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7 Superior Court of California
8 County of Orange

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11 The Spartan Associates, Inc.

12
13
14 v

15
16
17 Karen and Gary Humphreys
18
19

Case No.: 30-2015-00805807

REPLY TO OPPOSITION OF MOTION
TO VACATE VOID JUDGMENT

DECLARATION IN SUPPORT OF
MOTION

DEPT: C16
Hon. James Di Cesare

DATE: March 15, 2019
TIME: 9:30AM

INTRODUCTION

According to the United States Supreme Court, the trial Court's judgment and the appellate Court's affirmation thereof are incorrect. Here's why:

Consider the following example:

An unlicensed contractor receives \$500,000 to build a new home. The contractor spends \$425,000 in materials, labor, and other costs in building the home leaving the remaining \$75,000 in profit or gains.

Under the laws of unjust enrichment and non-punitive restitutionary disgorgement, the \$75,000 in profit is the only amount that can be disgorged. Anything more than the \$75,000 would be punitive because the unlicensed contractor was not unjustly enriched by the value of the materials and labor incorporated into the home.

This is clearly evidenced by the following holdings, contrasting the difference between non-punitive restitutionary disgorgement and a punitive sanction:

Non-punitive Restitutionary Disgorgement

Kokesh v SEC, 581 US____:

*"As a general rule, the defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement. Denial of an otherwise appropriate deduction, by making the defendant liable in excess of net gains, results in a punitive sanction that the law of restitution normally attempts to avoid". *Kokesh*, *supra* citing App. to Pet. for Cert. 43a, Restatement (Third) §51, Comment h, at 216. (emphasis added).*

Punitive Sanction

Fourth District Court of Appeal:

"Full disgorgement is required; offsets and reductions for labor and materials received are not permitted." Exhibit [A]- Opinion p.11, Fourth District Court of Appeal, G055075.

"Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work- \$848,000." Ibid. p2. (emphasis added).

See also *White v. Cridlebaugh*, 178 Cal.App.4th 506 pp. 520–521 (2009):

"We conclude the authorization of recovery of 'all compensation paid to the unlicensed contractor for performance of any act or contract' means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided."

Because there is no evidence on the record of this case supporting any profits or gains by Mr. Bereki, and offsets for labor and materials were denied, the entire judgment of \$930,000 is a punitive sanction.

The Court of appeal is in error that the disgorgement in this case is not punitive.

While there is evidence the Humphreys paid Mr. Bereki and his company, Spartan, \$848,000, the Humphreys failed to substantiate what portion of this payment was Mr. Bereki's profit or gain. In concert, they also failed to substantiate the costs including materials and labor services that were incorporated into their home remodel as value returned to them. These costs were NOT MR. BEREKI'S PROFIT OR GAIN.

1 As repeatedly cited by the US Supreme Court in *Kokesh*, “Restatement (Third) of
2 Restitution and Unjust Enrichment §51: Enrichment by Misconduct; Disgorgement”,
3 clearly establishes the nature of a cause of action for non-punitive disgorgement:
4

5 *“The claimant's case is not merely that the defendant has committed a wrong to the*
6 *claimant, but that the wrong has proximately resulted in an unjust gain to the*
7 *defendant. Allegations that the defendant is a wrongdoer, and that the defendant's*
8 *business is profitable, do not state a claim in unjust enrichment. By contrast, a*
9 *claimant who is prepared to show a causal connection between defendant's*
10 *wrongdoing and a measurable increase in the defendant's net assets will satisfy the*
11 *burden of proof as ordinarily understood.*

12 *The claimant who seeks disgorgement of profits must identify one or more*
13 *transactions connecting the wrong complained of and the profits sought to be*
14 *recovered.* [T]he causal connection required is between the amount by which the
15 defendant was unjustly enriched and the amount he can be required to disgorge.
16

17 *If the claimant's evidence will not yield even a reasonable approximation, the claim of*
18 *unjust enrichment is merely speculative, and disgorgement will not be*
19 *allowed.”* (emphasis added)
20

21 What this means is that the Humphreys failed to state a claim for non-punitive
22 restitutionary disgorgement. It also means that the entire judgement against Mr. Bereki is
23 punitive. Because both the trial and appellate Courts refused to recognize the punitive
24 nature of the judgment, Mr. Bereki was subsequently denied the 14th Amendment’s due
25 process protections of excessive punitive damage awards resulting in punishment without
26 a judicial hearing, otherwise known as a Bill of Pains and Penalties. These violations of
27 due process deprived both Courts of jurisdiction since [*“A Court of California does not*
28 *have jurisdiction to render judgment which violates the California Constitution or the*
29 *Constitution for the United States.”*] *Tillet, supra.* [*“A judgement is void on its face if the*

1 court which rendered the judgement lacked personal or subject matter jurisdiction...in
2 granting relief which it had no power to grant."] Tillett, supra.

3
4 The Humphreys Opposition fails to offer any legal authority contrary to the holdings of the
5 United States Supreme Court as presented by Mr. Bereki. Rather, the Humphreys
6 contend the judgments of the trial and appellate Courts (albeit void for violating due
7 process) are res judicata. ["The doctrine of res judicata is inapplicable to void judgments.]
8 *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239, (1988). ["A void
9 judgment is, in effect, no judgment. By it no rights are divested; from it no rights can be
10 obtained. Being worthless itself, all proceedings founded upon it are equally worthless. It
11 neither bars nor binds anyone."] *Bennett v Wilson*, 133 Cal. 379, 383 (1901).

12
13 As a result of the void judgments by the trial and appellate Courts, this Court has a non-
14 discretionary duty to vacate the void judgments in this case. ["And, where evidence is
15 admitted without objection that shows the existence of the invalidity of a judgment or
16 order valid on its face, it is the duty of the court to declare the judgment or order void."]
17 *County of San Diego v. Gorham*, 186 Cal. App. 4th 1215, 1229 (2010).

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I. The Humphreys fail to offer any opposition that the judgement against Mr Bereki is
4 punitive and that the 14th Amendment's due process protections against excessive
5 punitive damage awards do not apply.
6

7 The primary issue in this case is whether the "disgorgement" imposed upon Mr. Bereki in
8 the amount of \$930,000 is punitive in nature. The US Supreme Court unambiguously
9 held in *Kokesh*, supra that [*"because SEC disgorgement orders go beyond*
10 *compensation, are intended to punish and label defendants wrongdoers as a*
11 *consequence for violating public laws, they represent a penalty."*] The same applies in this
12 case.
13

14 In order for the trial and appellate Courts to exercise jurisdiction and the Humphreys to
15 consequently prevail on their first amended cause of action for non-punitive
16 disgorgement, there would have to be evidence on the record this case that Mr. Bereki
17 received \$930,000 in profits or gains. "*Disgorgement wrests the ill-gotten gains from the*
18 *hands of a wrongdoer."* *SEC v Huffman*, 996 F.2d 800, 802 (1993); See Opinion, Exhibit
19 [A]– p.8. "*[D]isgorgement is a form of "[r]estitution measured by the defendant's wrongful*
20 *gain."* *Kokesh*, supra citing Restatement (Third) of Restitution and Unjust Enrichment §51,
21 Comment a, p. 204 (2010). No such evidence exists and the Humphreys opposition is
22 devoid of any testimony or evidence supportive to the contrary.
23

24 On a challenge to jurisdiction, such as this Motion to Vacate Void Judgment, the party
25 seeking jurisdiction (the Humphreys) has the burden of substantiating each element of the
26 offense necessary to empower the Court to act. [*"If the evidence fails to prove all [of the]*
27 *elements of th[e] charge, the conviction is not supported by evidence, in which event it*
28 *does not comport with due process of law."*] *Thompson v. City of Louisville*, 362 U.S. 199,
29 204 (1960); California Evidence Code §500: [*"... [A] party has the burden of proof as to*

1 each fact the existence or nonexistence of which is essential to the claim for relief or
2 defense that he is asserting.]"

3
4 The Humphreys "Opposition" and the record of this case fail to provide any evidence
5 that Mr. Bereki profited or gained even \$1 to substantiate their claim for non-punitive
6 "disgorgement".

7
8 While an out of state case, the Arizona Supreme Court dealt with very similar issues
9 occurring in this case in *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466,
10 (2008). The Court stated:

11 *"The State thus already has many tools with which to punish unlicensed contractors.*
12 *Reading Wilkinson to forge another tool - a rule of total disgorgement regardless of*
13 *any benefit conferred on the victim -- would unnecessarily strain Arizona's restitution*
14 *scheme and may lead to absurd or troubling results."*

15
16 In a separate concurring opinion, Justice Hurwitz stated; *"If the restitution statutes are*
17 *read to require that the amount paid is invariably the measure of restitution, an*
18 *untenable result would obtain -- a homeowner who received flawless work from an*
19 *unlicensed contractor would be refunded the full amount paid but would nonetheless*
20 *also retain the work performed. It is impossible for me to view such a victim as having*
21 *suffered any loss, economic or otherwise, and I therefore concur in PP 1-18 of the*
22 *majority opinion."*

23
24 The "absurd and troubling" results recognized by the Arizona Supreme Court are precisely
25 what is occurring here – the entire amount paid by the Humphreys is not equivalent to the
26 profit or gains received by Mr. Bereki that would qualify as non-punitive restitutionary
27 disgorgement.

28
29 In fact, the California Supreme Court has declared that Court's cannot resort to equitable
considerations such as set off or unjust enrichment in "defiance" of §7031. *Lewis &*

1 *Queen v. N. M. Ball Sons, 48 Cal. 2d 141 (1957)*. A claim of set off is an equitable remedy
2 enshrined in due process and the fundamental fairness of equitable proceedings. To deny
3 it is to deny due process. Equitable remedies such as set off are precisely those
4 necessary under the laws of non-punitive restitutionary disgorgement to keep it from
5 becoming penal in nature. The fact that the CA Supreme Court has denied them
6 evidences §7031's purely punitive nature and the Court's intent to enforce it in this purely
7 punitive fashion by depriving litigants of due process.

8
9 Furthermore, in Equity "*no one is presumed to give something for nothing, and no one*
10 *can in reason and conscience expect to receive something for nothing*" [like a near million
11 dollar home remodel]. *Gibson, Henry R. A Treatise On Suits In Chancery, 2nd Ed. 1907,*
12 *p37,§43*). To require a defendant to return all of the money paid as opposed to only the
13 profits earned forces the defendant to perform construction services for a plaintiff for free,
14 thereby forcing the defendant into involuntary servitude in violation of the 13th
15 Amendment.

16
17 The Humphreys rely upon the Fourth District Court of Appeal in error which cited the
18 (1993) case of *SEC v Huffman*, 996 F.2d 800, 802, "*Huffman*", alleging that it held SEC
19 disgorgement was not-punitive. To the extent that *Huffman* made such a holding, it was
20 overruled or superseded by the US Supreme Court in *Kokesh*, supra (2017), "*[B]ecause*
21 *SEC disgorgement orders go beyond compensation, are intended to punish and label*
22 *defendants wrongdoers as a consequence for violating public laws, they represent a*
23 *penalty.*"]

24
25 The other case cited by the appellate Court in error to substantiate its holding the
26 disgorgement applied in this case is non-punitive is *United States v. Philip Morris USA*,
27 *310 F. Supp. 2d 58 (2004)*, "*Morris*", (Op. p9 first sentence). The *Morris* Court stated at p.
28 63-64 "*[D]isgorgement does not constitute punishment. The forfeiture of illegal proceeds,*
29 *much like the confiscation of stolen money from a bank robber, merely places that party in*
the lawfully protected financial status quo that he enjoyed prior to launching his illegal

1 scheme. This is not punishment within the plain meaning of the word. Disgorgement of ill-
2 gotten gains is instead remedial, serving to deprive a wrongdoer of unjust enrichment as
3 well as to deter others from violating the law. The remedial nature of disgorgement serves
4 to limit its application. **Because disgorgement may not be used punitively, a court's**
5 **equitable power is restricted to property causally related to the wrongdoing. For**
6 **this reason, the Government is required to distinguish between legally and**
7 **illegally obtained profits.**] (*emphasis* added).

8
9 To the extent the *Morris* Court held disgorgement beyond profits or gains to be non-
10 punitive or to deter others from violating the law, it was also overruled or superseded by
11 *Kokesh*.

12
13 This being said, *Morris* actually supports Mr. Bereki's claims. It holds that disgorgement
14 beyond gains or profits is punitive and not within the Court's Equity power and that there
15 must be evidence supporting what was gained or profited and what wasn't.

16
17 There is no evidence on the record of this case Mr. Bereki made any profits whatsoever.
18 BECAUSE OF THIS, THE JUDGMENT IS NOT NON-PUNITIVE RESTITUTIONARY
19 DISGORGEMENT!! (Refer to Mr. Bereki's Declaration In Support of this Motion To Vacate
20 Void Judgement and the record of this case).

21
22 * * *

23
24 The following establishes part 2 of the *Kokesh* holding in this case that [*disgorgement is*
25 *intended to punish and label defendants wrongdoers as a consequence for violating*
26 *public laws*] by examining §7031's deterrent nature:

27
28 The Court of Appeal, affirmed on p7 of its Opinion, (Exhibit [A]) that:
29

1 *"Section 7031 represents a legislative determination that the importance of detering*
2 *unlicensed persons from engaging in the contracting business outweighs any*
3 *harshness between the parties, and that such deterrence can best be realized by*
4 *denying violators the right to maintain any action for compensation in the courts of this*
5 *state. [Citation] ..."* *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.,*
6 *Inc., 36 Cal. 4th 412, 423 (2005). (emphasis added).*

7
8 *Morris, supra, (Op. p9) states:*

9
10 *"Disgorgement of ill-gotten gains [serves] to deprive a wrongdoer of unjust enrichment*
11 *as well as to deter others from violating the law. (emphasis added)*

12
13 The United States Supreme Court has held the following:

14 1. *"[S]anctions imposed for the purpose of deterring infractions of public laws are*
15 *inherently punitive because "deterrence [is] not [a] legitimate non-punitive*
16 *governmental objectiv[e]." Bell v Wolfish, 441 US 520, 539 (1979); reaffirmed in*
17 *Kokesh, supra.*

18
19 2. *"A pecuniary sanction operates as a penalty if it is sought "for the purpose of*
20 *punishment, and to deter others from offending in like manner" rather than to*
21 *compensate victims." Huntington v. Attrill, 146 US 657, 668 (1892); reaffirmed in*
22 *Kokesh, supra.)(emphasis added). (This action was not compensatory because the*
23 *Humphreys provided no evidence of harm. Refer to Mr. Bereki's aforementioned*
24 *Declaration.)*

25
26 3. *("[T]he labels affixed either to the proceeding or to the relief imposed . . . are not*
27 *controlling, and will not be allowed to defeat the applicable protections of federal*
28 *constitutional law"). To that end, the determination whether a given civil sanction*
29 *constitutes punishment in the relevant sense requires a particularized assessment of*
 the penalty imposed and the purposes that the penalty may fairly be said to serve.

1 Simply put, a civil as well as a criminal sanction constitutes punishment when the
2 sanction as applied in the individual case serves the goals of punishment. These goals
3 are familiar. We have recognized in other contexts that punishment serves the twin
4 aims of retribution and deterrence.[Citations] (these are the "traditional aims of
5 punishment"). Furthermore, "[r]etribution and deterrence are not legitimate nonpunitive
6 governmental objectives." [Citations]. From these premises, it follows that a civil
7 sanction that cannot fairly be said solely to serve a remedial purpose, but rather can
8 only be explained as also serving either retributive or deterrent purposes, is
9 punishment, as we have come to understand the term. *United States v. Halper*, 490
10 U.S. 435, 448 (1989).

11 4. "[A] forfeiture proceeding is quasi-criminal in character. Its object, like a criminal
12 proceeding, is to penalize for the commission of an offense against the law." One 1958
13 *Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 700 (1965).

14
15 5. "A proceeding to forfeit a person's goods for an offence against the laws, though
16 civil in form, and whether in rem or in personam, is a "criminal case" within the
17 meaning of that part of the Fifth Amendment..." *Boyd v. United States*, 116 U.S. 616
18 (1886).

19
20 California Courts have also unambiguously declared:

21
22 "Any provision by which money or property is to be forfeited without regard to the
23 actual damage suffered calls for a penalty..." *Grand Prospect Partners, L.P. v. Ross*
24 *Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1357.

25
26 "Under California law, the characteristic feature of a penalty is the lack of a
27 proportional relationship between the forfeiture compelled and the damages or harm
28 that might actually flow from the failure to perform a covenant or satisfy a condition".
29 *Id.* at p1538.

1 The Humphreys have not presented even one authority in their “Opposition” that
2 contravenes the aforementioned holdings of the United States Supreme Court that the
3 \$930,000 judgment in this case against Mr. Bereki is not punitive in nature.

4
5 Because the Humphreys failed to sustain their burden of proof for non-punitive
6 restitutionary disgorgement, the trial Court was not empowered to act. [*“If the evidence*
7 *fails to prove all [of the] elements of th[e] charge, the conviction is not supported by*
8 *evidence, in which event it does not comport with due process of law.”*] *Thompson v. City*
9 *of Louisville*, 362 U.S. 199, 204 (1960); California Evidence Code §500: [*“... [A] party has*
10 *the burden of proof as to each fact the existence or nonexistence of which is essential to*
11 *the claim for relief or defense that he is asserting.”*]

12
13 Even if was empowered to act, Mr. Bereki was then entitled to the 14th Amendment's due
14 process protections of excessive punitive damage awards which were denied.

15
16 The order for judgment as created by the Humphreys counsel and signed by David
17 Chaffee (Exhibit [B]) is an order requiring Mr. Bereki pay the Humphreys “Damages” in the
18 amount to \$848,000. It fails to reflect that the actual punishment imposed on Mr. Bereki is
19 \$930,000. Also See The Judicial Council of California Civil Jury Instruction, CACI §4561,
20 which states “4561 Damages – All Payments Made To Unlicensed Contractor.”

21
22 A punitive damages award pursuant to CACI §3941 and Civil Code §3294 requires there
23 to be evidence of harm, fraud, oppression, or malice, which are also nowhere on the
24 record of this case. (Refer to Mr. Bereki's Declaration In Support).

25
26 *“This Court has long made clear that “[p]unitive damages may properly be imposed to*
27 *further a State's legitimate interests in punishing unlawful conduct and deterring its*
28 *repetition.” BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996). (Citations). *At*
29 *the same time, we have emphasized the need to avoid an arbitrary determination of an*
award's amount. Unless a State insists upon proper standards that will cabin the jury's

1 *discretionary authority, its punitive damages system may deprive a defendant of "fair*
2 *notice ... of the severity of the penalty that a State may impose," BMW, supra, at 574; it*
3 *may threaten "arbitrary punishments," i.e., punishments that reflect not an "application of*
4 *law" but "a decisionmaker's caprice," State Farm, supra, at 416, 418 (internal quotation*
5 *marks omitted).*

6
7 The judgment in this case is clearly an "arbitrary punishment" not supported in
8 Constitutional Law. Mr. Bereki has clearly been deprived of fair notice of the penalty
9 imposed upon him. Additionally, the judgment bears no rational relation to the offense or
10 comparable civil and criminal penalties rendering it cruel and unusual if not excessive
11 punishment. In combination with Business and Professions Code §7071.17 requiring a
12 suspension revocation of any license for failure to pay the award without a hearing, it
13 punishes Mr. Bereki by depriving him of the opportunity to earn a living in his trade using
14 his inherent talents and abilities without due process.

15 Both the trial and appellate Courts denied Mr. Bereki the constitutional protections of due
16 process requiring a fair and impartial hearing and correct application of law to the facts of
17 the case. They Courts further denied him the protections of excessive punitive damage
18 awards thereby inflicting punishment upon him while depriving him of a judicial hearing.
19 *Windsor v. McVeigh*, 93 U.S. 274 (1876). The infliction of punishment of this severe,
20 excessive, and criminal nature without a judicial hearing is a Bill of Pains and Penalties in
21 violation of Article 1, 10. *Cummings v. Missouri*, 71 U.S. 4 Wall. 277 277 (1867).
22 Furthermore, Mr. Bereki was also deprived of the heightened due process protections
23 afforded in criminal or quasi-cimrinal proceedings and fair notice. His property was
24 ordered seized arbitrarily without due process and without just compensation.
25
26
27
28
29

1 II. The doctrine of res judicata is inapplicable to void judgments.

2
3 The Humphreys Opposition claims the arguments raised in Mr. Bereki's Motion are res
4 judicata.

5
6 This is fundamentally false and not supported by law. [**"The doctrine of res judicata is**
7 **inapplicable to void judgments.**] *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal.
8 App. 4th 1228, 1239, (1988). The purported "judgments" rendered and affirmed in this
9 case are void because they violate numerous protections afforded by the Constitution for
10 the United States as evidenced in this Motion and the record of this case. [*"A Court of*
11 *California does not have jurisdiction to render judgment which violates the California*
12 *Constitution or the Constitution for the United States."*] *Tillet, supra*.

13
14 [**"A void judgment is, in effect, no judgment.** By it no rights are divested; from it no
15 rights can be obtained. Being worthless itself, all proceedings founded upon it are equally
16 worthless. It neither bars nor binds anyone."] *Bennett v Wilson*, 133 Cal. 379, 383 (1901).
17 [*"Obviously a judgment, though final and on the merits, has no binding force and is*
18 *subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or*
19 *person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud."*]
20 *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239, (1988).

21
22 Generally, res judicata is the principle that a cause of action may not be relitigated once it
23 has been judged on the merits.

24
25 THERE IS NO RELITIGATION TAKING PLACE HERE AS THIS MATTER HAS NEVER
26 BEEN LITIGATED COMMENSURATE WITH DUE PROCESS OR ON THE MERITS TO
27 BEGIN WITH.

28
29 No hearing which recognized Mr. Bereki's Constitutionally protected Rights has taken
place and fraud has been committed upon the Court.

1 Courts derive their jurisdiction from the Constitution: [*"Jurisdiction in any proceeding is*
2 *conferred by law; that is, by the Constitution or by statute."*] *In re Marriage of Jensen*, 114
3 Cal. App. 4th 587, 593 (2003). [*"As regards all courts of the United States inferior to this*
4 *tribunal, two things are necessary to create jurisdiction, whether original or appellate. The*
5 *Constitution must have given to the court the capacity to take it, and an act of Congress*
6 *must have supplied it. Their concurrence is necessary to vest it. . . . It can be brought into*
7 *activity in no other way. . . ."*] *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

8
9 Therefore, a Judge cannot violate due process by denying a litigant constitutional
10 protections then claim to have jurisdiction over the subject matter when the Constitution
11 forbids the behavior taken by the Judge and unambiguously binds Judges to its
12 provisions.

13
14 The Constitution, at Article 6, Section 2, known as the "supremacy clause", declares:
15 "*This Constitution, and the Laws of the United States which shall be made in Pursuance*
16 *thereof...shall be the supreme Law of the Land; **and the Judges in every State shall be***
17 ***bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary*
18 *notwithstanding."* (**emphasis** added).

19
20 Furthermore, the Oath of Office of every of alleged "Judge" and "Justice" handling this
21 case states "*I, _____, do solemnly swear (or affirm) that I will support and defend the*
22 *Constitution of the United States and the Constitution of the State of California against all*
23 *enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution*
24 *of the United States and the Constitution of the State of California; that I take this*
25 *obligation freely, without any mental reservation or purpose of evasion; and that I will well*
26 *and faithfully discharge the duties upon which I am about to enter...."*

27 Mr. Bissell was also required to take a similar Oath to Support the State and Federal
28 Constitutions pursuant to Business and Professions Code §6067. He is also duty bound
29 by B&P Code §6068(a) "*To support the Constitution and laws of the United States...*".

1 If one is actively engaged in violating the Constitution for the United States he or she can't
2 very well be supporting or defending it. Those activities are mutually exclusive. And if one
3 violates an Oath of Office, one is not effectively in office. In the case of a Judge or Justice,
4 one is "coram non judice" or not a judge because it is not a judicial act to violate the
5 Constitution. [*"Actus judiciarius coram non judice irritus habetur. (A judicial act outside of*
6 *the Judge's authority is null and void.)"*] Gibson, Henry R. *A Treatise on Suits in Chancery*
7 *2nd Ed. 1907, §61 Maxims Applicable To The Court.*

8
9 "A judgement is void on its face if the court which rendered the judgement lacked
10 personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which it
11 had no power to grant." Tillett, supra.

12
13 No other Court has heard this case on the merits. No Court has rendered or affirmed any
14 judgment which isn't void and upon which it could be held 'res judicata'.

15
16 This Court has a non-discretionary duty to vacate the void judgments in this case. [*"And,*
17 *where evidence is admitted without objection that shows the existence of the invalidity of*
18 *a judgment or order valid on its face, it is the duty of the court to declare the judgment or*
19 *order void."* *County of San Diego v. Gorham*, 186 Cal. App. 4th 1215, 1229 (2010).

20
21 "A court may set aside a void order at any time. An appeal will not prevent the court from
22 at any time lopping off what has been termed a dead limb on the judicial tree— a void
23 order". *MacMillan Petroleum Corp. v Griffin*, 99 Cal. App. 2d 523, 533. "Judgments void
24 on their face may be set aside at any time." *In re Dahnke's Estate & Guardianship*, 64 CA
25 555, 560-561 (1923). See also Code of Civil Procedure §1916: "Any judicial record may
26 be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of
27 collusion between the parties, or of fraud in the party offering the record, in respect to the
28 proceedings".
29

1 *The Estate of Buchman*, 123 Cal. App. 2d 546, 549 (1954) aptly summarizes the
2 abomination of justice that has transpired in this case:

3
4 *"The fundamental conception of a court of justice is condemnation only after notice*
5 *and hearing. **No one may be deprived of anything which is his to enjoy until he***
6 ***shall have been divested thereof by and according to law.** Under the constitutional*
7 *guaranties no right of an individual, valuable to him pecuniarily or otherwise can be*
8 *justly taken away without its being done conformably to the principles of justice which*
9 *afford due process of law, unless the law constitutionally otherwise provides. **Due***
10 ***process of law does not mean according to the whim, caprice, or will of a judge***
11 *(citations); **it means according to law.** It excludes all arbitrary dealings with persons*
12 *or property. It shuts out all interference not according to established principles of*
13 *justice, one of them being the right and opportunity for a hearing: to cross-examine, to*
14 *meet opposing evidence, and to oppose with evidence. (citation)*

15
16 *Judicial absolutism is not a part of the American way of life. The odious doctrine that*
17 *the end justifies the means does not prevail in our system for the administration of*
18 *justice. The power vested in a judge is to hear and determine, not to determine*
19 *without hearing. **When the Constitution requires a hearing, it requires a fair one,***
20 ***one before a tribunal which meets established standards of procedure.** It is not*
21 *for nothing that most of the provisions of the Bill of Rights have to do with matters of*
22 *procedure. Procedure is the fair, orderly, and deliberate method by which matters are*
23 *litigated. **To judge in a contested proceeding implies** the hearing of evidence from*
24 *both sides in open court, a comparison of the merits of the evidence of each side, a*
25 *conclusion from the evidence of where the truth lies, **application of the appropriate***
26 ***laws to the facts found,** and the rendition of a judgment accordingly. The*
27 *constitutional right to notice and hearing cannot be taken away in the fashion that was*
28 *attempted in the present case. The judge's conception of his duty was entirely*
29 *erroneous. The plainest principles of justice required that appellant be given notice of*
the specific charges against him. No notice was given him...

[Mr. Bereki] was not only not accorded a just, fair, and impartial hearing; he was not accorded the right or opportunity of any hearing...In short, he was denied due process of law."

CONCLUSION

In conclusion, the Humphreys, acting in concert with the trial and appellate Courts have violated due process of law to unlawfully deprive Mr. Bereki of his property. Therefore, this Court does not have jurisdiction to award the Humphreys costs on appeal and has a duty to vacate the void judgments in this case.

A punitive forfeiture of \$930,000 is 186 TIMES the comparable criminal or civil penalties for contracting without a license. It is more than ninety times the monetary penalty for an act of treason against our country, and more than twenty-six times Petitioner's net worth. If affirmed it will force Petitioner into insolvency as a bankrupt arbitrarily divesting him of all money and property within his qualifying life estate. It is hard to imagine any ordinary sane person who would not believe a judgment of this nature to be punitive, cruel, unusual, excessive, subject to the protections of criminal proceedings, and fundamentally unfair.

"Despite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion"). To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property. Haslip, supra, at 42 (O'CONNOR, J., dissenting) ("Punitive damages are a powerful weapon. Imposed wisely and with restraint, they have the potential to advance legitimate state interests. Imposed indiscriminately, however, they have a devastating potential for harm." State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408 (2003)

1 "The purpose of punitive damages is not served by financially destroying a defendant. The
2 purpose is to deter, not destroy." *Rufo v Simpson*, 86 Cal. App. 4 573, 620 (2001)

3
4
5
6
7
8 Date:

3/11/19



adam alan bereki

In Propria Persona

EXHIBIT [G]

Declaration of adam alan bereki

I, adam alan bereki, declare:

I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration. If called upon to testify, I could and would competently testify to the following:

All references to Exhibits in this declaration are to the Exhibits lettered [A-F] annexed to the Notice of Motion and Motion to Vacate Void Judgment filed by me on 2/19/19. Exhibits [A-E] are true and correct copies of documents filed on the record of this case or on appeal under case number G055075.

As a self-represented party, I am very familiar with the record of this case.

I was present during the entire bench trial in this case which took place on March 27-28, 2017 and witnessed the testimony and other evidence admitted to the record.

It is my understanding that the judgments of a Court are to be fair and impartial and based upon application of the law to the facts admitted as evidence. I am unaware of any evidence on the record of this case that I gained or profited \$848,000 from the alleged agreement the trial Court determined I entered into with Karen and Gary Humphreys in this matter.

I have reviewed the trial Court's Minute Order rendering judgment in the Humphreys favor (Exhibit [C]) as well as the order for judgment created by William Bissell and signed by David Chaffee (Exhibit [B]). I believe these documents (and all others based upon them) to be fraudulent because they are not supported by any evidence on the record of this case that I gained or profited \$848,000 to substantiate the findings by the trial and appellate

Courts of “non-punitive restitutionary disgorgement” as I use these terms in the Motion To Vacate Judgment and Reply To Opposition in this Motion.

The appellate Court’s opinion states the following, clearly evidencing the trial Court’s award was not based on what I gained or profited, but on the entire amount the Humphreys paid my company, Spartan, and I: *[“Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them **all monies received in relation to the remodel work-** \$848,000.”] Exhibit [A]- Opinion p.2, Fourth District Court of Appeal, G055075. (**emphasis** added). See also p8 *[“Full disgorgement is required; offsets and reductions for labor and materials are not permitted.”]* p2 *[“Among the remedies they sought [the Humphreys] was disgorgement of all payments made for the project.”]**

Upon further examination of Exhibit [B], I noticed it also fails to reflect the actual punishment imposed upon me which was ordered by the trial Court by denying Spartan’s claim and finding I was the unlicensed contractor. This resulted in an additional approx. \$82,000 forfeiture.

It is my understanding that the judgments of a Court are to be fair and impartial and based upon application of the law to the facts admitted as evidence. I am unaware of any evidence on the record of this case admitted at trial whereby I caused Karen and Gary Humphreys any harm by fraud, oppression, or malice to support the award of punitive damages and/or other punishment against me as declared as “Damages” on Exhibit [B].

It is my understanding that the judgments of a Court are to be fair and impartial and based upon application of the law to the facts admitted as evidence. I am unaware of any evidence on the record of this case (or any other) that support a lawful legislative or judicial determination that I am “incompetent or dishonest” and therefore caused harm to the Humphreys.

It is my understanding that the judgments of a Court are to be fair and impartial and based upon application of the law to the facts admitted as evidence. I am unaware of any evidence on the record of this case admitted at trial whereby neither I (as the alleged unlicensed contractor) nor my company, Spartan, did not return value to the Humphreys in the form of remodel construction services to them as stated by the Arizona Supreme Court in *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466 (2008): [*"We find no significant difference between returning cash, one form of value, and returning other forms of value, such as permits, chattels, services, or other property. (Citation). "Loss" is a concept rooted in value, not solely in the exchange of money."*]

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed this 11th day of March, 2019 at Costa Mesa, California.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a long, sweeping horizontal stroke that ends in a small loop.

adam alan bereki

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: in propria persona NAME: adam alan bereki FIRM NAME: STREET ADDRESS: 818 Spirit CITY: Costa Mesa STATE: Ca ZIP CODE: [92626] TELEPHONE NO.: 949.241.6693 FAX NO.: E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (name):		FOR COURT USE ONLY CASE NUMBER: 30-2015-00805807 JUDICIAL OFFICER: Di Cesare DEPARTMENT: C-16
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center		
PLAINTIFF/PETITIONER: The Spartan Associates, Inc. DEFENDANT/RESPONDENT: Karen and Gary Humphreys		
PROOF OF ELECTRONIC SERVICE		

1. I am at least 18 years old.

a. My residence or business address is (specify):
818 Spirit Costa Mesa, California [92626]

b. My electronic service address is (specify):
abereki@gmail.com

2. I electronically served the following documents (exact titles):
Reply To Opposition

☐ The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:

a. Name of person served: William Bissell/ Scott Russo/ Carlos Sosa

On behalf of (name or names of parties represented, if person served is an attorney):
Karen and Gary Humphreys/ The Spartan Associates Inc./ Sure Tec Insurance

b. Electronic service address of person served :
wbissell@wgb-law.com/srusso@russoandduckworth.com/bmorales@hausmansosa.com

c. On (date): 03/11/19

☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
(Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: 03/11/19

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

adam bereki

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)