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8 **MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

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**ADV-21-0630**  
Cause No. **DAVID J. GRUBICH**

10 Tong Ying Hong and Hui Qun Zhang,

11 **Plaintiffs,**

12 **v.**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

13 Crypt’N Computer Case Co.  
14 d/b/a Fox Farm Diner and Arlo Christianson and  
Pamela Christianson,

15 **Defendants.**

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18 COMES NOW Plaintiffs, Tong Ying Hong and Hui Qun Zhang, and for their Complaint  
19 against Defendants, Crypt’N Computer Case Co. d/b/a Fox Farm Diner, Arlo Christianson, and  
20 Pamela Christianson, allege as follows:

21 **PARTIES**

22 1. Plaintiffs, Tong Ying Hong and Hui Qun Zhang, hereinafter referred to as “Tong”  
and “Zhang”, are landlords of a commercial property located in Great Falls, Cascade County,  
Montana, and are, and at all times relevant herein, residents of Cascade County, Montana.

1 2. Defendant Crypt’N Computer Case Co., d/b/a Fox Farm Diner, hereinafter  
2 referred to as “Fox Farm Diner”, is a Domestic Profit Close Corporation organized under the laws  
3 of the State of Montana with its principal place of business in Great Falls, Cascade County,  
4 Montana.

5 3. Defendants Arlo Christianson and Pamela Christianson, hereinafter referred to as  
6 “Arlo” and “Pam”, are, and at all times relevant herein, residents of Cascade County, Montana.

7 4. Defendants Arlo and Pam are, and at all times relevant herein, the sole  
8 owners/operators of Fox Farm Diner.

### 9 JURISDICTION AND VENUE

10 5. Jurisdiction is proper in that all persons and entities herein named are found within  
11 the State of Montana as defined and described in Rule 4a and 4b (1), M.R.Civ.P. Jurisdiction is  
12 also proper as to Defendants pursuant to Rule 4b(1)(A), (B), (C), (E) and (F), M.R.Civ.P.

13 6. Cascade County is the proper place for trial as this is the location where the Parties  
14 entered the contract at issue and Defendant committed the acts complained of in this Complaint.

### 15 GENERAL ALLEGATIONS

16 7. Plaintiffs own a commercial building located at 1709 Alder Dr. Great Falls,  
17 Montana 59404 (the “Commercial Space”).

18 8. The Property is comprised of two commercial suites, identified as Suite 1 and Suite  
19 2.

20 9. From 2012 through 2019 Plaintiffs owned and operated a Chinese restaurant under  
21 the Assumed Business Name “Chinatown Restaurant” in Suite 1 of the Commercial Space.

22 10. In September of 2019, Plaintiffs decided to retire from the restaurant industry and  
23 closed Chinatown Restaurant. Plaintiffs subsequently decided to lease the Commercial Space to  
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1 Defendants who expressed interest in opening a diner in the Commercial Space since it was  
2 already suited for use as a restaurant.

3 11. On August 31, 2019, the Parties executed a Commercial Lease Agreement  
4 (“Lease”) for Suite 1 of the Commercial Space. A true and correct copy of the Lease is attached  
5 hereto as “**Exhibit A**”.

6 12. The Parties agreed that the lease term would begin on October 1, 2019, and  
7 terminate on September 30, 2024, unless renewed as otherwise provided in the Lease.

8 13. On December 27, 2020, Plaintiffs and Defendants Arlo and Pamela signed  
9 ADDENDUM #4 TO OCTOBER 1, 2019, COMMERCIAL LEASE, indicating that Line 10 of  
10 the Lease “should be modified from ‘Arlo Christianson and Pamela Christianson’ to ‘Arlo  
11 Christianson and Pamela Christianson DBA Fox Farm Diner’”.

12 14. According to the terms of the Lease, Defendants agreed to pay Plaintiffs \$3,000.00  
13 per month on the 1st day of each month, commencing October 1, 2019. The Lease also  
14 contemplates a cost-of-living rent increase in the amount of \$3,075.00 for year two, \$3,150.00 for  
15 year three, \$3,225.00 for year four, and \$3,300.00 for year five.

16 15. Defendants further agreed to pay a late charge of \$150.00 if rent is not paid in full  
17 by the 5th day of each month.

18 16. Pursuant to the “DEFAULT” section on page 2 of the Lease (See Exhibit A, lines  
19 86-89), the time period for notice of default for tenant’s failure to pay rent to landlord when due  
20 is thirty (30) days.

21 17. Pursuant to the “DEFAULT” section on page 2 of the Lease (See Exhibit A, lines  
22 86-87 and 90-91), the time period for notice of default for any other term, condition, or covenant  
23

1 to be kept or performed by the tenant (other than the payment of rent or monies) is thirty (30)  
2 days.

3 18. The "DEFAULT" section on page 9 of the Lease (See Exhibit A, lines 379-397)  
4 states:

5 *"Tenant agrees that each of the terms of this Commercial Lease and of the Landlord's Rules*  
6 *and Regulations, if any constitutes an independent condition of Tenant's right to possession*  
7 *of the Leased Property. If the rent or monies payable by Tenant to Landlord due under the*  
8 *terms of this Commercial Lease, or any part thereof, shall remain unpaid for the period of*  
9 *time as set out in the Specific Terms after written notice is given by Landlord to Tenant, or*  
10 *if any other term, condition or covenant of this Commercial Lease to be kept or performed*  
11 *by the Tenant (other than the payment of rent or monies) shall be violated or neglected and*  
12 *shall remain so for the period of time as set out in the Specific Terms after written notice*  
13 *thereof to the Tenant by Landlord, then the Tenant does hereby authorize and fully empower*  
14 *the Landlord to re-enter and take possession of the Leased Property immediately without*  
15 *any previous notice of intention to re-enter and remove all persons and their property*  
16 *therefrom and to use such force and assistance in effecting and perfecting such removal as*  
17 *the Landlord may deem advisable to recover at once full and exclusive repossession of all*  
18 *of the Leased Property, whether the Leased Property be in possession of the Tenant or a*  
19 *third persons, or whether the Leased Property be in possession of the Tenant or of third*  
20 *persons, or whether the Leased Property be vacant. The Landlord may, however, at his*  
21 *option, at any time after such default or violation of condition or covenant, re-enter and*  
22 *take possession of the Leased Property without such re-entering working a forfeiture of the*  
23 *rents to be paid and the covenants to be kept and performed by such Tenant for the full term*  
24 *of this Lease."*

25 19. Pursuant to the "VACATING PRIOR TO TERMINATION" section on page 10  
26 (See Exhibit A, lines 416-418), the Lease is clear that the Defendants' obligations under the  
27 terms of the Lease shall not cease upon surrender of the Leased Property and Defendant's  
28 obligations shall continue until the Commercial Lease expires.

29 20. Plaintiffs primarily speak Cantonese and therefore frequently rely on their adult  
30 sons, Wei Tong ("Wei"), Nathan Tong ("Nathan"), and Alan Tong ("Alan"), to assist in their  
31 business communications with tenants.

1 21. Defendants Pamela and Arlo notified Plaintiffs that they discovered mold in the  
2 wall directly behind the dishwasher around October of 2019, and claimed the discovered mold  
3 was delaying their opening.

4 22. Despite the "MOLD DISCLOSURE" section on page 3 of the Lease (See Exhibit  
5 A, lines 92-126), and the separate "MOLD DISCLOSURE" document executed by the Parties  
6 and attached to the Lease, as a gesture of good will, Plaintiffs responded to the mold complaint  
7 by giving Defendants a \$3,000.00 rental credit spread over the period of two months.

8 23. Sometime around December of 2019, Defendants contacted Plaintiffs and claimed  
9 the original kitchen exhaust hood cleaning was not sufficient and as a result they had to pay a  
10 third-party to have it professionally cleaned. Defendants provided the receipt for the hood  
11 cleaning and were reimbursed the full amount of \$1,150.00 by Plaintiffs.

12 24. On or about March 25, 2020, Defendants received a letter advising that Plaintiffs  
13 were reducing their base rent for April and May to \$1,500.00 in an effort to mitigate some of the  
14 financial stress caused by the COVID-19 pandemic.

15 25. On or about September 10, 2020, Defendants received a notice letter advising that  
16 September rent in the amount of \$3,000.00 was past due, the monthly "Common Area  
17 Maintenance" ("CAM") in the amount of \$1,000.22 was past due, and the unpaid total amount of  
18 \$4,000.22 constitutes default under the terms of the Lease. The notice letter also states Plaintiffs'  
19 concerns that unauthorized alterations had been made inside the commercial space in violation of  
20 the Lease terms (See, Exhibit A, lines 325-327).

21 26. On or about March 20, 2021, Defendants received a notice letter advising they  
22 were past due in rental obligations in the amount of \$4,460.26, including unpaid rent, unpaid  
23 CAM, and late fees.  
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1           27.     On or about June 6, 2021, Defendants received a notice letter advising they were  
2 past due in the rental obligations in the amount of \$8,560.55, including continuing unpaid rent,  
3 unpaid CAM, and late fees.

4           28.     On July 6, 2021, a Notice of Default and Notice to Vacate was mailed to  
5 Defendant via certified mailing and Defendants refused service.

6           29.     The Notice of Default and Notice to Vacate was sent via certified mailing a  
7 second time on July 28, 2021, and Defendants refused to acknowledge service a second time.

8           30.     The Notice of Default and Notice to Vacate was also emailed to Defendants by  
9 Plaintiffs' counsel on July 30, 2021. Defendants responded via email claiming they did not  
10 receive the Notice of Default and Notice to Vacate until August 6, 2021.

11           31.     The Notice of Default and Notice to Vacate letter informed Defendants they were  
12 in default of the Lease and owed \$12,914.73 in unpaid rent, unpaid CAM, and late fees.  
13 Defendants were further informed that as a result of their default, the Commercial Lease was  
14 terminated, and they needed to vacate the commercial property in thirty (30) days.

15           32.     On August 13, 2021, Plaintiffs, through counsel, sent Defendants a letter entitled  
16 Notice to Return Keys and Notice of Inspection. The August 13th letter advised Defendants of  
17 Plaintiffs' intention to enter and inspect the Commercial Space and requested all keys in  
18 Defendants' possession be returned. The Defendants were also informed that their updated  
19 balance owed was \$13,149.12.

20           33.     On September 2, 2021, Plaintiffs went to the property and confirmed that  
21 Defendants had vacated the Commercial Property and returned all keys. Upon inspection,  
22 Plaintiffs discovered the original gas range and grill were missing, as were the dishwasher,  
23 garbage disposal, and dishtable.  
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1 34. The inspection also revealed the kitchen exhaust hood was not cleaned and  
2 restored to its original condition, and there were unapproved modifications to the Commercial  
3 Space in violation of the "Alterations" section of the Lease.

4 35. On September 21, 2021, Defendants received a Pre-Suit Notice and Demand for  
5 Damages advising Defendants of the damages found during inspection and demanding payment  
6 in the amount of \$170,861.49 for damages related to their breach of the Lease.

7 36. The September 21st letter included itemized lists detailing the damages due from  
8 unpaid rent, unpaid CAM, late fees, future unpaid rent, cost of cleaning, and cost of equipment  
9 replacement.

10 37. The Plaintiffs have given the Defendants written notice of the debt which the  
11 Defendants have failed to pay.

12 38. Defendants Pam, Arlo and Fox Farm Diner have an obligation to Plaintiffs to act  
13 in good faith and deal with Plaintiffs fairly. They must act honestly and observe reasonable  
14 commercial standards of fair dealing.

15 **CAUSES OF ACTION**  
16 **COUNT I – BREACH OF CONTRACT**

17 39. Plaintiffs incorporate by reference the allegations in paragraphs 1-38 above as  
18 though fully set forth herein.

19 40. Defendants Arlo, Pam, and Fox Farm Diner entered into a valid lease with the  
20 Plaintiffs Tong and Zhang.

21 41. The Defendants Arlo, Pam, and Fox Farm Diner did not abide by the terms of the  
22 valid lease they executed with Plaintiffs Tong and Zhang.

23 42. Defendants Arlo, Pam, and Fox Farm Diner breached the Lease with Plaintiffs  
24 Tong and Zhang to their detriment in an amount in excess of \$170,861.49.  
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43. Plaintiffs request such other relief as is just and proper under the circumstances.

1 **COUNT II - BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

2 44. Plaintiffs incorporate by reference the allegations in paragraphs 1-38 above as  
3 though fully set forth herein.

4 45. Implicit in the Lease is the covenant of good faith and fair dealing requiring that  
5 conduct between parties be honest in fact with the observance of reasonable commercial standards  
6 of fair dealing in trade.

7 46. Defendants' conduct, as described above, is a breach of the implied covenant of  
8 good faith and fair dealing

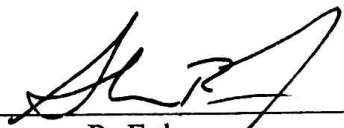
9 47. Plaintiffs have been damaged by such breach in an amount to be proven at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs Tong and Zhang respectfully request that, upon due resolution  
12 of this civil action, the Court grant them the following relief:

- 13 1. Enter judgment in favor of Plaintiffs and against Defendants as requested above;  
14 2. Award Plaintiffs their costs and attorney's fees in this action as provided under  
15 the Lease; and  
16 3. Award Plaintiffs such other relief which the Court deems just and proper under  
17 the circumstances.  
18 4. Plaintiffs respectfully request a Jury Trial in this matter.

19 Dated this 15~~th~~ day of December 2021.

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25 Shannon R. Foley  
On behalf of Plaintiffs