

1 LOEB & LOEB LLP  
WILLIAM M. BRODY (SBN 229901)  
2 wbrody@loeb.com  
ARTHUR FELS (SBN 294802)  
3 afels@loeb.com  
10100 Santa Monica Blvd., Suite 2200  
4 Los Angeles, CA 90067  
Telephone: 310.282.2000  
5 Facsimile: 310.282.2200

6 Attorneys for Plaintiffs Mountaingate  
Open Space Maintenance Association  
7 and Crest/Promontory Common Area  
Association  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES  
11

12 MOUNTAINGATE OPEN SPACE  
MAINTENANCE ASSOCIATION;  
13 CREST/PROMONTORY COMMON  
AREA ASSOCIATION

14 Plaintiffs,

15 v.

16 MONTEVERDI, LLC, a California limited  
17 liability company; BERGGRUEN  
INSTITUTE, a California non-profit  
18 organization; and CASTLE & COOKE  
CALIFORNIA, INC., a California  
19 corporation; and DOES 1-10;

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: 19STCV33893

Assigned to: Hon. Rupert A. Byrdsong

Dept. 28

**FIRST AMENDED COMPLAINT  
FOR:**

- (1) DECLARATORY RELIEF RE:  
MEMORANDUM OF  
UNDERSTANDING
- (2) DECLARATORY RELIEF RE:  
EQUITABLE SERVITUDE
- (3) BREACH OF THE  
MEMORANDUM OF  
UNDERSTANDING AND  
COVENANT OF GOOD FAITH  
AND FAIR DEALING THEREIN
- (4) BREACH OF THE  
MEMORANDUM OF  
UNDERSTANDING AND  
COVENANT OF GOOD FAITH  
AND FAIR DEALING THEREIN
- (5) TORTIOUS INTERFERENCE
- (6) UNJUST ENRICHMENT
- (7) DECLARATORY RELIEF RE:  
STONE HILL ROAD

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Mountaingate Open Space Maintenance Association and  
2 Crest/Promontory Common Area Association hereby allege as follows:

3 **PARTIES**

4 1. Plaintiff Mountaingate Open Space Maintenance Association (“MOSMA” or  
5 “Plaintiff”) is a California Nonprofit Mutual Benefit Corporation, located in Los Angeles  
6 County, California.

7 2. Plaintiff Crest/Promontory Common Area Association (“Crest/Promontory”)  
8 is a California Nonprofit Mutual Benefit Corporation, located in Los Angeles County,  
9 California.

10 3. Defendant Monteverdi, LLC (“Monteverdi”) is a California limited liability  
11 company which operates in Los Angeles County, California.

12 4. Defendant Berggruen Institute, formerly Berggruen Institute on Governance  
13 (“Berggruen”) is a 501(c)(3) non-partisan think tank, with its principal place of business in  
14 Los Angeles, California. On information and belief, Berggruen’s and Monteverdi’s  
15 operation is wholly or principally funded by billionaire entrepreneur Nicholas Berggruen.  
16 At all times herein, Monteverdi was acting as an agent of and on behalf of Berggruen.

17 5. Defendant Castle & Cooke California, Inc. (“Castle & Cooke”) is a  
18 California Corporation with its principle place of business located in Los Angeles County,  
19 California. (Monteverdi, Berggruen and Castle & Cooke are hereafter collectively referred  
20 to as “Defendants”).

21 6. Plaintiffs are informed and believe and based thereon alleges, that at all  
22 times herein mentioned, Monteverdi and Berggruen were the agent, servant, co-  
23 conspirator, aider and abettor, representative, and/or alter ego of each of the other, acting  
24 as a single joint enterprise, and in doing the things hereinafter mentioned, were acting  
25 within the course and scope of its authority as such agent, representative and/or servant,  
26 with the ratification and consent of the other party respectively. Accordingly, Monteverdi  
27 and Berggruen are each liable for each other’s conduct.



1 homeowner associations and condominium associations annexed to Mountaingate under its  
2 Covenants, Conditions and Restrictions (“CCRs”). MOSMA is authorized to pursue this  
3 action on behalf of its members.

4 12. The Mountaingate community was planned as a residential, open space  
5 community. The homes in the community are surrounded by passive and active open  
6 space. Development in Mountaingate initially began in the 1970’s. Currently,  
7 approximately 420 acres have been annexed to Mountaingate under its CCRs, with 165  
8 acres developed with 300 single-family residences and condominiums, and approximately  
9 255 acres devoted to passive and active open space uses. The remaining adjacent land (the  
10 “Adjacent Land”) is presently undeveloped, except for the Mission Canyon 8 Landfill.

11 13. Mountaingate’s topography is comprised of steep canyons and narrow ridges  
12 covered in brush habitat. It is located in a designated Very High Fire Hazard Severity  
13 Zone, with Mountaingate Drive (to Sepulveda Boulevard) being the only realistically  
14 viable avenue of escape for residents in the event of a fire or other emergency.

15 14. As recently as December 2017, the Skirball Fire ravaged land around  
16 Mountaingate, burning 422 acres of land on the slopes of the Sepulveda Pass on its east  
17 side and causing the closure of Interstate 405 (as well as the parallel Sepulveda Boulevard,  
18 a major traffic artery in the city). It took nine days to fully control the fire. Eighteen  
19 structures were damaged or destroyed.

20 **B. Castle & Cooke Acquires An Interest In The Adjacent Land And Agrees With**  
21 **MOSMA To Limit Development.**

22 15. As a result of habitat preservation concerns, hillside protection goals, and  
23 among other things, fire-safety concerns, the City of Los Angeles has progressively  
24 curtailed the development of hillside areas in Los Angeles, including Mountaingate’s  
25 undeveloped hillsides and canyons. Such curtailment resulted in disputes, and eventually  
26 litigation, between the owners of the Adjacent Land, the Mountaingate community  
27 (MOSMA and the Mountaingate Community Association), and the City.

1           16.     In 1990, Castle & Cooke's predecessor in interest applied to the City for  
2 permission to develop 184 homes on approximately 99 acres of the Adjacent Land. Based  
3 upon its inconsistency with the density and character of the community and its hillside  
4 setting, as well as significant environmental and fire-safety concerns, the proposal was  
5 opposed by the Mountaingate community and rejected by the City.

6           17.     In 1996, Castle & Cooke acquired the Adjacent Land from the prior owner,  
7 and applied to the City for permission to develop 164 homes on 99 acres. Subsequently,  
8 Castle & Cooke modified its application and applied for the City's approval of Tentative  
9 Tract 54528, which would allow for the development of 117 homes on 61 acres.

10          18.     Based upon its inconsistency with the density and character of the  
11 community and its hillside setting, as well as, without limitation, significant environmental  
12 and fire-safety concerns, Tentative Tract 54528 was opposed by the Mountaingate  
13 community and rejected by the City.

14          19.     In response to the issues raised by inappropriate hillside development  
15 proposals, including those made by Castle & Cooke, in November 1998 the City adopted  
16 the Brentwood-Pacific Palisades Community Plan Update, which changed zoning and land  
17 use designations for the Adjacent Land and applied the City's slope density ordinance to  
18 the Adjacent Land, thereby prohibiting the development proposed by Tentative Tract  
19 54528 sought by Castle & Cooke.

20          20.     Castle & Cooke thereupon sued the City in *Castle & Cooke California, Inc.*  
21 *v. The City of Los Angeles*, et al. (LASC Case. No. BS 052418), alleging that the  
22 Community Plan Update and zoning actions violated the California Environmental Quality  
23 Act and applicable land use laws (the "Lawsuit").

24          21.     MOSMA sought and was granted permission to intervene in the Lawsuit to  
25 protect the Mountaingate community.  
26  
27  
28

1           22.     Castle & Cooke requested that Councilperson Cindy Miscikowski broker  
2 negotiations with MOSMA to settle the Lawsuit and resolve the decades-long dispute  
3 between the owners of the Adjacent Land, the Mountaingate community, and the City.

4           23.     The negotiations lasted five months and resulted in a binding agreement,  
5 dated October 4, 1999 between Castle & Cooke, MOSMA and the MCA (an association of  
6 Mountaingate community members) to settle the Lawsuit and resolve – once and for all –  
7 the future use of the Adjacent Land by limiting its development to 29 residential homes,  
8 with the remainder of the land to be preserved as permanent open space (the “MOU”). A  
9 true and correct copy of the MOU is attached hereto as Exhibit A.

10          24.     The key terms of the MOU relevant to this dispute include:

- 11           • Castle & Cooke would dismiss the Lawsuit with prejudice.
- 12           • MOSMA would support and cooperate in Castle & Cooke’s  
13           development of the Adjacent Land with a maximum of 29 homes in a  
14           designated location (the “Reduced Density Plan,” as reflected in Exhibit  
15           B hereto).
- 16           • Castle & Cooke agreed that it would pursue the Reduced Density Plan  
17           which limited development of the Adjacent Land to 29 homes. It was  
18           the intent of the parties that Castle & Cooke, and any of its successors  
19           and assigns, would be obligated by the MOU to only develop the  
20           Adjacent Land in accordance with the Reduced Density Plan if it was  
21           approved by the City.
- 22           • The parties would negotiate in good faith towards an agreement that,  
23           among other things, would annex each home developed under the  
24           Reduced Density Plan to MOSMA or other appropriate associations or  
25           sub-associations “in a manner consistent with prior annexations, such  
26           that the homes will obtain all the benefits of, and be subject to all the  
27           obligations of, such association members generally.”

- 1 • MOSMA would assist Castle & Cooke in disposing the open space
- 2 portion of the Reduced Density Plan in a mutually beneficial manner.
- 3 • The MOU would be binding on any successors or assigns of Castle &
- 4 Cooke.
- 5 • Castle & Cooke and MOSMA would both waive any and all claims for
- 6 attorneys' fees and costs in the Lawsuit.

7 25. Shortly after the effective date of the MOU, Castle & Cooke dismissed the  
8 Lawsuit with prejudice in accordance with the MOU.

9 26. The Reduced Density Plan was not allowed under the planning and zoning  
10 regulations for the Adjacent Land in place at the time. In order to pursue the Reduced  
11 Density Plan, Castle & Cooke required amendments to General Plan and zoning  
12 designations to increase the amount of development permitted. Castle & Cooke used, and  
13 needed, the MOU (personally brokered by Councilperson Cindy Miscikowski) and  
14 MOSMA's support to obtain these planning and zoning changes, and to ultimately obtain  
15 vested entitlements to develop the Adjacent Land with the Reduced Density Plan. Without  
16 MOSMA's support, Castle & Cooke may never have been able to develop the land.

17 27. In reliance on the MOU, in May 2000, Castle & Cooke filed applications for  
18 the City's approval of the Reduced Density Plan, including but not limited a General Plan  
19 Amendment, Vesting Zone Change, Tentative Tract Map 53072, and an Environmental  
20 Impact Report. The Reduced Density Plan consisted of 29 single-family lots on 25.4 acres  
21 limited to a maximum height of 36 feet, with the remaining areas of the Adjacent Land  
22 (including the Mission Canyon 8 Landfill) to be preserved as open space with no  
23 additional development permitted (the "Open Space Land").

24 28. In seeking these approvals from relevant City agencies, Castle & Cooke  
25 referenced MOSMA's agreement to the Reduced Density Plan.

26 29. In accordance with the MOU, MOSMA supported the City's approval of the  
27 Reduced Density Plan.

1           30.     In 2006, the City approved the General Plan and zoning designations to  
2 increase the amount of development permissible on the Adjacent Land and approved the  
3 Reduced Density Plan. The City’s approvals expressly referenced the MOU as the basis  
4 for resolving land use disputes regarding the Adjacent Land and as the basis for rejecting  
5 alternative development of the Adjacent Land. As such, Castle & Cooke received the  
6 benefit of its bargain under the MOU.

7           31.     MOSMA’s support for the Reduced Density Plan under the MOU, and the  
8 City’s subsequent approval of the Reduced Density Plan, significantly increased the land  
9 value of the Adjacent Land by granting Castle & Cooke valuable vested entitlements and  
10 ending the decades long dispute that had delayed and prevented its development.

11           32.     In accordance with the conditions of approval for the Reduced Density Plan,  
12 in 2006 Castle & Cooke dedicated permanent public open space easements over the Open  
13 Space Land to the Mountains Recreation and Conservation Authority.

14           33.     Between 2009 and 2019, Castle & Cooke, and Monteverdi and Berggruen as  
15 its successors, requested and received extensions of the City’s approvals of the Reduced  
16 Density Plan. Consistent with the MOU, MOSMA did not oppose those extensions and has  
17 continually offered to cooperate in the development of the Reduced Density Plan approved  
18 by the City. MOSMA continues to support the development of the Adjacent Land that is  
19 consistent with the MOU and the Reduced Density Plan approved by the City.

20     **C.     Berggruen, Through Monteverdi, Acquires A Portion Of The Adjacent Land**  
21     **From Castle & Cooke.**

22           34.     In 2014, Defendant Monteverdi acquired a portion of the Adjacent Land  
23 from Castle & Cooke (the “Monteverdi Property”), while Castle & Cooke, through its  
24 subsidiary C&C Mountaingate, Inc., retained the remainder of the Adjacent Land (the  
25 “Castle & Cooke Property”).<sup>1</sup>

26 \_\_\_\_\_  
27           <sup>1</sup> The Castle & Cooke Property includes, among other things, the portions of road  
28 that is required by the Reduced Density Plan to connect certain of the Reduced Density  
Plan’s lots over the Mission Canyon 8 Landfill site to Sepulveda Boulevard.



1           35.     The Monteverdi Property contains the majority of the lots intended for the 29  
2 approved homes under the Reduced Density Plan. Plaintiff is informed and believes that  
3 the Castle & Cooke Property contains the remainder of the lots approved under the  
4 Reduced Density Plan, as well as the access road from such lots to Sepulveda Boulevard.

5           36.     Plaintiff is further informed and believes that Monteverdi is wholly owned  
6 and controlled by Berggruen and/or its principals and employees. At all times in  
7 connection with its acquisition and use of the property, Monteverdi was acting at the  
8 direction of, as an agent of, and for the benefit of, Berggruen.

9           37.     Plaintiff is informed and believes that Monteverdi, and Berggruen as its  
10 owner and principal, are the successors in interest to Castle & Cooke and the MOU, and/or  
11 are assignees of the MOU, and are bound by the MOU to develop and use the Adjacent  
12 Property in accordance with the approved Reduced Density Plan. Plaintiff is informed and  
13 believes that Monteverdi and Berggruen dispute that they are bound by the MOU and the  
14 obligations thereunder.

15           38.     In or around May 2019, Monteverdi and C&C Mountaingate, Inc. requested  
16 that the City approve the recordation of Final Map 53072 (the "Final Map"). The Los  
17 Angeles City Council approved the Final Map in June 2019 and it was recorded in the  
18 Official Records of Los Angeles County shortly thereafter. The Final Map reflected the  
19 Reduced Density Plan (as modified at the request of Castle & Cooke in 2009), and  
20 subdivided the Adjacent Land into legal lots that are now saleable. Recordation of the  
21 Final Map also removed the temporary designation of the zoning increase approved for the  
22 Reduced Density Plan in 2006, thereby making such up-zoning effective.

23           39.     However, despite the City's approval of the Final Map for the Reduced  
24 Density Plan, in August 2019, Berggruen and Monteverdi announced that they do not  
25 desire or intend to develop the Reduced Density Plan and plan to pursue other, non-  
26 residential, and much more intensive development of the Adjacent Land. Monteverdi and  
27 Berggruen filed an Environmental Assessment Form ("EAF") and related documents with  
28

1 the City of Los Angeles requesting that it approve the development of an entirely different,  
2 non-residential development. The documents indicated that Berggruen is now seeking  
3 rights to develop the 25.4 acres designated for the homes under the Reduced Density Plan  
4 with approximately 223,880 square feet of facilities for Berggruen, including offices,  
5 numerous conference facilities (including a large auditorium), buildings up to 95 feet  
6 (approximately 10 stories) in height, 46 residences for Berggruen's invitees, a heliport for  
7 VIPs, and parking for employees and special events (the "Berggruen Project").

8 40. In its press releases and filings, Berggruen's representatives state that the  
9 Berggruen Project is intended to host business and political leaders, "thinkers," and invited  
10 guests at conferences, symposia, large panels, meetings and workshops, as well as indoor  
11 and outdoor special events with sound amplification hosting up to 400 guests until 11 p.m.  
12 Berggruen's filings state that its facilities may also be used by persons or entities who are  
13 "partners" of Berggruen.

14 41. The development and operation of the Berggruen Project would conflict with  
15 the development limitations of the MOU (the agreement for the use of the property that  
16 was reached after a decade of dispute and litigation) and would introduce an incompatible,  
17 out of scale, high intensity, non-residential use directly in the midst of a permanent public  
18 open space in a Very High Fire Hazard Severity Zone.

19 42. Development and operation of the Berggruen Project would have a negative  
20 effect on fire-safety, natural habitat, wildlife, and would increase traffic, noise, light and  
21 other nuisances that are not appropriate for a hillside residential area or open space.

22 43. The inherent nature of its think tank operations and the events that Berggruen  
23 holds would also create significant security, privacy and traffic problems. Plaintiff is  
24 informed and believes that Berggruen events have included high-profile politicians,  
25 businesspeople, activists and celebrities from around the world. These year-round events  
26 and conferences in and around Mountaingate would create substantial security problems,  
27  
28

1 could serious cause traffic problems and would negatively impact the privacy of the  
2 residents.

3 44. Facilities for a private public policy organizations like Berggruen are not  
4 permitted in areas designated Very Low I under the Brentwood – Pacific Palisades  
5 Community Plan, or in areas zoned RE-20-1-H. Within the City, facilities for private  
6 public policy organizations, such as Berggruen, are limited to areas that are planned and  
7 zoned for commercial use.

8 45. Monteverdi’s applications for the Berggruen Project also concedes it would  
9 exceed the 36-foot height limit for the RE-20 zone and that the amount of construction  
10 proposed by Berggruen exceeds the City’s Hillside Development Standards.

11 46. For all of the foregoing reasons, Plaintiff is informed and believes that,  
12 overall, the Proposed Berggruen Development would also have a negative effect on  
13 property values in Mountaingate and the quiet enjoyment of its residents.

14 47. Because private think tanks are not a permitted use under the planning and  
15 zoning designation for the Adjacent Land, as well as to avoid hillside height and slope  
16 density limits, Monteverdi’s applications falsely characterize the Berggruen Project as an  
17 “Educational Institution” under the City’s Zoning Code. As community-serving uses, an  
18 “Educational Institution,” as defined by the City’s Zoning Code, may be authorized in  
19 residential areas and may obtain relief from otherwise applicable zoning restrictions.

20 48. However, the Berggruen Project is not an “Educational Institution” under the  
21 City’s Zoning Code because Section 12.03 of the Los Angeles Municipal Code expressly  
22 defines an “Educational Institution” as “[c]olleges or universities supported wholly or in  
23 part by public funds and other colleges or universities giving general academic instruction  
24 as prescribed by the State Board of Education.” As postsecondary educational institutions,  
25 private colleges and universities are regulated by the State of California Bureau for Private  
26 Postsecondary Education (“Bureau”), and must be licensed to do business by the Bureau.  
27 To become licensed, private colleges or universities must meet extensive and detailed  
28

1 requirements, and the Bureau must, among other things, independently verify “that the  
2 applicant has the capacity to satisfy the minimum operating standards” mandated by the  
3 Education Code and its implementing regulations. *See* Cal. Educ. Code § 94887.  
4 Berggruen is not licensed to do business as a private college or university and is not  
5 accredited by a qualifying accrediting agency. In actuality, the Berggruen Institute operates  
6 as a private think tank and not an “Educational Institution.”

7 49. The operation of City planning and zoning restrictions are not sufficient to  
8 protect MOSMA and the Mountaingate community. To avoid the City planning and  
9 zoning restrictions that would prohibit the development and operation of the Berggruen  
10 Project on the Adjacent Property, Berggruen has hosted elected representatives at lavish  
11 parties, made political contributions, and engaged public officials, including the former  
12 President of the City’s Police Commission, to lobby public officials to approve the  
13 Berggruen Project.

14 **D. Stoney Hill Road.**

15 50. In or about January 1979, as the development of Mountaingate went forward,  
16 a public street easement was dedicated over the alignment of proposed “Stoney Hill Road”  
17 within Mountaingate. The Stoney Hill Road public street easement never extended to, and  
18 terminated before it reached, the Adjacent Land.

19 51. In 2009, the City vacated the public street easement over Stoney Hill Road.  
20 Accordingly, since 2009, Stoney Hill Road has been a private, gated street under Private  
21 Street Map No. 1404/1404-M1. The various homeowners and homeowners’ associations  
22 in the gated Mountaingate residential community known as Crest/Promontory are the  
23 owners of Stoney Hill Road. The general public is not entitled to use Stoney Hill Road,  
24 which is gated and privately patrolled to protect the safety, privacy and tranquility of the  
25 Crest/Promontory community.

26 52. The Crest/Promontory homeowners fund the maintenance, repair and  
27 operation of Stoney Hill Road through their membership in Crest/Promontory, which is  
28

1 responsible for the administration, management, operation, preservation, control,  
2 maintenance, repair and replacement of Stoney Hill Road and other private streets in the  
3 Crest Promontory community. Crest/Promontory is authorized by its members to pursue  
4 this action in order to, without limitation, ensure the road is preserved and maintained, and  
5 to protect the residents' interests with respect to unauthorized or improper use of the road.

6 53. Defendants are not entitled to use Stoney Hill Road for ingress or egress, and  
7 have no easement (express or implied), license, or other right to use the road.

8 54. Nonetheless, Monteverdi and the Berggruen Institute have claimed in the  
9 EAF and Final Map they caused to be filed with the City in 2019 that they have an  
10 easement of ingress and egress over Stoney Hill Road. This is not true as Stoney Hill  
11 Road is private and Defendants have no right to use Stoney Hill Road for ingress or egress.

12 55. Crest/Promontory is informed and believes that Monteverdi and Berggruen  
13 intend to use Stoney Hill Road for ingress and egress to the Adjacent Land and the  
14 Berggruen Project, and for the construction of the Berggruen Project. Monteverdi and  
15 Berggruen's ingress and egress to the Berggruen Project over Stoney Hill Road would  
16 conflict with the residential character of the Crest Promontory community, and the safety,  
17 privacy and tranquility of its residents. Monteverdi and Berggruen's use of Stoney Hill  
18 Road would also likely cause wear and damage to the road and impose costs for which the  
19 Crest/Promontory community would be responsible.

20 **FIRST CAUSE OF ACTION**

21 **(Declaratory Relief Regarding the MOU)**

22 **(By MOSMA Against All Defendants)**

23 56. MOSMA incorporates by reference each and every allegation of the other  
24 paragraphs in this complaint into this cause of action, as though set forth fully herein.

25 57. An actual controversy has arisen and now exists between the parties  
26 regarding the Defendants' rights and obligations with respect to the MOU. Specifically,  
27 the parties disagree as to the above described issues including, without limitation, whether  
28

1 the MOU is binding on Monteverdi and Berggruen as successors and/or assigns of Castle  
2 & Cooke, and binding upon Castle & Cooke with respect to the property that it retained.

3 58. MOSMA therefore desires a judicial determination of the rights and duties  
4 between the parties with respect to the above-described matters, including but not limited  
5 to a declaration that:

6 a. the MOU is binding on Monteverdi, and thus Berggruen, as a  
7 successor or assignee of Castle & Cooke;

8 b. the MOU is binding on Castle & Cooke to the extent it retained any  
9 rights in the Adjacent Land; and

10 c. the MOU obligates Monteverdi, Berggruen and/or Castle & Cooke to,  
11 among other things, limit development of the Adjacent Land to the Reduced Density Plan  
12 in accordance with the MOU.

13 **SECOND CAUSE OF ACTION**

14 **(Declaratory Relief Regarding Equitable Servitude)**

15 **(By MOSMA Against Monteverdi and Berggruen )**

16 59. MOSMA incorporates by reference each and every allegation of the other  
17 paragraphs in this complaint into this cause of action, as though set forth fully herein.

18 60. MOSMA contends that the MOU is binding on Monteverdi and Berggruen  
19 as successors and/or assignees of Castle & Cooke. In addition, or in the alternative, if the  
20 MOU is deemed not to be binding on Monteverdi and Berggruen as a successors or  
21 assignees, Monteverdi and Berggruen are nonetheless bound to comply with the  
22 obligations in the MOU including, without limitation, the obligation to limit development  
23 of the Adjacent Land to the Reduced Density Plan in accordance with the MOU and the  
24 obligation to negotiate in good faith to annex the new 29 homes to the relevant  
25 homeowners associations, because those obligations constitute equitable servitudes.

26 61. The MOU is a written agreement which expressly states the parties' intent to  
27 bind Castle & Cooke's successors and assigns. Plaintiff is informed and believes that  
28

1 Monteverdi and Berggruen were aware of the MOU and its terms prior to acquiring their  
2 respective interests in the Adjacent Property and prior to seeking to develop the land.

3 62. For the reasons set forth above, the equities favor a finding that the MOU  
4 serves as an equitable servitude because it would be unfair, unjust, inequitable and  
5 damaging to MOSMA and the residents of Mountaingate to allow the development of the  
6 Berggruen Project, or any development that conflicts with the MOU, to proceed.

7 63. An actual controversy has arisen because MOSMA is informed and believes  
8 that Monteverdi and Berggruen dispute the obligations in the MOU act as equitable  
9 servitudes. Accordingly, MOSMA hereby seeks a declaration and order that the  
10 restrictions in the MOU constitute equitable servitudes such that the MOU is binding on  
11 Berggruen, Monteverdi and any of their parents, agents and/or subsidiaries such that they  
12 are obligated to limit development of the Adjacent Land to the Reduced Density Plan and  
13 in accordance with the MOU.

14 **THIRD CAUSE OF ACTION**

15 **(Breach Of The MOU And Covenant Of Good Faith And Fair Dealing Therein)**

16 **(By MOSMA Against Monteverdi)**

17 64. Plaintiff incorporates by reference each and every allegation of the other  
18 paragraphs in this complaint into this cause of action, as though set forth fully herein.

19 65. In 1999, MOSMA and Castle & Cooke entered into a binding MOU which  
20 remains in full force and effect. MOSMA and Castle & Cooke entered into MOU for good  
21 and valuable consideration. MOSMA is informed and believes that Monteverdi is the  
22 successor and/or assignee of the MOU and is bound by its terms.

23 66. MOSMA has fully performed all, or substantially all, of its obligations under  
24 the MOU.

25 67. Monteverdi has breached, and/or imminently soon anticipates to breach or  
26 further breach, the terms of the MOU by seeking to develop and developing the  
27 Monteverdi Property contrary to the terms of the MOU.  
28





1           74.     MOSMA is informed and believes that Castle & Cooke has breached, and/or  
2 soon anticipates to breach or further breach, the terms of the MOU by seeking to develop  
3 and developing the Castle & Cooke Property contrary to the terms of the MOU insofar as it  
4 is going to develop the Castle & Cooke Property to support Berggruen Project in a manner  
5 that is contrary to the limitation in the MOU on development of the property that is  
6 consistent with the Reduced Density Plan by, without limitation, providing access to the  
7 property and allowing improvements to be constructed on its property that are necessary  
8 for the Berggruen Project to proceed, such as improvements to the road.

9           75.     Further, implied in the MOU is a covenant of good faith and fair dealing that  
10 required Castle & Cooke not to do anything that would injure the rights of MOSMA to  
11 receive the benefits of the MOU, render the performance of the Agreement impossible, or  
12 otherwise harm or take advantage of the other party.

13           76.     MOSMA is informed and believes that Castle & Cooke has breached, and  
14 will imminently soon further breach, the covenant of good faith and fair dealing under the  
15 MOU by, in bad faith: (i) selling the Monteverdi Property to Monteverdi knowing that  
16 Monteverdi intended to build Berggruen Project, contrary to the MOU and MOSMA's  
17 rights thereunder; and (ii) allowing Monteverdi and Berggruen access and other rights  
18 through the Castle & Cooke Property that Monteverdi needs to develop the land which  
19 would be in a manner contrary to the MOU.

20           77.     In addition, and in the alternative, to the extent Monteverdi is not bound as a  
21 successor and assignee of Castle & Cooke's interest in the MOU (which MOSMA  
22 contends it is), MOSMA is informed and believes that Castle & Cooke has acted in bad  
23 faith in breach of the covenant of good faith and fair dealing under the MOU by knowingly  
24 and intentionally failing to ensure that Monteverdi was bound by the MOU, and by selling  
25 the property to Monteverdi even though Castle & Cooke knew that Monteverdi and  
26 Berggruen intended to violate the intent and terms of the MOU by developing the  
27 Berggruen Project.



1 that Monteverdi and Berggruen have arranged with Castle & Cooke for use of the Castle &  
2 Cooke Property in order to aid in, and allow for, the development of the Berggruen Project,  
3 in breach of the MOU and the covenant of good faith and fair dealing therein.

4 85. As further described above, Monteverdi's and Berggruen's acts have  
5 intentionally and knowingly caused, aided and encouraged Castle & Cooke to breach the  
6 MOU and its obligations of good faith and fair dealing thereunder.

7 86. As a direct and proximate result of Monteverdi and Berggruen's wrongful  
8 conduct, MOSMA has suffered, and will continue to suffer, damages in an amount to be  
9 proven at trial.

10 **SIXTH CAUSE OF ACTION**

11 **(For Unjust Enrichment)**

12 **(By MOSMA Against All Defendants)**

13 87. Plaintiff incorporates by reference each and every allegation of the other  
14 paragraphs in this complaint into this cause of action, as though set forth fully herein.

15 88. As described above, MOSMA has conferred a benefit on Defendants by,  
16 without limitation, entering into the MOU, supporting the City's approval and  
17 development of the Reduced Density Plan, offering to annex the homes under the Reduced  
18 Density Plan consistent with prior Mountaingate annexations, and by withdrawing their  
19 opposition to the development of the Adjacent Property. Defendants have profited from  
20 this by avoiding protracted delay, disputes, litigation and by receiving vested development  
21 approvals from the City that significantly increased the value of the Adjacent Land.

22 89. By accepting such benefits but rejecting their obligations under the MOU,  
23 Defendants have been unjustly enriched at the expense of MOSMA. Therefore,  
24 Defendants should be estopped from denying that the MOU is binding, or in the alternative  
25 they must disgorge and make restitution to MOSMA for the total amount of value gained  
26 from their unjust enrichment, which would include but not be limited to the increased  
27 value of the now-entitled Adjacent Land.

1 **SEVENTH CAUSE OF ACTION**

2 **(Declaratory Relief Regarding Stoney Hill Road)**

3 **(By MOSMA and Crest/Promontory Against Monteverdi and Berggruen)**

4 90. Plaintiffs incorporate by reference each and every allegation of the other  
5 paragraphs in this complaint into this cause of action, as though set forth fully herein.

6 91. Defendants are not entitled to use Stoney Hill Road for ingress or egress, and  
7 have no easement (express or implied) or other right to use the road.

8 92. Nonetheless, Monteverdi and Berggruen have claimed in the Final Map and  
9 Environmental Assessment Form that they filed in 2019 with the City that they have an  
10 ingress and egress easement over Stoney Hill Road.

11 93. Crest/Promontory is informed and believes that Berggruen and Monteverdi  
12 intend to use Stoney Hill Road for ingress and egress to the Berggruen Project even though  
13 they are not entitled to do so.

14 94. Furthermore, MOSMA is informed and believes that Monteverdi and  
15 Berggruen contend that the MOU requires MOSMA to allow it to access the Berggruen  
16 Project through Stoney Hill Road. On the other hand, MOSMA contends that the MOU  
17 requires the parties to negotiate in good faith towards an agreement that, among other  
18 things, would annex each home developed under the Reduced Density Plan to MOSMA or  
19 other appropriate associations or sub-associations “in a manner consistent with prior  
20 annexations, such that the homes will obtain all the benefits of, and be subject to all the  
21 obligations of, such association members generally,” but that the terms of the MOU do not  
22 require MOSMA or anyone else at this time to provide use of Stoney Hill Road for  
23 Monteverdi or Berggruen to access the Berggruen Project, which is not in conformance  
24 with the Reduced Density Plan.

25 95. Accordingly, an actual controversy has arisen and now exists between the  
26 parties as to their rights and obligations with respect to Stoney Hill Road. Plaintiffs  
27 therefore desire a judicial determination of the respective rights and duties between the  
28

1 parties with respect to the above-described matters including but not limited to a  
2 declaration that Defendants do not currently have an ingress or egress easement over  
3 Stoney Hill Road.

4 **PRAAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment, in the alternative where necessary, as  
6 follows:

7 1. For a declaration in accordance with MOSMA's claims set forth above,  
8 including but not limited to a declaration that, because the MOU acts as a binding  
9 agreement and/or an equitable servitude, Defendants and their successors and assigns are  
10 bound by the MOU and the obligation to limit development of the Adjacent Property to the  
11 Reduced Density Plan in accordance with the MOU;

12 2. For a declaration that Defendants are not entitled to use Stoney Hill Road  
13 without obtaining further permission to do so, as set forth above;

14 3. For general, compensatory and consequential damages to be proven at trial;

15 4. For specific performance of the obligations under the MOU;

16 5. For an injunction against Defendants and their partners, agents, affiliates,  
17 parents, subsidiaries, trustees, attorneys, representatives, successors, and assigns enjoining  
18 such persons from interfering with Plaintiffs' rights stated herein;

19 6. For disgorgement and restitution to account for any unjust enrichment;

20 7. For prejudgment interest at the highest legal rate;

21 8. To the extent permitted by law, for costs of suit and attorneys' fees incurred  
22 in connection with this lawsuit and related matters;

23 9. For any other legal and equitable relief as the Court deems just and proper  
24 under the circumstances.

25 ///

26 ///

27 ///

28


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all triable issues.

Dated: October 18, 2019

LOEB & LOEB LLP  
WILLIAM M. BRODY  
ARTHUR J. FELS

By:   
\_\_\_\_\_  
William M. Brody  
Attorneys for Plaintiffs Mountaingate Open  
Space Maintenance Association and  
Crest/Promontory Common Area  
Association

**PROOF OF SERVICE**

I, Cathy Roybal, the undersigned, declare that:

I am employed in the County of Los Angeles, State of California, over the age of 18, and not a party to this cause. My business address is 10100 Santa Monica Blvd., Suite 2200, Los Angeles, CA 90067.

On October 18, 2019, I caused to be served a true copy of the **FIRST AMENDED COMPLAINT FOR: (1) DECLARATORY RELIEF RE: MEMORANDUM OF UNDERSTANDING (2) DECLARATORY RELIEF RE: EQUITABLE SERVITUDE (3) BREACH OF THE MEMORANDUM OF UNDERSTANDING AND COVENANT OF GOOD FAITH AND FAIR DEALING THEREIN (4) BREACH OF THE MEMORANDUM OF UNDERSTANDING AND COVENANT OF GOOD FAITH AND FAIR DEALING THEREIN (5) TORTIOUS INTERFERENCE (6) UNJUST ENRICHMENT (7) DECLARATORY RELIEF RE: STONEY HILL ROAD** on the parties in this cause as follows:

(VIA OVERNIGHT DELIVERY) by placing the above named document in a sealed envelope addressed as set forth below, or on the attached service list and by then placing said envelope for collection and overnight delivery via Federal Express in accordance with Loeb & Loeb's ordinary business practices

James P. Fogelman  
Gibson, Dunn & Crutcher  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: 213-229-7234  
Facsimile: 213-229-7520  
Email: jfogelman@gibsondunn.com

Theona Zhordania  
Sheppard Mullin  
333 South Hope Street, 43rd Floor  
Los Angeles, CA 90071-1422  
Telephone: 213-617-5546  
Facsimile: 213-620-1398  
Email: TZhordania@sheppardmullin.com

Attorneys for Berggruen Institute and Monteverdi, LLC


Attorneys for Castle & Cooke California, Inc.

I am readily familiar with Loeb & Loeb LLP's practice for collecting and processing correspondence for mailing with the United States Postal Service and Overnight Delivery Service. That practice includes the deposit of all correspondence with the United States

1 Postal Service and/or Overnight Delivery Service the same day it is collected and  
2 processed.

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

5 Executed on October 18, 2019, at Los Angeles, California.

6   
7 \_\_\_\_\_  
8 Cathy Roybal

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28