

1 SAMANTHA P. TRAVIS  
2 OGLE, WORM & TRAVIS, PLLP  
3 P.O. BOX 899  
4 Kalispell, MT 59903-0899  
5 Telephone: (406) 752-7550  
6 Facsimile: (406) 257-0411  
7 [samantha@owlawoffice.com](mailto:samantha@owlawoffice.com)

5 KIMBERLY S. MORE  
6 CROWLEY FLECK PLLP  
7 219 East Center Street  
8 P. O. Box 759  
9 Kalispell, MT 59903-0759  
10 Telephone: (406) 752-6644  
11 Facsimile: (406) 752-5108  
12 [kmore@crowleyfleck.com](mailto:kmore@crowleyfleck.com)

9 Attorneys for Defendants  
10 O'Brien Byrd, Three Byrd's Properties, LLC,  
11 North Fork Intuition, LLC

13 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

14 COLUMBIA FALLS COMMUNITY )  
15 MARKET, a Montana nonprofit corporation, )  
16 Plaintiff, )  
17 vs. )  
18 O'BRIEN BYRD, individually and d/b/a )  
19 THREE BYRD'S PROPERTIES, LLC a )  
20 Montana limited liability company, and )  
21 NORTH FORK INTUITION, LLC, a Montana )  
22 limited liability company )  
23 Defendant. )

Cause No.: DV-2023-636

District Judge: Dan Wilson

**DEFENDANTS' ANSWER,  
COUNTERCLAIMS AND DEMAND  
FOR TRIAL BY JURY**

1 NORTH FORK INTUITION, LLC, a Montana  
2 Limited Liability Company, THREE BYRD'S  
3 PROPERTIES, LLC and O'BRIEN BYRD,  
4 Counterclaim-Plaintiffs

5 v.

6 COLUMBIA FALLS COMMUNITY  
7 MARKET, a Montana nonprofit corporation,

8 Counterclaim-Defendants.

9 \_\_\_\_\_  
10 Defendants, O'Brien Byrd, individually d/b/a Three Byrd's Properties, LLC, and  
11 North Fork Intuition, LLC hereby answer Plaintiff's Complaint as follows:

12 **JURISDICTION & VENUE**

- 13 1. Defendants admit the allegations contained in paragraph 1 of the Complaint.
- 14 2. Defendants admit the allegations contained in paragraph 2 of the Complaint.
- 15 3. Defendants admit the allegations contained in paragraph 3 of the Complaint.
- 16 4. Defendants admit the allegations contained in paragraph 4 of the Complaint.
- 17 5. Defendants admit the allegations contained in paragraph 5 of the Complaint.
- 18 6. Answering paragraph 6 of the Complaint, Defendants deny tortious actions  
19 occurred in this matter. Defendants admit that all activities related to this litigation occurred  
20 in Flathead County.
- 21 7. Defendants admit the allegations contained in paragraph 7 of the Complaint.
- 22 8. Defendants are without sufficient information or knowledge to admit or deny  
23 the allegations contained in paragraph 8 of the Complaint and therefore deny the same.
- 24 9. Defendants are without sufficient information or knowledge to admit or deny  
the allegations contained in paragraph 8 of the Complaint and therefore deny the same.
10. Defendants admit the allegations contained in paragraph 10 of the Complaint.

1 **GENERAL ALLEGATIONS**

2 11. Answering paragraph 11 of the Complaint, Defendants incorporate their  
3 responses to paragraph 1 through 10 of the Complaint as if fully restated herein.

4 12. Defendants admit the allegations contained in paragraph 12 of the Complaint.

5 13. Defendants admit the allegations contained in paragraph 13 of the Complaint.

6 14. Defendants deny the allegations as stated in paragraph 14 of the Complaint.

7 15. Answering paragraph 15 of the Complaint, Defendants admit that on or about  
8 March 28, 2022, CFC Market entered into a lease with North Fork Intuition, LLC.

9 Defendants further admit that Byrd is a member of Three Byrd Properties, LLC and North  
10 Fork Intuition, LLC. Defendants deny the remaining allegations contained in paragraph 15  
11 of the Complaint.

12 16. Defendants admit the allegations contained in paragraph 16 of the Complaint.

13 17. Defendants admit the allegations contained in paragraph 17 of the Complaint.

14 18. Answering paragraph 18 of the Complaint, Defendants state that the March  
15 2022 speaks for itself and that the quoted words appear in the lease document. Defendants  
16 expressly deny any allegations inconsistent with the terms set forth in lease.

17 19. Answering paragraph 19 of the Complaint, Defendants state that during the  
18 time period of April 2023 the Plaintiff and Defendants were exchanging documents regarding  
19 proposed lease terms. Exhibit was one of the many documents, communications, e-mails  
20 being exchanged between the parties during their conversations.

21 20. Answering paragraph 20 of the Complaint, Defendants state that Exhibit 2  
22 speaks for itself, and Defendants expressly deny any allegations inconsistent with the written  
23 document.

24

1 21. Answering paragraph 21 of the Complaint, Defendants state that Exhibit 2  
2 speaks for itself, and Defendants expressly deny any allegations inconsistent with the written  
3 document.

4 22. Defendants admit the allegations contained in paragraph 22 of the Complaint.

5 23. Defendants deny the allegations as stated in paragraph 23 of the Complaint.

6 **Count One**  
7 **(Breach of Contract)**

8 24. Answering paragraph 24 of the Complaint, Defendants incorporate their  
9 responses to paragraph 1 through 23 of the Complaint as if fully restated herein.

10 25. Defendants admit the allegations contained in paragraph 25 of the Complaint.

11 26. Answering paragraph 26 of the Complaint, Defendants expressly deny that  
12 they were required to deliver possession of the leasehold premises on May 18, 2023. The  
13 Lease had been cancelled due to Plaintiffs multiple breaches of the Lease Agreement.

14 27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

15 28. Defendants are without specific knowledge or information regarding  
16 Plaintiff's business operations and contractual arrangements with other individuals and  
17 entities and are therefore unable to admit or deny the allegations contained in paragraph 28 of  
18 the Complaint.

19 **Count II**  
20 **(Breach of Covenant of Good Faith and Fair Dealing)**

21 29. Answering paragraph 29 of the Complaint, Defendants incorporate their  
22 responses to paragraph 1 through 28 of the Complaint as if fully restated herein.

23 30. Defendants deny the allegations as stated in paragraph 30 of the Complaint.

24 31. Defendants deny the allegations contained in paragraph 31 of the Complaint.

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32. Defendants deny the allegations contained in paragraph 32 of the Complaint.

**Count III  
(Intentional and Negligent Misrepresentation)**

33. Answering paragraph 33 of the Complaint, Defendants incorporate their responses to paragraph 1 through 32 of the Complaint as if fully restated herein.

34. Defendant admit the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

**Count IV  
(Actual Fraud)**

43. Answering paragraph 43 of the Complaint, Defendants incorporate their responses to paragraph 1 through 42 of the Complaint as if fully restated herein.

44. Defendants deny the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

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- 50. Defendants deny the allegations contained in paragraph 50 of the Complaint.
- 51. Defendants deny the allegations contained in paragraph 51 of the Complaint.
- 52. Defendants deny the allegations contained in paragraph 52 of the Complaint.
- 53. Defendants deny the allegations contained in paragraph 53 of the Complaint.
- 54. Defendants deny the allegations contained in paragraph 54 of the Complaint.
- 55. Defendants deny the allegations contained in paragraph 55 of the Complaint.

**Count V  
(Declaratory Judgment)**

56. Answering paragraph 56 of the Complaint, Defendants incorporate their responses to paragraph 1 through 55 of the Complaint as if fully restated herein.

- 57. Defendants deny the allegations contained in paragraph 57 of the Complaint.
- 58. Defendants deny the allegations contained in paragraph 58 of the Complaint.
- 59. Defendants deny the allegations contained in paragraph 59 of the Complaint.
- 60. Defendants deny the allegations contained in paragraph 60 of the Complaint.

**Count VI  
(Attorneys' Fees)**

61. Answering paragraph 61 of the Complaint, Defendants incorporate their responses to paragraph 1 through 60 of the Complaint as if fully restated herein.

- 62. Defendants deny the allegations contained in paragraph 62 of the Complaint.
- 63. Defendants deny the allegations contained in paragraph 63 of the Complaint.
- 64. Defendants deny the allegations contained in paragraph 64 of the Complaint.
- 65. Defendants expressly deny each and every allegation contained in the

Complaint not expressly admitted in the above paragraphs numbered 1 through 64.

**AFFIRMATIVE DEFENSES**

1           1.       Plaintiff's Complaint fails to state one or more causes of action upon which  
2 relief can be granted.

3           2.       Plaintiff failed it mitigate its damages, if any.

4           3.       Any and all damages purportedly sustained were the proximate result of the  
5 independent and intervening acts, conduct, fault, negligence, breach of duty or misconduct by  
6 persons or entities other than Defendant.

7           4.       The imposition of punitive damages under the facts alleged in the case  
8 violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States  
9 Constitution and violates Article II, Sections 4, 17, 22 and 25 of the Constitution of Montana.

10          5.       Plaintiff failed to plead fraud with particularity as required by the Montana  
11 Rules of Civil Procedure.

12          6.       Plaintiff has waived the right to assert the claims and seek relief contained in  
13 the Complaint.

14          7.       Plaintiff's claims are barred by the doctrine of unclean hands.

15          8.       Plaintiff breached the implied covenant of good faith and fair dealing  
16 precluding recovery in this matter.

17          9.       Plaintiff's claims are barred due to its material breach of the Lease  
18 Agreement.

19          10.       There is no privity of contract between O'Brien Byrd and Plaintiff and the  
20 claims for relief asserted in the Complaint against him for breach of contract are precluded.

21          11.       There is no privity of contract between Three Byrd Properties LLC and  
22 Plaintiff and as such the claims for relief asserting in the Complaint against it for breach of  
23 contract are precluded.

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1 **COUNTERCLAIMS**

2 COMES NOW, North Fork Intuition, LLC, Three Byrds Properties, LLC and  
3 O’Brien Byrd, in accordance with Rule 13 of the Montana Rules of Civil Procedure, and as  
4 and for their counterclaims against Columbia Falls Community Market state and allege as  
5 follows:

6 **ALLEGATIONS COMMON TO ALL COUNTS**

7 1. Counterclaim Plaintiff North Fork Intuition, LLC (“North Fork”) is a Montana  
8 Limited Liability Company with its principal place of business located in Flathead County,  
9 Montana. North Fork owns the real property located at 810 1<sup>st</sup> Avenue West in Columbia  
10 Falls, Montana, which is comprised of a paved area and a music and events venue that is  
11 commonly referred to as “The Coop.”

12 2. Three Byrd’s Properties, LLC (“Three Byrds”) is a Montana Limited Liability  
13 Company with its principal place of business located in Flathead County, Montana. Three  
14 Byrds owns real property located at 830 1<sup>st</sup> Avenue West in Columbia Falls, which is  
15 comprised of a retail building and parking lots, immediately adjacent to The Coop.

16 3. Counterclaim Plaintiff O’Brien Byrd is an individual residing in Flathead County,  
17 Montana. Mr. Byrd is a partial owner of North Fork with an investing partner. Mr. Byrd is  
18 also an owner of Three Byrds, along with his wife, Melanie Byrd.

19 4. Counterclaim Defendant the Columbia Falls Community Market (“CFCM”) is a  
20 Montana Non-Profit Corporation with its principal place of business located in Flathead  
21 County, Montana.

22 5. CFCM was initially created by O’Brien and Melanie in 2015 to create a fun family  
23 event for the Columbia Falls community and to provide a space where local farmers and  
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1 artisans could sell their wares. After operating the market successfully for five years on  
2 their own as volunteers, the market became an incredibly popular community event and  
3 became too large for the Byrds to continue to operate as volunteers. As a result, the Byrds  
4 moved the management of the market to CFCM's current executive director, Melissa Ellis, in  
5 May of 2020.

6 6. After the transition, the Byrds continued to offer their property for use of CFCM on  
7 Thursday evenings to operate the market free of charge, once again, as an ongoing  
8 community service.

9 7. During this period from 2020-2021, several businesses operated on the property  
10 simultaneously, including O'Briens Liquor & Wine, a gift store, and Copper Mountain  
11 Coffee Shop. From 2015 through 2022, a period of 7 years, CFCM operated on Thursday  
12 evenings alongside and in cooperation with the other businesses operating full-time on the  
13 property. During this period, CFCM did not demand, nor was it entitled to, fees or a share of  
14 any business generated by these businesses resulting from their operations during market  
15 hours.

16 8. In December 2021, North Fork was created with the express purpose of improving  
17 The Coop and transforming it into a community music and event venue. In order to obtain  
18 the financing necessary to construct and make improvements to The Coop, North Fork's  
19 lender required North Fork to complete a boundary-line-adjustment to separate The Coop  
20 from the adjoining property owned by Three Byrds. This boundary line adjustment process  
21 began in January 2022, was a condition of North Fork's bank loan, and separated The Coop  
22 from Three Byrds property, creating The Coops address as 810 1<sup>st</sup> Avenue West in Columbia  
23  
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1 Falls. North Fork never owned the parking lots and liquor store building adjoining Three  
2 Byrds property, where CFCM had traditionally operated.

3 9. CFCM and Ellis were apprised of and provided regular updates regarding North  
4 Fork's plans regarding the boundary line adjustment, to improve The Coop and the creation  
5 of the community music and events venue.

6 10. In or around March 2022, CFCM presented North Fork with a Commercial Lease  
7 Agreement with the non-exclusive right to rent The Coop on Thursdays from April 1 through  
8 October 30 for a period of 5 years in exchange for \$350.00 rental payment for each market  
9 and other consideration ("CFCM Lease"), including reimbursing energy costs of CFCM's  
10 vendors. North Fork's renovation plans are specifically referenced in the CFCM Lease.

11 11. The CFCM Lease was drafted by legal counsel for CFCM. North Fork was not  
12 represented by counsel relative to the CFCM Lease.

13 12. The CFCM Lease did not provide for exclusive use of The Coop on Thursdays. The  
14 CFCM Lease did not provide CFCM any right to purvey or supply alcohol on the premises.  
15 The CFCM Lease places no limitations on the other businesses operating at the premises  
16 during market Thursdays. The CFCM Lease provides CFCM no rights to interfere with or  
17 limit the operations of other businesses on the premises during market Thursdays. The  
18 CFCM Lease provides CFCM with no right to demand payment or a share of income from  
19 other businesses operating at the property on market Thursdays.

20 13. In August 2022, Three Byrds entered into a partnership with a local concert promoter,  
21 Johnathan Shockey, to develop the music venue at The Coop. As part of this partnership,  
22 Three Byrds, entered into an automatically renewing five-year Commercial Lease for the  
23 Coop where Shockey would pay \$6,500.00 per month to operate the commercial concert and  
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1 event venue. The lease provided automatic increases in rent after the initial period. In  
2 December 2022, Three Byrd's interest in this commercial lease was assigned to North Fork.  
3 Over the course of the lease, North Fork stood to obtain \$421,647.87 in rental income. North  
4 Fork also engaged in serious discussions with Shockey regarding partnering in the future for  
5 a percentage of the income on the community and music events venue and expanding the  
6 space of The Coop and expanding music, food and catering operations.

7 14. Shockey, through a business entity, sought and obtained a Department of Revenue  
8 liquor license for operation at The Coop as a "licensed premises."

9 15. At the time he entered the lease, Shockey was aware and was willing to work with the  
10 CFCM on Thursdays during the summer months for operation of their market.

11 16. On March 13, 2023, a meeting occurred between North Fork and Melissa Ellis,  
12 executive director of CFCM, where the parties discussed continued improvements to the  
13 Coop and the operations of the Shockey lease, including that the Coop was now a licensed  
14 premises subject to a Montana DOR liquor license. The parties discussed that this liquor  
15 license would operate the bar on Thursday market evenings, that CFCM and its guests would  
16 have full access to the Coop, its stage and sound system, its bathroom and that market  
17 attendees would be able to travel freely within the Coop.

18 17. A second meeting occurred in April, after Melissa Ellis requested a meeting with  
19 North Fork, Mr. Shockey and one of the CFCM's board members, Ryan Garnache. Mr.  
20 Shockey attended the meeting by phone and Mr. Shockey's food truck manager and the  
21 manager of The Coop attended in person along with representatives of North Fork. Ms. Ellis  
22 had brought a current copy of the CFCM Lease and had highlighted sections that she was  
23 requesting changes to. Ms. Ellis followed up with an email regarding these requested  
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1 changes and requested NFI provide CFCM with an updated lease prior to her next board  
2 meeting. NFI promptly sent Ms. Ellis' email with the requested lease changes to its attorney  
3 to draft and updated lease in order for her to turn around and provide to her board before their  
4 next board meeting.

5 18. North Fork met CFCM's deadline and provided the requested updated lease  
6 agreement, which corrected errors included in the CFCM Lease drafted by CFCM's counsel.  
7 The CFCM Lease, unbeknownst to the parties at the time they entered it, purported that  
8 North Fork was leasing property that it did not and had never owned. A portion of the  
9 property subject to the CFCM Lease was, in fact, owned by Three Byrds. The updated lease  
10 agreement sought to correct this error and clarify operation on market nights at The Coop.

11 19. In May 2023, a third meeting was held to discuss operations of the CFCM during the  
12 summer 2023 season. This meeting was attended by Melissa Ellis, on behalf of CFCM,  
13 Johnathan Shockey and several of his business associates, O'Brien Byrd and his partner in  
14 North Fork. At the meeting, Ellis was informed again that CFCM and its customers could  
15 operate within The Coop and that The Coop, through Shockey, would provide alcohol sales  
16 to market customers during the market, but alcohol could not leave The Coop's licensed  
17 premises. Ellis responded by demanding, without any basis or legal right to do so, that  
18 Shockey and his business associates pay CFCM exorbitant amounts to operate on Thursday  
19 evenings and demanded portions of all of Shockey's liquor and food sales be paid to CFCM.

20 20. After this failed meeting and when CFCM's unsupported financial demands were not  
21 met, Ellis, on behalf of CFCM, next made spurious and unsubstantiated reports and  
22 allegations against Shockey and his associated businesses and Mr. Byrd to state and local  
23 health and liquor-license authorities, including, on information and belief, the MT DOR, the  
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1 Columbia Falls Fire Marshall and the Flathead County Health Department. These spurious  
2 and unsubstantiated complaints were made with the intention of harming Counterclaim  
3 Plaintiffs, their reputations and their business relationships.

4 21. After the meeting and CFCM's failed attempt to extort funds from Mr. Shockey's  
5 liquor and food sales, Ellis, on behalf of CFCM declared that CFCM would bring its own  
6 liquor concessionaire onto CFCM's licensed premises during the market. Representatives of  
7 North Fork and Mr. Shockey both informed CFCM that bringing an outside liquor  
8 concessionaire/caterer onto the licensed premises would violate Montana law and the CFCM  
9 Lease. CFCM's response was to refuse to utilize the Coop on market Thursdays.

10 22. CFCM held its first market of the 2023 season on May 18, 2023. Prior to conducting  
11 the market, CFCM placed obstructions in front of all doors to The Coop and prevented The  
12 Coop from operating. During the next market, CFCM attempted to place porta-potties and  
13 placed tables obstructing the entrance and exit to The Coop. In addition, CFCM made public  
14 disparaging statements regarding Shockey's business operations at The Coop. This conduct  
15 was all intended with the intention of harming Counterclaim Plaintiffs, their reputations and  
16 their business relationships.

17 23. As a result of CFCM's conduct potentially compromising the liquor license at The  
18 Coop, CFCM's spurious reports to governing agencies and CFCM's actions to interfere with  
19 and obstruct the business operations at the Coop, Shockey sent NFI a notice of default under  
20 his commercial lease on May 17, 2023.

21 24. During this same period, CFCM launched a social media campaign falsely declaring  
22 that it had been prevented by NFI, Three Byrd's and Mr. Byrd from operating in The Coop  
23 on market nights. The social media posts were false and designed to inflame the sentiments  
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1 of the community against NFI, Three Byrd's and Mr. Byrd and damage their businesses  
2 partnerships and reputation.

3 25. CFCM did not pay rent to North Fork on or before operating the market on May 18,  
4 2023.

5 26. On May 25, 2023, NFI sent CFCM a Notice of Default and Cancellation and Notice  
6 of Rescission (Alternative Claim) of the CFCM Lease. Specifically, NFI identified the  
7 following defaults:

- 8 1. CFCM failed to pay rent due for use of the Premises on May 18, 2023 in violation of  
9 Paragraph 4 of the Lease.
- 10 2. On May 18, 2023, CFCM attempted to serve liquor at the community market in a manner  
11 that violated federal, state or local regulations in violation of Paragraph 8 of the Lease.
- 12 3. CFCM tortiously interfered with contracts and caused damage to other businesses on the  
13 Leased Premises or in the vicinity of the Leased Premises.
- 14 4. CFCM, through its agent, Melissa Ellis, has repeatedly caused disruption at the Leased  
15 Premises, interfering with business operations of other businesses operating on the  
16 Leased Premises and/or in the vicinity of the Leased Premises, violating NFI's quiet use  
17 and enjoyment of its property and constituting a nuisance.
- 18 5. CFCM breached the implied covenant of good faith and fair dealing.
- 19 6. CFCM, through its agent, Melissa Ellis, has made false and defamatory statements  
20 regarding NFI and its member, O'Brien Byrd.
- 21 7. CFCM has made false and defamatory comments on its social media pages, including  
22 Instagram and Facebook, regarding NFI.

23 Said Lease contains no right to cure CFCM's defaults as described herein. Said Lease is  
24 hereby Cancelled.

Attached hereto as Exhibit A.

25 27. CFCM sent one rent check in the amount of \$350.00 to NFI post-marked on May 24,  
26 2023, which was not received by NFI until after NFI had sent and CFCM had received NFI's  
27 Notice of Default. As the CFCM Lease contains no right to cure, this rent check was rejected  
28 by NFI and never cashed.

29 28. CFCM continued to operate at NFI premises weekly through October 2023, a total of  
30 19 markets. CFCM never paid rent to NFI for any of these markets or any other payments

1 due under the CFCM Lease. CFCM continued to interfere with and obstruct The Coops’  
2 business operations at each of these weekly markets.

3 29. On November 17, 2023, Shockey’s business terminated his \$6,500.00 monthly lease  
4 with NFI, citing “near-constant interferences that have been instigated and/or related to the  
5 neighboring tenant, Columbia Falls Market”:

6 As you are aware, although TCM has endeavored to operate its business at the Property in good  
7 faith throughout the term of the Lease, it has suffered from near-constant interferences that have  
8 been instigated and/or related to the neighboring tenant, Columbia Falls Market. The Market has  
9 made repeated claims against the Property as well as against TCM. In addition, the Market has  
10 routinely interfered with TCM’s business operations by, among other actions, blocking the  
11 entrances to the Property with “port-a-johns.” The Market’s conduct has made it difficult not to  
12 say impossible for TCM to operate its business in the desired manner and has generated substantial  
13 negative publicity that has caused untold harm to TCM. Perhaps even more alarming, the Market’s  
14 allegations, if determined in favor of the Market, will place TCM in considerable jeopardy of being  
15 found in violation of the state laws by which TCM’s liquor license are governed.

11 Attached hereto as Exhibit B.

12 30. At all times relevant, Melissa Ellis was acting as an agent or apparent agent of CFCM.

13 31. Jurisdiction is proper in this Court pursuant to Sections 25-2-121 & 122, MCA.

14 32. As a direct and proximate result of CFCM’s conduct as set forth herein, NFI, Three  
15 Byrd’s and Mr. Byrd have and continue to experience damages.

16 **COUNT I: BREACH OF CONTRACT**

17 33. Plaintiffs restate and re-allege all paragraphs above.

18 34. The CFCM Lease is a contract between NFI and CFCM.

19 35. CFCM breached their contract with NFI as set forth in the Notice of Default and  
20 Cancellation and Notice of Rescission (Alternative Claim) dated May 25, 2023.

21 36. CFCM did not make rental payments to North Fork due under the CFCM Lease.

22 37. As a direct and proximate result of CFCM’s actions or inactions, Counterclaim  
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1 Plaintiffs have sustained damages, including but not limited to, lost rents, damage to their  
2 property; loss of business opportunity and income; and were prevented from transacting their  
3 business, daily activities and recreation; that they have suffered pain and emotional distress in  
4 the past and will suffer pain and emotional distress in the future; all to their detriment, in an  
5 amount to be established at trial.

6 **COUNT II: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**  
7 **(Alternative Claim)**

8 38. Plaintiffs restate and re-allege all paragraphs above.

9 39. CFCM owed Counterclaim Plaintiffs a duty of good faith and fair dealing as a result of  
10 the contract they entered with NFI.

11 40. CFCM had the legal duty to not do anything unreasonable and to operate with  
12 reasonable conduct in the observance of commercial standards in the community market and  
13 commercial property leasing industries.

14 41. CFCM breached said duty as set forth herein.

15 42. As a direct and proximate result of CFCM's actions or inactions, Counterclaim  
16 Plaintiffs have sustained damages, including but not limited to, lost rents, damage to their  
17 property; loss of business opportunity and income; and were prevented from transacting their  
18 business, daily activities and recreation; that they have suffered pain and emotional distress in  
19 the past and will suffer pain and emotional distress in the future; all to their detriment, in an  
20 amount to be established at trial.

21  
22 **COUNT III: DECLARATORY JUDGMENT**

23 43. Plaintiffs restate and re-allege all paragraphs above.

24 44. This Counterclaim is for the purpose of having the Court grant to Plaintiffs a



1 Declaratory Judgement, declaring that the lease between NFI and CFCM is cancelled.

2 45. NFI has suffered and continues to suffer damages by reason of CFCM's refusal to  
3 vacate the property, all in amounts to be proven at trial.

4 **COUNT IV: QUANTUM MERUIT/UNJUST ENRICHMENT**

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6 46. Plaintiffs restate and re-allege all paragraphs above.

7 47. By operating on the property owned by Counterclaim Plaintiffs without paying rent  
8 and by causing damage to their business operations and business partnerships, as set forth  
9 herein, and refusing to vacate the property, CFCM has wrongfully and/or unlawfully received,  
10 enjoyed, and retained benefits from Counterclaim Plaintiffs that would be unjust and  
11 inequitable for Defendants to retain the benefit without payment of their value.

12 48. Accordingly, Counterclaim Plaintiffs are entitled to damages under the principle of  
13 quantum meruit/unjust enrichment, the amount of which is to be determined at trial.

14 **COUNT V: ATTORNEYS' FEES AND COSTS**

15 49. Plaintiffs restate and re-allege all paragraphs above.

16 50. The CFCM Lease provides for the award of attorneys' fees and costs to the prevailing  
17 party.

18 51. The claims plead by Conterclaim Plaintiffs, including those under the Uniform  
19 Declaratory Judgment Act, provide for the award of fees and costs to the prevailing party.

20 52. Plaintiffs have incurred and will continue to incur attorneys' fees and costs throughout  
21 the prosecution of this action to judgment and collection thereof.

22 **COUNT VI: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS**

23 53. Plaintiffs restate and re-allege all paragraphs above.

24 54. CFCM intentionally and willfully interfered with and obstructed the business

1 operations of North Fork's tenant at The Coop, Mr. Shockey, as set forth herein.

2 55. CFCM's actions were calculated to cause Counterclaim Plaintiffs damage to their  
3 business.

4 56. CFCM's actions were done with the unlawful purpose of causing damage, without  
5 justifiable cause on the part of CFCM.

6 57. CFCM's actions, as set forth herein, constitute actual fraud and actual malice towards  
7 Counterclaim Plaintiff.

8 58. As a direct and proximate result of CFCM's tortious conduct, Counterclaim Plaintiffs  
9 have sustained damages, including but not limited to loss of business opportunity and income;  
10 lost rents, and were prevented from transacting their business, daily activities and recreation;  
11 that they have suffered pain and emotional distress in the past and will suffer pain and  
12 emotional distress in the future; all to their detriment, in an amount to be established at trial.

13 **COUNT VII: TORTIOUS INTERFERENCE WITH CONTRACT**

14 59. Plaintiffs restate and re-allege all paragraphs above.

15 60. North Fork had contractual relationships with Shockey and valid business expectancies  
16 to enter into its lease agreement and future business opportunities with Shockey.

17 61. CFCM and Ellis had knowledge of said contractual relationships and business  
18 expectancies.

19 62. CFCM have interfered with and intend to interfere with North Fork's contractual  
20 relationships and business expectancies as set forth herein.

21 63. CFCM's interference with North Fork's contractual relations and business  
22 expectancies as set forth above was and is intentional or willful, calculated to cause damage to  
23 North Fork's business, and done with the unlawful purpose of causing damage or loss without  
24

1 right or justifiable cause on the part of CFCM.

2 64. As a result of CFCM's intentional interference with North Fork's contractual relations  
3 as set forth above, North Fork has been or will be damaged in an amount to be determined at  
4 trial.

5 **COUNT VIII: RESCISSION (Alternative Claim)**

6  
7 65. Plaintiffs restate and re-allege all paragraphs above.

8 66. The CFCM Lease of the Property between North Fork and CFCM was entered into  
9 based on the mistake of fact that North Fork was the owner of all of the purported leased  
10 property and had the legal ability to lease the entire property to CFCM.

11 67. North Fork was unconsciously ignorant of the fact that it was not the owner of the  
12 entire property to be leased to CFCM, and that Three Byrds was the owner of portions of the  
13 property to be leased.

14 68. North Fork's ownership of the entire property to be leased and its legal ability to lease  
15 the entire property to CFCM was material to the contract.

16 69. North Fork's consent to the lease was given by mistake of fact.

17 70. Immediately upon discovery of its lack of ownership of the entire property, North  
18 Fork acted reasonably and promptly to rescind the lease.

19 71. North Fork has refused and/or not received any of CFCM's 2023 lease payments, as  
20 set forth herein.

21 72. The CFCM Lease should be rescinded and CFCM ordered to vacate the property.

22 **RELIEF SOUGHT**

23 Defendants respectfully requests the Court grant the following relief:  
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1. Dismiss Plaintiff's Complaint with prejudice;
2. For Counterclaim Plaintiffs' damages in an amount to be proven at trial;
3. Award Counterclaim Plaintiffs its costs and attorneys' fees;
4. For punitive damages;
5. For such other relief as the Court deems just and proper.

Dated this 11<sup>th</sup> day of December 2023.

OGLE, WORM, & TRAVIS, PLLP

By /s/ Samantha Travis  
Samantha P. Travis

CROWLEY FLECK PLLP

By /s/ Kimberly S. More  
KIMBERLY S. MORE  
Attorneys for Defendants

**NOTICE OF DEFAULT AND CANCELLATION**  
**AND**  
**NOTICE OF RESCISSION (Alternative Claim)**

**TO: Columbia Falls Community Market, Inc.**  
**PO Box 130070**  
**Coram, MT 59913**

YOU ARE HEREBY NOTIFIED that you are in default under the terms of that certain Commercial Lease dated March, 2022, between North Fork Intuition, LLC, 555 Walker Meadow Road Whitefish, MT, hereinafter "NFI", and Columbia Falls Community Market, LLC, PO Box 130070, Coram MT, hereinafter "CFCM". Said Lease provides for the lease of real property located at 830 1<sup>st</sup> Ave. West, Columbia Falls, MT.

Said Lease provides that you were to pay the sum of \$350.00 for each market Thursday CFCM uses the Property and also pay a \$10.00 utility use fee for each Vendor that connects to the COOP's electricity each market day.

Specifically, you are in default under the terms and provisions of said Lease in that:

1. CFCM failed to pay rent due for use of the Premises on May 18, 2023 in violation of Paragraph 4 of the Lease.
2. On May 18, 2023, CFCM attempted to serve liquor at the community market in a manner that violated federal, state or local regulations in violation of Paragraph 8 of the Lease.
3. CFCM tortiously interfered with contracts and caused damage to other businesses on the Leased Premises or in the vicinity of the Leased Premises.
4. CFCM, through its agent, Melissa Ellis, has repeatedly caused disruption at the Leased Premises, interfering with business operations of other businesses operating on the Leased Premises and/or in the vicinity of the Leased Premises, violating NFI's quiet use and enjoyment of its property and constituting a nuisance.
5. CFCM breached the implied covenant of good faith and fair dealing.
6. CFCM, through its agent, Melissa Ellis, has made false and defamatory statements regarding NFI and its member, O'Brien Byrd.
7. CFCM has made false and defamatory comments on its social media pages, including Instagram and Facebook, regarding NFI.

Said Lease contains no right to cure CFCM's defaults as described herein. Said Lease is hereby Cancelled.



**RESCISSION (Alternative Claim)**

Notice is hereby given, pursuant to 28-2-1711 MCA that the Commercial Lease drafted by CFCM and entered March, 2022 between NFI and CFCM was entered by mistake in that the Lease purports to lease property which is not owned by NFI; CFCM is occupying and using property which is not owned by NFI or subject to the Lease and therefore the Lease is rescinded.

DATED this 25<sup>th</sup> day of May, 2023.

NORTH FORK INTUITION, LLC

By: 

Randall S. Ogle  
Samantha Travis

OGLE, WORM & TRAVIS, PLLP  
P.O. Box 899  
Kalispell, MT 59903  
(406)752-7550

CERTIFIED MAIL; RETURN RECEIPT REQUESTED

pc: Columbia Falls Community Market, LLC  
PO Box 130070  
Coram, MT 59913

Clifton W. Hayden  
(via email only – [clif@whitefishlaw.lawyer](mailto:clif@whitefishlaw.lawyer))

# FRAMPTON PURDY

## ATTORNEYS AT LAW

SEAN S. FRAMPTON  
DOUGLAS SCOTTI  
CONNOR C. WALKER\*

530 WEST 19<sup>TH</sup> STREET #301  
WHITEFISH, MONTANA 59937-2576  
T: (406) 862-9600 F: (406) 862-9611  
WWW.FRAMPTONPURDY.COM

RYAN D. PURDY  
ANDREW E. HINDS\*

November 17, 2023

### VIA EMAIL

North Fork Intuition, LLC  
c/o Kevin Bostock, as Member  
kbostock19@gmail.com

RE: *Notice of Lease Termination for 810 1st Ave. W., Columbia Falls, Montana 59912*

Dear Mr. Bostock,

This law firm represents The Coop Management, LLC (“TCM”) in connection with its lease of the Property commonly known as 810 1<sup>st</sup> Ave. W., Columbia Falls, Montana 59912 (the “Property”) pursuant to that certain lease dated August 8, 2022 (as amended, the “Lease”) by and between TCM as tenant and North Fork Intuition, LLC (“NFI”) as Landlord.

As you are aware, although TCM has endeavored to operate its business at the Property in good faith throughout the term of the Lease, it has suffered from near-constant interferences that have been instigated and/or related to the neighboring tenant, Columbia Falls Market. The Market has made repeated claims against the Property as well as against TCM. In addition, the Market has routinely interfered with TCM’s business operations by, among other actions, blocking the entrances to the Property with “port-a-johns.” The Market’s conduct has made it difficult not to say impossible for TCM to operate its business in the desired manner and has generated substantial negative publicity that has caused untold harm to TCM. Perhaps even more alarming, the Market’s allegations, if determined in favor of the Market, will place TCM in considerable jeopardy of being found in violation of the state laws by which TCM’s liquor license are governed.

Although TCM has given NFI repeated notice of these defaults under the Lease as well as ample opportunity to cure the same, there are no signs that the Market’s claims in and to the Property will be resolved in a timely fashion, or that NFI will be able to provide TCM with the uninterrupted peaceful possession of the Property that it is entitled to under the Lease. In light of the foregoing, **please accept this letter as formal notice of TCM’s election to terminate the Lease, effective immediately**, as a result of NFI’s failure to deliver quiet and peaceful possession of the Property to TCM.



\* ALSO LICENSED IN WA  
\* ALSO LICENSED IN LA, VA & WY

Should you have any questions or concerns regarding the foregoing, please feel free to contact me directly at the number listed above. Thank you in advance for your attention to this matter.

Sincerely,



Ryan D. Purdy  
Frampton Purdy Law Firm

Cc: Client  
Samantha Travis (samantha@owtlawoffice.com)

**F**RAMPTON **P**URDY

530 WEST 19TH STREET #301, WHITEFISH, MONTANA 59937-2576  
TELEPHONE: (406) 862-9600 FACSIMILE: (406) 862-9611



## CERTIFICATE OF SERVICE

I, Kimberly S. More, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer and Counterclaim to the following on 12-11-2023:

Samantha P. Travis (Attorney)  
PO Box 899  
Kalispell MT 59903-0899  
Representing: North Fork Intuition, LLC  
Service Method: eService

Clifton William Hayden (Attorney)  
913 Wisconsin Ave. Ste. 101  
Whitefish MT 59937  
Representing: Columbia Falls Community Market, Inc.  
Service Method: eService

Electronically signed by Leslie Culver on behalf of Kimberly S. More  
Dated: 12-11-2023