lunch, and dinner.

38. However, the grand opening was postponed several times due to issues caused by Gudrun's mismanagement of the partnership business. These issues include, but are not necessarily limited to, the following:

a. siphoning off operating funds and company accounts;

b. failing to pay construction contractors in timely fashion;

c. arbitrary firings of key staff members; and

d. misappropriation of partnership capital.

39. Despite these issues, Patton Public House finally had its official opening on June 13, 2016, after a "soft opening" just a week before. Notably, the opening occurred nearly two years after Tammy joined the venture full-time, even though Gudrun had specifically assured her that the restaurant would open in only 6 to 8 weeks.

40. The initial revenue stream generated by the business averaged $11,000.00 to $13,000.00 per week and, at first, Patton Public House employed about 32 servers and 22 kitchen staff.

41. Soon, Plaintiffs became aware that Gudrun was not managing the business's finances properly. This fact became most obvious when Gudrun began paying the business's employees late, and then later refused to pay them at all. At other times, employees' payroll checks would be returned by their banks for insufficient funds.

42. In addition, Gudrun would routinely reduce hours from employees' checks and find other ways to shortchange their wages. This resulted in the local ABC television affiliate, WLOS - News 13, running a TV story about the non-payment of employees at Patton Public House.

43. This negative press tarnished the partnership business's reputation and immediately affected sales at Patton Public House.

44. To make matters worse, Gudrun fired many employees based on their participation in the TV news story, and now the business has multiple claims pending with the North Carolina Department of Labor over unpaid wages.

45. The wage controversy culminated in a mass walk-out by employees on August 9, 2016. At this time, Gudrun admitted to Jaimie that she had not maintained or set aside any operating funds for payroll or inventory expenses.

46. Indeed, Gudrun's handling of the partnership's finances caused its food and alcohol vendors to be consistently paid late or not at all, and many local suppliers discontinued their business with Patton Public House, which in turn raised expenses and created inventory shortages.

47. On the same day as the employee walk-out, Gudrun also refused to pay any wages to Tammy or Jaimie. Within a week after that, Gudrun demanded that Tammy and Jaimie return their work phones.

48. Subsequently, Gudrun has refused to issue the Plaintiffs any ownership shares in the business, or otherwise pay them for their work or their contributions to the partnership.

49. In the intervening time, Plaintiffs have learned of other instances of mismanagement or deception by Gudrun. These include:

a. soliciting outside investors, obtaining credit, and promising shares to others without prior authorization by the partnership;

b. scrapping and selling appliances and metal from the business without ever placing the proceeds back into the operating account;

c. writing business checks to herself without just cause and without presenting any invoices or cost receipts to justify these alleged "reimbursements";

d. lying to employees about their wages and falsely telling them that an outside payroll contractor was responsible for their late pay;

e. comingling Patton Public House's money with that of other, unrelated business ventures;

f. soliciting investment capital without ever placing these funds into the partnership business; and

g. consuming alcohol on the business premises in violation of ABC regulations and state law.

50. Due to this conduct and the events and actions complained of herein, Defendant and Plaintiffs have been unable to agree upon the proper and reasonable management of the partnership's affairs.

51. In her role as president and financial manager of Patton Public House, Gudrun was required to make all necessary tax payments on behalf of the business to the United States Department of the Treasury and to the North Carolina Department of Revenue.

52. Specifically, with respect to tax payments owed to the U.S. Department of the Treasury, Gudrun was required to:

a. deduct and withhold federal and state income tax payments from the wages paid to the business's employees (Federal Internal Revenue Code ("IRC") Section 3402);

b. collect federal insurance contributions act taxes ("FICA" taxes) from the wages the business paid to its employees (IRC Sections 3102 and 3111); and

c. pay federal unemployment and state unemployment taxes with respect to the wages paid to employees (IRC Section 3301).

53. As a person making payments of wages who was obligated to collect and pay over or otherwise pay the taxes set forth above, the business was required to timely prepare and file on a quarterly and/or annual basis federal and state returns reporting such amounts, and there are statutory penalties for failure to do so (IRC Section 6651).

54. As a person making payments of wages who was obligated to collect and pay over or otherwise pay the taxes set forth above, the parties' business, when it failed to timely deposit such taxes, became liable for the penalties and interest, compounded daily, computed with respect to such amounts not so timely deposited, in addition to the amount of such taxes (IRC Sections 6601 and 6656).

55. The federal income taxes and the FICA taxes collected and withheld in accordance with the requirements set forth above from the wages of employees are deemed, for federal income tax purposes, to be held in a special fund in trust for the United States (the "Trust Fund Taxes") (IRC Section 7501).

56. Any person required to collect, truthfully account for, and pay over any Trust Fund Taxes (referred to in the Code as a "Responsible Person"), who willfully fails to collect such taxes, or truthfully account for and pay over such taxes, or willfully attempts in any manner to evade or defeat any such Trust Fund Taxes or the payment thereof, shall, in addition to any other penalties provided by law, be liable for a penalty equal to the total amount of the Trust Fund Taxes evaded, or not collected, or not accounted for and paid over (IRC Section 6672).

57. Gudrun, in her role as president and financial manager of the parties' business venture, had sole discretionary authority and exclusive knowledge with respect to (i) the business's obligation to collect and withhold from employees' wages the taxes set forth above, and (ii) the decision to pay the taxes due.

58. Upon information and belief, Gudrun failed to file the required tax returns and to deposit or pay-over the required taxes to the United States and to the State of North Carolina.

59. Gudrun is now operating Patton Public House under a trade name called "Byrish Haus Pub" or "Byrish Haus Restaurant and Pub." However, this is the very same business entity and restaurant as Patton Public House, and, upon information

and belief, the name change was implemented by Gudrun solely in response to the partnership disagreement with Plaintiffs and in anticipation of this lawsuit.

FIRST CLAIM FOR RELIEF
(Dissolution of Business Partnership)

60. As a result of the continuing disagreement pertaining to managerial control, Plaintiffs and Defendant have found it impossible to carry on the partnership business at Patton Public House.

61. Plaintiffs are informed and believe and upon such information and belief allege that the disagreements cannot be reconciled and that it would be in the best interests of the parties if the partnership were dissolved. Yet Defendant has refused and continues to refuse to consent to the dissolution of the partnership or otherwise refuses to pay-out Plaintiffs for their respective shares in said partnership.

62. The said partnership business owns a large and valuable stock of goods, wares, and merchandise, consisting of inventory; a valuable, remodeled premises used as a restaurant and bar at 1341 Patton Avenue, Asheville, NC 28806; an amount of moneys, some due and some to grow due, is owing to the partnership; it has a valuable good will; and the premises, goods, etc., and good will taken together are of far greater value than if separated; and no division of the same among the partners can be made without great sacrifice of value and loss.

63. That on or about August 9, 2016, Defendant took exclusive possession of the partnership property, company books, accounts, and assets, and then and ever since has prevented Plaintiffs from having access to same.

64. From the time they went into the business and during its continuance, Defendant has consistently manifested a willful and deceitful disposition, and refused in any manner to accede to or consider the wishes and views of Plaintiffs, and in consequences the business from the commencement has been attended with many annoyances, failures, and shortcomings that were trying to Plaintiffs and harmful to their interests.

65. In view of the constant disputes and inability to agree on any line of policy or selection of stock, which disputes have become so violent and lasting as to prevent any beneficial effects from its continuance, it is for the interest of the parties that the said partnership be dissolved.

66. Moreover, upon information and belief, Defendants have maintained various alcohol sale licenses, supplier contracts, and credit accounts under the names of one or more of the Plaintiffs, whereby Plaintiffs are entitled to dissolution of said business operation in order to protect their creditworthiness, their good standing with the ABC Commission, and their reputation with supply vendors.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duties of Good Faith, Loyalty, and Due Care)

67. As Plaintiffs' business partner, Gudrun owed fiduciary duties of good faith, fair dealing, loyalty, and due care to the Plaintiffs and their business.

68. By virtue of her position as an officer of Patton Public House, Gudrun owed the same fiduciary duties to all actual, prospective, and purported shareholders of said corporate entity, including Plaintiffs.

69. Gudrun breached her fiduciary duties to Plaintiffs by committing the fraudulent acts and unfair and deceptive trade practices complained of herein.

70. Gudrun further breached her fiduciary duties to Plaintiffs by, inter alia:

a. failing to make timely payments to the U.S. Department of the Treasury and the N.C. Department of Revenue of taxes owed by Patton Public House and its employees;

b. misrepresenting to Plaintiffs the actual financial condition of, and amount of revenue generated by, Patton Public House and the partnership business; and

c. perpetrating the acts or omissions complained of above, including, in particular, the conduct described in Paragraphs 49 a. through 49 g. of this Verified Complaint.

71. Plaintiffs, along with the parties' partnership business, have been damaged by Gudrun's breaches of fiduciary duty in many ways, including, but not limited to, the following categories of damages:

a. wages still owing to past or current employees;

b. penalties and interest owing to the U.S. Department of the Treasury and N.C. Department of Revenue;

c. bills owing to lessors, utility providers, creditors, construction contractors, and supply vendors;

d. the diminution in value of the partnership business;

e. tarnished business good will and reputation;

f. loss of skilled labor and essential employees;

g. depletion of available operating capital;

h. foiled business growth and similar opportunity costs;

i. loss of local supply vendors, who are now unwilling to do business with Patton Public House or its owners/partners;

j. exposure to liability from former employees and third-parties;

k. restaurant closures and delays in opening;

l. negative media attention; and

m. dilution of Plaintiffs' respective ownership shares.

72. All of these breaches of fiduciary duty by Gudrun were made in bad faith and were plainly adverse to the best interests of the partnership business and of the Plaintiffs.

73. As a direct and proximate result of her breaches of said duties, Gudrun has caused Plaintiffs to suffer damages in an amount to be proven at trial, but at least in excess of $25,000.00.

THIRD CLAIM FOR RELIEF
(Fraud, Misrepresentation, and/or Fraud in the Inducement)

74. In May of 2013, Defendant Gudrun, with intent to defraud Victoria, represented to Victoria that she was to receive ownership shares in Patton Public House proportionate to the hours that Victoria spent preparing the restaurant for its opening. Gudrun also misrepresented to Victoria that, once Patton Public House became profitable, Gudrun would pay $45,000.00 to Victoria in order to satisfy a debt that was owed to Victoria by a former owner of Tolliver's Pub, named Landon Phillips, who had previously employed Gudrun as an accountant and bookkeeper.

75. In October of 2013, Defendant Gudrun, with intent to defraud Jaimie, represented to Jaimie that she was to receive ownership shares in Patton Public House proportionate to the hours that she spent opening and operating the business.

76. In the fall of 2014, Defendant Gudrun, with intent to defraud Tammy, represented to Tammy that she was to receive ownership shares in Patton Public

House proportionate to the hours she spent opening and operating the restaurant; Gudrun further represented to Tammy that she was to receive regular weekly pay from Patton Public House as a supplement to her share distributions.

77. Thereafter, Gudrun made ongoing representations to each of the Plaintiffs that their shares would be issued promptly upon Patton Public House's formation and opening, and she even presented Plaintiffs with business incorporation documents purportedly drawn by an attorney for the partnership, which Plaintiffs and Gudrun, in turn, signed. These documents listed Plaintiffs as partners and shareholders in the business venture, and Gudrun represented to Plaintiffs that said items would be duly registered with the Secretary of State.

78. Said representations were known by Defendant Gudrun to be false and were in fact false. In truth, Gudrun never intended to issue any ownership shares nor register the partnership's incorporation documents.

79. Plaintiffs believed and relied upon the false representations, and thus were induced to expend their time, labor, and capital in establishing and building the business of Patton Public House.

80. Defendant Gudrun made such representations to Plaintiffs with the fraudulent intent that Plaintiffs should act on them.

81. Plaintiffs did not discover that Gudrun's representations were false until August 2016 when their business relationships with Gudrun soured. Up to that point, Plaintiffs had been prevented from discovering the true nature of Gudrun's deceit due to her active concealment and ongoing misrepresentation of such facts.

82. As a result of the foregoing, Plaintiffs have been damaged in an amount directly equal to the value of their time, labor, skill, and capital contributions, as well as the relative increase in value to the business and its good will resulting therefrom, which equals an amount in excess of $25,000.00.

FOURTH CLAIM FOR RELIEF
(Unfair and/or Deceptive Trade Practices)

83. Through her breaches of fiduciary duty to Plaintiffs and her fraud, all of which were intentional and deliberate, Gudrun has committed unfair or deceptive acts or practices as proscribed under N.C. Gen. Stat. § 75-1.1.

84. Gudrun's conduct was in the stream of commerce or affected commerce within North Carolina.

85. Plaintiffs have been damaged by Gudrun's unfair and deceptive trade practices in an amount to be proved at trial, which is in excess of $25,000.00.

86. Plaintiffs are entitled to recover from Gudrun their actual damages, which shall be trebled, plus interest and attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

87. As a result of Gudrun's breaches of fiduciary duties, fraud, and unfair and deceptive trade practices, Defendants are not entitled to the benefits, revenue, income, and appreciation in value that they received from Plaintiffs, which resulted from Plaintiffs' time, labor, skills, and capital contributions to Patton Public House and the partnership business.

88. Plaintiffs have been damaged by Defendants' retention of benefits, revenue, income, and appreciation in value to which they are not entitled, whereby Defendants have been unjustly enriched, and Plaintiffs are therefore entitled to recover from Defendants, an amount in excess of $25,000.00.

SIXTH CLAIM FOR RELIEF
(Resulting Trust)

89. Plaintiffs are entitled to a resulting trust on all funds, benefits, and capital contributions received by Defendants, as referenced above.

90. Said resulting trust shall further encompass any and all assets allegedly held by the pseudo-entity referenced in Paragraph 59 above.

SEVENTH CLAIM FOR RELIEF
(Constructive Trust)

91. Defendants have been unjustly enriched by Gudrun's breaches of fiduciary duties, fraud, and unfair and deceptive trade practices, as described above.

92. Plaintiffs request that this Court impose a constructive trust on all benefits and funds that Gudrun has received from Patton Public House and the partnership business as a result of her wrongful conduct complained of herein.

93. Plaintiffs request that this Court impose a constructive trust on all personal property, funds, and other assets currently held by the business located at 1341 Patton Avenue, Asheville, North Carolina 28806, and on all such personal property, revenue, capital gains, and any other assets which may accrue at such business in the future, including all current and future assets held by Patton Public House or its subsidiaries and successors in interest.

94. Said constructive trust shall further encompass any and all assets allegedly held by the pseudo-entity referenced in Paragraph 59 above.

EIGHTH CLAIM FOR RELIEF
(Punitive Damages)

95. The conduct of Defendant Gudrun, as set forth above, constituted fraud, malice, and willful or wanton conduct within the meaning of Chapter 1D of the North Carolina General Statutes.

96. At the time Gudrun made the false representations to Plaintiffs, as set forth above, she knew such representations were false and intended that the Plaintiffs should act on them, and Plaintiffs did in fact rely on Gudrun's false representations and have been injured as a direct and proximate result thereof.

97. Therefore, Plaintiffs are entitled to recover punitive damages from Gudrun in an amount to be determined by the jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the Court for the following relief:

1. That the Court find for Plaintiffs against Defendants on all claims;

2. That the said partnership be adjudged dissolved and that the Defendants be directed to render an accounting of the assets, transactions, and profits of the partnership and of the debts and liabilities thereof and that the Plaintiffs be granted such other and further relief as may be just and proper, or in the alternative that the said partnership be adjudged dissolved; the partnership property and effects, including the good will, be directed to be sold; a receiver of the property rights and good will of said partnership be appointed with power to dissolve the same and to

collect all debts for the benefit of all parties entitled thereto; an accounting be had of the affairs of said partnership; the proceeds of the partnership assets be divided after payment of all just debts of said partnership and the costs of this action between the parties hereto, according to their respective rights;

3. To the extent not otherwise addressed by the dissolution and receivership prayed above, that the Court impose a resulting trust, in favor of Plaintiffs, on all partnership assets held by Defendants, along with any other funds by which Defendants have been unjustly enriched, and that the Court impose a constructive trust, in favor of Plaintiffs, on all funds or assets that Defendant Gudrun acquired by fraud or by taking advantage of the relationship of trust and confidence between her and Plaintiffs;

4. That the Court award Plaintiffs recovery of all direct damages, together with any incidental and consequential damages, which are in excess of $25,000.00;

5. That Plaintiffs have and recover of the Defendant all special damages, including lost profits, in an amount to be proven at trial;

6. For punitive damages, in an amount to be determined at trial, for Gudrun's fraudulent, malicious, willful and wanton acts;

7. That the costs of this action be taxed against the Defendant;

8. That Plaintiffs have and recover such other and additional damages as Plaintiffs may substantiate through evidence and under North Carolina law;

9. For pre-judgment interest on any award granted to Plaintiffs herein;

10. For a trial by jury on all material issues of fact; and

11. For such other and further relief as the Court deems just, equitable, and proper.

Respectfully submitted,

Dated: November _____, 2016.

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dpayne@drplawfirm.com

Attorneys for Plaintiffs

VERIFICATION

Victoria Lancaster-Ames, being duly sworn, deposes and says that the contents of the foregoing Complaint are true to her own knowledge, except as to matters stated on information and belief, and as to those matters, she believes them to be true.

VICTORIA LANCASTER-AMES

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE, to wit:

Before me, a Notary Public in and for the State and County aforesaid, on this 23rd day of November, 2016, personally appeared Victoria Lancaster-Ames, who first being duly sworn, says that the foregoing Complaint is true and correct.

Seal-Stamp

TERESA S WILLIAMS
NOTARY
8/3/2018
MY COMM. EXPIRES
PUBLIC
BUNCOMBE COUNTY, NC

NOTARY PUBLIC

My Commission Expires:_____

VERIFICATION

Jaimie Green, being duly sworn, deposes and says that the contents of the foregoing Complaint are true to her own knowledge, except as to matters stated on information and belief, and as to those matters, she believes them to be true.

JAIMIE GREEN

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE, to wit:

Before me, a Notary Public in and for the State and County aforesaid, on this 29th day of November, 2016, personally appeared Jaimie Green, who first being duly sworn, says that the foregoing Complaint is true and correct.

Seal-Stamp

NOTARY PUBLIC

My Commission Expires:_____

VERIFICATION

Tammy Calloway, being duly sworn, deposes and says that the contents of the foregoing Complaint are true to her own knowledge, except as to matters stated on information and belief, and as to those matters, she believes them to be true.

Tammy Calloway
TAMMY CALLOWAY

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE, to wit:

Before me, a Notary Public in and for the State and County aforesaid, on this 29th day of November, 2016, personally appeared Tammy Calloway, who first being duly sworn, says that the foregoing Complaint is true and correct.

Seal-Stamp

Teresa S Williams
NOTARY PUBLIC

My Commission Expires:_____

File No. 16 CVS 5135

LEAD DOCUMENT FOR SCANNING

AUDIT TRAIL

Date Filmed	Description	Film No.
10-28-16	COMPLETE FILE	19-51

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