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David W. Slayton,
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By E. Mayorga, Deputy Clerk

Richard P. Petersen State Bar No. 136577

Attorney for Plaintiff Cheyenne Mission, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 Cheyenne Mission, LLC,

13 Plaintiff,

15 vs.

17 Hidden Hills Ranch, Inc., a California
18 Corporation; Andrew Nowaczek, an individual;
19 Marta Litwin, an individual; and DOES 1 through
20 10, inclusive,

21 Defendants.

) CASE NO: 23STCV18445

) **PLAINTIFF'S TRIAL BRIEF**

) **Trial Date:** October 13, 2025
) **Time:** 8:30 a.m.
) **FSC Date:** October 3, 2025
) **Time:** 8:30 a.m.
) **Department:** 55

22 TO THE COURT, THE PARTIES AND THEIR ATTORNEYS OF RECORD:

24 **TRIAL BRIEF**

25 **I**

26 **INTRODUCTION**

27 This is an action for breach of a written agreement/promissory note, common counts,
28 fraud and negligent misrepresentation. The plaintiff is Cheyenne Mission, LLC ("Cheyenne").

1 Daniel Moore ("Moore") is the managing and sole member of the limited liability company. The
2 defendants are Hidden Hills Ranch, Inc., Andrew Nowaczek (Nowaczek") and Marta Litwin
3 ("Litwin"). The action rises out of monies lent by Moore/Cheyenne to the Defendants at various
4 times between June of 2018 and October 2018. In total, Plaintiff lent monies to Defendants
5 totaling \$650,000.00. The sum of \$250,000.00 was lent via a check and a wire transfer from
6 Cheyenne to Villa Nova Developing, LLC and Villas on Oswego, LLC, which are entities owned
7 and controlled by Nowaczek. The sum of \$300,000.00 was paid by Cheyenne to an individual
8 named Jim Bagge, to extinguish a debt owed for monies owed to him by Nowaczek/Litwin and/or
9 entities owned or controlled by them. Plaintiff was also owed \$22,733.00 for other prior
10 transactions between the parties. These amounts comprise the total owed of \$672,233.00.
11 Defendant Litwin represented to Moore that Nowaczek needed the monies to make payroll and
12 extinguish a debt he owed to Bagge. At the time the monies were lent, Nowaczek, a general
13 contractor, was in the process of developing a single-family residence at 11044-11046 West
14 McBroom St. in Sunland, California. Defendant Hidden Hills was an entity he created to hold title
15 to the McBroom property while it was being developed. Nowaczek is in the business of
16 developing properties and selling them for a profit. Defendant Litwin worked with or assisted
17 Nowaczek in these endeavors for many years.

20 In October 2018, in order to secure the repayment of the monies that had been lent by
21 Moore/Cheyenne, Defendant Litwin agreed to execute a promissory note in favor of Plaintiff
22 Cheyenne on behalf of defendant Hidden Hills, together with a deed of trust against the McBroom
23 property. Defendant Litwin represented to Dan Moore at the time the note and deed of trust were
24 given, that the promissory note would be paid off, using funds from a loan that was to be taken
25 against the McBroom property that they were in the process of obtaining to further develop the
26 McBroom property. Defendant Litwin further represented to Moore that the deed of trust, she
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1 executed on behalf of Hidden Hills and in favor of Plaintiff Cheyenne could not be recorded, or
2 Defendants would be unable to obtain the financing against the property to complete the
3 construction and pay back Plaintiff the monies owed. In reliance based on these representations,
4 the deed of trust given to Cheyenne was not recorded by Plaintiff. The due date on the note was
5 November 5, 2018. The note was also to bear interest at the rate of 10% per annum. In or about
6 December 2018, Hidden Hills obtained a loan from a commercial lender, Anchor Loans, L.P., in
7 the amount of \$645,100 secured by a construction deed of trust against the McBroom property.
8 The Anchor deed trust was recorded on December 28, 2018. Defendants however failed to repay
9 Plaintiff from the proceeds of the Anchor Loan, any of the money Plaintiff had lent them. Upon
10 learning of the loan obtained from Anchor, plaintiff began demanding repayment of the note. The
11 defendants continuously promised repayment, but repayment never occurred. As time went by,
12 Defendant Litwin made every excuse for why the monies had not been repaid and promised they
13 would be repaid. Sometime shortly after April 2021, after another project involving the same
14 parties unraveled, Plaintiff began insisting repayment of the monies lent or he would have to file a
15 legal action to recover the monies due. Defendant Litwin on more than one occasion told him that
16 wasn't necessary, confirmed the monies owed and promised repayment. For example, in February
17 2022 Defendant Litwin represented that Defendants would fulfill their obligations under the
18 promissory note when they received monies owed to them from the IRS. In March 2022
19 Defendant Litwin in a text message to Dan Moore acknowledged the monies were owed. In July
20 2022 via text messages, Defendant Litwin again promised that the monies would be repaid, so the
21 parties could be friends again. Based on these repeated representations and promises, Plaintiff
22 Cheyenne refrained from immediately filing an action to recover said monies. However, despite
23 these representations, the monies were never paid and the instant action for breach of contract,
24 common counts, fraud and negligent misrepresentation was filed on August 4, 2023.
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2 The evidence will also establish that Defendant Hidden Hills defaulted on the loan from
3 Anchor, and Anchor recorded a notice of default in January 2020, which resulted in the
4 foreclosure against the property that occurred in September, 2020. The property was purchased at
5 the Trustee's sale by an entity named JRM Financial, who later transferred title to CNE
6 Investments, LLC in December of 2020. On December 17, 2021, a quit claim deed was recorded
7 transferring the property from CNE Investments to MCBG, LLC, of which Andrew Nowaczek is
8 the managing member. At the same time the quit claim deed was given, a loan was obtained by
9 MCBG from Forbix Capital Corp. The monies lent to MCBG were secured by a Deed of Trust-
10 signed on behalf of MCBG, by Andrew Nowaczek. The evidence will establish that MCBG then
11 later sold the McBroom property to a third party for a sum in excess of 2 million dollars and
12 Defendants still failed to repay Plaintiff the monies that had been lent.
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15 II

16 PLAINTIFFS CLAIMS

17 A. THE PLEADINGS

18 Plaintiff Cheyenne Mission, LLC filed its complaint for Breach of Contract (promissory
19 note), money had and received, fraud, and negligent misrepresentation on August 4, 2023. The
20 Defendants, Andrew Nowaczek, Marta Litwin, and Hidden Hills Ranch, Inc. filed their answer to
21 the complaint on October 11, 2023. The answer of Defendant Hidden Hills Ranch, Inc. was later
22 stricken and its default entered as it is a suspended entity with the Secretary of State.
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24 In addition, this court has also entered an **issue sanction** against the Defendants which
25 conclusively establishes that the Defendants did not use the monies obtained from two loans
26 secured against the McBroom property for the construction and in the development of the project.
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1 **B. PLAINTIFF'S CLAIMS**

2 **1. Breach of Contract.** In order to establish liability on the contract claim, Plaintiff must
3 establish the existence of a written agreement, plaintiff's performance, the defendant's breach, and
4 damages. See CACI no. 303-Breach of Contract. Here, the evidence that will be submitted at trial
5 will establish each element of Plaintiff's claim. The evidence will establish that to secure and
6 memorialize monies that were lent by Plaintiff to Defendants, that Defendant Hidden Hills agreed
7 to sign a promissory note in favor of Plaintiff for the sum of \$690,000.00. On October 29, 2018, a
8 promissory note by Defendant Hidden Hills was signed by Defendant Marta Litwin on behalf of
9 Andrew Nowaczek (the managing member of Hidden Hills) under a General and Special Power of
10 attorney that Defendant Nowaczek gave to Litwin in April of 2011. The evidence will also
11 establish that there is no dispute that Plaintiff lent the monies to Defendants that comprise the
12 amount of the note. The evidence at trial will also be undisputed that Defendants have not repaid
13 any of the monies lent.
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16 **2. Common Count-Money Had and Received.** In addition to the breach of contract
17 cause of action, Plaintiff has pled the common count of Money Had and Received. Common
18 counts are pled as an alternative theory to recovery when a contract fails for some reason. The
19 common count of Money Had and received lies wherever one person has received money which
20 belongs to another, and which in equity and good conscience should be paid over to the latter. See
21 CACI No. 370; Guitierrez v. Girardi (2011)194 Cal. App. 4th, 950, 958, 125 Cal. Rptr. 3rd 210. A
22 claim for money had and received can be based upon money paid by mistake, money paid
23 pursuant to a void contract, or a performance by one party of an express contract. See Witkin,
24 California Procedure (5th Ed. 2008) Pleading, Section 561; See Schultz v. Harney (1994) 27
25 Cal.App.4th 1611, 1623, 33 Cal.Rptr.2d 276; Kawasho International, U.S.A., Inc. v. Lakewood
26 Pipe Service, Inc. (1983) 152 Cal.App.3d 785, 793, 201 Cal. Rptr. 640. The evidence that will be
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1 submitted at trial will be sufficient to establish liability of all Defendants under this common count
2 cause of action. The same evidence that supports Plaintiffs breach of contract claim also
3 establishes Defendants liability on the common count claim, namely that Plaintiff lent monies to
4 Defendants, that Defendants failed to repay the monies despite a valid and enforceable promissory
5 note, that Defendants persuaded Plaintiff to not record a Deed of Trust that was also given to
6 Plaintiff to secure the note, that the monies lent were not used by Defendants for the development
7 and construction of the project (per the court's issue sanction), that Defendants did not repay the
8 loan by Plaintiff when they obtained a loan from a commercial lender, Anchor Loans, that was
9 secured against the property, that the Defendants allowed the Anchor loan to go into default, and
10 allowed Anchor to foreclose on the loan, that Defendant Nowaczek purchased the property back
11 after the foreclosure, but using a different entity that Defendant Nowaczek had created (MCBG,
12 LLC), and that the property was then sold to a third party for approximately 2 million dollars, and
13 Defendants still did not repay Plaintiff the monies it had lent. The evidence that will be offered at
14 trial will clearly establish that the monies lent are monies belonging to Plaintiff which in equity
15 and good conscience should be returned to Plaintiff by all Defendants.

18 3. **Fraud.** The third cause of action brought by Plaintiff is for Fraud. In order to
19 establish liability against the Defendants for fraud, Plaintiff must prove that Defendants
20 represented that a certain fact or facts were true, that the representations were false, that
21 Defendants knew them to be false when made or made them recklessly without regard for the
22 truth, that Defendants intended that Plaintiff rely on the representation, that Plaintiff relied upon
23 the representations, and that the representations were a substantial factor in causing Plaintiff harm
24 or damages. See CACI 1900; Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal. 4th 951,
25 974, 64 Cal. Rptr.2d 843. Here the overwhelming evidence that will be submitted at trial will
26 establish every element of Plaintiff's claim. The evidence will establish that Defendant Marta
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1 Litwin on behalf herself and on behalf of Defendant Nowaczek made various representations to
2 Dan Moore to convince Mr. Moore to lend monies to Litwin/Nowaczek so Nowaczek could make
3 payroll and to extinguish a debt that Nowaczek owed to a third party. Litwin further represented to
4 Moore that they needed the monies only for a short period of time and would repay the monies as
5 soon as they got financing from a bank/lender which would be secured against the McBroom
6 property. She represented to Moore that she would sign a promissory note and deed of trust on
7 behalf of Hidden Hills to secure the obligation. In addition, she represented to Moore, that the
8 deed of trust that Hidden Hills was giving to Cheyenne to secure the obligation could not be
9 recorded or they would be unable to obtain financing from a lender to pay back his monies. The
10 reality is, and what the evidence will show, is that Nowaczek was having extreme financial issues,
11 was in desperate need of cash, and the representations made by Litwin were patently false, or at
12 the very least recklessly made, and made to induce Moore to loan the monies. At the time Litwin
13 made the representations, the evidence will establish that she was acting on behalf of Nowaczek,
14 as the monies lent were going to be used by Nowaczek with respect to his various entities, and to
15 pay back monies owed by him to a third party. In addition, the evidence will establish that Litwin
16 did not obtain the benefit of the monies for her personal use. The evidence will further establish
17 that Litwin was acting on behalf of Nowaczek under both a General and Specific power of
18 attorney that Litwin had been given by Nowaczek in April of 2011. That Defendants never
19 intended to repay the monies is supported by the fact that once the Anchor Loan was obtained in
20 December 2018, the monies were never repaid, and further by the fact that Defendants allowed the
21 Anchor loan to go into foreclosure. The evidence will further establish, that Nowaczek, in March
22 2021, created a new entity and later repurchased the McBroom property out of foreclosure, and
23 then sold it to a third party for approximately 2 million dollars-AND STILL DID NOT REPAY
24 THE MONIES LENT BY PLAINTIFF. All of this evidence clearly establishes that Defendants
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never had any intention to repay the monies lent and intentionally or recklessly made the misrepresentations referenced above. Finally, this court has also previously ordered an issue sanction against the Defendants, that the monies obtained from the loans against the McBroom property were not used by them in construction of the residence. Thus, by implication, the monies went to their personal benefit, at least as to Nowaczek, which further establishes fraud.

4. **Negligent Misrepresentation.** The fourth cause of action is for negligent misrepresentation. To establish liability under this claim, Plaintiff must prove all of the same elements as required for the cause of action for fraud, except that the false representations do not have to be made intentional and Plaintiff must only establish that they were made without reasonable grounds for believing them to be true. See CACI no. 1903; Fox v. Pollack (1986) 181 Cal. App. 3d, 954, 962, 226 Cal. Rptr. 532. The same evidence that will be established at trial under the fraud claim also establishes liability of Defendants under this cause of action.

5. Damages. Plaintiff has suffered damages in the face amount of the note in the sum of \$690,000.00, plus interest at the rate of 10% per annum from November 5, 2018 through the date of this trial, October 13, 2025 (2,355 days). Through the date of this trial the amount of accrued interest is therefore the sum of \$478,841.09. The note also provides for attorney fees and costs.

III

DEFENDANTS CONTENTIONS

Plaintiff anticipates that Defendants will contend that Plaintiffs claims are barred by the Statute of Limitations. The evidence will establish that this contention has no merit.

Breach of Contract (promissory note). The statute of limitations for breach of a promissory note is 6 years when the note is a negotiable instrument. See California Commercial Code section 3118. Under California Commercial Code 3-104, the note here is a negotiable instrument. The

1 note was due and payable on November 5, 2018 per its terms. The complaint was filed on August
2 4, 2023, well within the 6 year period.

3 Money Had and Received, Fraud and Negligent Misrepresentation. The Statute of
4 Limitations for Money Had and Received is 2 years (C.C.P. 339(1)) and 3 years for Fraud and
5 Negligent Misrepresentation (C.C.P. 338). While the Statute of Limitations for these causes of
6 action had expired by the time the complaint herein was filed, the doctrine of equitable estoppel
7 precludes Defendants from raising the SOL as a defense. Under Evidence Code section 623 a
8 Defendant can be equitably estopped from asserting the statute of limitations as a defense. This
9 section provides that "Whenever a party has, by his own statement or conduct, intentionally and
10 deliberately led another to believe a particular thing true and to act upon such belief, he is not, in
11 any litigation arising out of such statement or conduct, permitted to contradict it." See also, CACI
12 456; See Battuello v. Battuello (1998) 64 CA4th 842, 848, 75 CR2d 548, 551-mother's
13 representations (told son he would receive property in 2 years) to convince son not to sue to
14 enforce father's promise to give vineyard to son, were false, and sufficient to support a claim of
15 equitable estoppel. Further, an estoppel may arise even though there was no designed fraud or
16 intent on the part of the person sought to be estopped. It is enough if the party has been induced to
17 refrain from taking action to protect his interests because of the other party's conduct. See Lantz
18 v. Centex Homes (2003) 31 C4th 363, 383, 2 Cr3d 655, 673. Here the evidence will establish that
19 Defendant Marta Litwin continuously made representations to Dan Moore that Defendants would
20 repay the monies lent and that Plaintiff did not need to pursue legal action. These representations
21 were made in person, on the telephone and in text messages. In reliance thereon, Moore refrained
22 from bringing an action to enforce the note and related causes of action. The evidence will
23 establish that at the time Ms. Litwin made these representations, she was acting on behalf of
24 herself, and the other Defendants, under the power of attorney Defendant Nowaczek had given
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1 her. The evidence will establish that these representations occurred into the middle of July 2022,
2 and thus the filing of the complaint on August 4, 2023 was well within the running of the SOL on
3 each of these causes of action.
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5 DATED: 9-26-25
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LAW OFFICES OF RICHARD P. PETERSEN

7 By: 
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RICHARD P. PETERSEN
Attorney for Plaintiff Daniel Moore
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I reside in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 4515 OCEAN VIEW BLVD., SUITE 370, LA CANADA, California 91011.

On 9-26, 2025, I served the foregoing documents described as **PLAINTIFF'S TRIAL BRIEF** on all parties in this action.

___ By placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

STEPHEN WEISSKOPF, ESQ.
2029 CENTURY PARK EAST, SUITE 400
LOS ANGELES, CA 90067

___ BY MAIL: As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at La Canada, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

___ BY OVERNIGHT MAIL: As follows: I enclosed the documents in an envelope or package provided by an overnight delivery carrier or the United States Post Office and addressed to the persons listed above, and caused the documents to be given to the carrier or United States Post Office to be delivered by overnight.

☒ BY ELECTRONIC TRANSMISSION: As follows: I caused the above-referenced document to be transmitted electronically to the above-referenced person at the following address: sweisskopf@levatolaw.com

Executed 9-26, 2025, at La Canada, California. The envelope was mailed with postage thereon fully prepaid.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



RICHARD P. PETERSEN