

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

Index No.

Date purchased:

-----X  
**DAVID BOYHAN and ANGELA McNAMEE,**

**Plaintiffs,**

**-against-**

**GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ,**

**Defendant.**

**Plaintiff designates Kings County  
as the place of trial.**

**The basis of the venue is  
CPLR § 503(a) (residence  
of defendant in Kings County)**

**SUMMONS**

-----X  
To the above-named Defendant:

**YOU ARE HEREBY SUMMONED** to answer the motion for summary judgment in lieu of complaint filed in this action and to serve a copy of your answering papers on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York) or as otherwise directed in the annexed Notice of Motion for Summary Judgment in Lieu of Complaint; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in plaintiffs' motion papers.

Dated: November 18, 2022

**DANIEL R. BRIGHT  
Attorney for Plaintiffs**

By: 

\_\_\_\_\_  
Daniel R. Bright  
1115 Broadway, 11<sup>th</sup> Floor  
New York, New York 10010  
(646) 588-4871

TO: Gabriela Behnen  
115 Ashland Place, # 8B  
Brooklyn, NY 11201

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

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**DAVID BOYHAN and ANGELA McNAMEE,**

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**-against-**

**GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ,**

**Defendant.**  
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**Index No.**

**NOTICE OF MOTION  
FOR SUMMARY  
JUDGMENT IN LIEU OF  
COMPLAINT**

**PLEASE TAKE NOTICE** that, upon the affidavit of David Boyhan, sworn to November 16, 2022, and the exhibits annexed thereto, Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment, and all other papers and proceedings had herein, a motion for summary judgment in lieu of a complaint will be made, pursuant to Civil Practice Law and Rules Section 3213, at the Courthouse located at 360 Adams Street, Brooklyn, New York, at an IAS Part to be determined, on the 26<sup>th</sup> day of January, 2023, at 9:30 a.m., or at such other time as may be designated by the Court, for an Order awarding summary judgment in favor of plaintiffs and against defendant in the amount of \$20,000.00, plus interest thereon at the rate of 9% per annum from May 15, 2022, plus reasonable costs and attorney's fees, and granting such other and further relief as this Court deems just, proper and equitable.

**PLEASE TAKE FURTHER NOTICE** that answering papers must be served upon the undersigned at least ten days prior to the return date of this motion, pursuant to CPLR § 3213.

Dated: New York, New York  
November 18, 2022

DANIEL R. BRIGHT  
Attorney at Law

By: 

Daniel R. Bright  
1115 Broadway, 11<sup>th</sup> Floor  
New York, New York 10010  
(646) 588-4871

Attorney for Plaintiffs

To: Gabriela Behnen  
115 Ashland Place, # 8B  
Brooklyn, NY 11201



# REQUEST FOR JUDICIAL INTERVENTION

## SUPREME COURT, COUNTY OF KINGS

 UCS-840  
(rev. 02/01/2022)

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

**For Court Use Only:**
**CAPTION** Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

IAS Entry Date

DAVID BOYHAN and ANGELA MCNAMEE

Plaintiff(s)/Petitioner(s) Judge Assigned

-against-

GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ

Defendant(s)/Respondent(s) RJ Filed Date

**NATURE OF ACTION OR PROCEEDING** Check only one box and specify where indicated.

**COMMERCIAL**

- ☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)  
☐ Contract  
☐ Insurance (where insurance company is a party, except arbitration)  
☐ UCC (includes sales and negotiable instruments)  
☒ Other Commercial (specify): Promissory Note

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJ ADDENDUM (UCS-840C).

**TORTS**

- ☐ Asbestos  
☐ Child Victims Act  
☐ Environmental (specify): \_\_\_\_\_  
☐ Medical, Dental or Podiatric Malpractice  
☐ Motor Vehicle  
☐ Products Liability (specify): \_\_\_\_\_  
☐ Other Negligence (specify): \_\_\_\_\_  
☐ Other Professional Malpractice (specify): \_\_\_\_\_  
☐ Other Tort (specify): \_\_\_\_\_

**SPECIAL PROCEEDINGS**

- ☐ Child-Parent Security Act (specify): ☐ Assisted Reproduction ☐ Surrogacy Agreement  
☐ CPLR Article 75 - Arbitration [see NOTE in COMMERCIAL section]  
☐ CPLR Article 78 - Proceeding against a Body or Officer  
☐ Election Law  
☐ Extreme Risk Protection Order  
☐ MHL Article 9.60 - Kendra's Law  
☐ MHL Article 10 - Sex Offender Confinement (specify): ☐ Initial ☐ Review  
☐ MHL Article 81 (Guardianship)  
☐ Other Mental Hygiene (specify): \_\_\_\_\_  
☐ Other Special Proceeding (specify): \_\_\_\_\_

**MATRIMONIAL**

- ☐ Contested  
 NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJ ADDENDUM (UCS-840M).  
 For Uncontested Matrimonial actions, use the Uncontested Divorce RJ (UD-13).

**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

- ☐ Condemnation  
☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial

 Property Address: \_\_\_\_\_  
 NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJ ADDENDUM (UCS-840F).

- ☐ Partition  
 NOTE: Complete and attach the PARTITION RJ ADDENDUM (UCS-840P).  
☐ Tax Certiorari (specify): Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
☐ Tax Foreclosure  
☐ Other Real Property (specify): \_\_\_\_\_

**OTHER MATTERS**

- ☐ Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section]  
☐ Emergency Medical Treatment  
☐ Habeas Corpus  
☐ Local Court Appeal  
☐ Mechanic's Lien  
☐ Name Change/Sex Designation Change  
☐ Pistol Permit Revocation Hearing  
☐ Sale or Finance of Religious/Not-for-Profit Property  
☐ Other (specify): \_\_\_\_\_

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

- |   | YES                              | NO                               |                                       |
|---|----------------------------------|----------------------------------|---------------------------------------|
| Has a summons and complaint or summons with notice been filed?  | <input checked="" type="radio"/> | <input type="radio"/>            | If yes, date filed: <u>11/18/2022</u> |
| Has a summons and complaint or summons with notice been served? | <input type="radio"/>            | <input checked="" type="radio"/> | If yes, date served: _____            |
| Is this action/proceeding being filed post-judgment?            | <input type="radio"/>            | <input checked="" type="radio"/> | If yes, judgment date: _____          |

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

- ☐ Infant's Compromise  
☐ Extreme Risk Protection Order Application  
☐ Note of Issue/Certificate of Readiness  
☐ Notice of Medical, Dental or Podiatric Malpractice  
☒ Notice of Motion  
☐ Notice of Petition  
☐ Order to Show Cause  
☐ Other Ex Parte Application  
☐ Partition Settlement Conference  
☐ Poor Person Application  
☐ Request for Preliminary Conference  
☐ Residential Mortgage Foreclosure Settlement Conference  
☐ Writ of Habeas Corpus  
☐ Other (specify): \_\_\_\_\_

Date Issue Joined: \_\_\_\_\_

Relief Requested: \_\_\_\_\_

Relief Requested: \_\_\_\_\_

Relief Requested: \_\_\_\_\_

Relief Requested: \_\_\_\_\_

Return Date: \_\_\_\_\_

Return Date: \_\_\_\_\_

Return Date: \_\_\_\_\_

Return Date: \_\_\_\_\_

RELATED CASES				
List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the RJ1 ADDENDUM (UCS-840A).				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

**PARTIES** For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided.  
If additional space is required, complete and attach the RJ1 ADDENDUM (UCS-840A).

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3rd party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: DAVID BOYHAN Role(s): Plaintiff	Daniel R. Bright, Esq. 1115 Broadway, 11th Floor, New York, NY 10010 dan@thebrightfirm.law (646) 588-4871	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: ANGELA MCNAMEE Role(s): Plaintiff	Daniel R. Bright, Esq. 1115 Broadway, 11th Floor, New York, NY 10010 dan@thebrightfirm.law (646) 588-4871	<input type="radio"/> YES <input type="radio"/> NO	
<input checked="" type="checkbox"/>	Name: GABRIELA BEHNEN Role(s): Defendant	115 Ashland Place #8B, Brooklyn, NY 11201	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 11/18/2022

  
Signature

2268803

Attorney Registration Number

Daniel R. Bright

Print Name

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
**DAVID BOYHAN and ANGELA McNAMEE,**

**Plaintiffs,**

**-against-**

Index No.

**AFFIDAVIT OF**  
**DAVID BOYHAN**

**GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ,**

**Defendant.**  
-----X

**DAVID BOYHAN, being duly sworn, deposes and says:**

1. I am one of the plaintiffs in this action. I submit this affidavit in support of plaintiffs' motion for summary judgment in lieu of a complaint. I make this affidavit on personal knowledge, except where otherwise indicated.
2. The other plaintiff in this action, Angela McNamee, is my wife. We reside at 4 Lantern Lane, Cumberland Foreside, Maine.
3. The defendant, Gabriela Behnen, is a former friend of mine and my wife. The two of us attended New York University in the early 2010s, which is when my wife and I became friends with Ms. Behnen, whose name was Gabriela Gutierrez at the time. (Behnen is her married name, which, upon information and belief, is the surname she currently and primarily uses now.)
4. Defendant resides at 115 Ashland Place, Brooklyn, New York.
5. In 2011, plaintiffs made two loans to defendant in the amount of \$10,000.00 each.
6. On September 3, 2011, plaintiffs and defendant executed a promissory note in

connection with the first \$10,000.00 loan made to defendant by plaintiffs. A copy of this promissory note is attached to this affidavit as Exhibit 1.

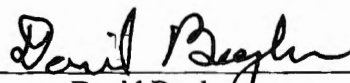
7. On December 31, 2011, plaintiffs and defendant executed a second promissory note which related to the second \$10,000.00 loan that was made to defendant by plaintiffs. A copy of this second promissory note is attached to this affidavit as Exhibit 2.

8. Each promissory note required defendant to pay \$10,000.00 to plaintiffs "by no later than ten (10) years from May 15, 2012."

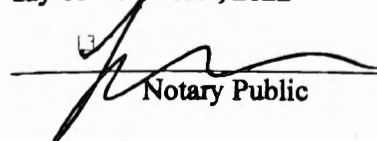
9. No extensions of time to pay the required sums were requested by defendant or granted by plaintiffs.

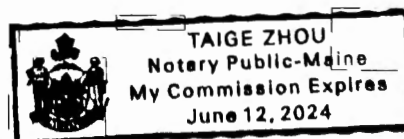
10. On July 22, 2022, I mailed a letter to defendant by certified mail, return receipt requested, demanding "full repayment of [the] \$20,000" owed to plaintiffs pursuant to the terms of the September and December 2011 promissory notes. A copy of my demand letter is attached as Exhibit 3. Proof of mailing of the demand letter is attached as Exhibit 4. Proof of delivery of the demand letter is attached as Exhibit 5.

11. Defendant has not made any payments to plaintiffs on either of the two promissory notes.

  
David Boyhan

Sworn to before me this 16<sup>th</sup>  
day of November, 2022

  
Notary Public





## Simple Promissory Note

Norwalk, Connecticut - September 3, 2011

Gabriela Gutierrez agrees and promises to pay to Angela McNamee and David Boyhan the sum of (\$10,000) Ten-Thousand Dollars for value received by no later than ten (10) years from May 15, 2012, provided, however, that Gabriela Gutierrez may request, in writing, one extension of an additional two (2) years, which such request shall not be unreasonably withheld.

If this note is in default and is placed for collection Gabriela Gutierrez shall pay all reasonable costs of collection and attorneys' fees.

Angela McNamee  
David Boyhan  
(Lenders)

Signature Angela McNamee Date 9-3-11  
Signature David Boyhan Date 9-3-11

Gabriela Gutierrez  
(Borrower)

Signature Gabriela Gutierrez Date 9/3/2011

## Simple Promissory Note # 2

Norwalk, Connecticut - December 31, 2011

Gabriela Gutierrez agrees and promises to pay to Angela McNamee and David Boyhan the sum of (\$10,000) Ten-Thousand Dollars for value received by no later than ten (10) years from May 15, 2012, provided, however, that Gabriela Gutierrez may request, in writing, one extension of an additional two (2) years, which such request shall not be unreasonably withheld.

If this note is in default and is placed for collection Gabriela Gutierrez shall pay all reasonable costs of collection and attorneys' fees.

Angela McNamee  
David Boyhan  
(Lenders)

Signature

Angela McNamee

Date

12/31/11

Signature

David Boyhan

Date

12/31/11

Gabriela Gutierrez  
(Borrower)

Signature

Gabriela Gutierrez

Date

12/31/2011

## DEMAND LETTER

David M. Boyhan  
4 Lantern Lane  
Cumberland Foreside, ME 04110  
[david.boyhan@gmail.com](mailto:david.boyhan@gmail.com)  
(646) 326-6898

July 21, 2012

Gabriela Gutierrez/Behnen  
115 Ashland Place, # 8B  
Brooklyn, NY 11201

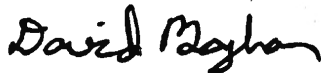
Dear Ms. Gutierrez:

As you know, in September and December of 2011 you borrowed a total of \$20,000 from us, interest-free, with a term of 10 years from May 15, 2012. Both notes, signed by you and copies of which are attached hereto are now due.

Given that you have not contacted us or made any attempt to pay us back, we do not believe it is unreasonable to refuse to grant you the two-year extension discussed in the notes.

Accordingly, please contact us immediately to arrange for the full repayment of \$20,000.

Respectfully,



David M. Boyhan

# U.S. Postal Service™

## CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

# OFFICIAL USE

Certified Mail Fee

\$

4.00

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy)

\$ 3.25

☐ Return Receipt (electronic)

\$

☐ Certified Mail Restricted Delivery

\$

☐ Adult Signature Required

\$

☐ Adult Signature Restricted Delivery

\$

Postage

\$

.60

Total Postage and Fees

\$

7.85

Sent To

Gabriela Behnen

Street and Apt. No., or PO Box No.

115 Ashland Place # 8B

City, State, ZIP+4®

Brooklyn NY 11201



PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7022 0410 0001 3330 0484

USPS TRACKING #



9590 9402 7271 1284 9937 77

**United States  
Postal Service**

• Sender: Please print your name, address, and city, state, and ZIP+4.

Boylan  
4 Lantern Lane  
Cumberland Foresid

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

fabriela Gutierrez/Behnen  
115 Ashland Place #6B  
Brooklyn NY 11201



9590 9402 7271 1284 9937 77

## 2. Article Number (Transfer)

7022 0410 0001 3330 0484

**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

X

Q.S.

☐ Agent☐ Addressee

## B. Received by (Printed Name)

C19

## C. Date of Delivery

- D. Is delivery address different from Item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Certified Mail Restricted Delivery Restricted Delivery
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



# REQUEST FOR JUDICIAL INTERVENTION

## SUPREME COURT, COUNTY OF KINGS

UCS-840  
(rev. 02/01/2022)

Index No: \_\_\_\_\_

Date Index Issued: \_\_\_\_\_

For Court Use Only:

**CAPTION** Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

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Plaintiff(s)/Petitioner(s)

-against-

GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ

Defendant(s)/Respondent(s)

IAS Entry Date

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- ☐ MHL Article 81 (Guardianship)
- ☐ Other Mental Hygiene (specify): \_\_\_\_\_
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**MATRIMONIAL**

- ☐
- Contested

NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RIJ ADDENDUM (UCS-840M).

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**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

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**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

- Has a summons and complaint or summons with notice been filed? YES ☒ NO ☐ If yes, date filed: 11/18/2022
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- ☐ Poor Person Application
- ☐ Request for Preliminary Conference
- ☐ Residential Mortgage Foreclosure Settlement Conference
- ☐ Writ of Habeas Corpus
- ☐ Other (specify): \_\_\_\_\_

Date Issue Joined: \_\_\_\_\_

Relief Requested: \_\_\_\_\_

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Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

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Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: DAVID BOYHAN Role(s): Plaintiff	Daniel R. Bright, Esq. 1115 Broadway, 11th Floor, New York, NY 10010 dan@thebrightfirm.law (646) 588-4871	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: ANGELA MCNAMEE Role(s): Plaintiff	Daniel R. Bright, Esq. 1115 Broadway, 11th Floor, New York, NY 10010 dan@thebrightfirm.law (646) 588-4871	<input type="radio"/> YES <input type="radio"/> NO	
<input checked="" type="checkbox"/>	Name: GABRIELA BEHNEN Role(s): Defendant	115 Ashland Place #8B, Brooklyn, NY 11201	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
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<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 11/18/2022

  
 \_\_\_\_\_  
 Signature

2268803

Attorney Registration Number

Daniel R. Bright

Print Name



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

-----X  
**DAVID BOYHAN and ANGELA McNAMEE,**

**Plaintiffs,**

**-against-**

**GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ,**

**Defendant.**  
-----X

**Index No.**

**NOTICE OF MOTION  
FOR SUMMARY  
JUDGMENT IN LIEU OF  
COMPLAINT**

PLEASE TAKE NOTICE that, upon the affidavit of David Boyhan, sworn to November 16, 2022, and the exhibits annexed thereto, Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment, and all other papers and proceedings had herein, a motion for summary judgment in lieu of a complaint will be made, pursuant to Civil Practice Law and Rules Section 3213, at the Courthouse located at 360 Adams Street, Brooklyn, New York, at an IAS Part to be determined, on the 26<sup>th</sup> day of January, 2023, at 9:30 a.m., or at such other time as may be designated by the Court, for an Order awarding summary judgment in favor of plaintiffs and against defendant in the amount of \$20,000.00, plus interest thereon at the rate of 9% per annum from May 15, 2022, plus reasonable costs and attorney's fees, and granting such other and further relief as this Court deems just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that answering papers must be served upon the undersigned at least ten days prior to the return date of this motion, pursuant to CPLR § 3213.

Dated: New York, New York  
November 18, 2022

DANIEL R. BRIGHT  
Attorney at Law

By:



Daniel R. Bright  
1115 Broadway, 11<sup>th</sup> Floor  
New York, New York 10010  
(646) 588-4871

Attorney for Plaintiffs

To: Gabriela Behnen  
115 Ashland Place, # 8B  
Brooklyn, NY 11201

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

-----X  
**DAVID BOYHAN and ANGELA McNAMEE,**

**Plaintiffs,**

**Index No.**

**-against-**

**GABRIELA BEHNEN, a/k/a GABRIELA GUTIERREZ,**

**Defendant.**  
-----X

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT**

**DANIEL R. BRIGHT**  
Attorney at Law

1115 Broadway, 11<sup>th</sup> Floor  
New York, New York 10010  
(646) 588-4871

Attorney for Plaintiffs

Plaintiffs submit this memorandum of law in support of their motion for summary judgment in lieu of complaint. In this action, plaintiffs seek to recover \$20,000 owed to them under two promissory notes, plus pre-judgment interest and attorney's fees and costs, which defendant is liable for under the express terms of the promissory notes she has defaulted on.

### PRELIMINARY STATEMENT

CPLR § 3213 provides an expedited procedure for suing “[w]hen an action is based upon an instrument for the payment of money only.” When suing a defendant for a failure to make a payment that was due pursuant to an “instrument for the payment of money only,” a complaint need not be filed. Instead, the plaintiff may initiate the action with a motion for summary judgment.

A promissory note is the quintessential example of an instrument for the payment of money only. All that is required for a plaintiff to establish a prima facie right to judgment under CPLR § 3213 is “the existence of a promissory note executed by the defendant and the failure of the defendant to pay in accordance with the note’s terms.” Hansraj v. Sukhu, 145 A.D.3d 755 (2<sup>nd</sup> Dept. 2016) (collecting cases).

The present action is based upon defendant’s failure to pay to plaintiffs \$20,000 that she borrowed from them in 2011 and was required to repay to them no later than May 15, 2022, pursuant to the terms of two promissory notes she executed in 2011. Thus, a motion for summary judgment in lieu of complaint is a correct procedure for bringing this action and, based on the facts set forth in the affidavit of David Boyhan and settled legal principles, the motion should be granted and judgment should be awarded in favor of plaintiffs and against defendant in the amount of \$20,000, plus pre-judgment statutory interest of 9% per annum from May 15,

2022, and the reasonable attorney's fees and costs incurred in the pursuit of this action, as agreed by defendant in the promissory notes she executed.

### STATEMENT OF FACTS

In 2011, plaintiffs made two zero-interest loans in the amount of \$10,000 each to defendant, who executed a separate promissory note in connection with each of the two loans. Each promissory note obligated defendant to pay \$10,000 to plaintiffs no later than December 15, 2022. (Affidavit of David Boyhan, sworn to November 16, 2022 ("Boyhan Aff."), ¶¶ 5-8 and Ex. 1 and 2.)

Defendant has not paid the plaintiffs any of the \$20,000 she owes them, despite the fact that payment is overdue and plaintiffs have demanded that payment be made. (Boyhan Aff., ¶¶ 9-11.) Pursuant to the terms of the two promissory notes, defendant owes plaintiffs \$20,000, plus "all reasonable costs of collection and attorneys' fees." (Boyhan Aff., Ex. 1 and 2.) In addition, pursuant to CPLR §§ 5001 and 5004, defendant is also liable for pre-judgment interest on the \$20,000 owed at the statutory interest rate of 9% per annum, with interest accruing from May 15, 2022 (*i.e.*, the date payment on the notes was due).

### ARGUMENT

The framework for obtaining a judgment pursuant to CPLR § 3213:

Pursuant to CPLR 3213, a party may obtain accelerated relief by moving for summary judgment in lieu of complaint, provided that the action is based upon an instrument for the payment of money only or upon any judgment. A promissory note is an instrument for the payment of money only, provided that it contains an

unconditional promise by the borrower to pay the lender over a stated period of time. To establish a prima facie entitlement to judgment as a matter of law on the issue of liability with respect to a promissory note, a plaintiff must show the existence of a promissory note executed by defendant and the failure of the defendant to pay in accordance with the note's terms. Once the plaintiff establishes its prima facie entitlement to judgment as a matter of law, the burden shifts to the defendant to establish the existence of a triable issue of fact with respect to a bona fide defense. However, conclusory and unsubstantiated allegations of defenses to payment on a note are insufficient to defeat the plaintiff's entitlement to summary judgment.

Hansraj, *supra*. 145 A.D.3d at 755-56 (citations and internal quotation marks omitted). *See also*, e.g., Von Fricken v. Schaefer, 118 A.D.3d 869, 870 (2<sup>nd</sup> Dept. 2014) ("a plaintiff makes a prima facie showing of entitlement to judgment as a matter of law pursuant to CPLR 3213 by showing that the defendant executed the promise to repay the plaintiff upon demand or at a definite time, and the defendant failed to pay in accordance with the instrument's terms"); Seaman-Andwall Corp. v. Wright Mach. Corp., 31 A.D.2d 136, 137-38 (1<sup>st</sup> Dept. 1968), *aff'd*, 29 N.Y.2d 617 (1971); Meris v. Splinis, 2020 WL 6380169, \* 1 (Sup. Ct., Kings Cty.); Deheise v. Isied, 2016 WL 9804127, \* 1 (Sup. Ct., Queens Cty.); Persichilli v. Metropolitan Paper Recycling, Inc., 30 Misc.3d 1227(A), \*\* 1-2 (Sup. Ct., Nassau Cty. 2010); Rusin v. Pedrignani, 2018 WL 6332553 (Sup. Ct., New York Cty.) ("[a] promissory note is an instrument for the payment of money only" and a "prima facie case for summary judgment in lieu of complaint is established, without more, where the plaintiff establishes that the defendant (a) executed a note or guaranty for a sum certain and (b) defaulted under the note or guaranty").

In addition to the \$20,000 in unpaid debt, plaintiffs are entitled to be awarded pre-judgment interest (at the rate of 9% per annum) from the date payment on the promissory notes

was due (pursuant to CPLR §§ 5001 and 5004) and – because “both notes included a provision for attorney’s fees [and costs] in the event that any collection action became necessary” – the reasonable costs and attorney’s fees associated with this action. Persichilli, *supra*, at \* 5.

The requirements for establishing plaintiffs’ right to summary judgment pursuant to CPLR § 3213 have been satisfied. Defendant signed two promissory notes and has defaulted on those notes. No other showing is required.

Plaintiffs’ motion for summary judgment in lieu of complaint should be granted.

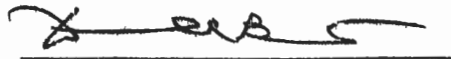
#### CONCLUSION

Plaintiffs’ motion for summary judgment in lieu of complaint should be granted. A judgment against defendant and in favor of plaintiffs should be awarded in the amount of \$20,000.00, together with interest at 9% per annum from May 15, 2022 to the date of entry of judgment, plus attorney’s fees and costs, in an amount to be determined by the Court.

Dated: November 18, 2022

Respectfully submitted,

DANIEL R. BRIGHT  
Attorney at Law



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1115 Broadway, 11<sup>th</sup> Floor  
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Attorney for Plaintiffs