

FIRST AFFIRMATIVE DEFENSE

6. The counterclaims do not state a cause of action.

SECOND AFFIRMATIVE DEEFENSE

7. Defendant's claims are barred by documentary evidence, including but not limited to, the Lease.

THIRD AFFIRMATIVE DEFENSE

8. Plaintiff has been prevented from operating its business as a result the unprecedented COVID-19 pandemic including, but not limited to, governmental directives barring operation, in whole or in part.

9. The pandemic and associated governmental orders constitute a casualty under f9 of the Lease.

10. Accordingly, plaintiff's obligations, if any, under the Lease, including, without limitation, the payment of rent and additional rent, installation of a sprinkler system and continuous operation, are suspended, in whole or in part.

FOURTH AFFIRMATIVE DEFENSE

11. The pandemic and associated governmental orders have rendered the parties' respective performance under the Lease impossible.

12. Accordingly, plaintiff's obligations, if any, under the Lease, including, without limitation, the payment of

rent and additional rent, installation of a sprinkler system and continuous operation, are suspended, in whole or in part.

FIFTH AFFIRMATIVE DEFENSE

13. The pandemic and associated governmental orders constitutes a *force majeure* per f63 of the Lease.

14. Accordingly, plaintiff's obligations, if any, under the Lease, including, without limitation, the installation of a sprinkler system and continuous operation, are suspended, in whole or in part.

SIXTH AFFIRMATIVE DEFENSE

15. The pandemic and associated governmental orders has substantially frustrated the purpose of the Lease as a full service restaurant.

16. Accordingly, plaintiff's obligations, if any, under the Lease, including, without limitation, the payment of rent and additional rent, installation of a sprinkler system and continuous operation, are suspended, in whole or in part.

SEVENTH AFFIRMATIVE DEFENSE

17. Per f6 of the Lease, plaintiff must obey all requirements of law.

18. Multiple governmental edicts barred plaintiff from operating as a full service restaurant, in whole or in part.

19. Such edicts constitute a requirement of law.

20. Accordingly, defendant is barred from collecting rent and additional rent or enforcing the continuous operation provision for any period plaintiff was obeying the requirements of law by ceasing operation, in whole or in part.

EIGHTH AFFIRMATIVE DEFENSE

21. Defendant, not plaintiff, is obligated to install the sprinkler system per Local Law 26 and f29 of the Lease.

NINTH AFFIRMATIVE DEFENSE

22. The Non Operation Per Diem Rent purportedly due per f7(g) of the Second Amendment to the Lease is not reasonably related to defendant's actual damages.

23. Accordingly, it is an unenforceable penalty.

TENTH AFFIRMATIVE DEFENSE

24. The Non Operation Per Diem Rent, if any is in fact due, must be prorated for any period in which plaintiff was legally barred from operating, n whole or in part.

Wherefore, plaintiff demands judgment dismissing the counterclaims and granting such other and further relief as may be just and proper.

Dated: New York, New York
February 11, 2021

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VERIFICATION

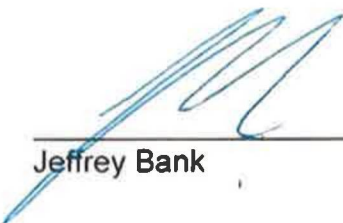
State of New York)

ss.:

County of New York)


Jeffrey Bank, being sworn, deposes and says:

I am CEO of plaintiff LITTLE FISH CORP. a/k/a LITTLE FISH INC. I have read the attached reply and know its contents to be true. As to those items stated upon information and belief, I believe them to be true.



Jeffrey Bank

Sworn to before me
February 11, 2021



Notary Public

ROBERT M. OLSHEVER
Notary Public, State of New York
No. 02OL4643583
Qualified in New York County
Commission Expires 05/31/2023