

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT
for the
Eastern District of Missouri

Eagle Private Equity, LLC
Plaintiff
v.
Lower Brule Community Dev. Enterprise, LLC, et al.
Defendant
Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: Michael T. George, Esq.
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/19/2012, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 04/19/2012

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Eagle Private Equity, LLC

(b) County of Residence of First Listed Plaintiff Hennepin, Minnesota
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Law Firm of Michael T. George, P.C., 2330 Menard Street, Suite 301, St. Louis, MO 63104

DEFENDANTS

Lower Brule Community Development Enterprise, LLC, and LBC Western Holdings, LLC, and Gavin Clarkson

County of Residence of First Listed Defendant Lyman, South Dakota
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	400 State Reapportionment 410 Antitrust 430 Bnks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights	PRISONER PETITIONS 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Breach of Contract/Fraud/Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,200,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/19/2012

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EAGLE PRIVATE EQUITY, LLC)

Plaintiff,)

vs.)

LOWER BRULE COMMUNITY)

DEVELOPMENT ENTERPRISE, LLC)

Serve: Robert Giacovas, Esq.)

Lazare, Potter & Giacovas LLP)

950 Third Avenue)

New York, NY 10022)

and,)

LBC WESTERN HOLDINGS, LLC)

Serve: Robert Giacovas, Esq.)

Lazare, Potter & Giacovas LLP)

950 Third Avenue)

New York, NY 10022)

and,)

GAVIN CLARKSON)

Serve: Robert Giacovas, Esq.)

Lazare, Potter & Giacovas LLP)

950 Third Avenue)

New York, NY 10022)

Defendants.)

JURY TRIAL DEMANDED

**COMPLAINT FOR BREACH OF CONTRACT, FRAUD
& UNJUST ENRICHMENT**

COMES NOW, Plaintiff pursuant to 28 U.S.C.A. § 1332 and states the following:

PARTIES

1. Eagle Private Equity, LLC (hereinafter “Eagle”) is a duly organized limited liability company, with it’s principle place of business in Minneapolis, Minnesota, and is engaged in capital formation for business enterprises.
2. The Lower Brule Community Development Enterprise, LLC (hereinafter “Brule Community”) is a duly organized limited liability company, with its principle place of business in Lower Brule, South Dakota, and is engaged in furthering economic development for the Lower Brule Sioux Indian tribe in South Dakota.
3. LBC Western Holdings LLC (hereinafter “Western Holdings”) is a duly organized limited liability company, with it principle place of business in New York City, New York, and is affiliated with and controlled by Brule Community, and is engaged in broker-dealer security services.
4. Gavin Clarkson is a natural person, Harvard Law School graduate, Harvard Business School graduate, University of Houston Law Center Associate Professor, resident of Texas, and President and CEO of Brule Community, and officer of Western Holdings.

JURISDICTION

5. The United States District Court for the Eastern District of Missouri, Eastern Division, has jurisdiction in this matter pursuant to Title 28 U.S.C. § 1332, because the

all plaintiffs have citizenship different from all defendants, and the amount in controversy exceeds \$75,000.00.

FACTS

6. Brule Community is the lender and Western Holdings is the borrower of a certain \$22,519,638 note, that is guaranteed by the United States Government under the Department of Interior, Bureau of Indian Affairs, Loan Guaranty Certificate No. G103D1A1501.

7. Brule Community wanted to monetize their United States Government guaranteed loan to Western Holdings and realize cash for other development projects.

8. Eagle offered to consult with and help Brule Community monetize their loan into cash.

9. Eagle and Brule Community entered into their first written contract on August 23, 2011.

10. That August 23rd, 2011 contract promised Eagle a 5% fee from Brule Community.

11. On September 22nd, 2011 a second agreement was entered into between Brule Community and Eagle, which adopted the 5% fee from the August 23rd, 2011 contract.

12. On December 21, 2011 a third agreement was entered into between Brule Community and Eagle.

13. That December 21, 2011 contract promised Eagle a 5% fee from Brule Community, with the bonus payment of 1% more (6% total) if the transactions closed prior to January 30, 2012.

14. On January 20, 2012 Brule Community entered into an agreement to sell their loan agreement with Western Holdings to Seaport Loan Products LLC (hereinafter "Seaport") for \$19,254,290.00.

15. The trade confirmation stated, "All Parties to use best efforts to settle in 5-10 business days."

16. The trade did not settle in 5-10 days.

17. On January 30, a second trade confirmation between Brule Community and Seaport, was signed by Gavin Clarkson.

18. The second trade confirmation stated, "All Parties to use best efforts to settle 5-10 business days after January 26, 2012."

19. The trade did not settle in 5-10 days after January 26, 2012.

20. All parties, Brule Community, Western Holdings, Eagle, Seaport, and Farm Credit Services of America (the ultimate buyer, hereinafter "Farm Credit") continued their efforts to settle the trade according to the second trade confirmation.

21. Unknown to Eagle, Seaport, and Farm Credit, Brule Community had begun negotiations with Great American Insurance Group (hereafter "Great American").

22. Brule Community and Western Holdings, in a recorded conversation through their CEO, President, and officer, assured Eagle that "One, you are going to get paid, and two, the note is not going to get sold out from under you."

23. Brule Community never informed Eagle, Seaport, or Farm Credit that it was negotiating with another buyer.

24. Brule Community never gave notice to Eagle or Seaport that there was a deadline by which the Seaport trade must close.

25. Brule Community never gave notice to Eagle or Seaport that it was cancelling the trade with Seaport.

26. Upon information and belief, Brule Community monetized their loan to Western Holdings for an amount greater than \$19,254,290.00.

27. Brule Community is refusing to settle their trade with Seaport and Farm Credit.

28. Brule Community is refusing to pay Eagle their 6% fee.

**COUNT I
BREACH OF CONTRACT AGAINST
BRULE COMMUNITY AND WESTERN HOLDINGS**

29. The allegations of paragraphs 1 through 28 *supra* are re-alleged and herein incorporated in this paragraph.

30. Eagle had a contract to help Brule Community and Western Holdings monetize the loan between them.

31. Eagle used its expertise, business acumen, and time to help Brule Community and Western Holdings arrange for sale of the note through Seaport to Farm Credit.

32. Brule Community and Western Holdings agreed to sell the note to Seaport and Farm Credit.

33. Brule Community and Western Holdings refuses now to honor its sale to Seaport and Farm Credit.

34. Brule Community and Western Holdings, despite its previous sale to Seaport and Farm Credit, sold the note to Great American for a higher price.

35. Brule Community and Western Holdings, despite its contractual obligations, refuses to honor its consulting contract with Eagle and pay to Eagle its 6% fee.

36. Brule Community and Western Holdings' refusal to pay the 6% fee to Eagle is a breach of contract.

37. Brule Community and Western Holdings' by its breach has directly and proximately damaged Eagle \$1,200,000.

38. Brule Community and Western Holdings' breach was willful and wanton, and committed with such reckless disregard to the rights of Eagle, as to justify punitive damages to deter Brule Community and Western Holdings from such conduct in the future.

WHEREFORE, Plaintiff prays the Court order, judge, and decree that Brule Community and Western Holdings breached its contract with Eagle, and award Eagle the expectation of its contract, its 6% fee or \$1,200,000.00, statutory interest on that amount from this date of filing, attorney fees and costs expended, and punitive damages, and for such further relief and justice as this Court deems just and proper.

COUNT II
FRAUD AND MISREPRESENTATION AGAINST
BRULE COMMUNITY, WESTERN HOLDINGS, AND GAVIN CLARKSON

39. The allegations of paragraphs 1 through 38 *supra* are re-alleged and herein incorporated in this paragraph.

40. Gavin Clarkson, for himself, Brule Community, and Western Holdings made numerous material misrepresentations to Eagle, Seaport, and Farm Credit over the course of conducting business with them.

41. Gavin Clarkson, Brule Community, and Western Holdings represented to Eagle that they would be paid, and that the note would not be sold out from underneath them.

42. Well after Gavin Clarkson had begun negotiating with Great American, and up to the close with Great American, Gavin Clarkson, Brule Community, and Western Holdings continued to induce Eagle to work towards settling the Seaport trade, while fully aware that the Great American had bought the loan.

43. Eagle relied upon these material misrepresentations of fact.

44. Eagle had a right to rely upon Gavin Clarkson, Brule Community, and Western Holdings' representations.

45. Gavin Clarkson, Brule Community, and Western Holdings used these material misrepresentations of fact to fraudulently induce more time, effort, and work from Eagle.

46. Had Gavin Clarkson, Brule Community, and Western Holdings revealed the truth, given notice of the negotiations with Great American, and given notice of a final settlement deadline with Seaport, Eagle could have reacted and protected their interests.

47. Instead, Gavin Clarkson, Brule Community, and Western Holdings kept the material facts and truth from Eagle, delayed the needed responses and documents to settle the Seaport trade, and broke the trade for a higher price elsewhere.

48. Eagle has been damaged as a direct and proximate cause of Gavin Clarkson, Brule Community, and Western Holdings' misrepresentations, omissions, and concealments.

49. Gavin Clarkson, Brule Community, and Western Holdings' by their fraudulent misrepresentations have directly and proximately damaged Eagle \$1,200,000.

50. Gavin Clarkson, Brule Community, Western Holdings' fraudulent misrepresentations were willful and wanton, and committed with such reckless

disregard to the rights of Eagle, as to justify punitive damages to deter Gavin Clarkson, Brule Community, and Western Holdings from such conduct in the future.

WHEREFORE, Plaintiff prays the Court order, judge, and decree that Gavin Clarkson, Brule Community, and Western Holdings made fraudulent misrepresentations to Eagle, and award Eagle the expectation of its contract, its 6% fee or \$1,200,000.00, statutory interest on that amount from this date of filing, attorney fees and costs expended, and punitive damages, and for such further relief and justice as this Court deems just and proper.

COUNT III
NEGLIGENT REPRESENTATION AGAINST
BRULE COMMUNITY, WESTERN HOLDINGS, AND GAVIN CLARKSON

51. The allegations of paragraphs 1 through 50 *supra* are re-alleged and herein incorporated in this paragraph.

52. Gavin Clarkson, Brule Community, and Western Holdings had a duty to be honest with Eagle and to provide the relevant material facts surrounding the monetization of the loan.

52. Gavin Clarkson, Brule Community, and Western Holdings breached that duty by making numerous material representations to Eagle that were false over the course of conducting business with Eagle

53 To wit, Gavin Clarkson, Brule Community, and Western Holdings concealed the negotiations with Great American, induced Eagle to continue to work to settle the Seaport trade, delayed the settlement with Seaport, mislead Eagle about their desire to settle with

Seaport, and in the end told Eagle that the note had been sold and gave the pretext on April 3rd in a recorded voice message from Gavin Clarkson and Mr. Dennis Ickes (the Chairman of the Board of Brule Community) that, “about a week ago a third party came in and very quickly made an offer that could not be refused,” Dennis Ickes then followed this voice message with a text message on April 3rd that stated, “A very quick offer and close. About one week.” These two text messages were followed by a telephone call from Dennis Ickes stating that the, “Buyer materialized from left field, it was a really quick deal, less than 7 days start to finish, that they had a higher offer, that the Brule Community had to accept it, and it was not planned.” This series of pretexts were to cover the fact that Brule Community had been negotiating with Great American for at least two months.

54. Eagle reasonably relied to its detriment on Gavin Clarkson, Brule Community, and Western Holdings negligent representations.

55. Eagle has been damaged as a direct and proximate cause of Gavin Clarkson, Brule Community, and Western Holdings’ negligent representations, omissions, and concealments.

56. Gavin Clarkson, Brule Community, and Western Holdings’ negligent representations were willful and wanton, and committed with such wreckless disregard to the rights of Eagle, as to justify punitive damages to deter Gavin Clarkson, Brule Community, and Western Holdings from such conduct in the future.

WHEREFORE, Plaintiff prays the Court order, judge, and decree that Gavin Clarkson, Brule Community, and Western Holdings made negligent representations to

Eagle, and award Eagle the expectation of its contract, its 6% fee or \$1,200,000.00, statutory interest on that amount from this date of filing, attorney fees and costs expended, and punitive damages, and for such further relief and justice as this Court deems just and proper.

**COUNT IV
UNJUST ENRICHMENT AGAINST
BRULE COMMUNITY AND WESTERN HOLDINGS**

57. The allegations of paragraphs 1 through 56 *supra* are re-alleged and herein incorporated in this paragraph.

58. Brule Community and Western Holdings have received and kept for themselves, all of the proceeds of the sale of the note.

59. Brule Community and Western Holdings are refusing to pay Eagle their 5% consulting fee.

60. Brule Community and Western Holdings are being enriched by Eagle's 6% fee.

61. Brule Community and Western Holdings have been enriched at the expense, and to the detriment of Eagle.

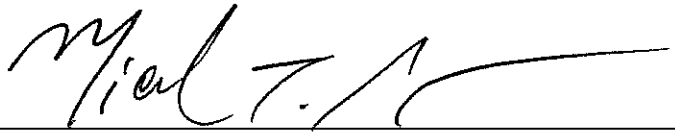
63. To allow Brule Community and Western Holdings' to retain the 6% enrichment would be unjust.

64. Brule Community and Western Holdings' unjust enrichment were committed willfully and wantonly, and committed with such wreckless disregard to the rights of Eagle, as to justify punitive damages to deter Brule Community and Western Holdings from such conduct in the future.

WHEREFORE, Plaintiff prays the Court order, judge, and decree that Brule Community and Western Holdings have been unjustly enriched, disgorge the unjust enrichment from Brule Community and Western Holdings, and award Eagle the its 6% fee or \$1,200,000.00, statutory interest on that amount from this date of filing, attorney fees and costs expended, punitive damages, and for such further relief and justice as this Court deems just and proper.

Respectfully submitted,

The Law Firm of Michael T. George, P.C.

A handwritten signature in black ink, appearing to read "Michael T. George", written over a horizontal line.

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