Appeal No. G055075

In the California Court of Appeal
Fourth Appellate District, Division Three

Adam Bereki
Defendant below and Appellant

v

Karen and Gary Humphreys
Plaintiffs below and Respondents

Appeal from the Superior Court County of Orange
Case No. 30-2015-00805807
Hon. David Chaffee

APPELLANTS REPLY BRIEF

Adam Bereki
In Propria Persona
818 Spirit
Costa Mesa, California
949.241.6693
abereki@gmail.com

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INTRODUCTION

The heart of this appeal is to present a challenge to the jurisdiction of the proceedings of the trial court. As such, it is mandatory for Respondents to submit the factual sufficiency of their claim showing the court had the requisite jurisdiction over the subject matter to process their claim and award judgement against Adam Bereki.

Respondents failed to prove each element of their claim. Therefore the trial court did NOT have jurisdiction over the subject matter and had a non-discretionary duty to dismiss Respondents claim but failed to resulting in a void judgment.

Respondents also committed fraud and/or fraud on the court in their attempts to procure jurisdiction along with multiple violations of due process.

As a result, this court should vacate the void judgement in this case for want of subject matter jurisdiction, fraud and/or fraud on the court, and violations of due and judicial process thereby dismissing all of Respondents claims in 30-2015-00805807 with prejudice.

I. RESPONDENTS COMMITTED AND/OR CONSPIRED TO COMMIT FRAUD ON THE TRIAL COURT AND ARE MISREPRESENTING FACTS TO THIS APPELLATE COURT

[In response to RRB Argument 1]

"No fraud is more odious than an attempt to subvert the administration of justice."[1]

What will continue to be evidenced is Respondents and their Counsel have engaged in fraudulent misrepresentation and manipulation of the Trail Court and now this Appellate Court to gain a civil advantage by taking Adam's money and property with the intent of denying his Rights to due and judicial process and committing violations of criminal law.

"No man has a good enough memory to make a successful liar."
-Abraham Lincoln

A. EVIDENCE OF FRAUD AND FRAUD ON THE COURT IS ADMISSIBLE ON APPEAL

Despite being confronted with the allegations of fraud in AOB, Respondents offer no challenges or denials to the validity of their documents and the representations to the court contained therein.

The bellwether US Supreme Court Case involving fraud on the court is Hazel–Atlas Glass Co. v Hartford–Empire Co., 322 US 238, "Hazel", which held Respondents may NOT be heard to dispute the effectiveness, nor to dispute the truth of their [Motions] (changed from "article").

[1] Hazel, infra, Mr. Justice Roberts

Had Respondents challenged the validity of their documents and representations they *may* have been entitled to a hearing on this issue. But the fact is, they didn't.

The defense Respondents claim is inadmissibility on appeal regarding Appellants timeliness of raising this issue. Hazel speaks poignantly to this matter of timeliness as well:

> "Even if [Appellant] failed to exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved."

The following has been slightly adapted from the Hazel decision as it pertains to the instant case:

> Here, even if we consider nothing but [Respondents] sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only [Adam Bereki], but the [Superior Court of the State of California]. Proof of the scheme, and of its complete success up to date, is conclusive. We cannot easily understand how, under the admitted facts, [Appellant] should have been expected to do more than it did to uncover the fraud.[2] But even if [Appellant] did not exercise the highest degree of diligence, [Respondents] fraud cannot be condoned for that reason alone.
>
> This matter does not concern only private parties. There are issues of great moment to the public in a [regulatory suit] (citations omitted). Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public

[2] The Trial Court has a NON-DISCRETIONARY duty to examine the record at all times.

welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

[The "trial court" also engaged in acts of fraud on the court, see Appellant's Motion to Consider New Evidence, "MCNE".

[Respondents] and their lawyer thought the [Motion For Summary Judgment] was material. They conceived it in an effort to persuade [the trial court], and went to considerable trouble and expense to get it [admitted]…They are in no position now to dispute its effectiveness. Neither should they now be permitted to escape the consequences. **Truth needs no disguise.** The MSJ should stand or fall under the only title it can honestly can be given -- that of a brief seeking judgment on behalf of Respondents in their favor, prepared by Respondents attorneys. (emphasis added)

See also Civil Code of Procedure 128.7(b) regarding representations to the Court which must be to the best of the person's knowledge, information, and belief. These representations were each signed by William Bissell in representation of his clients.

Furthermore, Mr. Bissell, has sworn an Oath to our State and Federal Constitutions to faithfully discharge his duties as an attorney which include:

(a) to support the Constitution and laws of the united States and of this State,
(b) to maintain the respect due to the courts of justice and judicial officers,
(c) to counsel or maintain those actions, proceedings, or defenses only as appear to him legal or just..
(d) to employ, for the purpose of maintaining the cases confided to him or her those means only as are consistent with truth, and

> never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.[3]

Furthermore, California Rules of Court, Rule 9.4 requires the following Oath of an attorney: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity."

These heinous deprivations of due and judicial process, foundational to our system of ordered liberty involve a member of the bar repeatedly breaching his duties as an officer of the court and in the commission of criminal acts. See Lugar v Edmundson Oil Co. Inc. 457 US 922 (1982):

> The statutory scheme obviously is the product of state action, and a private party's joint participation with the state officials in the seizure of disputed property is sufficient to characterize that party as a "state actor"… Respondents were, therefore, acting under color of state law in participating in the deprivation of [Appellant's] property. See also 42 USC 1983.

B. MISREPRESENTATION OF FACTS TO APPEAL COURT

Recall at trial Respondents testified under oath to having contracted with Adam Bereki **and** Glenn Overley (RT 86– 6, 40– 4).

In Respondents Reply Brief (RRB Page 7- end of 2nd paragraph) they represent to ***this*** Court they terminated *only* Mr. Bereki (not Spartan or Glenn Overley).

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[3] Business & Professions Codes §6067 and §6068

Referring back to Respondents Sworn Declaration in their Motion For Summary Judgment, hereafter "MSJ", (CT 254, 11):

> "On about August 28, 2013, my wife and I terminated Mr. Bereki and Spartan from our condominium project."

Examine EXHIBIT [38]. It is dated August 28, 2013, the same date referenced above in Respondents declaration. The only entity terminated by this document is "The Spartan Associates, Inc."

Adam Bereki did NOT receive a similar notice as a separate entity and neither did Glenn Overley (See EXHIBIT [A2]–Declaration of Glenn Overley, MCNE.

Adam Bereki and Glenn Overley were never terminated for an agreement they never entered into.

C. ADDITIONAL EVIDENCE OF FRAUD AND FRAUD ON THE TRIAL COURT

Mrs. Humphreys stated at (RT 43, 6-8) she was never presented with any type of agreement with Spartan Associates, Inc. on this project. She also stated at (RT 52, 11–23) she wasn't working with Adam Bereki on any plans in August of 2013. And that she didn't enter into an agreement with the Spartan Associates (RT 46–2).

Respondent's counsel stated at (RT Vol. 2, 3, 6–9):

> "There simply was no other contract. There was no contract at any time proposed, offered, suggested by Spartan Associates and the Humphreys or proposed to the Humphreys."

Counsel was referring to email EXHIBIT [303] being the only "agreement" between the parties (RT Vol. 2, 2-22)

Refer to EXHIBIT [31]– the Interior and Exterior Design Presentation created by Spartan for 436 Via Lido.

"Spartan Construction" and it's logo are on every single page of this agreement which illustrates in no uncertain terms the interior and exterior design elements of the project, including the finishes, construction details, and furnishings Respondents agreed to with Spartan. It contains agreements on everything from roofing tile specifications to stucco finishes, to the construction of custom kitchen and bath cabinets and countertops.

Refer to pages 31-49 thru 31-70 which exhibits items Respondents have "APPROVED" or "NOT APPROVED" for their project.

Refer to EXHIBIT [A3], MCNE. These EXHIBITS are emails that occurred on August 3rd,5th and 8th, 2013 regarding these specific design considerations that occurred between Adam Bereki on behalf of Spartan and Respondents, namely Mrs. Humphreys. EXHIBIT [A3-3] from Karen Humphreys states "We approve of all of the selections…"

(1)These emails evidence Karen was indeed working on plans with Adam Bereki during the month of August 2013, that she had in fact been presented with agreements by Spartan, that she agreed to. (2) Contrary to Bissell's representations, other agreements did in fact exist between Spartan and the Humphreys.

EXHIBITS [A3-4] thru [A3-13] (MCNE) are yet another presentation created and offered by Spartan which was incorporated into EXHIBIT [31]. Mrs. Humphreys, on August 22, 2013 states: "I have reviewed your recommendations and approved some and made some recs of my own", EXHIBIT [A3-14]

Clearly Mrs. Humphreys had in fact been presented with agreements by Spartan and was in fact working on plans in August of 2013.

And clearly, contrary to Mr. Bissell's fraudulent statements to the court, there were in fact other agreements between Spartan and Respondents.

D. RESPONDENTS REPLY TO ALLEGATIONS OF FRAUD

In defense of Adam's claims of fraud and/or fraud on the court RRB claims there were no false or misleading statements made to the trial Court. (Really?)

RRB cites their declarations wherein at (CT 251 and 273, Line 15), they state they entered into an oral agreement with Adam Bereki.

The next statement however, at Line 20 states: "…agreement we had entered into with Mr. Bereki and/or his corporation, The Spartan Associates, Inc."

RRB (Page 15, 3rd paragraph last sentence) claims these declaration statements represent their testimony at trial in that they contracted with Adam Bereki **and** Glenn Overley. Yet Mr. Overley is NOT mentioned anywhere in their MSJ.

Respondents claim to have contracted with Mr. Overley whom they never met or had any communication with and whose deposition they never took and failed to join as a party in this lawsuit? (CT 84-9)

Furthermore, this is the same declaration mentioned above wherein they claimed they "terminated Adam Bereki and Spartan", not Glenn Overley.

E. PRIOR REPRESENTATIONS OF UNDISPUTED FACTS

JUDICIAL ESTOPPEL

What is found throughout Respondents pleadings and their testimony at trial is that who they contracted with changes in context to whatever argument they make before the court so the court will rule in their favor as opposed to what's actually true. This is not fundamental fairness, also known as "due process". It is an abuse of process, and in this case, fraud on the court primarily orchestrated by Respondents ~~shyster~~[4], err lawyer with whom they conspired.

Respondents have a tremendous motivation to manipulate or alter the truth here. That motivation is to obtain a windfall of more than $848,000 by testifying they had never contracted with Spartan. There scheme was to manipulate their testimony to deceive the Trial Court thereby fraudulently establishing the elements of a violation of §7031.

Their scheme was successful. Judgment was awarded in their favor. The Court relied on their testimony.

Both Karen and Gary Humphreys testified at trial their agreement had been exclusively with "Adam Bereki and Glenn Overley". (RT 86– 6, 40– 4)

The problem here is that this testimony conflicts with their Motion For Summary Judgment wherein they claimed the *undisputed facts* were that they had in fact contracted with Spartan (CT 232):

> "This motion is made on the ground that the undisputed facts establish each element necessary for [Respondents] to prevail upon each cause of action… "Those material facts which are undisputed are":

[4] A person, especially a lawyer who uses unscrupulous, fraudulent, or deceptive methods in business.

"In April of 2012, The Spartan Associates, Inc. entered into an agreement with the Humphreys for the performance of home improvement work on the Humphreys condominium unit.

The Home improvement work to be ***performed*** by The Spartan Associates, Inc. on the Humphryes condominium unit had a value in excess of $500.

The agreement entered into between Spartan and the Humphreys for the home improvement work on the Humphreys condominium unit…

At (CT 237, 8) they stated:

This action was commenced by The Spartan Associates, Inc., the general contractor on the project….[5]

At (CT 241,11) they refer back to the Statement of Undisputed Facts whereby:

"As is set forth in more detail in the separate Statement of Undisputed Facts, plaintiff Spartan, in contracting with Defendants…

Then at (CT 245, 25):

"At all times relevant to this action, Spartan was a licensed contractor. As such the services to be performed by it under

[5]Throughout the remainder of the Memorandum they then combine Adam and Spartan as "Spartan".

agreement with [Respondents] for home improvement work were not illegal."[6]

These representations of *undisputed* facts of having contracted with Spartan were not only in their original Motion, but also in their Reply to Spartan's Opposition where they stated:

"Plaintiff Spartan Associates Inc. (Spartan)..... both in contracting with the the Humphreys for the renovation work for their condominium units… and in the **performance of that work.**" (CT 413, 3)

What's evidenced here is not only that Respondents contracted with Spartan, but that Spartan performed the work.

The intent of Respondents Motion For Summary Judgment was to convince the Court they contracted with Spartan, *not* "Adam Bereki and Glenn Overley". And that since Spartan *allegedly* failed to comply with the requirements of a "home improvement contract" their agreement was void and entitled them to award of Summary Judgment.

At trial Respondents then took the *opposite* position to support their new cause of action for disgorgement based on fraud and misrepresentation.

See Evidence Code §623: Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon

[6] The MSJ repeatedly refers to both an oral agreement and the email which, although not dated, appears to be the email of April 5, 2012, EXHIBIT [303]. This is the same email Respondents testified at trial was representative of their agreement only with Adam Bereki and Glenn Overley, yet in their Motion is claimed to be the agreement with Spartan.

such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.[7]

The Court ultimately denied Respondents Motion For Summary Judgment having failed to prove their claim that a violation of §7159 BPC entitled them to summary judgment.

In examining the Court's denial found in the Minute Order at CT 477, it is abundantly clear the Court believed Respondents had in fact formed an agreement with Spartan. The court first considered whether Spartan – a Corporation in the process of dissolution – could even state a valid claim. It determined it could. The court was clearly considering this matter because Respondents represented they had contracted with Spartan. The matter of Spartan's in–progress–dissolution would be very relevant to that issue. On the contrary, if there were never an agreement with Spartan this issue would be moot and their MSJ would obviously have taken an *entirely different* course with opposite representations.

The court also concluded that Respondents terminated Spartan (CT 477, last sentence) as a result of it's finding there was an agreement upon which Spartan could be terminated (although not directly stating so).

Nowhere in the Minute Order is there any consideration given to an agreement with Adam Bereki or Glenn Overley or their termination.

The Minute Order never mentions Adam Bereki or Glenn Overley at all.

Respondents entire MSJ also never mentions Glenn Overley

[7] Without jurisdiction, a court lacks discretion, Piper v Pearson 68 Mass. 120 (Supreme Ct.)

Respondents went to considerable trouble and expense in their MSJ to convince the trial Court of the undisputed facts they had contracted with Spartan so the court would adjudicate their claim in their favor and were barred from asserting counter facts at trial.

F. FRAUD EFFECTS JURSIDICTION

Fraud effects the jurisdiction of the trial court. A crime cannot be committed in the procurement of jurisdiction.

It should also be noted fraud on the court is NOT a specific intent crime. All that need be evidenced is that false or misleading statements were made which the court relied on it is judgment.

With further regard to the issue of "timeliness", Respondents presented no evidence Adam has been untimely. In fact, the trial Court record reflects four separate challenges to the trial court's jurisdiction ignored by Respondents and the "Court" wherein they were required to the submit the factual sufficiency of their claim (one specifically not based on fraud) but defaulted. See AOB, Pages 59-63 & MCNE.

In three instances there is no reply in the record, nor even a signed order from the court as to the reason(s) for denials of hearings on any of these Motions. If these Motions were not properly presented to the Court, the Court had a duty to inform Adam EXACTLY what he needed to do to correct them, but clearly failed to. See Haines v Kerner, supra, Platsky v Cia, supra, and Nashville RR v Wallace, supra (AOB Page 60). The Court instead, like Respondents, just ignored Adam.

On 9/20/17 Adam sent Respondents counsel, William Bissell, an email offering to meet and confer on the jurisdictional challenge issue (CT 1445).

Mr. Bissell replied: “Thank you for your clarification and the opportunity to avoid the trouble that may befall me as a result of the trial conducted in this matter… I suppose I (and I guess Judge Chaffee as well) will just have to take my chances that the court will have the same view of your argument as I do.”

Respondents have been given five opportunities to state a valid claim on which relief can be granted and have failed to do so. Five strikes and they’re out.

It should further be recognized that on Adam’s third jurisdictional challenge, the Motion to Compel the Bill of Particulars (CT 1160) Respondents sought and were awarded sanctions against Adam for “abuse of discovery” (CT 1460) while still failing to respond to the jurisdictional challenge specifically designed to elicit that response. This is an unconscionable violation of due process and bullying on the part of Respondents counsel and the “Court”.

While a court can order a pro se litigant to pay legal fees, (citations omitted) the court must adequately warn the pro se litigant before imposing such an order. (citations omitted) In addition, "[l]ack of meritorious claims alone does not warrant . . . sanctions, especially if a plaintiff is proceeding *pro se*."(citations omitted) Cai v. Frequency Networks, Inc., 2017 U.S. Dist. LEXIS 182794

CONCLUSION

This court should vacate the void judgement issued by the trial court as well as Respondents other claims with prejudice for the commission of fraud and/or fraud on the court resulting in jurisdictional defects in this case.

Also of relevance are the crimes of §470PC- creation of false judicial records (order for judgment knowingly based on fraud (CT 967), §459PC– entering the courthouse with the intent to commit grand or petty theft of any felony (§550), §115PC– knowingly filing order for

judgment and costs based on fraud (CT 971, 1005, 1010), and 18 USC 876– using United States Mail for the commission of crimes– mailing fraudulent orders for judgment (CT 1008, 1016 et al indicating proof of service by United States Mail to Adam Bereki at 818 Spirit Costa Mesa CA 92626.

Respondents are correct, this issue should be reviewed by the substantial evidence standard. AOB should be amended to reflect this change.

II. RESPONDENTS CLAIMS WERE VOID ABINITIO FOR FRAUD

[In response to RRB Argument 1]

At trial, Respondent Gary Humphreys was asked by his counsel (RT 86– 25):

> Q: Was there any point during Mr. Bereki's involvement in this project in which you thought that you had contracted with Spartan Construction?
>
> A: No.

Karen Humphreys was asked a similar question:

> Did you ever enter into any agreement with Spartan Associates on this project?
>
> She replied: "No."
> (RT 42– 26, 46-2, 66-8)

In their cross-complaint Respondents sued Spartan and it's bonding companies, Suretec and Old Republic Surety [CT 206–207], to collect on $25,000 in surety bonds despite swearing under oath at trial they believed there was never any agreement with Spartan to perform construction services.

Penal Code §550 makes the following a felony:

> (1) Knowingly present or cause to be presented <u>any false or fraudulent *claim* for the payment of a loss or injury</u>, including payment of a loss or injury under a contract of insurance.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

Respondents and their counsel clearly conspired to commit and did commit these crimes by filing suit against Spartan and it's sureties with the intent of collecting the payment for losses or injuries knowing they never had any agreement with Spartan as evidenced by their sworn testimony.

In order to obtain the bonds, Adam had to personally indemnify the bonding companies which also included providing for their defense. Moreover, Suretec generated it's own internal fees which it sent Adam a bill for on October 9, 2017 pursuant to this indemnity agreement. See EXHIBIT [A1], MCNE. As a result of this personal indemnification, Respondents fraud was committed against Adam Bereki.

This court should declare Respondents claim void abinitio for fraud and refer them and their attorney to the proper authorities for prosecution and award Adam restitution for damages.

This issue should be reviewed by the substantial evidence standard.

III. THE ALLEGED SUBJECT MATTER JURISDICTION OF THIS CASE

[In response to RRB Argument 2]

The alleged Subject Matter Jurisdiction of this case consisted of two statutes– §7028 and §7031 of the Business and Professions Code. Pursuant to these authorities, Respondents had to prove (1) Adam was a "person" required to be a licensed contractor, (2) that he performed work required to be licensed; and (3) that he accepted compensation for that work.

Chapter 9. Contractors at §7025 and §7026 defines which "persons" are required to be licensed. §7068.1(c)(2) states that a "natural person" must qualify for all of the entities described in §7025. It further states that a "natural person" is notwithstanding any of the defined entities in §7025, including an "individual".

A natural person is NOT a "person" otherwise known as fiction of law as defined by §7025 required to be licensed.

Respondents failed to offer any evidence whatsoever at trial Adam was an "individual" as defined by §7025 and NOT a natural person. Competent sworn testimony evidencing Adam was a person (individual) pursuant to §7025 was required before proceeding to §7031 since §7031 applies to "persons" and NOT natural persons.

"Just as we are not liberty to seek ingenious analytical instruments to avoid giving a congressional enactment the broad scope its language and origins may require, (citations omitted), so too are we not at liberty to recast the statute to expand its application beyond the limited reach Congress gave it." Ngiraingas v Sanchez, 495 US 182 (1990).

The following sections will review the other elements of the subject matter in this case missing from Respondents proof of their claim.

IV. RESPONDENTS FAILED TO PROVE ADAM PERFORMED THE WORK

[In response to RRB Argument 2]

The trial court's application of law to the facts of this case was NOT correct as Respondents failed to prove the statutory element of their claim that Adam performed the work.

Business and Professions Code §7031 reads in relevant part:

> … "compensation paid to the unlicensed contractor for **performance** of any act or contract."

Performance of the work is an element of the offense.

There were numerous licensed contractors that performed the work on Respondents project in addition to Spartan. Other's include: Wolf Construction, Lic #487530; Oakley and Son's Electric, Lic # 690738; Wright Construction, Lic #484699; Anaheim Heating and Air, Lic #784141; Shoreline Fabricators, Lic #641234, including others. This jurisdictional argument was repeatedly made at trial.

See EXHIBIT [33] and (RT 141-8) whereby Spartan's Counsel asked Adam on behalf of Spartan:

> Q: WHO ELSE DID YOU HAVE TO HIRE FOR THIS?
>
> A: I HIRED A PLUMBER, AN ELECTRICIAN, NUMEROUS UNSKILLED WORKERS. I HIRED A FOREMAN, AN ENGINEER, AN ARCHITECT, CRANE OPERATORS, METAL FABRICATORS, PEOPLE TO RE-ALIGN THE SEWER DRAIN UNDERNEATH THE HOUSE BECAUSE IT WAS ROTTEN. OTHER PEOPLE, OTHER CARPENTERS. A CONCRETE EXPERT. A CONCRETE SUBCONTRACTOR. A FIRE SPRINKLER SUBCONTRACTOR AND PAVING SUBCONTRACTOR. THAT'S WHAT'S COMING TO MIND.

It is NOT unlawful for licensed contractors to perform work.

Spartan's Counsel asked Spartan and Adam the following question [RT Vol 1, 125-2]:

> Q: Were you ever doing any of the work in your personal capacity as opposed to on behalf of Spartan Associates?
> A: No

Spartan performed the work on the project as the general contractor, EXHIBIT [33] (RT 103-14 thru 105-14, 141-8 thru 141-16, 133-3)

Spartan was the company that paid for and obtained the building permits for the work to be performed, EXHIBIT [34] (RT 133-3).

Spartan invoiced Respondents for work it performed, EXHIBIT [18] (RT 139-17)

Spartan posted it's sign on the building as the contractor doing the work, EXHIBIT [30-1], (RT 148-19 thru 148-22)

Spartan secured and maintained the required Worker's Compensation Insurance upon which it paid its workers on the project, EXHIBIT [35], (RT 134-22)

Spartan prepared and actively engaged Respondents in the design considerations of their remodel, EXHIBIT [31] and [A3]. Specifically note the "APPROVED" or "NOT APPROVED" designations reflected throughout the presentation on Pp 31-49 thru 31-70.

Spartan individually accepted $758,000 in compensation, [EXHIBIT 32-2] (AOB 23-24)

Spartan's projects for other Humphreys family members and Gary Humphreys business were all invoiced by Spartan evidencing its repeated intent through pattern and practice to contract with the Humphreys and their businesses, EXHIBIT [39] (RT 130-3)

Where is Respondents evidence that controverts all of this evidence and/or proves Adam performed the work completed by Spartan and all of the *licensed* sub–contractors Spartan hired?

It simply doesn't exist.

In RRB (Page 22, Item 2), Respondents claim their testimony at trial evidenced the work was performed by Adam, yet failed to cite where in their testimony this occurred. The only testimony evidencing who performed the work was given by Spartan.

Referring once again to Respondents own Motion For Summary Judgment:

> The Home improvement work to be **PERFORMED** by The Spartan Associates, Inc. on the Humphryes condominium unit had a value in excess of $500. (CT 232)

> "At all times relevant to this action, Spartan was a licensed contractor. As such the SERVICES TO BE **PERFORMED** BY IT UNDER AGREEMENT WITH RESPONDENTS for home improvement work were not illegal." (CT 245, 25)

> "Plaintiff Spartan Associates Inc. (Spartan)..... both in contracting with the Humphreys for the renovation work for their condominium units… and in the **PERFORMANCE** of that work." (CT 413, 3)

RESPONDENTS COUNSEL EVEN REPRESENTED AT TRIAL THAT SPARTAN PERFORMED SOME OF THE WORK:

(RT Vol. 2, 40–18), Mr Bissell: "Now Spartan did perform work on the job."

CONCLUSION

Respondents have failed to produce any evidence to support their claim for disgorgment that Adam Bereki performed any work required to be licensed on their project. This evidence simply doesn't exist because Spartan and it's sub-contractors performed the work.

It is NOT unlawful for a licensed contractor to perform work.

What Respondents were required to do was produce a competent fact witness who could testify under oath as to: (1) EXACTLY what work Adam performed on their project, (2) when he did the work, (3) how this was independent of the work Spartan or other contractors performed, (4) that the work he did was required to be licensed, and (5) EXACTLY how much compensation he received.

The Court acted in clear absence of any factual foundation to declare Adam performed all the work and received compensation for it. It further acted without statutory authority to declare Adam had violated §7031.

This issue should be reviewed de novo.

This Court should vacate this void judgment for reason of the jurisdictional defects occurring therein.

V. PRE–LAWSUIT CORRESPONDENCE SUPPORTS APPELLANT'S CLAIMS OF FRAUD AND FRAUD ON THE COURT AND SPARTAN'S TESTIMONY THAT IT PERFORMED THE WORK

In continuing to discover evidence of the fraud perpetrated by Respondents and their counsel, Adam received the file copies of the documents in Spartan's counsels possession subsequent to trial. Therein was an initial letter between Respondents counsel and Alexander Gelman, the attorney who had initially represented Spartan. Mr. Gelman sent Mr. Bissell a letter on behalf of Spartan. Mr. Bissell replied on July 17, 2014, about one year after Spartan had been terminated (EXHIBIT [38]). The letter from Mr. Bissell is EXHIBIT [A4] in MCNE and states in relevant part:

> "**It is the Humphreys' position** that the patently negligent and fraudulent manner in which **Spartan and it's principal Mr. Bereki managed the project…**"

This letter makes it clear beyond all doubt that the Humphreys "position" was that they had an agreement with Spartan who, in connection with it's principal Adam Bereki managed their project.

Nowhere in this letter is there any denial of an agreement with Spartan which is exactly what we'd expect to find if this were true thereby supporting their sworn statements at trial.

Nowhere in this letter is there any mention of Glenn Overley or an agreement with him.

Nowhere in this letter is there any mention of having contracted with Adam Bereki separate from Spartan.

This letter supports Spartan's testimony that it was the contractor on the project. Respondents have committed fraud and their counsel fraud on the court to gain a civil advantage extorting money and property from Adam Bereki under color of law.

VI.RESPONDENTS FAILED TO PROVE ADAM RECEIVED COMPENSATION

While EXHIBIT [32-2] shows Adam did directly receive compensation, this is not a violation of §7031 if he didn't do the work. The fact that Adam may have deposited checks into his personal account when ultimately all profits flowed from Spartan to him through its S Corporation elected status is of no consequence to a cause of action for §7031.

Respondents, want us to believe that even after they failed to prove Adam did any work, that he then accepted $848,000 in compensation (RRB Page 22, Item 3). This, despite the summary they created which states in part who the payments were made to:

Extract of Checks/Wire Transfers from Humphreys to Bereki/Spartan

Check#/Wire Transfer	Date	Amount	Payee	Running Total
1. 1077	Apr. 13, 2012	$15,000	Adam Bereki	$15,000
2. 101	May 17, 2012	$15,000	Adam Bereki	$30,000
3. Wells WT	June 8, 2012	$40,000	Adam Bereki	$70,000
4. Wells WT	June22, 2012	$30,000	Adam Bereki	$100,000
5. Wells WT	July 19, 2012	$45,000	Spartan Const.	$145,000
6. 3815	Aug, 31, 2012	$30,000	Spartan Const.	$175,000
7. 140	Nov. 15, 2012	$50,000	Spartan Const.	$225,000
8. 3853	Dec. 8, 2012	$30,000	Adam Bereki	$255,000
9. 3856	Dec. 14, 2012	$30,000	Adam Bereki	$285,000
10. 3860	Dec. 31, 2012	$28,000	Adam Bereki	$313,000
11. 16657	Jan. 21, 2013	$80,000	Spartan Associates	$393,000
12. 16693	Feb. 14, 2013	$60,000	Spartan Associates	$453,000
13. 16747	Mar. 18, 2013	$75,000	Spartan Associates	$528,000
14. 16784	Apr. 15, 203	$95,000	Spartan Associates	$623,000
15. 16819	May 24, 2013	$95,000	Spartan Associates	$718,000
16. 3942	June 8, 2013	$40,000	Spartan	$758,000
17. 16904	July 31, 2013	$90,000	Spartan Associates	$848,000

Recall that after Adam asked Respondents to make their checks payable to Spartan they made several payable to him (RT 59–9, 56–20, 58–5 thru 59–8) and (Line's 8,9 above). Despite this all checks after July 19, 2012 were deposited directly into Spartan's account totaling $758,000, AOB 23-24.

Also recall that Respondents misrepresented the check on line 10 of this EXHIBIT, which was actually payable to Adam Bereki/Spartan Construction, AOB Page 23.

None of this amounts to "evidence" of Adam receiving $848,000 in compensation for work Respondents haven't established he performed.

* * *

As has also been evidenced, $495,000 of the compensation received by Spartan was from Respondents corporation, Humpreys & Associates, Inc., "H&A", that was never a party to this action. (RT 64, 3)

Respondents and their attorney have demonstrated they have serious credibility problems. It is for this reason protections are in place in Law and why H&A needed to be a party to this action so this aspect of the case could be fully investigated through discovery with witnesses and evidence confronted at trial.

The main problem here again is that H&A's payments were to Spartan, a licensed contractor, and because of this, H&A wouldn't have a claim anymore than Respondents do.

H&A however appeared at trial through Mr. Humphreys where he "testified" that H&A was in fact a sub chapter S elected corporation and that he ultimately ended up paying personal income tax on the monies it paid to Spartan. No corroborating independent evidence of these

assertions was presented. While this may or may not have happened, the monies paid during this project belonged to H&A.

Also of great significance is the fact Mrs. Humphreys testified she had NO knowledge any corporate funds had ever even been dispersed:

> Q: Isn't it true that Humpreys & Associates made some of the payments towards the construction of the lido property?
>
> A: No (RT 44, 1–12)

Nor had she ever seen EXHIBIT [32-2] (an EXHIBIT provided in discovery by Respondents) listing all the compensation, $495,000 of which had been paid The Spartan Associates, Inc.

She also had no idea Spartan had been sent a termination notice (50–16).

If Mrs. Humphreys had no idea that an additional $495,000 had been paid, how was she even competent to state a claim for $848,000?

The fact of the matter is Mr. Humphreys directed Humphreys & Associates, Inc. – a separate legal entity – to compensate Spartan for work it performed on the Lido project.

Spartan agreed to H&A's offer by depositing the checks into it's account and continuing to perform work on the project for which it continued to receive payment from H&A.

Until H&A proved by independent corroborating evidence these "loans" to the Humphreys – if that is in fact what they were? – were repaid in full, H&A remains the real party in interest and it failed to state a claim.

VII. THE TRIAL COURT DID **NOT** POSSESS THE REQUISITE SUBJECT MATTER JURISDICTION TO RENDER JUDGMENT IN THIS MATTER

At RRB (Page 25) Respondents represent the trial court had the requisite subject matter jurisdiction to render judgment in this matter and cite Richardson v Superior Court of Los Angeles County 138 Cal. App. 389, 391:

> The Superior Court is a court having jurisdiction in all civil actions and proceedings, with stated exception, and it is a court of *general* jurisdiction."

Courts of general, limited, or inferior jurisdiction have no inherent judicial power.

Courts of general, limited, or inferior jurisdiction get their jurisdiction from one source and one source only: SUFFICIENT PLEADINGS WHICH EMPOWER THE COURT TO ACT THROUGH COMPETENT SWORN TESTIMONY REGARDING AUTHENTICATED EVIDENCE.

Without pleadings sufficient to empower the court to act, that court cannot have judicial capacity.

What this means is that no court can declare it has the legal power to hear or decide cases, i.e. jurisdiction. Jurisdiction must be proved and on the record. Without sufficient pleadings, without jurisdiction, no court can issue a judgment that isn't void *ab initio.*

Even parties appearing before the United States Supreme Court must present pleadings establishing the subject matter jurisdiction of the Court, empowering it to act.

One of the clearest authorities of these jurisdictional requirements is found in the case of Buis v State, supra:

> "We recognize the district court, in our unified court system, is a court of *general* jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,"… However, this "unlimited original jurisdiction of all justiciable matters" **can only be exercised** by the district court through the filing of pleadings which are sufficient to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record. …[V]erification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it. (underlined emphasis added)

See also AOB regarding the two-sided nature of Subject Matter Jurisdiction, Page 64; and Thompson v Louisville, supra.

Additionally, failing to submit competent sworn testimony and evidence for each element of the offense deprives the court of subject matter jurisdiction to adjudicate Respondents claim in their favor.

"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be **treason** to the Constitution." Cohens v Virigina, supra.

County of Ventura v Tillett, supra:

"In a contested proceeding, no court may render judgement without conforming to the Constitutional guarantees which afford due process of law."

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

Elliott v. Lessee of Piersol, 26 U.S. 328 (1828):

Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers.

VIII. RESPONDENTS DEFAULTED ON JURISDICTIONAL CHALLENGES

It may be helpful to use different terminology to define what is meant by a jurisdictional challenge. A jurisdictional challenge in this instance means: "Hey, you haven't proved the elements of your claim. Either submit them to the record or go away. If you don't submit them to the record and the proof of your claim is missing, the court will have a non-discretionary duty to dismiss the case because it doesn't have authority (jurisdiction) to process a claim that hasn't been proven."

A judgment is void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v United States, 620 F. Supp. 892

Once jurisdiction has been challenged, it is presumed the court lacks jurisdiction unless or until the evidentiary sufficiency is proved and submitted to the record. The presumption is that a court lacks jurisdiction on a particular issue until it has been demonstrated that jurisdiction over the subject matter exists.

Subject matter jurisdiction is not per the case. Subject matter jurisdiction is per each issue. So if there are a hundred issues and one of those issues represents a jurisdictional defect, the court has lost subject matter jurisdiction.

The facts showing the existence of jurisdiction must be affirmatively in the record.

If jurisdiction is challenged the burden is on the party claiming jurisdiction to demonstrate that the court has jurisdiction over the subject matter.

The Supreme Court of the united States as well as lower courts have consistently reaffirmed the requirement that once jurisdiction is challenged, those who claim jurisdiction **must submit the evidence to prove the validity of the claim.**

Based upon Respondents failure to prove their claim, the trial Court was deprived of its judicial power to render judgment.

Where the record reveals a jurisdictional failing such as no evidence to support the claim, fraud, fraud on the court, or violations of due and judicial process, the matter is void. Court's have a non-discretionary duty to vacate void judgments meaning the court lacks judicial discretion when in comes to vacating void judgments.

This court shall notice Respondents defaulted on Appellant's Motion to Vacate (CT1466) thereby abandoning their claim against Adam Bereki.

Any challenge to the court's jurisdiction is purely an administrative proceeding wherein the court is wholly lacking in judicial discretion. Customary judicial functions are absolutely unavailable to the court. The court has but one duty: to examine the record in the instant case, and, if in the determination that the face of the record reveals so much as one jurisdictional failing or abridgment of a substantive right, the court has a non-discretionary duty to provide the relief sought, minimally including quashing the judgement order, dismissal of this action and complete exoneration of Adam Bereki.

To shift the burden onto the opposing party challenging jurisdiction or to fail to comply with the jurisdictional challenge is itself another violation of due process.

In McNutt v General Motors Acceptance Corp. 298 U.S. 178 (1936) the united States supreme Court offered the following regarding subject matter jursidiction:

Under § 5 of the Act of March 3, 1875, Jud.Code, § 37, 28 U.S.C. 80, a plaintiff in the District Court must plead the essential jurisdictional facts and must carry throughout the litigation the burden of showing that he is properly in court; if his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof, and, even where they are not so challenged, the court may insist that the jurisdictional facts be established by a preponderance of evidence, or the case be dismissed.

[T]he act of 1875 as to the duty to dismiss to which we have referred, the burden of proof to establish that the court was vested with power to act, we think in a case like this, in the nature of things, rested upon the complainant."

The Act of 1875 prescribes a uniform rule, and there should be a consistent practice in dealing with jurisdictional questions. We think that the terms and implications of the Act leave no sufficient ground for varying rules as to the burden of proof. The prerequisites to the exercise of jurisdiction are specifically defined, and the plain import of the statute is that the District Court is vested with authority to inquire at any time whether these conditions have been met. They are conditions which must be met by the party who seeks the exercise of jurisdiction in his favor. He must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations, he has no standing. If he does make them, an inquiry into the existence of jurisdiction is obviously for the purpose of determining whether the facts support his allegations. In the nature of things, the authorized inquiry is primarily directed to the one who claims that the power of the court should be exerted in his behalf. As he is seeking relief subject to this supervision, it follows that he must **carry throughout the litigation the burden of showing that he is properly in court.** The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment, or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof. And, where they are

not so challenged, the court may still insist that the jurisdictional facts be established, or the case be dismissed, and, for that purpose, the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence. We think that only in this way may the practice of the District Courts be harmonized with the true intent of the statute which clothes them with adequate authority and imposes upon them a correlative duty.

ADMISSION OF EVIDENCE ON JURISDICTIONAL CHALLENGE

The evidence in MCNE supports the commission of crimes such as the filing of false or fraudulent claims, fraud/fraud on the court, and substantive due process violations thereby effecting the trial Court's jurisdiction to render judgement against Adam Bereki. The acceptance of evidence on a challenge to jurisdiction which supports evidence of jurisdictional defects and criminal actions is non-discretionary.

Respondents having been given repeated notice and opportunity to be heard & have repeatedly failed to submit the factual sufficiency of their claim. They insist the trial court had the requisite jurisdiction over the subject matter. Evidence already in the record along with the following EXHIBITS in MCNE undeniably substantiates otherwise.

The trial Court did not have jurisdiction over the subject matter to render judgment in Respondents favor in this case and therefore will NOT be deprived by any opportunity to examine additional evidence which exhibits this fact already on the record.

Refer to the summary of the six EXHIBITS in Appellants MCNE.

IX. APPELLANT HAS NOT WAIVED HIS RIGHT TO ATTACK THE JUDGMENT ON CONSTITUTIONAL GROUNDS

[In Response to RRB Argument 2A:]

Respondents claim (RRB Page 15) Adam has waived his Right to attack the judgment on Constitutional grounds yet provide no evidence of when, where, or how this waiver has occurred, nor that it was done knowingly, voluntarily, and intelligently, as is required by Johnson v Zerbst, supra.

They further claim (Page 16) a constitutional issue in a civil case must be raised at the earliest opportunity. This is precisely what is happening here! Especially considering Adam attended the mandatory public education system where there was no training or education in the Constitution, history, or laws of the united States that would provide him and other like situated litigants with the requisite understanding and skills to perform such a task. No evidence has been presented Adam is not presenting these issues at his first possible opportunity.

Respondents also claim (Page 16) "failure to make a timely assertion of the right before a tribunal having jurisdiction to determine it." Adam has repeatedly claimed the trial court lacked the requisite jurisdiction to even adjudicate Respondents case. As such, it had no jurisdiction to determine these issues either. Respondents have deprived the trial court of its power to act and cannot now complain of their own actions. It is they who have failed to assert a right before a tribunal having jurisdiction to determine it.

Furthermore, "A Court of this state does not have jurisdiction to render a judgment that violates the California Constitution of the Constitution for the united States". County of Ventura v Tillett, supra.

If the trial court rendered a judgment which violated our State or Federal constitutions because the statute itself was unconstitutional, this issue directly effects the trial court's jurisdiction and can be challenged at any time, including for the first time on appeal.

X. THE MATTER OF "OFFSET" IS NOT RES JUDICATA

[In response to RRB argument 2E3 Page 23:]

Respondents cite White v Cridlebraugh, "White", as having adjudicated the issue of "offset" raised in AOB Pp 29-31.

White was similar to the instant case where the court treated the Cridlebraugh's as corporate entities/ fictions of law, failing to recognize they were "natural persons" to whom the CSLL's did not apply.

Adam Bereki is not a fiction of law. As such, the issues presented in AOB concerning "offset" are ripe for review as a new issue before the court.

Additionally, there are no known cases where a court has ordered return of compensation paid to a licensed contractor (Spartan) by a third party (Adam Bereki). A judgment of this kind is otherwise known as robbery §211PC, grand theft §487PC or extortion §518PC.

XI. INVOKING POLICE POWERS IN CIVIL PROCEEDINGS

[In response to RRB 2C Page 17:]

Respondents argue Business & Professions Code §7031 is an appropriate and valid exercise of the State's police powers.

Has the Constitution for the united States been amended or modified by a United States Supreme Court precedent to the effect that the police powers inherent in the Constitution can be invoked by civil authority without a showing of public health, public safety, or public morality?

Respondents did not show and cannot show any act or issue of Adam Bereki affecting public health, safety, welfare, or morality lawfully invoking authority for Respondents to trespass on Adam Bereki's federally protected Right to be gainfully employed at innocent and harmless activities for lawful compensation.

XII. THE RECORD PERFECTLY REFLECTS A VOID JUDGMENT

Respondents claim Appellant has failed to perfect Rights to appeal matters occurring post judgment.

The record perfectly reflects Respondents fraud and fraud on the court, a void judgment, numerous violations of due and judicial process and other crimes. Appellant not only has a duty to report these actions but each affects the alleged jurisdiction in this case.

Every issue in the proceedings of a case on a jurisdictional challenge is fully perfected upon a challenge to jurisdiction. The court has but one duty: to examine the record, and, if in the determination that the face of the record reveals so much as one jurisdictional failing or abridgment of a substantive right, the court has a non-discretionary duty to provide the relief sought, minimally including quashing the judgement order, dismissal of the action and in this case, complete exoneration of Adam Bereki.

> Bennett v Wilson, 122 Cal. 509:
> "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, **all proceedings founded upon it are equally worthless.**

When a Notice of Appeal is filed, the trial court loses jurisdiction to do anything with the case that would affect the judgment until determination of the appeal. Portillo v. Superior Court, 10 Cal. App. 4th 1829 citing People v. Perez (1979) 23 Cal.3d 545, 554

Adam submitted a Notice of Appeal on June 13, 2017. While the court certainly had no jurisdiction to issue the order for judgement at trial, it most certainly had none to further violate due process and sanction Adam (CT 1507) for challenging it's jurisdiction upon filing a Motion

to Compel a Bill of Particulars on 8/25/17. This represents yet another jurisdictional defect in this case.

See also: Simon v. Craft, 182 U.S. 427 (1901) if there are any issues as to the *form* of Adam's motions:

> The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form.

XIII. CONSENT OF THE GOVERNED?[8]

What constitutes consent of the governed [See Declaration of Independence 1776] for any members of the dejure body politic to be regulated other than by the common law?

The Constitution for the united States [1787-1791] and the laws enacted in pursuance thereof are the supreme Law of the land.[9] It establishes a federated Republican form of government[10] based on the rule of Law and consent of governed[11] as a trust for "ourselves and our posterity" (the beneficiaries).

A Constitutional Republic which recognizes Creator Endowed Inalienable (Private) Rights as ordained and established by "We The People" in the Declaration For Independence looks like this:

Constitutional Republic

Creator

People/human beings

Constitution

Government

Public Servants

Statute Law

Corporations

[8] Co-authored with William Henshall, legal historian and leading 21st Century Constitutional Scholar

[9] Article 6, Section 2

[10] Article 4, Section 4

[11] Declaration of Independence 1776

A De Facto National Socialist Government NOT based on the rule of Law or consent of the governed otherwise referred to as a “Democracy” looks like this:

Majority Rule Democracy

X- Unk.

Majority

Government

Public Servants

Case & Statute Law

Corporations

human beings

In this illustration, a democracy ruled by the majority places the individual at the bottom, and an unknown elite, Mr. "X" at the top. The majority (or mob) elects a government to hire public "servants" who write laws primarily for the benefit of corporations. These corporations are either owned or controlled by Mr. X, a clique of the ultra-wealthy who seek to restore a two-class "feudal" society. They exercise their vast economic power so as to turn all of America into a "feudal zone". The rights of individuals occupy the lowest priority in this chain of command. Those rights often vanish over time, because democracies eventually self-destruct. The enforcement of laws within this scheme is the job of administrative tribunals, who specialize in holding individuals to the letter of all rules and regulations of the **corporate state,** no matter how arbitrary and with little if any regard for fundamental human (private) rights.[12]

In the constitutional Republic, however, the rights of individuals are supreme. Human beings delegate their sovereignty to a written contract, called a constitution, which empowers government to hire public servants to write laws primarily for the benefit of human beings. The corporations occupy the lowest priority in this chain of command, since their primary

[12] The Federal Zone, Paul Andrew Mitchell, www.supremelaw.org

objectives are to maximize the enjoyment of human rights, and to facilitate the fulfillment of individual responsibilities. The enforcement of laws within this scheme is the responsibility of sovereign individuals, who exercise their power in three arenas: the voting booth, the trial jury, and the grand jury. Without a jury verdict of "guilty", for example, no law can be enforced and no penalty exacted. The behavior of public servants is tightly restrained by contractual terms, as found in the written U.S. Constitution. Statutes and case law are created primarily to limit and define the scope and extent of public servant power.[13]

Within this scheme, Sovereigns are never subject to their own creations, and the constitutional contract is such a creation. To quote the Supreme Court, "No fiction can make a natural born subject." Milvaine v. Coxe's Lessee, 8 U.S. 598 (1808). That is to say, no fiction, be it a corporation, a statute law, or an administrative regulation, can mutate a natural born Sovereign into someone who is subject to his own creations.

In Yick Wo v Hopkins, supra the US Supreme Court stated: Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal except to the ultimate tribunal of the public judgement, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws and not of men." **For, the very idea that one man may be compelled to hold his**

[13] Id 11

life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself. (Refer to §7028 B&P as applied in this case)

And in Perry v. United States, 294 U.S. 330, 353 (1935) In the united States***, sovereignty resides in the people who act through the organs established by the Constitution. [cites omitted] The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared.

The issue of "consent of the governed" and overriding the will of the people is inextricably tied to "Ratio of Representation" or a "Quorum to do business" as guaranteed in Article 1, Section 2, Clause 3. These issues have few, if any, relevant case law decisions, making them novel and 'ripe for review'. They have great significance in the instant case.

Some of the decisions which do exist will be reviewed and distinguished, with reliance on contemporaneous, cogent and compelling authorities that paint a much different, not to mention much more meaningful picture of exactly how these important issues fit into the original intent of the Framers of the Constitution and those who ratified it.

THE ORIGINAL CONCEPT

Article I, Section 2, Clause 3 clearly and unambiguously sets forth the minimum and maximum ratio of representation in the House of Representatives, with each State admitted into "this Union" having at least one representative, and entitled to a representative for every 30,000 inhabitants of a State.

This section has NOT been amended, let alone repealed, though proponents of the so-called 14th "amendment" might take a different view. Yet even if this abomination of an "amendment" was, somehow lawfully ratified in accordance with Article V, there is NOTHING in the 14th "amendment" which speaks to this issue, save for the elimination of the 3/5th provision.

Coming to the Federalist Papers, perhaps the best reference standard of the original intent of the Framers, we find Number 56 annexed hereto as (EXHIBIT [A5].

From Federalist Papers Number 55, (EXHIBIT [A6] annexed hereto) with the irrefutable contention of Mr. Madison, the Father of the Constitution, on the subject of ratio of representation.

Of equal merit and clarity are the comments of Senator Reverdy Johnson (D-Md), a later leading Constitutional scholar and proponent of the original intent of the Framers on Ratio of Representation, appearing in 38 Congressional Globe pages 763-4, on February 9th, 1866, which are incorporated by reference as though fully set forth herein.

From his Commentaries on the Constitution, Joseph Story, a Justice on the supreme Court for 30 years and a leading contemporaneous authority on the Constitution, are the excerpts found in EXHIBIT [A7] annexed hereto.

Early history, at least thru the census of 1850, shows that Congress made a good faith attempt to adhere to the provisions of I-2-3 and its upper limit of one representative per 30,000 inhabitants.

Like so many areas of American law, I-2-3 was very negatively affected, most especially by the serpentine, sphincteresque shenanigans of the renegade, runaway, radical republican 39th

Congress, changes which have affected the ratio of representation and, very arguably, ALL 6 Articles of the Constitution for the united States to the present day.
Indeed, the situation was so bad in 1870, that a population of almost 39 million people had but 291 Representatives in the House, when the Constitutionally mandated amount would have been close to 1300 !!

Accordingly, even at this time, elementary math, understandable by even 2nd and 3rd Graders, would establish that 22% of what should have been the total amount of Representatives in the House could in NO way, shape, or form constitute a quorum to do any business at all, at least not in the federative, republican form of government which should have then existed.

As can be seen, the Ratio of Representation during the Reconstruction Era hovered around 1 per 120,000, at least in the "states" NORTH of the Mason-Dixon Line (with, for all apparent intents and purposes NO representation at all for the "States then lately in rebellion"). This, around FOUR TIMES the maximum limited by the Constitution.

This pales in comparison to the situation today, in which the ratio of "representation" has burgeoned to about one to every EIGHT HUNDRED THOUSAND, with NO increase in the size of the House since at least 1910, save for the "admission" of Arizona, New Mexico, Alaska and Hawaii.

And this maximum level was, for all apparent intents and purposes, set by a "law" enacted by the 61st Congress which, at the time, should have been composed of almost 3300 Representatives ! [14] ***It is difficult, if not impossible, to imagine a more egregiously unconstitutional enactment than this one.***

[14] The act of June 18, 1929 provided that the membership of the House of Representatives should henceforth be restricted to 435 members.

In pure point of fact, there has been an addition of over 200,000,000 people to the population of the United States in over 100 years who do NOT have any representation at all, to the point where the House "represents" about FOUR percent of what the Constitutionally **mandated** ratio of proportion should be.

Now even assuming arguendo that the House has some "discretion" in determining the existence of a quorum to do business, an outright and outlandish abuse of which occurred with the Revised Statutes of 1874 and the Federal Reserve Act of 1913 – to name a couple of ignominious instances – there simply is NOT any way that any "enactment" could survive a constitutional challenge based on a vote of just over TWO percent of the House to pass any such law.

FURTHER BACKGROUND ON RATIO OF REPRESENTATION

See also EXHIBIT [A8] (omitted) excerpts from the U.S. Constitution Annotated (2002) published by the United States Government Printing Office, which gives a good history of the issue, albeit minimally addressing the issues presented in the instant case.

DECISIONS OF THE SUPREME COURT RE: RATIO OF REPRESENTATION

To say the least, the following decisions have not only left much to be desired, but NONE of the issues hereinabove set forth has been presented in such cases. This, in concert with the Court's sanctimoniously self-promulgated rules for status and standing, its "Ashwander Doctrine" (see e.g. Ashwander v TVA, 297 US 288,341, Brandeis et al, JJ concurring) and the incredibly inept, even ignorant, efforts of the advocates before the Court, have left GAPING holes in the proper construction of virtually ALL provisions of the Constitution for the united States, most particularly the area of Ratio of Representation, as will be vividly illustrated.

The good news is that this makes all known decisions of the Court easily distinguishable from the instant case, thus totally defeating any specious, frivolous claim of "res judicata".

From Franklin v Massachusetts, 505 US 788, a case immediately distinguishable from the issues presented in the instant case, the Court addressed situations having some relevance here, most particularly the delegation of authority to the Secretary of Commerce to make the decennial enumeration of the census. While this delegation was made in the 1920s, after a clear and unambiguous failure of Congress to make any census enumeration in 1920, this might have been a planned, albeit pernicious precursor, to the events of the New Deal (which contained a deck full of Jokers), including HJR 192, the Bank "holiday" declared by FDR and the confiscation of gold, pursuant to some or another pretended state of "emergency" by FDR, as per the delegation of such unfettered discretion to the President pursuant to 12 USC 95(a), the cumulative effect of which was to make all Americans, "hypothecators of goods or stipulators in the admiralty" (see e.g. Bank of Columbia v Okely, 4 Wheat. 235).

Indeed, this delegation might have been the initial step in the federalization of all Birth Certificates, the Social (in)Security Act and the egregiously evil, exponential expansion of the commerce clause powers of Congress 'courtesy' of a 'judicial' amendment of the Constitution for the united States – see e.g. NLRB v Jones & Laughlin Steel 301 US 1, U.S. v Darby 312 US 100, Steward Machine v Davis, 301 US 548 and Wickard v Filburn, 317 US 111, carefully noting the cogent and compelling dissents of the "Four Horsemen" in NLRB and Steward, with the Court making up the law as they went along.

We come to the case of Dept. of Commerce v Montana 503 US 442, yet another in a long, seemingly unbroken line of distinguishable so-called 14th "amendment" decisions, in which there was a discussion of "ideal districts" for the purposes of apportionment and representation. While the Court correctly noted the maximum amount of Representatives was 30,000 to 1, the Justices were seemingly untroubled by the then average ("ideal" ??) size of a

Congressional District of 572,000 to 1, nor by the fact that Montana's reduction to a single district, of over 800,000 to 1 !

In addition, a brief by the Solicitor General in this case blithely suggested that Congress had the power to apply the minimum "standard" of ONE representative per "State", the result of which in California would be an "ideal district" of forty MILLION (40,000,000+) "persons" to **ONE** Representative !

STATES NOT REPRESENTED IN THE SENATE (NOR THE PEOPLE IN THE HOUSE)

"No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass."[15]

"No man can contradict me when I say that, if you have this power, you may squeeze down a newborn sovereign State to the size of a pygmy, and then taking it between the finger and thumb, stick it into some niche of the Union, and shall, by way of mockery, call it a State in the sense of the Constitution."[16]

Even assuming arguendo that there are any of the Several States remaining which were admitted into "**this** Union" and/or that this was the case in 1913, albeit without any apparent factual foundation and legal basis controverting these contentions, the States are no longer represented in the Senate. This, 'courtesy' of the "ratification" of the 17th "amendment", formally declared by Secretary of State Philander C. Knox.[17]

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[15] Senator Wiliam Pinkney (D- Maryland) 15th Congress: Annals of Congress

[16] Id 14

[17] Petitioner will cheerfully submit a supplemental brief on the "Admission of States" on request of this court evidencing exactly how in addition to the arguments made herein, all but lifeless skeletons remain of "States" resulting in the territorial government of the United States of Congress otherwise known as the District of Columbia.

With even otherwise perfectly compliant circumstances present with the Constitution, this "amendment", which removed the States from the federative, republican form of government of defined and limited powers, thus also removing a key check and balance in the system, was **NOT unanimously** ratified, the only type of Amendment which is an exception to the ¾ rule for ratification, since at least Delaware and Utah did not ratify the "amendment".

And here is yet another novel question of constitutional law which research has NOT turned up any case law decisions, certainly not from the supreme Court, namely: "How could an amendment which requires unanimous ratification – as per Article V, "… and that NO State shall, without its consent, be denied its equal representation in the Senate", be ratified by anything LESS than unanimous consent of the States?

Of course the "consent of the governed" is the last thing that any collectivist government 'worthy' of the name, especially one exercising, at present, 150 years of federal regional martial law rule, run primarily by Executive Orders of the President, acting as Commander-in-Chief of the Armed Forces, thinks is necessary, to continue its horrific hegemonious assault on its victims.

As has been demonstrated, the House of Representatives did NOT have any quorum to do business, let alone propose amendments which would further erode the sovereignty of the Several States and the Creator endowed inalienable rights of at least lawful de jure, jus sanguinis State Citizens /aka/ members of the sovereign body politic of the Nation and Republic /aka/ Beneficiaries of the Trust known as "The United States".

And the ratification of such an amendment, given these issues, would have been beyond the scope of authority of the agents of "We the People" in the 'state' legislatures, and for reasons strikingly similar to those present with the "ratification" of the so-called 14th "amendment", since each of these amendments, albeit sub silentio, affecting the makeup of the sovereign body

politic of the Nation & Republic, not to mention that ever present, yet 'pesky', "**consent of the governed**" and/or a "voluntary, intelligent and knowing" waiver of rights (Johnson v Zerbst, supra), would clearly be **required** to be ratified by the 'People in conventions' as **specifically** set forth in Article V.

When Congress makes a law which is outside the scope of its enumerated powers, it is no "law" at all, but is void; and American men and women have no obligation to comply. Alexander Hamilton says this repeatedly in The Federalist Papers. Here are a few examples:

> "…If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify…" (Federalist No. 33, 5th para).
>
> "…acts of … [the federal government] which are NOT PURSUANT to its constitutional powers … will [not] become the supreme law of the land. **These will be merely acts of usurpation, and will deserve to be treated as such…"** (Federalist No. 33, 6th para). [emphasis added]
>
> "…every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. **No legislative act …contrary to the Constitution can be valid.** To deny this, would be to affirm … that men … may do not only what their powers do not authorize, but what they forbid."
> (Federalist No. 78, 10th para). [emphasis added]

The result of all of this Constitutional confusion and obfuscation has given birth, as it were, to yet another in a long line of collectivist governments, by whatever name one chooses to call it

– socialist, fascist, communist, or – the choice here – de facto national socialist government (DNSG), one in which the primary author of the Social (in)Security Act, Arthur J. Altmeyer, likely a latter day doppelganger of Otto von Bismarck, admitted that he drafted it on national socialist "principles", and a government which, based on the following analysis of the Nazi government, would make Herr Hitler green with envy.

To summarize the evidence of Constitutional Rights violations presented in Appellants briefs in violation of at least five out of six Articles of the Constitution for the united States:

(1) An Application For Original Contractors License[18] is an unconstitutional unilateral contract of adhesion that requires the waiver of Private Inalienable Rights in exchange for government Privileges without disclosing this material fact anywhere in the "Application". It requires the surrender of Rights to trial by jury, Appeal, and to challenge the Constitutionality of the statute without any disclosure or knowing consensual waiver.[19]

(2) The Contractors State License Board, "CSLB", conducts Mandatory Arbitration hearings without any lawful statutory authority[20] and did so without even notifying Appellant thereby depriving him of his Property without due process.

(3) A "trial court" conducting proceedings as a "judicial court" but which does not adhere to substantive due process or judicial process in violation of Article 3, Section 2.

(4) A "trial court" acting without jurisdiction of the subject matter.

(5) A "trial court" rendering judgment for statutory enactments that don't exist.

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[18] http://www.cslb.ca.gov/Resources/FormsAndApplications/ApplicationForOriginalContractorsLicense.pdf

[19] See Johnson v Zerbst, supra.

[20] See §7085 B&P and AOB Pp 74-78

(6) A "trial court" ignoring litigant's substantive due process Rights to challenge the court's jurisdiction numerous times.

(7) A "trial court" denying due process Rights to a findings of facts and conclusions of law.

(8) A judge ruling on a Motion to Disqualify the same judge for cause when the court had no jurisdiction of the subject matter and therefore no discretion and the Motion was intended to be heard by a separate judge who could evaluate the facts without bias or prejudice.

(9) A "trial court" and Respondents conspiring to bully and sanction Appellant for exercise of his Rights to challenge the jurisdiction of the proceedings/order against him.

(10) The California State Governor, a Board Member of the CSLB and Respondents counsel all active members of the State Bar thereby violating the separation of powers doctrine.

The first question to ask is: Is the function of the state to be limited or unlimited? Is any area of human life to be inviolate, exempt from government coercion, or is the state to be the all-encompassing and all-powerful? Do men have certain rights which the state cannot transgress, or may the state properly act without restriction, in any sphere, to achieve its purpose as evidence in this case?

To this question, Nazism gives an unequivocal answer. The state is to have unlimited authority; it is to have absolute power; it is to have total control over every citizen and over every sphere of human activity. It is to be a "total state", said Hitler's mentor, Mussolini, coining the famous term from which the adjective "totalitarianism" was subsequently derived.

From US v Lopez, 514 US 549, 600 **(1995)**:

"When asked at oral argument if there were any limits to the Commerce Clause, the Government was at a loss for words."

Ernst Huber, a leading Nazi theorist, in a definite presentation of the Nazi political-legal position writes:

"The authority of the Fuhrer is complete and all-embracing; it unites in itself all the means of political direction; it extends into all fields of national life; it embraces the entire people, which is bound to the Fuhrer in loyalty and obedience. The authority of the Fuhrer is <u>not</u> limited by checks and controls, by special autonomous bodies or individual rights, but is free and independent, all-inclusive and unlimited."

What happens to personal liberty in the "total state" ? Writes Huber:

"Not until the nationalistic political philosophy had become dominant could the liberalistic idea of basic rights be really overcome. <u>The concepts of personal liberties of the individual as opposed to the authority of the state had to disappear;</u> it is not to be reconciled with the principle of the nationalistic Reich. <u>There are no personal liberties of the individual which fall outside the realm of the state and which must be respected by the state …</u> There can no longer be any question of a private sphere, free of state influence, which is sacred or untouchable before the political unity. The constitution of the nationalistic Reich is therefore not based upon a system of inborn and inalienable rights of the individual …"

"In such regimes there is no longer any distinction between private matters and public matters; there are no private matters. "The only person who is still a private individual in Germany," declared Robert Ley, a member of the Nazi hierarchy , … "<u>is somebody who is asleep</u>."

National Socialism: Basic Principles, Their Application by the Nazi Party's Foreign Organization" **prepared by:** U.S. Department of State, U.S. Govt. Printing Office "1864 (1943) as cited in the Objectivist Newsletter February 1969

CONCLUSION

That neither lawful, de jure, jus sanguinis State Citizens nor the sovereign States which they ordained and established are represented in any department of the de facto national socialist government, and are thus ***NOT*** bound any acts of such government for want of such representation, lack of quorums in either House of Congress to transact any business, ***WITHOUT*** there being one iota of the "***consent of the governed***" anywhere in sight, further resulting in a violation of a federative Republican form of government.

XIV. MISC. ISSUES

In the event any of the statutes or so-called Constitutional "amendments" referenced throughout Appellant's Briefs in his favor (including the filing of this appeal) constitute "acceptance of the benefit"[21] then such references shall be immediately disregarded and this appeal converted to a common law Writ of Error and/or Non-Statutory Writ of Habeas Corpus preserving each and every argument as according to the course of the common law. It should further be noted Adam Bereki is not a resident or citizen of the United States known as the "District of Columbia" and any fictions of law or pretended waivers of rights upon which he could be presumed to have made submitting to that jurisdiction shall be immediately disclosed.

All presumptions, fictions of law, hypothecations, apparent waivers of Rights, or contracts including Adam Bereki having "accepted any government benefit" upon which this court will rely for its determination must be disclosed within thirty days after the submission of ARB. Appellant shall be allowed thirty days to submit evidence (including supplement briefs and affidavits) contrary to those presumptions or fictions disclosed if he so desires.

Adam Bereki has not made any knowing, voluntary, or intelligent waiver of inalienable Rights or those secured by the Declaration of Independence, or the Constitution for the united States [1787-1791]. See also EXHIBIT [A9]: Declaration of Adam Bereki.

Adam Bereki accepts the Oaths of Office of the Justices of this court, David Chaffee, and William Bissell. See EXHIBIT [A9].

[21] See Ashwander v TVA, supra

XV. CONCLUSION

For the reasons evidenced in Appellant's Briefs this court should find:

§7028, §7031 B&P, and the "Application For Original Contractors License" unconstitutional as applied to human beings.

The "mandatory arbitration" proceeding conducted by the CSLB #AS2014-087 (CT 1403) (and all others conducted upon like situated litigants) is/are void for violation of substantive due process without any statutory authority.

It is unconstitutional for the Courts of California to enforce a presumption of incompetence founded by the requirements of licensure (§7028 B&P) upon the People of the State of California without a judicial hearing on this specific issue.

It is unconstitutional for the Courts of California to award judgment pursuant to §7031 B&P without proof of injury in fact commensurate with Article 3, §2 of the Constitution for the united States [1787-1791].

It is unconstitutional for the Courts of California to award judgment pursuant to §7031 B&P (as exhibited in the instant case and those of other like situated litigants) because it violates due process and the requirements of punitive damage awards.

§632 and CRC 3.1590(d) are unconstitutional because they create a Bill of Attainder wherein the trail court is not required to submit a findings of facts and conclusions of law which are requisite to a court's final decision and must be provided.

The Trial Court was without subject matter jurisdiction.

The judgments found in 30-2015-00805807 are void.

Respondents failed to prove the factual sufficiency of their claim.

Respondents counsel, William Bissell, committed fraud on the court.

Respondents Karen and Gary Humphreys conspired with William Bissell to commit fraud on the court.

Respondents Karen and Gary Humphreys committed fraud.

Respondents Karen and Gary Humphreys conspired with William Bissell to file a false of fraudulent claim against Suretec, Old Republic Surety and/or The Spartan Associates Inc.. (See §550 PC)

William Bissell knowingly filed a false or fraudulent order for judgment based on fraud. (See §470 PC, §115PC)

William Bissell and Karen and Gary Humphreys committed burglary by entering the court with the intent of committing grand theft or any felony.

The Trial Court and/or Respondents violated due process in failing to acknowledge Adam's challenges to jurisdiction.

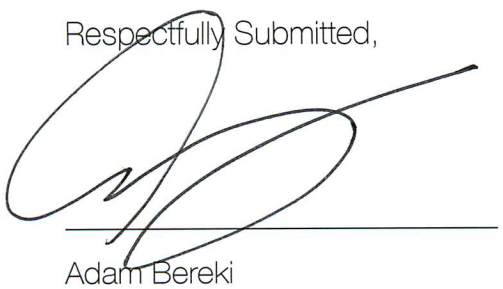
Sanction William Bissell for committing fraud on the court, violating the B&P code, committing other crimes and any other violations the Court sees reasonable, necessary and in accordance with law.

The behavior of Respondents, William Bissell, and the "trial court" have injured Adam Bereki emotionally, psychologically, and financially. This Court should order Respondents and William Bissell to pay restitution to Adam Bereki for all costs (including attorney fees) and his time and labor since the inception of this case or when this Court determines Respondents fraud began. Adam's time should be compensated at the rate of $300 per hour, the same rate at which Respondents sought and were unlawfully awarded sanctions against him. The restitution award shall be as the court deems reasonable and in accordance with law. Adam shall be granted leave to submit evidence of his time and expenses.[22]

Find the Act of June 18, 1929 otherwise known as "The Reapportionment Act" fixing the House of Representative to 435 members a violation of Article 1, §2, Cl.3 of the Constitution for the united States and therefore unconstitutional. The Court should also determine fraud has been committed on Adam Bereki as well as all American people having been unlawfully deprived of Representation, consent of the governed, and a federative Republican form of government.

Respond to all other issues presented throughout Appellants Brief with thorough answers/ responses and applicable authorities.

Respectfully Submitted,

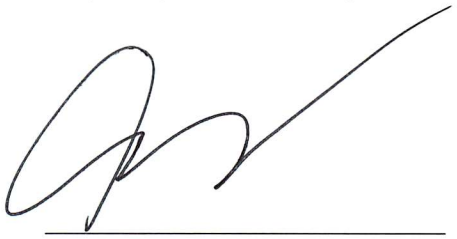


Adam Bereki

[22] See also CCP §908 and CC §3294

WORD COUNT CERTIFICATE

Excluding sections identified by CRC 8.204(c)(3), this brief has 13580 words. I rely upon the word-counting function of Pages, the word-processing program used to generate this brief, in making this certification.



Dated: February 26, 2018

Adam Bereki, In Propria Persona

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Adam Bereki, In Propria Persona 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*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 700 W. Civic Center Dr. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center	CASE NUMBER: 30-2015-00805807
Plaintiff/Petitioner: The Spartan Associates, Inc. Defendant/Respondent: Karen and Gary Humphreys	JUDICIAL OFFICER: Chaffee
PROOF OF SERVICE—CIVIL **Check method of service *(only one)*:** ☐ By Personal Service ☑ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	DEPARTMENT: C-20

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age **and not a party to this action**.
2. My residence or business address is:
   818 Spirit Costa Mesa, CA 92626
3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*
4. On *(date):* February 26 2018 I served the following **documents** *(specify):*
   Appellants Reply Brief, Motion For Consideration of New Evidence
   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served: David Chaffee
   b. ☑ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
      Business or residential address where person was served:
      Attn. David Chaffee, Dept. C-20 Orange County Superior Court. 700 W. Civic Center Dr. Santa Ana, CA 92702
   c. ☐ *(Complete if service was by fax.)*
      Fax number where person was served:
      ☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Form Approved for Optional Use
Judicial Council of California
POS-040 [Rev. February 1, 2017]

PROOF OF SERVICE—CIVIL
(Proof of Service)

Code of Civil Procedure, §§ 1011, 1013, 1013a, 2015.5; Cal. Rules of Court, rule 2.306
www.courts.ca.gov

CASE NAME: Spartan v Humphreys	CASE NUMBER: 30-2015-00805807

6. b. ☑ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

(1) ☑ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date: February 26, 2018

Roseanne Bereki
(TYPE OR PRINT NAME OF DECLARANT)

▶ Roseanne Bereki
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

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

Date:

(NAME OF DECLARANT)

▶
(SIGNATURE OF DECLARANT)

EXHIBIT [A5]; Federalist Paper 56

To the People of the State of New York:

THE SECOND charge against the House of Representatives is, **that it will be too small to possess a due knowledge of the interests of its constituents.** As this objection evidently proceeds from a comparison of the proposed number of representatives with the great extent of the United States, the number of their inhabitants, and the diversity of their interests, without taking into view at the same time the circumstances which will distinguish the Congress from other legislative bodies, the best answer that can be given to it will be a brief explanation of these peculiarities. **It is a sound and important principle that the representative ought to be acquainted with the interests and circumstances of his constituents.**

But this principle can extend no further than to those circumstances and interests to which the authority and care of the representative relate. An ignorance of a variety of minute and particular objects, which do not lie within the compass of legislation (today, however, there does NOT seem to be ANY activity of "citizens" which does NOT come within the scope of Congress' commerce clause powers – see e.g. U.S. v Lopez, supra– ed), is consistent with every attribute necessary to a due performance of the legislative trust. In determining the extent of information required in the exercise of a particular authority, recourse then must be had to the objects within the purview of that authority.

What are to be the objects of federal legislation ? Those which are of most importance, and which seem most to require local knowledge, are commerce, taxation, and the militia. A proper regulation of commerce requires much information, as has been elsewhere remarked; but as far as this information relates to the laws and local situation of each individual State, a very few representatives would be very sufficient vehicles of it to the federal councils.
Taxation will consist, in a great measure, of duties which will be involved in the regulation of commerce. So far the preceding remark is applicable to this object. As far as it may consist of

internal collections, a more diffusive knowledge of the circumstances of the State may be necessary. But will not this also be possessed in sufficient degree by a very few intelligent men, diffusively elected within the State? Divide the largest State into ten or twelve districts, and it will be found that there will be no peculiar local interests in either, which will not be within the knowledge of the representative of the district. Besides this source of information, the laws of the State, framed by representatives from every part of it, will be almost of themselves a sufficient guide.

In every State there have been made, and must continue to be made, regulations on this subject which will, in many cases, leave little more to be done by the federal legislature, than to review the different laws, and reduce them in one general act. A skillful individual in his closet with all the local codes before him, might compile a law on some subjects of taxation for the whole union, without any aid from oral information, and it may be expected that whenever internal taxes may be necessary, and particularly in cases requiring uniformity throughout the States, the more simple objects will be preferred. To be fully sensible of the facility which will be given to this branch of federal legislation by the assistance of the State codes, we need only suppose for a moment that this or any other State were divided into a number of parts, each having and exercising within itself a power of local legislation.

Is it not evident that a degree of local information and preparatory labor would be found in the several volumes of their proceedings, which would very much shorten the labors of the general legislature, and render a much smaller number of members sufficient for it? The federal councils will derive great advantage from another circumstance. The representatives of each State will not only bring with them a considerable knowledge of its laws, and a local knowledge of their respective districts, but will probably in all cases have been members, and may even at the very time be members, of the State legislature, where all the local information and interests of the State are assembled, and from whence they may easily be conveyed by a very few hands into the legislature of the United States.

The observations made on the subject of taxation apply with greater force to the case of the militia. For however different the rules of discipline may be in different States, they are the same throughout each particular State; and depend on circumstances which can differ but little in different parts of the same State. The attentive reader will discern that the reasoning here used, to prove the sufficiency of a moderate number of representatives, does not in any respect contradict what was urged on another occasion with regard to the extensive information which the representatives ought to possess, and the time that might be necessary for acquiring it. This information, so far as it may relate to local objects, is rendered necessary and difficult, not by a difference of laws and local circumstances within a single State, but of those among different States.

Taking each State by itself, its laws are the same, and its interests but little diversified. A few men, therefore, will possess all the knowledge requisite for a proper representation of them. Were the interests and affairs of each individual State perfectly simple and uniform, a knowledge of them in one part would involve a knowledge of them in every other, and the whole State might be competently represented by a single member taken from any part of it. On a comparison of the different States together, we find a great dissimilarity in their laws, and in many other circumstances connected with the objects of federal legislation, with all of which the federal representatives ought to have some acquaintance. Whilst a few representatives, therefore, from each State, may bring with them a due knowledge of their own State, every representative will have much information to acquire concerning all the other States.

The changes of time, as was formerly remarked, on the comparative situation of the different States, will have an assimilating effect. The effect of time on the internal affairs of the States, taken singly, will be just the contrary. At present some of the States are little more than a society of husbandmen. Few of them have made much progress in those branches of industry which give a variety and complexity to the affairs of a nation. These, however, will in all of them be the fruits of a more advanced population, and will require, on the part of each State, a fuller representation. The foresight of the convention has accordingly taken

care that the progress of population may be accompanied with a proper increase of the representative branch of the government. The experience of Great Britain, which presents to mankind so many political lessons, both of the monitory and exemplary kind, and which has been frequently consulted in the course of these inquiries, corroborates the result of the reflections which we have just made. The number of inhabitants in the two kingdoms of England and Scotland cannot be stated at less than eight millions. The representatives of these eight millions in the House of Commons amount to five hundred and fifty-eight.

Of this number, one ninth are elected by three hundred and sixty-four persons, and one half, by five thousand seven hundred and twenty-three persons. [1] It cannot be supposed that the half thus elected, and who do not even reside among the people at large, can add anything either to the security of the people against the government, or to the knowledge of their circumstances and interests in the legislative councils.

On the contrary, **it is notorious, that they are more frequently the representatives and instruments of the executive magistrate, than the guardians and advocates of the popular rights.** They might therefore, with great propriety, be considered as something more than a mere deduction from the real representatives of the nation. We will, however, consider them in this light alone, and will not extend the deduction to a considerable number of others, who do not reside among their constituents, are very faintly connected with them, and have very little particular knowledge of their affairs.

With all these concessions, two hundred and seventy-nine persons only will be the depository of the safety, interest, and happiness of eight millions that is to say, there will be one representative only to maintain the rights and explain the situation OF TWENTY-EIGHT THOUSAND SIX HUNDRED AND SEVENTY constituents, in an assembly exposed to the whole force of executive influence, and extending its authority to every object of legislation within a nation whose affairs are in the highest degree diversified and complicated. Yet it is very certain, not only that a valuable portion of freedom has been preserved under all these

circumstances, but that the defects in the British code are chargeable, in a very small proportion, on the ignorance of the legislature concerning the circumstances of the people. Allowing to this case the weight which is due to it, and comparing it with that of the House of Representatives as above explained it seems to give the fullest assurance, that a representative for every THIRTY THOUSAND INHABITANTS will render the latter both a safe and competent guardian of the interests which will be confided to it.

PUBLIUS

EXHIBIT [A6]: Federalist Paper #55

From Federalist Papers Number 55, comes the following excerpt, with the irrefutable contention of Mr. Madison, the Father of the Constitution, on the subject of ratio of representation, that:

"It is necessary also to recollect here the observations which were applied to the case of biennial elections. For the same reason that the limited powers of the Congress, and the control of the State legislatures (which safeguards NO longer exist ! – ed), justify less frequent elections than the public safely might otherwise require, the members of the Congress need be less numerous than if they possessed the whole power of legislation (which seems to be true today ! – ed), and were under no other than the ordinary restraints of other legislative bodies.

With these general ideas in our mind, let us weigh the objections which have been stated against the number of members proposed for the House of Representatives. It is said, in the first place, that so small a number cannot be safely trusted with so much power.

The number of which this branch of the legislature is to consist, at the outset of the government, will be sixty five. Within three years a census is to be taken, when the number may be augmented to one for every thirty thousand inhabitants; and within every successive period of ten years the census is to be renewed, and augmentations may continue to be made under the above limitation. It will not be thought an extravagant conjecture that the first census will, at the rate of one for every thirty thousand, raise the number of representatives to at least one hundred. Estimating the negroes in the proportion of three fifths, it can scarcely be doubted that the population of the United States will by that time, if it does not already, amount to three millions. At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred, and of fifty years, to four hundred. This is a number which, I presume, will put an end to all fears arising from the

smallness of the body. I take for granted here what I shall, in answering the fourth objection, hereafter show, that the number of representatives will be augmented from time to time in the manner provided by the Constitution. On a contrary supposition, I should admit the objection to have very great weight indeed." (as should we all ! -- ed)

EXHIBIT [A7]: Story's Commentaries

§ 642. Viewed in its proper light, as a real compromise, in a case of conflicting interests, for the common good, the provision is entitled to great praise for its moderation, its aim at practical utility, and its tendency to satisfy the people, that the Union, framed by all, ought to be dear to all, by the privileges it confers, as well as the blessings it secures. It had a material influence in reconciling the southern states to other provisions in the constitution, and especially to the power of making commercial regulations by a mere majority, which was thought peculiarly to favour the northern states. It has sometimes been complained of, as a grievance; but he, who wishes well to his country, will adhere steadily to it, as a fundamental policy, which extinguishes some of the most mischievous sources of all political divisions,--those founded on geographical positions, and domestic institutions. It did not, however, pass the convention without objection. Upon its first introduction, it was supported by the votes of nine states against two. In subsequent stages of the discussion, it met with some opposition; and in some of the state conventions it was strenuously resisted. The wish of every patriot ought now to be, requiescat in pace.

§ 643. Another part of the clause regards the periods, at which the enumeration or census of the inhabitants of the United States shall be taken, in order to provide for new apportionments of representatives, according to the relative increase of the population of the states. Various propositions for this purpose were laid, at different times, before the convention. It was proposed to have the census taken once in fifteen years, and in twenty years; but the vote finally prevailed in favour of ten. The importance of this provision for a decennial census can scarcely be overvalued. It is the only effectual means, by which the relative power of the several states could be justly represented. If the system first established had been unalterable, very gross inequalities would soon have taken place among the states, from the very unequal increase of their population. The representation would soon have exhibited a system very analogous to that of the house of commons in Great-Britain, where old and decayed boroughs send representatives, not only

wholly disproportionate to their importance; but in some cases, with scarcely a single inhabitant, they match the representatives of the most populous counties.

§ 644. In regard to the United States, the slightest examination of the apportionment made under the first three censuses will demonstrate this conclusion in a very striking manner. The representation of Delaware remains, as it was at the first apportionment; those of New-Hampshire, Rhode-Island, Connecticut, New-Jersey, and Maryland have had but a small comparative increase; whilst that of Massachusetts (including Maine) has swelled from eight to twenty; that of New-York, from six to thirty-four; and that of Pennsylvania, from eight to twenty-six. In the mean time, the new states have sprung into being; and Ohio, which in 1803 was only entitled to one, now counts fourteen representatives. The census of 1831 exhibits still more striking results. In 1790, the whole population of the United States was about three millions nine hundred and twenty-nine thousand; and in 1830, it was about twelve millions eight hundred and fifty-six thousand. Ohio, at this very moment, contains at least one million, and New-York two millions of inhabitants. These facts show the wisdom of the provision for a decennial apportionment; and, indeed, it would otherwise have happened, that the system, however sound at the beginning, would by this time have been productive of gross abuses, and probably have engendered feuds and discontents, of themselves sufficient to have occasioned a dissolution of the Union. We probably owe this provision to those in the convention, who were in favour of a national government, in preference to a mere confederation of states.

§ 645. The next part of the clause relates to the total number of the house of representatives. It declares, that "the number of representatives shall not exceed one for every thirty thousand." This was a subject of great interest; and it has been asserted, that scarcely any article of the whole constitution seems to be rendered more worthy of attention by the weight of character, and the apparent force of argument, with which it was originally assailed. The number fixed by the constitution to constitute the body, in the first instance, and until a census was taken, was sixty-five."