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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 Adam Bereki,  
12 Plaintiff,  
13 v.  
14 Gary Humphreys;  
15 Karen Humphreys,  
16 Defendants.  
17  
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Case No.: CV 19-2050-CBM-ADS(x)  
**ORDER RE: DEFENDANTS’  
MOTION TO DISMISS THE FIRST  
AMENDED COMPLAINT  
PURSUANT TO RULE 12(B)(1), (6)  
& (7) OF THE FEDERAL RULES  
OF CIVIL PROCEDURE AND  
REQUEST FOR JUDICIAL  
NOTICE [JS-6]**

19 The matter before the Court is Defendants Gary Humphreys and Karen  
20 Humphreys’ (collectively, “Defendants” or “The Humphreys”) “Motion to  
21 Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the  
22 Federal Rules of Civil Procedure and Request for Judicial Notice.” (Dkt. No. 9  
23 (the “Motion”).)<sup>1</sup>

24 **I. BACKGROUND**

25 This action arises from a state court judgment in favor of Defendants and  
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27 <sup>1</sup> Following the hearing on the Motion, Plaintiff filed a document entitled  
28 “Additional Authorities and Corrected Testimony To Be Considered By the Court  
re: Defendants Motion to Dismiss Filed 11/19/19,” which has been reviewed by  
the Court. (Dkt. No. 30 (hereinafter, “Additional Authorities”).)

1 against Plaintiff in connection with remodeling work performed by Plaintiff. On  
 2 April 20, 2017, following a bench trial, the Superior Court, County of Orange,  
 3 entered judgment in favor of The Humphreys and against Plaintiff in the amount  
 4 of \$848,000 (plus costs).<sup>2</sup> (FAC Exs. D, G.) The Superior Court found Plaintiff  
 5 (as opposed to his company Spartan Associates) was the contractor who  
 6 performed the remodel work for The Humphreys, and found Plaintiff was not a  
 7 licensed contractor. Accordingly, the superior court awarded The Humphreys  
 8 disgorgement of all compensation paid by The Humphreys to Plaintiff for the  
 9 remodel work pursuant to Cal. Bus. & Prof. Code § 7031.<sup>3</sup> Plaintiff appealed the  
 10 state court judgment. The California Court of Appeals affirmed the judgment in  
 11 favor of The Humphreys. Plaintiff's request for review by the California Supreme  
 12 Court was denied, and Plaintiff's writ for certiorari with the United States  
 13 Supreme Court was also denied.

14 Plaintiff then commenced this action on October 28, 2019. On November  
 15 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right  
 16 naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this  
 17 action is "an Independent Action in Equity to relieve a party from a judgment,  
 18 order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this  
 19 action "is a direct attack on the jurisdiction of the California trial and appellate  
 20 Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## 21 II. STATEMENT OF THE LAW

### 22 A. Fed. R. Civ. Proc. 12(b)(1)

23 On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

24 <sup>2</sup> While the superior court judgment reflects judgment entered against Plaintiff in  
 25 the amount of \$848,000, the FAC alleges Plaintiff was "fined \$930,000 for  
 26 allegedly doing remodel construction work without a contractor's license." (FAC  
 at p.16.)

27 <sup>3</sup> California Business & Professions Code § 7031 provides: "[A] person who  
 28 utilizes the services of an unlicensed contractor may bring an action in any court  
 of competent jurisdiction in this state to recover all compensation paid to the  
 unlicensed contractor for performance of any act or contract."

1 the party asserting jurisdiction bears the burden of proving jurisdiction exists.  
2 *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).  
3 A motion under Rule 12(b)(1) may challenge the court’s jurisdiction facially,  
4 based on the legal sufficiency of the claim, or factually, based on the legal  
5 sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
6 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court  
7 considers the complaint’s allegations to be true, and draws all reasonable  
8 inferences in the plaintiff’s favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir.  
9 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the  
10 substance of jurisdictional allegations, the court does not presume the factual  
11 allegations to be true, and may consider evidence such as affidavits and testimony  
12 to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850  
13 F.2d 558, 560 (9th Cir. 1988).

14 **B. Fed. R. Civ. Proc. 12(b)(6)**

15 Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a  
16 complaint for “failure to state a claim upon which relief can be granted.”  
17 Dismissal of a complaint can be based on either a lack of a cognizable legal theory  
18 or the absence of sufficient facts alleged under a cognizable legal theory.  
19 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To survive  
20 a motion to dismiss, the complaint “must contain sufficient factual matter,  
21 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*  
22 *v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
23 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action  
24 will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil  
25 Procedure 8, the plaintiff must make more than “an unadorned, the-defendant-  
26 harmed me” accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are  
27 insufficient to meet the Plaintiff’s obligation to provide the grounds of his or her  
28 entitlement to relief. *Twombly*, 550 U.S. at 555. “Factual allegations must be

1 enough to raise a right to relief above the speculative level.” *Id.* If a complaint  
 2 cannot be cured by additional factual allegations, dismissal without leave to  
 3 amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts  
 4 accept as true all well-pleaded allegations of material fact and construes them in a  
 5 light most favorable to the non-moving party. *Manzarek v. St. Paul Fire &*  
 6 *Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only  
 7 consider the allegations contained in the pleadings, exhibits attached to or  
 8 referenced in the complaint, and matters properly subject to judicial notice.  
 9 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

### 10 **C. Fed. R. Civ. Proc. 12(b)(7)**

11 Rule 12(b)(7) permits a party to move to dismiss the case for “failure to join  
 12 a party under Rule 19.” Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires “[a] person  
 13 who is subject to service of process and whose joinder will not deprive the court  
 14 of subject-matter jurisdiction” to be joined as a party if:

15 (A) in that person’s absence, the court cannot accord complete relief  
 16 among existing parties; or

17 (B) that person claims an interest relating to the subject of the action  
 18 and is so situated that disposing of the action in the person’s absence  
 may:

19 (i) as a practical matter impair or impede the person's ability to  
 protect the interest; or

20 (ii) leave an existing party subject to a substantial risk of  
 21 incurring double, multiple, or otherwise inconsistent  
 obligations because of the interest.

22 Fed. R. Civ. P. 19. If “a person who is required to be joined if feasible cannot be  
 23 joined, the court must determine whether, in equity and good conscience, the  
 24 action should proceed among the existing parties or should be dismissed.” Fed. R.  
 25 Civ. Proc. 19(b).

## 26 **III. DISCUSSION**

### 27 **A. Request for Judicial Notice**

28 Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).<sup>4</sup>

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

#### **B. Rooker-Feldman Doctrine**

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker-Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

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<sup>4</sup> Plaintiff did not oppose Defendants' request for judicial notice.

1 judgment entered against Plaintiff in the superior court action and (2) ordering the  
2 superior court to remove the property lien based on the judgment entered against  
3 Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges  
4 the instant federal action “is a direct attack on the jurisdiction of the California  
5 trial and appellate Courts in case numbers – 30-2015-00805897, and G055075.”  
6 (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment  
7 affirmed by the California Court of Appeals.

8 The FAC also alleges a legal error by the superior court and California  
9 Court of Appeals on the ground that the superior court and appellate court entered  
10 and affirmed the judgment against Plaintiff without supporting evidence, and erred  
11 in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable  
12 remedy rather than a penalty, thereby “resulting in a void judgment.” (FAC at  
13 p.82, 90.)

#### 14 **(1) Extrinsic Fraud on the Court**

15 Where the federal plaintiff does not complain of a legal injury caused by a  
16 state court judgment, but rather of a legal injury caused by an adverse party,  
17 Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th  
18 Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the  
19 plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court  
20 judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

21 Plaintiff contends this action is not barred because this Court has the power  
22 to set aside or enjoin state-court judgments procured by fraud. The FAC alleges  
23 Defendants committed “fraud in the procurement of jurisdiction” in the superior  
24 court action because Defendants took one position during summary judgment (i.e.,  
25 that they had contracted with Spartan (Plaintiff’s company) to perform the work)  
26 and then took a contrary position during trial (i.e., that they believed they  
27 contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged  
28 conduct does not constitute “extrinsic” fraud on the court since such evidence was

1 presented by Defendants before the superior court, nor constitute a legal injury  
2 caused by Defendants. Rather, the FAC alleges the superior court erred in  
3 entering judgment despite Defendants taking contrary positions throughout the  
4 state court litigation. Therefore, the extrinsic fraud exception to the Rooker-  
5 Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

6 **(2) Constitutional Challenge**

7 Plaintiff also argues the Rooker-Feldman doctrine does not bar this action  
8 because the FAC raises a constitutional challenge to California Business &  
9 Professions Code §§ 7071.17 and 7031. While the FAC raises a “facial” and “as  
10 applied” challenge to the constitutionality of Sections §§ 7071.17 and 7031, the  
11 relief sought by Plaintiff is an order vacating or voiding the state court judgment.  
12 Moreover, the basis for Plaintiff’s constitutional challenge is that the Superior  
13 Court and California Court of Appeals lacked subject matter jurisdiction to enter  
14 and affirm the judgment against Plaintiff because (1) there is no evidence  
15 supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code  
16 § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The  
17 California Court of Appeals, however, found there was evidence supporting the  
18 Superior Court’s judgment and held disgorgement pursuant to Cal. Bus. & Prof.  
19 Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus,  
20 despite purporting to raise a “constitutional” challenge in his FAC, Plaintiff seeks  
21 relief from the state court judgment in this action and asserts legal errors by the  
22 Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman  
23 doctrine applies to bar Plaintiff’s instant action.

24 \* \* \*

25 Accordingly, the Court finds Plaintiff’s action is barred pursuant to the  
26 Rooker-Feldman doctrine because Plaintiff seeks relief from the state court  
27 judgment and alleges legal errors by the state trial and appellate court. *See Bell v.*  
28 *City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).



**C. Res Judicata / Collateral Estoppel**

Defendants also move to dismiss the FAC as barred by the res judicata / collateral estoppel doctrines.<sup>5</sup>

Issue preclusion, or collateral estoppel, bars relitigation of issues that have been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824.

Pursuant to the doctrine of collateral estoppel, “a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.” *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738.

Under California law, collateral estoppel/issue preclusion applies: “(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” *DKN Holdings LLC*, 61 Cal. 4th at 825.

Here, the FAC alleges the superior court lacked jurisdiction and violated Plaintiff’s due process rights because there was no evidence supporting the judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the superior court in a motion to vacate the judgment, which was denied. (FAC at 97-98.)

Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued the Superior Court committed due process violations and lacked subject matter jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals affirmed the Superior Court’s judgment, and found Plaintiff’s arguments on appeal had “no merit.” (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court of Appeal held the superior court judgment against Plaintiff was a “non-punitive”

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<sup>5</sup> “Res judicata” refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action were not asserted in the state court action, res judicata would not apply to bar Plaintiff’s claims here.



1 “equitable remedy”).)

2 Plaintiff filed a petition for review with the California Supreme Court  
3 wherein Plaintiff argued the superior court and California Court of Appeals lacked  
4 jurisdiction and violated Plaintiff’s due process rights, and argued Cal. Bus. &  
5 Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition  
6 of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff’s  
7 petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for  
8 writ of certiorari with the United States Supreme Court, which was denied. (*Id.*  
9 Exs. F, G.)

10 Therefore, the issues raised by Plaintiff in this federal action regarding the  
11 Superior Court and California Court of Appeal’s lack of jurisdiction and violation  
12 of Plaintiff’s due process rights, the unconstitutionality of Cal. Bus. & Prof. Code  
13 §§ 7031 and 7071.17, Plaintiff’s contention that disgorgement pursuant to Cal.  
14 Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and  
15 the lack of evidence supporting the Superior Court’s judgment and California  
16 Court of Appeals decision affirming the judgment, were actually litigated by  
17 Plaintiff in the state court action and necessarily decided in a final judgment. *See*  
18 *DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d  
19 1123, 1132 (9th Cir. 2019).

20 Thus, even if the instant action was not barred pursuant to the Rooker-  
21 Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing  
22 this action. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th  
23 Cir. 2006).

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1 **IV. CONCLUSION**

2 Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and  
3 dismisses the action with prejudice because Plaintiff is collaterally stopped from  
4 bringing this action.<sup>6</sup> The Court also finds this action is barred pursuant to the  
5 Rooker-Feldman doctrine.<sup>7</sup>

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7 **IT IS SO ORDERED.**

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9 DATED: February 6, 2020.

  
10 CONSUELO B. MARSHALL  
11 UNITED STATES DISTRICT JUDGE  
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24 <sup>6</sup> Because Plaintiff's claims are barred on collateral estoppel grounds, leave to  
25 amend would be futile. *See Tait v. Asset Acceptance, LLC*, 2013 WL 3811767  
(C.D. Cal. July 22, 2013).

26 <sup>7</sup> Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the  
27 superior court and California Court of Appeals which are "indispensable parties."  
28 Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine,  
and finds collateral estoppel would bar Plaintiff from bringing this action, it does  
not reach the issue of whether the superior court and California Court of Appeals  
are indispensable parties.