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CIVIL DIVISION
2006 AUG 23 P 2:04
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SAN DIEGO COUNTY
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

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871328

10 STEPHEN ROSEN, an individual,
11 Plaintiff,
12 vs.
13 MATTMAN SPECIALTY VEHICLES, INC.,
14 a Nevada corporation; J. MATTMAN
15 SECURITY, INC., a California corporation
16 dba THE MATTMAN COMPANY; JOHN
MATTMAN, an individual; STEVE PRIOR,
17 an individual; and DOES 1-50, Inclusive,
18 Defendants.

CASE NO.
(Unlimited Civil Case)

COMPLAINT FOR:

- (1) FORECLOSURE ON PROMISSORY NOTE;
- (2) BREACH OF SECURITY AGREEMENT;
- (3) FRAUD AND INTENTIONAL DECEIT;
- (4) NEGLIGENT MISREPRESENTATION; and
- (5) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

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20 Plaintiff Stephen Rosen alleges as follows:

21 I. PARTIES

22 1. Plaintiff Stephen Rosen ("Plaintiff") is an individual residing in San Diego County,
23 California.

24 2. Defendant Mattman Specialty Vehicles, Inc. ("MSV") is a Nevada corporation having its
25 principal place of business in San Marcos, California.

26 3. Defendant J. Mattman Security, Inc. ("JMS") is a California corporation having its principal
27 place of business in San Marcos, California and doing business as The Mattman Company.

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1 4. Defendant John Mattman ("Mattman") is an individual. Plaintiff is informed and believes,
2 and thereon alleges, that Mattman resides in San Diego County, California.

3 5. Defendant Steve Prior ("Prior") is an individual. Plaintiff is informed and believes, and
4 thereon alleges, that Prior resides in San Diego County, California.

5 6. Plaintiff is ignorant of the true names and capacities of the Defendants herein named as
6 Does, and therefore includes such Defendants by fictitious names. Plaintiff will file an amendment
7 to this Complaint to allege the true names and capacities of said Does, when such information is
8 ascertained.

9 7. On information and belief, each of the fictitiously named Defendants is responsible for, or
10 has contributed to, the matters herein alleged giving rise to the relief being sought by Plaintiff.
11 Plaintiff therefore asserts and alleges each and every cause of action of this Complaint against each
12 fictitiously named Defendant.

13 8. On information and belief, at all times relevant herein each Defendant, including the Doe
14 Defendants, acted as an agent or employee of each other Defendant in connection with the acts
15 and/or omissions alleged herein.

16 II. GENERAL ALLEGATIONS

17 9. On September 14, 2005, Plaintiff and JMS entered into a Secured Promissory Note (the
18 "Note"). Attached hereto as Exhibit 1, and incorporated herein by this reference, is a true and
19 correct of the Note. Pursuant to the Note, Plaintiff loaned JMS \$100,000.00. In exchange, JMS
20 promised to repay said amount to Plaintiff, plus interest at a rate of 12% *per annum*, no later than
21 September 13, 2006. (See Exhibit 1, p. 1.)

22 10. The Note provides that interest on the loan shall be increased to 14.5% upon JMS' default or
23 breach. (See Exhibit 1, p. 1.) The Note authorizes Plaintiff, upon default by JMS, to declare the
24 entire unpaid principal balance and all accrued interest immediately due. (See Exhibit 1, p. 1.)

25 11. Pursuant to the Note, JMS pledged and assigned to Plaintiff, and granted Plaintiff a security
26 interest in, Los Angeles County Fire Department ("LAC") purchase order #31066135, dated June
27 17, 2005, in the amount of \$1,376,559.00 (the "P.O."). (See Exhibit 1, p. 2.) Under the P.O., JMS
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1 agreed to build and deliver to LAC three custom mobile command vehicles. Attached hereto as
2 Exhibit 2, and incorporated herein by this reference, is a true and correct copy of the P.O.

3 12. At or about the time of execution of the Note, Plaintiff and JMS also entered into a Security
4 Agreement (the "Security Agreement"). Attached hereto as Exhibit 3, and incorporated herein by
5 this reference, is a true and correct copy of the Security Agreement. Pursuant to the Security
6 Agreement, JMS again granted Plaintiff a security interest in the P.O. (See Exhibit 3, ¶ 1.)

7 13. In the Security Agreement, JMS represents and warrants that it is the sole owner of the P.O.,
8 free from any lien, security interest or other claim, except for Plaintiff's security interest and a
9 subordinated security interest in favor of an entity known as Huntington Capital, L.P. (See Exhibit
10 3, ¶ 3.2(a).)

11 14. Mattman, who was JMS' CEO at the time, signed the Note and Security Agreement on
12 behalf of JMS. Prior, who was JMS' CFO at the time, knew about and was involved in JMS'
13 transaction with Plaintiff.

14 15. JMS also agreed, through its CEO, Mattman, to record a UCC1 financing statement in favor
15 of Plaintiff. Although Plaintiff requested the recording of a UCC1 on numerous occasions
16 following execution of the Note and Security Agreement, JMS and Mattman failed to record a
17 UCC1 with the California Secretary of State until May 20, 2006.

18 16. On January 26, 2006, Plaintiff learned for the first time that JMS had merged into MSV, a
19 publicly traded company. No JMS representatives disclosed to Plaintiff its intent to merge into a
20 public company prior to said merger.

21 17. On or about July 18, 2006, Mattman, who had become MSV's Chairman of the Board, and
22 Barrie Cropper, MSV's CEO, approached Plaintiff about MSV's financial difficulties in an effort to
23 elicit assistance from Plaintiff. Plaintiff and his attorney met with Mattman and Mr. Cropper on
24 July 21, 2006, at which time Mattman and Mr. Cropper stated that MSV needed \$2,000,000.00 in
25 financing over the next 60-90 days in order to keep the company in business. Mattman and Mr.
26 Cropper also stated that MSV would not be able to perform on the remainder of the P.O. They
27 stated that the vehicles to be provided to LAC pursuant to the P.O. were only partially completed,
28 and that Mattman was attempting to negotiate a payment from LAC for delivery of the vehicles as

1 is, with LAC recruiting the services of another company to complete the vehicles. Mattman stated
2 that, in such a scenario, there would be no money received from LAC that could be used to repay
3 Plaintiff's loan, even partially.

4 18. Since that time, Plaintiff also learned that MSV is unable to fully perform on a sizeable
5 contract to provide several vehicles to Bank of America.

6 19. On August 1, 2006, Prior stated in an email to Plaintiff that JMS had also given a security
7 interest in the P.O. to an individual named David Bush, who is Prior's friend. Before this email, no
8 representative of JMS or MSV disclosed to Plaintiff that another individual held a security interest
9 in the P.O. Indeed, as recently as the meeting on July 21, 2006, Mattman had affirmatively
10 represented to Plaintiff that, apart from Huntington Capital's subordinate interest, Plaintiff held the
11 only security interest in the P.O.

12 20. After learning of Mr. Bush's interest from Prior, Plaintiff demanded copies of any
13 documents regarding said interest. Barrie Cropper provided Plaintiff copies of a \$100,000.00
14 promissory note, dated July 23, 2005, and a security agreement, dated June 23, 2005, in favor of
15 Mr. Bush. *These agreements occurred at least six weeks prior to Plaintiff's Note and Security*
16 *Agreement.* The agreements in favor of Mr. Bush specifically reference the P.O. and were signed
17 by Mattman and Prior. Prior also personally guaranteed repayment of Mr. Bush's \$100,000.00.

18 21. On August 15, 2006, Prior stated that MSV would most likely file for Chapter 11
19 reorganization in bankruptcy court. On August 22, 2006, Plaintiff sent a letter to Mattman and
20 Barrie Cropper declaring that JMS/MSV had defaulted under the Note and Security Agreement, and
21 that the principal and interest were immediately due.

22 III. CAUSES OF ACTION

23 1ST CAUSE OF ACTION

24 (FORECLOSURE ON PROMISSORY NOTE)

25 (Plaintiff against JMS, MSV, and Does 1-50)

26 22. Plaintiff refers to and incorporates herein by reference each and every allegation contained
27 above.

28 23. JMS executed the Note in favor of Plaintiff. JMS thereafter merged into MSV.

1 24. Plaintiff fully performed his obligations by providing the \$100,000.00.

2 25. JMS, MSV, and Does 1-50 failed to fulfill their obligations under the Note by, *inter alia*: (1)
3 failing to pay Plaintiff the full outstanding balance on the Note; (2) defaulting by making false
4 statements and failing to disclose material facts to Plaintiff, as described above; (3) defaulting by
5 having an adverse and material change in their financial condition, causing Plaintiff to reasonably
6 believe the prospect of repayment is impaired.

7 26. As a result of said failures by JMS, MSV, and Does 1-50, Plaintiff has suffered, and will
8 continue to suffer, the loss of his \$100,000.00, plus interest at 12% and increasing to 14.5% after
9 default, as well as consequential and incident damages according to proof. Plaintiff is also entitled
10 to a preliminary injunction to prevent JMS, MSV, and Does 1-50 from moving, transferring, selling,
11 or otherwise disposing of the vehicles to be provided to LAC pursuant to the P.O.

12 27. Pursuant to the Note, Plaintiff is entitled to an award of attorney fees.

13 **2ND CAUSE OF ACTION**

14 **(BREACH OF SECURITY AGREEMENT)**

15 **(Plaintiff against JMS, MSV, and Does 1-50)**

16 28. Plaintiff refers to and incorporates herein by reference each and every allegation contained
17 above.

18 29. Plaintiff and JMS entered into the Security Agreement. Thereafter, JMS merged into MSV.

19 30. Plaintiff performed his duties pursuant to the Security Agreement and has not breached the
20 Security Agreement.

21 31. JMS, MSV, and Does 1-50 breached the Security Agreement by the conduct alleged above.

22 32. The breach of the Security Agreement by JMS, MSV, and Does 1-50 proximately caused
23 compensatory, consequential, and incidental damages to Plaintiff as alleged herein and according to
24 proof. Plaintiff is also entitled to a preliminary injunction to prevent JMS, MSV, and Does 1-50
25 from moving, transferring, selling, or otherwise disposing of the vehicles to be provided to LAC
26 pursuant to the P.O. Plaintiff is entitled to attorney fees in accordance with paragraph 3.6(b) of the
27 Security Agreement.

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1 **3RD CAUSE OF ACTION**

2 **(FRAUD AND INTENTIONAL DECEIT)**

3 **(Plaintiff against JMS, MSV, Mattman, Prior, and Does 1-50)**

4 33. Plaintiff refers to and incorporates herein by reference each and every allegation contained
5 above.

6 34. By virtue of the Note and Security Agreement, and Plaintiff's \$100,000.00 loan pursuant to
7 the Note, JMS, MSV, Mattman, Prior, and Does 1-50 owed a duty to Plaintiff to disclose all
8 material facts, and to refrain from misrepresenting any material facts, regarding JMS, MSV, the
9 P.O., and any security interests therein.

10 35. In order to induce Plaintiff to provide JMS with \$100,000.00, JMS and Mattman
11 affirmatively represented to Plaintiff that he would be the sole secured party on the P.O. other than
12 Huntington Capital, which had a subordinate interest. Such representations were in fact false, and
13 JMS and Mattman knew them to be false at the time they were made. JMS and Mattman made such
14 representations with the intent that Plaintiff rely thereon and provide the \$100,000.00.

15 36. JMS, Mattman, Prior, and Does 1-50 intentionally or recklessly concealed from Plaintiff the
16 fact that, prior to execution of the Note and Security Agreement, JMS gave a \$100,000.00 security
17 interest in the P.O. to David Bush, Prior's friend. JMS, Mattman, Prior, and Does 1-50 knew these
18 implications by omission were false and that they had no reasonable grounds for believing them to
19 be true at that time or thereafter. Nevertheless, JMS, Mattman, Prior, and Does 1-50 allowed
20 Plaintiff to remain ignorant of these facts with the intent that Plaintiff rely on said omissions and
21 provide the \$100,000.00.

22 37. Plaintiff placed confidence in and reasonably relied on the representations or omissions by
23 Defendants, to Plaintiffs' detriment. The true facts were unknown to Plaintiff at the time he entered
24 into the Note and Security Agreement. Plaintiff justifiably entered into the Note and Security
25 Agreement in reliance on the fraudulent representations and omissions by the Defendants named in
26 this cause of action. Plaintiff did not learn the true facts until many months after he entered into the
27 Note and Security Agreement.

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1 38. Subsequent to execution of the Note and Security Agreement, the Defendants named in this
2 cause of action continued to conceal Mr. Bush's security interest from Plaintiff, and Mattman
3 continued to affirmatively represent that Plaintiff held the sole security interest in the P.O., apart
4 from Huntington Capital's subordinate interest. The Defendants named in this cause of action also
5 failed to disclose to Plaintiff the intent to merge JMS into MSV, a public company, and the
6 substantial financial difficulties JMS/MSV was having that materially affected the completion of
7 the vehicles promised to LAC in the P.O. and the viability of JMS/MSV as a going concern.

8 39. The Defendants named in this cause of action engaged in these wrongful acts and omissions
9 with conscious disregard of Plaintiff's rights, and with full knowledge of the harm that Plaintiff
10 would suffer as a result of their fraudulent representations and omissions.

11 40. The acts and/or omissions of the Defendants named in this cause of action proximately
12 caused Plaintiff to suffer damages as alleged herein and according to proof. Additionally, Plaintiff
13 is entitled to rescission of the Note and Security Agreement based on the fraudulent inducement by
14 the Defendants named in this cause of action.

15 41. Plaintiff is entitled to punitive damages due to the fraudulent conduct of the Defendants
16 named in this cause of action, and their reckless disregard for Plaintiff's rights and interests.

17 **4TH CAUSE OF ACTION**

18 **(NEGLIGENT MISREPRESENTATION)**

19 **(Plaintiff against JMS, MSV, Mattman, and Does 1-50)**

20 42. Plaintiff refers to and incorporates herein by reference each and every allegation contained
21 above.

22 43. By virtue of the Note and Security Agreement, and Plaintiff's \$100,000.00 loan pursuant to
23 the Note, JMS, MSV, Mattman, Prior, and Does 1-50 owed a duty to Plaintiff to refrain from
24 misrepresenting any material facts regarding JMS, MSV, the P.O., and any security interests therein

25 44. In order to induce Plaintiff to provide JMS with \$100,000.00, JMS and Mattman
26 affirmatively represented to Plaintiff that he would be the sole secured party on the P.O. other than
27 Huntington Capital, which had a subordinate interest. Such representations were in fact false, and
28 JMS and Mattman had no reasonable basis for believing the representations to be true at the time

1 they were made. JMS and Mattman made such representations with the intent that Plaintiff rely
2 thereon and provide the \$100,000.00.

3 45. Plaintiff placed confidence in and reasonably relied on the representations by Defendants,
4 to Plaintiffs' detriment. The true facts were unknown to Plaintiff at the time it entered into the Note
5 and Security Agreement. Plaintiff justifiably entered into the Note and Security Agreement in
6 reliance on the negligent representations by the Defendants named in this cause of action. Plaintiff
7 did not learn the true facts until many months after he entered into the Note and Security
8 Agreement.

9 46. Subsequent to execution of the Note and Security Agreement, JMS, MSV, and Mattman
10 affirmatively represented to Plaintiff that he held the sole security interest in the P.O., apart from
11 Huntington Capital's subordinate interest.

12 47. The negligent acts of the Defendants named in this cause of action proximately caused
13 Plaintiff to suffer damages as alleged herein and according to proof.

14 **5TH CAUSE OF ACTION**

15 **(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

16 **(Plaintiff against JMS, MSV and DOES 1-50)**

17 48. Plaintiff refers to and incorporates herein by reference each and every allegation contained
18 above.

19 49. Implied into the Note and Security Agreement was a covenant to act in good faith toward
20 the other party and engage in fair dealing.

21 50. JMS, MSV, and Does 1-50 breached this implied covenant of good faith and fair dealing by
22 engaging in the conduct alleged above.

23 51. The breach by JMS, MSV, and Does 1-50 of the implied covenant of good faith and fair
24 dealing caused damages to Plaintiffs as alleged herein and according to proof.

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IV. PRAYER

WHEREFORE, Plaintiffs pray for judgment against all Defendants as follows:

1. On the First Cause of Action:

a. For compensatory, consequential, and incidental damages as alleged herein and according to proof.

b. For interest at 12% up to default; for interest at 14.5% after default.

c. For injunctive relief

d. For attorney fees.

2. On the Second Cause of Action:

a. For compensatory, consequential, and incidental damages as alleged herein and according to proof.

b. For injunctive relief

b. For attorney fees.

3. On the Third Cause of Action:

a. For rescission of the Note and Security Agreement.

b. For special and general damages as alleged herein and according to proof.

c. For punitive damages.

4. On the Fourth Cause of Action:

a. For special and general damages as alleged herein and according to proof.

5. On the Fifth Cause of Action:

a. For special and general damages as alleged herein and according to proof.

5. On All Causes of Action:

a. For prejudgment interest at the legal rate;

b. For costs of suit; and

c. For such other and further relief as the Court may deem proper.

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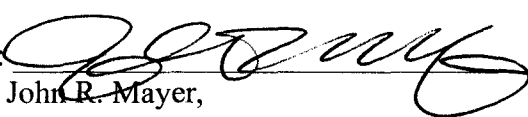
V. JURY DEMAND

Plaintiffs hereby demands a trial by jury.

Respectfully submitted,

JOHN R. MAYER, APLC

Dated: August 23, 2006

By: 
John R. Mayer,
Attorney for Plaintiff Stephen Rosen