

1 Mark P. Krones, Esq., Bar #090220  
THE LAW OFFICE OF MARK P. KRONES  
2 6340 Cascade Street  
San Diego, California 92122-2421  
3 (619) 457-3438

4 Attorney for ABC COMPANY, INC.

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
8 NORTH COUNTY JUDICIAL DISTRICT

9 ABC COMPANY, INC., a California  
10 Corporation,  
11 Plaintiff,  
12 vs.  
13 XYZ CORP. INC., an Oklahoma corporation  
14 dba XYZ CORP.; HONEST SOLUTIONS, INC.,  
an Oklahoma corporation dba HONEST  
15 SOLUTIONS; MICHAEL J. SMITH, an  
individual; and DOES 1 THROUGH 50,  
inclusive,,  
16 Defendants

COMPLAINT FOR DAMAGES  
  
1. OPEN BOOK ACCOUNT  
2. ACCOUNT STATED  
3. REASONABLE VALUE  
4. BREACH OF CONTRACT  
5. GUARANTY  
6. PROMISSORY NOTE

17 Plaintiff complains and alleges as follows:

18 **FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT**  
19 **XYZ CORP. INC. ("XYZ CORP."), DEFENDANT HONEST**  
**SOLUTIONS, INC. ("SSI") AND DOE DEFENDANTS**  
20 **(Open Book Account)**

21 1. The cause of action hereinafter stated is a money demand for more  
22 than \$25,000.00, and is one of which the above-entitled Court has jurisdiction.  
23 The venue and jurisdiction requirements of C.C.P. §§ 395 and 396 are attached  
24 hereto as **Exhibit "1"** and incorporated herein as though fully set forth.

25 2. At all times mentioned herein, Plaintiff was, and is, a California  
26 corporation authorized to do business in the County of San Diego, State of

1 California and whose transaction of business with furnishing of goods to  
2 Defendants gives rise to this lawsuit.

3 3. At all times mentioned herein, Defendants are and were residents of  
4 San Diego County. Plaintiff and Defendants were and are doing business within  
5 this judicial district. Defendants are liable to Plaintiff in the capacity sued  
6 and named herein.

7 4. Said obligation is commercial in nature, not based upon a retail  
8 installment sales contract or a conditional sales contract, and not subject to  
9 the provisions of Civil Code §§ 1812.10 and/or 2984.4. Said obligation is based  
10 on an open book account pursuant to Civil Code §1717.5 which entitles Plaintiff  
11 herein to reasonable attorneys' fees in addition to other costs.

12 5. The true names and/or capacities, whether individual, corporate,  
13 associate or otherwise, of Defendants named in this action as DOES 1 through 50,  
14 inclusive, are unknown to Plaintiff at this time; therefore, Plaintiff will amend  
15 this Complaint to show their true names and capacities upon discovery of same.

16 6. At all times herein mentioned, each of the Defendants was the agent  
17 of each of their Co-Defendants, and, in committing the acts hereinafter alleged,  
18 said Defendants were acting within the scope of their authority as such agents,  
19 or employees, or authorized representatives, and with the permission and consent  
20 of said Co-Defendants named herein.

21 7. Plaintiff alleges that within the past four (4) years, namely on July  
22 31, 1997, Defendants became indebted to Plaintiff on an open book account for a  
23 balance due in the sum of \$81,177.98 for goods, wares, merchandise and/or  
24 services, which were provided and delivered to Defendants at their request. No  
25 part of the above sum has been paid and the sum of \$81,177.98 is now due and  
26 owing from Defendants to Plaintiff, together with interest thereon at the legal  
27 rate from and after July 31, 1997, plus reasonable attorneys' fees as allowed by  
28 law.

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2 **FOR A SECOND CAUSE OF ACTION AGAINST**  
3 **DEFENDANT XYZ CORP., DEFENDANT SSI AND DOE DEFENDANTS**  
4 **(Account Stated)**

5 8. Plaintiff realleges and incorporates herein by reference each and  
6 every allegation contained in ¶¶ 1 through 7 of the First Cause of Action, as  
7 though fully set forth.

8 9. Plaintiff alleges that on or about July 31, 1997, there was an  
9 account stated between Plaintiff and Defendants, in which the sum of \$81,177.98  
10 was agreed upon as the balance due to Plaintiff. No part of said sum has been  
11 paid, and the sum of \$81,177.98 is now due and owing from said Defendants to  
12 Plaintiff, together with interest thereon at the legal rate from and after July  
13 31, 1997, plus reasonable attorneys' fees as allowed by law.

14 **FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT**  
15 **XYZ CORP., DEFENDANT SSI AND DOE DEFENDANTS**  
16 **(Reasonable Value)**

17 10. Plaintiff realleges and incorporates herein by reference each and  
18 every allegation contained within ¶¶ 1 through 9 above, as though fully set  
19 forth.

20 11. Plaintiff alleges that on or about July 31, 1997, Defendants became  
21 indebted to Plaintiff in the sum of \$81,177.98 for goods, wares, merchandise  
22 and/or services, which were provided and furnished to Defendants at their  
23 request. Despite demands, no part of that sum has been paid and the sum of  
24 \$81,177.98 is now due and owing from the Defendants to Plaintiff, together with  
25 interest thereon at the legal rate from and after July 31, 1997, plus reasonable  
26 attorneys' fees as allowed by law. The above sum represents the reasonable value  
27 of said goods, wares, merchandise and/or services.

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**FOR A FOURTH CAUSE OF ACTION AGAINST  
DEFENDANT XYZ CORP., DEFENDANT SSI AND DOE DEFENDANTS**  
(Breach of Contract)

12. Plaintiff realleges and incorporates herein by reference each and every allegation contained within ¶¶ 1 through 11 above, as though fully set forth.

13. On or about January 22, 1997 Plaintiff and Defendants entered into a written contract and/or agreement wherein Plaintiff agreed to provide and furnish goods, wares, merchandise and/or services according to the terms and conditions of said written contract and/or agreement. A copy of said contract is attached as **Exhibit "2"** to the Complaint and incorporated herein.

14. Pursuant to said contract and/or agreement, Plaintiff has performed all of the terms and conditions on its part to be performed. Any and all non-performance on Plaintiff's part was and is excused by the Defendants' acts, omissions and/or other conduct.

15. Defendants breached said contract and/or agreement by failing and refusing to pay the Plaintiff in accordance therewith. As a result, there is now due owing and unpaid from Defendants to Plaintiff the sum of \$81,177.98 together with interest thereon at the rate of ten percent (10%) per annum from and after July 31, 1997, pursuant to said contract and/or agreement.

16. Said contract and/or agreement provides for attorneys' fees and Plaintiff demands an award of reasonable attorneys' fees based upon the institution of litigation herein.

**FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT  
MICHAEL J. SMITH ("SMITH") AND DOE DEFENDANTS**  
(Guaranty)

17. Plaintiff realleges and incorporates herein by reference each and every allegation contained in ¶¶ 1 through 16 above, as though fully set forth.

1 18. On or about May 20, 1997, as an inducement to Plaintiff herein to  
2 grant credit and financial accommodations to XYZ CORP. and SSI, Defendant SMITH  
3 executed and delivered to Plaintiff a Continuing Personal Guaranty, whereby  
4 Defendant SMITH, jointly and severally, unconditionally guaranteed payment of all  
5 present and future obligations of XYZ CORP. and SSI. Defendant SMITH is indebted  
6 to Plaintiff for money due as alleged herein. A copy of said guaranty is  
7 attached as **Exhibit "3"** to the Complaint and incorporated herein.

8 19. Defendant SMITH is now indebted to Plaintiff in the sum of \$81,177.98  
9 for credit and financial accommodations granted to said Defendants' business from  
10 and after July 31, 1997, and said debt is now due, owing and unpaid and, although  
11 demand has been made on said Defendant SMITH to pay said sum, Defendants have  
12 failed, refused and neglected to pay the same, or any part thereof, all to  
13 Plaintiff's damage and there is now due and owing to Plaintiff from said  
14 Defendants the sum of \$81,177.98, together with interest thereon at the rate of  
15 ten percent (10%) per annum, from and after July 31, 1997.

16 20. Said Guaranty contains a venue provision for San Diego County and  
17 provides for a reasonable sum to be awarded for attorneys' fees in the event suit  
18 is brought and Plaintiff claims said attorneys' fees herein.

19 **FOR A SIXTH CAUSE OF ACTION AGAINST**  
20 **DEFENDANT SMITH AND DOE DEFENDANTS**  
21 **(Promissory Note)**

22 21. Plaintiff realleges and incorporates herein by reference each and  
23 every allegation contained in ¶¶ 1 through 20 above, as though fully set forth.

24 22. Plaintiff alleges that on or about May 20, 1997, Defendant SMITH had  
25 delivered to Plaintiff an executed promissory note ("note") in the sum of  
26 \$89,794.44, which represented the value of the printing merchandise and services  
27 provided Defendants at that time by Plaintiff. A copy of said note is attached as  
28 **Exhibit "4"** to the Complaint and incorporated herein.

1 23. Defendants have defaulted on the note and there is due and owing on  
2 said note the sum of \$81,177.98, which is the total price of all merchandise and  
3 services sold to Defendants, for which Plaintiff has not been paid.

4 24. Demand has been made upon Defendants by Plaintiff for payment.  
5 Defendants have refused to pay and Defendants remain in default regarding said  
6 note.

7 25. Said note contains a venue provision for San Diego County and  
8 provides for a reasonable sum to be awarded for attorneys' fees in the event suit  
9 is brought and Plaintiff claims said attorneys' fees herein.

10 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of  
11 them, as follows:

12 **AS TO DEFENDANTS XYZ CORP., SSI AND DOE DEFENDANTS ON THE**  
13 **FIRST, SECOND AND THIRD CAUSES OF ACTION**

- 14 1. For the principal sum of \$81,177.98;  
15 2. For interest at the proper legal rate on said principal sum from and  
16 after July 31, 1997, and  
17 3. For reasonable attorneys' fees pursuant to Civil Code § 1717.5.

18 **AS TO DEFENDANTS XYZ CORP., SSI AND DOE DEFENDANTS ON THE**  
19 **FOURTH CAUSE OF ACTION**

- 20 1. For the principal sum of \$81,177.98;  
21 2. For interest at the proper legal rate on said principal sum from and  
22 after July 31, 1997, and  
23 3. For reasonable attorneys' fees.

24 **AS TO THE DEFENDANT SMITH AND DOE DEFENDANTS**  
25 **ON THE FIFTH CAUSE OF ACTION**

- 26 1. For the principal sum of \$81,177.98; and  
27 2. For interest at the rate of ten percent (10%) per annum on said  
28 principal sum from and after July 31, 1997; and  
3. For reasonable attorneys' fees.

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**AS TO THE DEFENDANT SMITH AND DOE DEFENDANTS  
ON THE SIXTH CAUSE OF ACTION**

1. For the principal sum of \$81,177.98; and
2. For interest at the rate of ten percent (10%) per annum on said principal sum from and after July 31, 1997; and
3. For reasonable attorneys' fees.

**AS TO ALL CAUSES OF ACTION**

1. For costs of suit incurred herein; and
2. For such other and further relief as is just and proper in this case.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Mark P. Krones, Esq.  
Attorneys for Plaintiff ABC  
COMPANY, INC.

DECLARATION IN SUPPORT OF VENUE AND JURISDICTION

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I, MARK P. KRONES, declare,

1. I am an attorney duly licensed to practice law, and am attorney of record for Plaintiff ABC COMPANY, INC., a California corporation. If called as a witness, I could and would competently testify to the facts stated below.

2. The Superior Court of the North County Judicial District is the proper Court to commence and try the above-entitled action because:

2.1 The site of venue in the credit application, guaranty and promissory note is this judicial district.

2.2 Defendants were and are doing business in this Judicial District.

2.3 The obligation sued upon was and is payable and merchandise made/services performed within this Judicial District.

2.4 The subject agreements were and are payable within this Judicial District.

3. The causes of action sued upon are not subject to the provisions of Civil Code § 1812.10; and

4. The causes of action sued upon are not subject to the provisions of Civil Code § 2984.4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_ day of \_\_\_\_\_, 1997 in San Diego, California.

\_\_\_\_\_  
Mark P. Krones