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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

FIRST NATIONAL BANK OF OMAHA, a
National Banking Association,

Plaintiff,

vs.

Adam Bereki,

Defendant.

Case No. 30-2022-01271693

CHALLENGE TO JURISDICTION

**EMERGENCY PETITION FOR WRIT
OF HABEAS CORPUS** (Constructive
custody with request to expedite).

Judge: Hon.
Dept:
Action Filed: July 25, 2022
Petition Filed: September 7, 2022

**TO THE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF
RECORD:**

Adam Bereki, ("Petitioner"), appears in this action *specially* for the purpose of
challenging the personal and subject matter jurisdiction of this action and all

1 “Judgments” and “Awards” involved in the matters stated forthwith by a *verified*
2 Petition for Writ of *Habeas Corpus*.

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5 **VERIFIED STATEMENT OF FACTS¹**
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- 7
8 1. Petitioner was illegally prosecuted by private parties in a “civil case” for allegedly
9 performing construction work without a license in violation of Business and
10 Professions Code §7031(b). See case# 30-2015-00805807, incorporated and fully
11 set forth herein.
12 2. The punishment for violating §7031(b) is a fine in the form of a total forfeiture
13 (the return of “all compensation paid”) *without* offsets for the reasonable value of
14 materials and labor provided and *without* regard to profit.
15 3. Petitioner and/or his company, The Spartan Associates, Inc., were denied offsets
16 for the \$930,000 in custom remodel construction conferred. (Petitioner contends
17 that all work on the project at issue was performed by Spartan, and not him).
18 4. A violation of §7031(b) is a public offense as defined by Cal. Penal Code §15.
19 5. Article VI, §1 of the Cal. Constitution of 1879 vests the Executive power of
20 California *exclusively* in the Governor, not private parties. Public offenses can
21 only be prosecuted by the Executive power of California.
22 6. The Legislature of California was without authority to transfer/delegate the
23 Executive power of California to private parties to commence prosecutions
24 pursuant to §7031(b). Private parties therefore lack Constitutional standing to
25 commence prosecutions under §7031(b).
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30 ¹ All of the Exhibits referenced herein can also be viewed and/or downloaded from
31 <http://thespiritoflaw.com>. The Exhibits are intended to be fully incorporated and set forth herein.

7. No sworn information or indictment was filed against Petitioner in the name of the People of California to vest the Superior Court with subject matter jurisdiction.
8. At no time was Petitioner ever informed of the true nature and cause of the accusations against him and or his right to assistant counsel.
9. Petitioner made no knowing, voluntarily, or intelligent waiver of any rights, including the rights to assistant counsel and trial by jury. He was not afforded either of these rights at “trial”.
10. At “trial” no known evidence was presented that Petitioner:
 - a. performed any work on the project that was required to be licensed– the primary elements of the offense of §7031(b);
 - b. was a “person” required to be licensed;
 - c. profited \$848,000; or,
 - d. caused “damages” amounting to \$848,000.
11. Despite the foregoing, Petitioner was found to be an unlicensed contractor and ordered to “disgorge” \$848,000. Appendix [A] pp.4-5. See also the “Judgment Order”, Appendix [B] p.7 for “damages” in the amount of \$848,000.
12. Disgorgement is an equitable remedy that *only* applies to illegal profits. See for e.g. *Liu v. SEC*, 140 S. Ct. 1936 (2020). §7031(b) mentions nothing about “disgorgement” and imposes a total penal forfeiture. No known evidence of Petitioner’s profits was presented at “trial”.
13. Because the trial “Court” lacked personal and subject matter jurisdiction to proceed in the first instance and no known evidence was presented to establish each element of the aforementioned elements of the offense of §7031(b), he was subjected to an ex post facto law and bill of pains and penalties, having been punished without a judicial determination of his rights.
14. The “Court” also lacked subject matter jurisdiction to excessively, cruelly, and unusually punish Petitioner by depriving him of judicial proceedings and fining him approx. \$930,00 pursuant to §7031(a) (see Appendix [A] Minute Order p.5) and §7031(b).

15. Ninety days after the “Judgment Order” was issued on April 20, 2017, Petitioner’s vested right to act as a qualifying individual for a general contractor license was summarily suspended by operation of Cal. Business and Professions Code §7071.17 (Appendix [Q] pp.84-86) without a hearing or any known appeal process.
16. On appeal to the California Fourth District Court of Appeal, the “Justices” affirmed the Superior Court’s “Judgment” in its entirety holding that all of Petitioner’s claims were “meritless” and that he was not being punished because the fine was not penal, but instead an “equitable remedy” known as “disgorgement”. See *Humphreys et al v. Bereki*, case #G055075, fully incorporated and set forth herein, Appendix [C]– Opinion pp.9-22 dated October 31, 2018, and Procedural History Exhibits [A5-A18].
17. When the Court of Appeal awarded costs against Petitioner (to further take his money and property without lawful authority) and remitted the case to the Superior “Court”, he again challenged jurisdiction. The “Court” refused to vacate the void “Judgment” finding that the appellate “Court’s” arbitrary edict was “final”. See Appendix [D]– Minute Order p.23 dated March 15, 2019, Reporter’s Transcript pp.24-37; Procedural History Exhibits [A19-A23], and an audio tape of the hearing, Exhibit [E1].
18. On Petition for Review to the Supreme “Court” of California, the “Justices” declined to hear his Petition. See *Humphreys v. Bereki*, case #S252954, fully incorporated and set forth herein, Appendix [E] p.38, and Procedural History Exhibits [A24-A27].
19. On Petition for Writ of Certiorari to the U.S. Supreme Court, the “Justices” declined to grant the Petition. See *Bereki v. Humphreys*, case# 18-1416, incorporated and fully set forth herein.
20. In an Independent Action in Equity in the United States District Court for the Central District of California, Petitioner challenged the jurisdiction of the State “Court” “Judgments” and the Constitutionality of §7031 and §7071.17. The District Court “Judge” dismissed his claims in their entirety for lack of subject matter jurisdiction based on the doctrines of collateral estoppel and Rooker-

1 Feldman. See *Bereki v. Humphreys*, case# 8:19–CV–02050, fully incorporated and
2 set forth herein, Appendix [G]– Opinion pp.41-50 dated February 6, 2020, and
3 Procedural History Exhibits [A29-A36]. Upon notice of appeal, the District Court
4 “Judge” found Petitioner’s appeal “frivolous” and denied his *in forma pauperis*
5 status. Appendix [H] pp51-52.

6 21. On appeal to the Ninth Circuit Court of Appeals, the “Judges” dismissed
7 Petitioner’s appeal as “frivolous” on November 12, 2020. See *Bereki v.*
8 *Humphreys*, case# 20-55181, fully incorporated and set forth herein, Appendix [I]
9 p.53, and Procedural History Exhibits [A38-A42].

10 22. On September 16, 2021, Petitioner sent an Emergency Petition for Writs or Error
11 and/or non-Statutory Habeas Corpus to the U.S. Supreme “Court”. It was
12 received on September 22, 2021. Exhibit [A43]. The “Clerk” refused to file the
13 Petition, did not present it to the Justices, and returned it because it was
14 allegedly not in the proper form as required by the Rules of Court. Appendix [N]
15 p.72.

16 23. Petitioner filed Petitions for Redress of Grievance with the Governor of
17 California, Attorney General of California, California Commission on Judicial
18 Performance, Assembly of California through the office of Assemblywoman Cottie
19 Petrie-Norris, the Senate of California through the office of Senator John MW
20 Moorlach, Santa Ana Police Department, Orange County Sheriff-Coroner
21 Department, Newport Beach Police Department, Costa Mesa Police Department,
22 Irvine Police Department, Orange County District Attorney, and the Federal
23 Bureau of Investigation. On information and belief, all of the officials of these
24 agencies involved in these complaints have refused to perform a full, fair,
25 impartial, and independent investigation into his claims and refused to intervene
26 to stop the irreparable harm being perpetrated on him. See Exhibits [C]– Public
27 Records Requests and Complaints, [D]– Complaints, and [E]– Audible Exhibits
28 of Complaints.
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30 24. In a seemingly separate and unrelated action, On November 21, 2014, Petitioner
31 was subjected to an egregiously unconstitutional “mandatory arbitration”

1 proceeding executed by the Contractors State License Board and a private
2 arbitration company, the Arbitration Mediation Conciliation Center, Inc.
3 (“AMCC”). Appendix [O] pp.73-79, Exhibit [F]. According to the arbitrary
4 “Award”, Appendix [O] p.73, the proceeding occurred under the authority of Cal.
5 Business and Professions Code §7085. Appendix [Q] pp.86-87. §7085 does *not*
6 authorize the CSLB and/or AMCC to create and/or enforce any mandatory
7 arbitration proceeding whatsoever. Rather, it purports to authorize a *voluntary*
8 arbitration process requiring “the concurrence of both the licensee and the
9 complainant”.² Petitioner has not made any knowing, voluntary, or intelligent
10 waiver of any rights to be subjected to this or any other mandatory arbitration
11 proceeding as recognized by the CSLB. Appendix [O] p.74, Exhibit [F].

12
13 25. When Petitioner failed to comply with the award, his vested right to remain the
14 qualifying individual of a general contractor license was arbitrarily suspended
15 without any hearing or known process of appeal by operation of Cal. Business and
16 Professions Code §7085.6. Appendices [O] pp.75-78 and [Q] pp. 87-88; Exhibit [F].

17 26. On August 16, 2022, Petitioner submitted a complaint to this “Court”. Appendix
18 [S]. Petitioner has not received any acknowledgment of receipt or response.

19 27. This “Court” should also take Notice that Petitioner is diligently working on an
20 Application for Emergency Stay under Rule 22 and Petition for Writs of *Quo*
21 *Warranto*, *Mandamus*, and *Habeas Corpus* in the United States Supreme Court.
22 Appendix [R]. Due to time constraints pertaining to the filings in the instant
23 action and the foreclosure proceedings, the Application and Petitions have not yet
24 been completed but are nevertheless fully incorporated and set forth herein in
25 their rough draft form. Therein, Plaintiff and the Court will find a Memorandum
26 of Law in support of this Verified Statement. All issues raised anywhere in the
27 Application/Petition, including in the “Questions Presented”, should also be
28 considered raised herein, where applicable.

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31 ² The CSLB admits to referring 8,275 mandatory arbitration cases to the AMCC since January 1, 2006.
Appendix [O] p.79.

28. Based upon all of the foregoing:

- a. Fraud and treason was committed upon Petitioner to falsely and fraudulently procure personal and subject matter jurisdiction over his person and property to take his rights, liberty, and property under color of law but without lawful authority;
- b. Petitioner has been unlawfully restrained from earning a living in his profession as a general contractor resulting in an estimated three million dollars in lost earnings;
- c. Petitioner has been unable to obtain any relief in any branch of government petitioned, State and Federal;
- d. Petitioner has been subjected to a condition of involuntary servitude to perform a more than five-year forensic investigation of the fraud, deceit, and treason perpetrated against him (and all other like-situated litigants), without compensation, in an effort to clear his good name and protect his rights, property, and liberty from robbery by force of the Legislative, Executive, and Judicial powers of California and the United States;
- e. Petitioner's private contracts and obligations have been impaired resulting in the wrongful foreclosure proceedings for the real property located at 818 Spirit Costa Mesa, California³, and the claim made by Plaintiff in this case;
- f. Petitioner has been irreparably harmed and continues to suffer from psychological and emotional distress and the physical manifestations thereof;

29. The State can't have it both ways. It is without any lawful authority to commit fraud, treason, and other crimes upon Petitioner thereby causing him irreparable harm and damages, deny him any lawful remedy, then exercise subject matter

³ Petitioner intends this challenge to jurisdiction to also be a challenge the jurisdiction of these foreclosure proceedings.

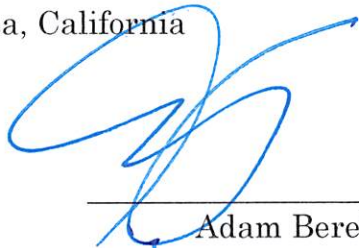
- jurisdiction to further take his money and property when it's behavior is the direct and proximate cause of the damages that are the subject of this complaint.
30. This "Court" further lacks subject matter jurisdiction over Plaintiff's claims because they all occurred in Interstate Commerce/ Admiralty. See for e.g. *Cohens v. Virginia*, 19 U.S. 264, 403 (1821) ("[t]he case of a State which pays off its own debts with paper money, no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation. Let it be that the act of discharging the debt is a mere nullity and that it is still due"). See also *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).
31. In addition to expeditiously granting this Emergency Writ, Petitioner requests this Court: (1) grant an emergency stay and/or restraining order to stay the foreclosure proceedings for the real property located at 818 Spirit Costa Mesa, California and the proceedings in the instant case pending resolution of the matters herein so that further irreparable harm is not caused and Petitioner is not forced into involuntary bankruptcy; (2) grant him emergency equitable monetary relief to compensate him for his time and labor and damages so that he may have the financial resources necessary to fully support himself and pay his obligations.
32. In the event this Court refuses to abide its sworn, mandatory, non-discretionary ministerial duty to grant this Writ and provide Petitioner the requested relief, the irreparable harm and other damages will continue, he will remain in constructive custody without any lawful remedy, and he will be forced into involuntary bankruptcy.

DECLARATION

I, Adam Bereki, declare under penalty of perjury of the laws of California:

- 1 (1) that all documents in the Appendix, incorporated and fully set forth herein, are
2 true and correct copies of the documents with the exception of any Bates
3 numbering or other hand-written notes or numbering I may have made thereon;
4 (2) that all of the documentary Exhibits as either annexed hereto or available on
5 <http://www.thespiritoflaw.com> are true and correct copies of the documents with
6 the exception of any Bates numbering or other hand-written notes I may have
7 made thereon;
8 (3) that all of the audio Exhibits available at <http://www.thespiritoflaw.com> are true
9 and correct copies of the digital files with the exception of any trimming I may
10 have done to remove white noise, block out my personal identifying information,
11 or other non-substantive clip-trimming;
12 (4) that the foregoing statements pertaining to matters of fact are true and correct
13 to the best of my knowledge and belief;
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16 Signed on September 7, 2022, in Costa Mesa, California

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Adam Bereki

Appendix

First National Bank of Omaha

v.

Adam Bereki

30-2022-01271693

Appendix [A]

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 03/27/2017

TIME: 09:00:00 AM

DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee

CLERK: Cora Bolisay

REPORTER/ERM: Khoung Kelvin Do

BAILIFF/COURT ATTENDANT: Shanon Taylor

CASE NO: 30-2015-00805807-CU-CO-CJC CASE INIT.DATE: 08/21/2015

CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 72514442

EVENT TYPE: Jury Trial

APPEARANCES

J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant, Plaintiff(s).

William G. Bissell, from Law Offices of William G. Bissell, present for Defendant, Cross - Complainant(s).

GARY HUMPHREYS, Defendant is present.

KAREN HUMPHREYS, Defendant is present.

Adam Bereki, self represented Cross - Defendant, present.

All counsel answer ready for trial.

1st day of trial

At 9:21 a.m. This being the date set for Court Trial in the above-entitled cause, having been assigned to this department, all parties and counsel appear as noted above and trial commences.

All parties waived jury trial.

The Court and counsels discuss exhibits and pleadings as set forth on the record.

At 9:33 a.m. The Court declared a recess to read the trial briefs.

At 10:19 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Pursuant to Court's ruling on 3/24/2017, the Court to commence a severed Cross Complaint 1st cause of action as against Cross-Defendant, Adam Bereki.

At 10:14 a.m. Mr. William G. Bissell presents an opening statement on behalf of Cross Complainants Karen & Gary Humphreys for the severed Cross complaint 1st cause of action against Mr. Adam Bereki.

DATE: 03/27/2017

MINUTE ORDER

DEPT: C20

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At 10:29 a.m. Mr. J. Scott Russo presents an opening statement on behalf of Plaintiffs/Cross-Defendants The Spartan Associates, Inc..

At 10:32 a.m Mr. Adam Bereki presents an opening statement on behalf of himself as the Cross-Defendant.

121 document(s) are ordered pre-marked for identification as Plaintiffs/Cross-Defendants exhibits 1 through 137, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

62 document(s) are ordered pre-marked for identification as Cross-Complainants/Cross-Defendants exhibits 301 through 362, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

MS. KAREN HUMPHREYS is sworn and testifies.

At 11:14 p.m. Court declares a recess.

At 11:25 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 11:26 a.m. Ms. Karen Humphreys, previously sworn, resumes the stand for further testimony .

Ms. Karen Humphreys steps down.

MR. GARY HUMPHREYS is sworn and testifies.

At 11:58 a.m. Court declares a recess.

At 1:40 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 1:42 p.m. Mr. Gary Humphreys, previously sworn, resumes the stand for further testimony .

Exhibit(s) 32, 302, 303, 304, 305, 306, having been previously marked for identification are admitted into evidence.

At 2:20 p.m. Mr. Gary Humphreys steps down.

MR. ADAM BEREKI is sworn and testifies.

Portions of Mr. Adam Bereki's deposition transcripts of 8/2/2016 read on the record (page 98 lines 10 to 13; page 61 lines 5 to 9)

At 2:34 p.m. Court declares a recess.

2:42 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 2:45 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

Exhibit(s) 34, 35, 33, 351 and 355, having been previously marked for identification are admitted into

evidence.

At 3:22 p.m. Court declares a recess.

At 3:41 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 3:42 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

Exhibit(s) 30-1; 348, having been previously marked for identification are admitted into evidence.

Mr. Adam Bereki steps down.

At 3:55 p.m. Mr. Gary Humphreys, previously sworn, recalls to the stand for further testimony by his counsel.

Mr. Gary Humphreys steps down.

At 4:10 p.m. Court declares a recess.

Court is adjourned until 03/28/2017 at 09:30AM in C-20.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 03/28/2017

TIME: 09:30:00 AM

DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee

CLERK: Cora Bolisay

REPORTER/ERM: Khoung Kelvin Do

BAILIFF/COURT ATTENDANT: Michelle Gallegos

CASE NO: 30-2015-00805807-CU-CO-CJC CASE INIT.DATE: 08/21/2015

CASE TITLE: **THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 72559889

EVENT TYPE: Jury Trial

APPEARANCES

J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant, Plaintiff(s).

William G. Bissell, from Law Offices of William G. Bissell, present for Defendant, Cross - Complainant(s).

KAREN HUMPHREYS, Defendant is present.

GARY HUMPHREYS, Defendant is present.

Adam Bereki, self represented Cross - Defendant, present.

2nd day of trial

At 9:55 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 9:57 a.m. Mr. William G. Bissell presents closing argument on behalf of Cross-Complainants/Defendants, Karen & Gary Humphreys.

At 10:12 a.m. Mr. J. Scott Russo presents closing argument on behalf of Cross-Defendant, The Spartan Associates, Inc..

Mr. Adam Bereki waived closing argument.

At 10:19 a.m. Court declares a recess.

At 10:52 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license.

The Court finds judgment for the Cross Complainants, Gary & Karen Humphreys (First Cause of Action,

DATE: 03/28/2017

MINUTE ORDER

DEPT: C20

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for Disgorgement of Funds Paid) and against cross-defendant, Adam Bereki.

The Court invites counsels to meet and discuss the plan for the remaining cause of actions and the complaint.

At 11:19 a.m. Court declares a recess.

At 11:37 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Legal discussions held with regards to remaining cross-complaint cause of actions and the complaint as set forth on the record.

Counsels are to resume discussions during lunch hour and report to the Court at 1:45 p.m.

At 11:47 p.m. Court declares a recess.

At 1:48 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Counsels reached an agreement as set forth on the record.

Mr. J. Scott Russo presents an offer of proof on plaintiff's complaint that if called Mr. Adam Bereki would be the witness and the testimony would be that Plaintiff, Spartan Associates had rendered goods and services to the defendants. The fair market value for the services and goods of \$82,821.53 to be backed up by invoices and testimony about the reasonable value of those services that would be the first cause of action Quantum Merit. For the 2nd cause of action, go and in hand that it was an open book accounting was rendered to the defendants that they were given the accountings and the sum was \$82,821.53 that was still due.

Based on Mr. Russo's offer of proof, the Court understand that those claims are based upon the view of plaintiff Spartan Associates, Inc. was the general contractor on the project. The Court finds that Spartan Associates does not have standing as determined earlier today that Mr. Bereki was the purported general contractor on the contract. Spartan Associates, Inc. may have been apparently substituted but it is certainly not with the permission or agreement of the defendants. Based on that, the **Court finds judgment for the defendants on the complaint.**

The parties have discussed, agreed and stipulates on the record as follows: The entirety of remaining causes of action on the First Amended Cross-Complaint will be dismissed without prejudice. If judgment on the first cause of action becomes final, the dismissal without prejudice will be converted to dismissal with prejudice. Pending judgment on the first cause of action becoming final, the statute of limitations on the re-filing of an action of the dismissed causes of action is waived. If a new action is filed on the dismissed causes of action, discovery deemed completed and will not be re-opened and the newly filed case will be consolidated with the remanded case for trial.

Pursuant to Mr. Bissell's Motion, **the Court orders the remaining causes of action, negligence, fraud, alter ego, penalty, attorney's fees and recovery against the Contractor's license bond be dismissed without prejudice. The judgment on the First Amended Cross Complaint is on the 1st cause of action for discouragement only.**

The Court directs Mr. William G. Bissell to prepare the judgment.

At 2:03 p.m. Pursuant to oral stipulation set forth on the record, exhibits are released and returned to the submitting parties/counsels for maintenance, custody and safekeeping pending any post-verdict or appeal proceedings. All identification tags and other identifying markings are to remain in place pending this period.

At 2:05 p.m. The Court is adjourned in this matter.

Appendix [B]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address) William Bissell SBN 93527 14 Corporate Plaza Drive, Suite 120 Newport Beach, CA 92660 TELEPHONE NO. (949) 719-1159 FAX NO. (Optional) E-MAIL ADDRESS (Optional) wbissell@wgb-law.com ATTORNEY FOR (Name) Gary Humphreys & Karen Humphreys		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER APR 20 2017 DAVID H. YAMASAKI, Clerk of the Court BY: <u>C. Bolivar</u> DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS 700 Civic Center Drive West MAILING ADDRESS CITY AND ZIP CODE Santa Ana, CA 92701 BRANCH NAME Central Justice Center PLAINTIFF The Spartan Associates, Inc. DEFENDANT Gary Humphreys, Karen Humphreys et al		
JUDGMENT <input type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input checked="" type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER 2015-00805807 Judge David Chaffee

JUDGMENT

1. ☐ **BY DEFAULT**
- Defendant was properly served with a copy of the summons and complaint.
 - Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - Defendant's default was entered by the clerk upon plaintiff's application.
 - ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)) Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - ☐ plaintiff's testimony and other evidence
 - ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - ☐ the signed written stipulation was filed in the case
 - ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☒ **AFTER COURT TRIAL** The jury was waived. The court considered the evidence.
- The case was tried on (date and time): March 27, 2017 at 9:00 a.m. before (name of judicial officer): The Honorable David Chaffee
 - Appearances by:

<input checked="" type="checkbox"/> Plaintiff (name each) (1) The Spartan Associates, Inc. (2) <input type="checkbox"/> Continued on Attachment 3b	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) J. Scott Russo esq. (2) <input type="checkbox"/> Defendant's attorney (name each): (1) William Bissell esq. (2) William Bissell esq.
<input checked="" type="checkbox"/> Defendant (name each): (1) Gary Humphreys (2) Karen Humphreys <input checked="" type="checkbox"/> Continued on Attachment 3b.	
 - ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - ☒ A statement of decision (Code Civ. Proc., § 632) ☒ was not ☐ was requested.

PLAINTIFF The Spartan Associates, Inc.	CASE NUMBER 2015-00805807
DEFENDANT Gary Humphreys, Karen Humphreys et al	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4 ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties

5. Parties. Judgment is

a ☐ for plaintiff (name each)

and against defendant (names):

☐ Continued on Attachment 5a.

b. ☒ for defendant (name each).

Gary Humphreys & Karen Humphreys

c ☒ for cross-complainant (name each).

Gary Humphreys & Karen Humphreys
and against cross-defendant (name each):
Adam Bereki

☐ Continued on Attachment 5c.

d ☐ for cross-defendant (name each):

6 Amount.

a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input type="checkbox"/> Damages	\$
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$

b. ☒ Plaintiff to receive nothing from defendant named in item 5b.

☒ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

c ☒ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$ 848,000.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input checked="" type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.

☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7 ☒ Other (specify):

Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 20 2017

☐ 

JUDICIAL OFFICER
DAVID R. CHAFFEE

Date

☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court

Date:

Clerk, by _____, Deputy

Page 2 of 2

Appendix [C]

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1116(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1116(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1116.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

GARY HUMPHREYS et al.,

Cross-complainants and Respondents.

v.

ADAM BEREKI,

Cross-defendant and Appellant,

G055075

(Super. Ct. No. 30-2015-00805807)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R.
Chaffee, Judge. Affirmed.

Adam Bereki, in pro. per., for Plaintiff and Appellant.

William G. Bissell for Defendants and Respondents.

* * *

This case involves the purported general contractor for a condominium remodel project, Adam Bereki, on one side, and the condominium owners, Gary and Karen Humphreys (the Humphreys), on the other. After the Humphreys terminated Bereki's involvement, a now defunct corporation formerly owned by Bereki, Spartan Associates, Inc. (Spartan Associates), sued Humphreys, claiming they still owed approximately \$83,000 for work on the project. The Humphreys denied the allegations and cross-complained against Bereki and Spartan Associates. Among the remedies they sought was disgorgement of all payments made for the project, pursuant to Business and Professions Code section 7031, subdivision (b)¹, due to Bereki's alleged failure to possess a required contractor's license.

Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work — \$848,000. Its ruling and a stipulation by the parties disposed of the remainder of the case and Bereki appealed. He challenges the disgorgement on a variety of constitutional, legal, and factual grounds. We find no merit in his contentions and, therefore affirm the judgment.

I

FACTS

The Humphreys own a condominium on Lido Isle in the City of Newport Beach. It was originally two separate units. The couple hired Bereki to do some remodeling which would, among other things, turn the two units into a single unit. After an on-site walkthrough, the Humphreys exchanged e-mails with Bereki to confirm the scope of the project. In one of his e-mails, Bereki stated he and his partner would perform the work for a specified rate.

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

The Humphreys agreed to the proposed scope and rates, and also inquired whether a written contract was necessary. Bereki responded that it was not; their “words/commitment [was] enough.” To start the project, Bereki asked the Humphreys for a \$15,000 check deposit payable to him, personally.

Several months into the remodel the Humphreys, at Bereki’s request, started making their progress payments to Spartan Associates instead of paying Bereki directly as an individual. Bereki never gave them an explanation for the change or what, if any, involvement Spartan Associates had in the project, but the accountings he sent included the name “Spartan Associates.”

After approximately a year and a half, the Humphreys terminated Bereki’s involvement and later hired a different general contractor to complete the project.

Believing the Humphreys still owed approximately \$82,800 for materials used in the remodel and labor performed, Spartan Associates sued to recover that amount. The Humphreys generally denied the allegations in the complaint, and filed a cross-complaint against Bereki, Spartan Associates, and a surety company. Among the allegations were causes of action for negligence, intentional misrepresentation, and negligent misrepresentation. The trial court later granted them leave to amend the cross-complaint to include a cause of action for disgorgement of funds paid to an unlicensed contractor, pursuant to section 7031, subdivision (b).

At the Humphreys’ request, the trial court bifurcated the disgorgement claim from the remainder of the claims in the cross-complaint, and it held a trial on that issue first. During the course of the two-day bench trial on the disgorgement cause of action, the court heard testimony from the Humphreys and Bereki.

Karen Humphreys testified it was her understanding, based on the initial e-mails exchanged with Bereki, that she and her husband were contracting with Bereki and his partner to do the work. They wanted a licensed contractor to do the work and obtain all the necessary permits, and she “took [Bereki] at his word that he had a license.”

She also testified there was no mention of Spartan Associates until months after the project began and insisted they never entered into a contract with Spartan Associates.

Gary Humphreys concurred with his wife's testimony about the remodel details, the series of events that transpired between them and Bereki, and the agreement he believed they entered into with Bereki. In addition, he confirmed Bereki told him he was a licensed contractor and stated he would not have hired him if he knew it was otherwise.

In contrast, Bereki testified the contract for the couple's remodel project was between the Humphreys and Spartan Associates. He nevertheless acknowledged his initial e-mail communications to the Humphreys made no mention of Spartan Associates, including the one which set forth the proposed scope of work and hourly rates. When asked about contractor's licenses, he admitted he never possessed one as an individual or as a joint venture with his partner. Spartan Associates, however, did have a contractor's license at the time of the project.

As for the work done for the Humphreys, Bereki testified he believed Spartan Associates performed all of it. He testified that the three city permits for the project were all obtained by, and issued to, Spartan Associates. Additionally, he produced contracts with subcontractors who performed aspects of the remodel work. The majority of these contracts were between the given subcontractor and Spartan Associates.²

The trial court found in favor of the Humphreys on the disgorgement cause of action based on its determination that Bereki, not Spartan Associates, was the

² Bereki filed an unopposed motion to augment the record on appeal with certain exhibits admitted in the trial court. We deny the request because the exhibits already are "deemed part of the record" by Court Rule. (Cal. Rule of Court, rule 8.122(a)(3).) We have considered the copies of the exhibits he provided in conjunction with our review of this appeal.

contractor who performed all the remodel work. As a result, the court also found in favor of the Humphreys on Spartan Associates's complaint. The remainder of the cross-complaint was dismissed without prejudice at the Humphreys' request.

II

DISCUSSION

Bereki challenges the portion of the judgment disgorging all compensation paid to him for his work on the Humphreys' remodel project.³ Though articulated in various ways, his arguments boil down to the following: (1) disgorgement under section 7031, subdivision (b), is unconstitutional or, alternatively, criminal in nature; (2) the trial court erred in ordering disgorgement because Spartan Associates, not Bereki, performed the work and Spartan Associates held a contractor's license; (3) even assuming Bereki performed the work, the state's contractor licensing requirement does not apply to him as a "natural person"; (4) there was insufficient evidence to support disgorgement, including no evidence of injury due to Bereki's failure to be individually licensed; (5) the court should have offset the disgorgement amount by the value the Humphreys received through the remodel work; (6) it was improper to order full disgorgement because certain payments were not made from the Humphreys' personal accounts; and (7) the court

³ Bereki appears to also challenge a postjudgment sanctions order the trial court issued based on Bereki's motion to compel a response to a demand for a bill of particulars filed after entry of judgment. The sanctions order is not encompassed by his earlier appeal from the judgment. And although such a postjudgment order is separately appealable (Code Civ. Proc., § 904.1, subds. (a)(2) & (b)), Bereki did not file another appeal. Accordingly, the issue is not before us. (*Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 693 [court without jurisdiction to review postjudgment order from which no appeal is taken].)

erroneously failed to provide a written statement of decision.⁴ We find no merit to any of these contentions.

A. Disgorgement Remedy Under Section 7031

Relying heavily on *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 517 (*White*), the decision in *Alatriste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 664-666 (*Alatriste*) aptly summarizes the nature, purpose and scope of the litigation prohibition and the disgorgement remedy provided in section 7031, subdivisions (a) and (b).

“Section 7031[, subdivision] (b) is part of the Contractors’ State License Law (§ 7000 et seq.), which ‘is a comprehensive legislative scheme governing the construction business in California. [This statutory scheme] provides that contractors performing construction work must be licensed unless exempt. [Citation.] ‘The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]’”

⁴ After briefing was complete, Bereki filed a motion asking that we take judicial notice of a plethora of items, among which are the federal Constitution and other foundational documents for this country, federal and state statutes, and a variety of case law. To begin, “[r]equests for judicial notice should not be used to ‘circumvent []’ appellate rules and procedures, including the normal briefing process.” (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064, overruled on another point as stated in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257.) Further, “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9.) We therefore deny Bereki’s request as unnecessary to the extent it included such materials. As for the remaining items, we likewise deny the request because we find them not properly the subject of a request for judicial notice and/or irrelevant to resolution of the matters before us. (Evid. Code, §§ 451, 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089, fn. 4 [appellate court will not take judicial notice of irrelevant material].)

[Citation.] The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services. [Citation.]’ [Citation.]

“This statutory scheme encourages licensure by subjecting unlicensed contractors to criminal penalties and civil remedies. [Citation.] The civil remedies ‘affect the unlicensed contractor’s right to receive or retain compensation for unlicensed work.’ (*Ibid.*) The hiring party is entitled to enforce these remedies through a defensive ‘shield’ or an affirmative ‘sword.’ [Citation.]

“The *shield*, contained in section 7031[, subdivision] (a), was enacted more than 70 years ago, and provides that a party has a complete defense to claims for compensation made by a contractor who performed work without a license, unless the contractor meets the requirements of the statutory substantial compliance doctrine. [Citation.] Section 7031[, subdivision] (e), the substantial compliance exception, provides relief only in very narrow specified circumstances, and ‘*shall not apply . . . where the [unlicensed contractor] has never been a duly licensed contractor in this state.*’ [Citation.]

“The California Supreme Court has long given a broad, literal interpretation to section 7031[, subdivision] (a)’s shield provision. [Citation.] The court has held that [it] applies even when the person for whom the work was performed *knew* the contractor was unlicensed. [Citation.] . . . [It] explained that “‘Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .’” [Citation.] “‘Because of the strength and clarity of this policy [citation],” the bar of section 7031 [, subdivision] (a) applies “[r]egardless of the equities.” [Citations.]

“In 2001, the Legislature amended section 7031 to add a *sword* remedy to the hiring party’s litigation arsenal. This sword remedy, contained in section

7031[,subdivision] (b), currently reads: ‘Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.’ [¶] By adding this remedy, the Legislature sought to further section 7031[,subdivision] (a)’s policy of deterring violations of licensing requirements by ‘allow[ing] persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. [Citation.]’ [Citation.]” (*Alatrisme, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatrisme* and *White* “concluded that the Legislature intended that courts interpret sections 7031[, subdivision] (a) and 7031[, subdivision] (b) in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant.” (*Alatrisme, supra*, 183 Cal.App.4th at p. 666, citing *White, supra*, 178 Cal.App.4th at pp. 519-520.) These principles are well-settled under the law.

Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence — “an equitable remedy” — for performing work without a required contractor’s license. (*S.E.C. v. Huffman* (5th Cir. 1993) 996 F.2d 800, 802 (*S.E.C.*); see *Walker v. Appellate Division of Superior Court* (2017) 14 Cal.App.5th 651, 657 [§ 7031 contemplates civil proceedings].) The Legislature created a separate criminal penalty. Specifically, section 7028 provides that acting or operating in the capacity of a contractor without a required license is a criminal misdemeanor subject to jail time, or fines, and restitution. (§ 7028, subs. (a)-(c), (h).)

For similar reasons, Bereki’s attempt to characterize disgorgement as an award of unconstitutional punitive damages is unavailing. As an equitable remedy, disgorgement is not punishment and, therefore, it does not implicate the excessive fines

clause of the Eighth Amendment to the United States Constitution. (*S.E.C.*, *supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-63.)

B. Contractor Licensing Requirement

Before turning to application of section 7031, subdivision (b), we address Bereki's claim that he, in his individual capacity, did not need a contractor's license. His argument is twofold, one part legal and the other part factual. We reject both.

As for the legal argument, Bereki asserts that licensing requirements only apply to "fictitious" persons, not "natural" persons such as himself. He cites no authority for his unique interpretation of the relevant statutes. And, the statutes provide otherwise. Contractors who are required to obtain a license include "[a]ny person . . . who . . . undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any . . . home improvement project, or part thereof." (§ 7026.1, subd. (a)(2).) In turn, "[p]erson" is defined to include "an individual[,]" as well as a variety of types of business entities and associations. (§ 7025, subd. (b).) "In ordinary usage[,], the word 'individual' denotes a natural person not a group, association or other artificial entity. (See Webster's Third New Internat. Dict. (2002 ed.) p. 1152 [giving a primary definition of 'individual' as 'a single human being as contrasted with a social group or institution'].)" (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 623, disapproved of on other grounds in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 416.) There is nothing in the statutes that indicates a different, specialized meaning. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 ["In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them a special meaning"].)

Bereki's factual attack concerns the trial court's conclusion that he, not Spartan Associates, was the contractor who performed the remodel work for the Humphreys. Though he implores us to engage in de novo review of this issue, it is a factual determination which we review for substantial evidence. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) There is ample evidence in the record supporting the court's conclusion.⁵

Both of the Humphreys testified that on the first day they met Bereki for a walkthrough of the site, he informed them that he and his partner would act as the general contractor for the project. Bereki followed up with a written proposal and estimate, which he sent to the couple from his personal e-mail address. When they inquired whether he had a contractor's license, he assured them he did, and when they asked him to whom they should make out their payment checks, he told them to put them in his name.

At no time during this series of events did Bereki ever mention Spartan Associates. Notably, Bereki did not apply to the State Board of Equalization to register Spartan as an employer until roughly three months after the remodel work began. Then, about four months into the project, he introduced the corporation into the mix by asking the Humphreys, without any explanation, to make future payments to Spartan Associates.

⁵ Bereki filed a motion asking us to consider additional evidence not presented in the trial court, among which are two declarations, an e-mail correspondence and a letter. He believes the documents are relevant to establishing the identity of the contracting parties. We deny the motion as "[i]t has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, *upon a record of matters which were before the trial court for its consideration.*'" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics added.) Circumstances warranting an exception to this rule are very rare and we do not find them extant here, particularly in light of the conflicting evidence weighed by the trial court. (See *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1213 ["The power to take evidence in the Court of Appeal is never used where there is conflicting evidence in the record and substantial evidence supports the trial court's findings."].)

Based on what transpired, the couple believed they contracted with Bereki, in his individual capacity, to complete the remodel work.

While Bereki claims the Humphreys lied when they testified at trial because some of their factual statements purportedly contradicted those they made at the summary judgment stage, our role is not to resolve factual disputes or to judge the credibility of witnesses. (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) The trial court bore that responsibility in this case, and our review of the record reveals substantial evidence to support its conclusion that Bereki, not Spartan Associates, was the contractor for the job.

C. Disgorgement Remedy Under Section 7031

Separate from his general attacks on section 7031, subdivision (b), Bereki challenges its application under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit — the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. (See, e.g., *Alatraste, supra*, 183 Cal.App.4th at pp. 672-673; *White, supra*, 178 Cal.App.4th at pp. 520-521; see also *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521.) Full disgorgement is required; offsets and reductions for labor and materials received are not permitted.

Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor's license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute. The disgorgement consequence is not remedial in nature. Similar to the licensing requirement, it is a proactive measure

intended to decrease the likelihood of harm due to “incompetent or dishonest providers of building and construction services.” (*White, supra*, 178 Cal.App.4th at pp. 517.)

We also are not persuaded by Bereki’s objection to the amount the court ordered him to repay to the Humphreys. He highlights evidence showing that some of the payment checks came from Gary Humphreys’ corporation, and he argues the Humphreys are not entitled to those amounts given they did not pay them in the first instance. While we do not necessarily see eye-to-eye with Bereki’s legal reasoning, we need not reach the legal aspect of his argument due to the trial court’s factual findings.

The trial court, relying on Gary Humphreys’ uncontradicted testimony, found that the contested payments ultimately were attributable to Gary Humphrey himself. Substantial evidence supports this conclusion. The Humphreys testified that the business is an S corporation, and at the relevant time Gary Humphreys was the sole shareholder and an employee. Gary Humphreys explained he was traveling often for business during the remodel, including at times when Bereki insisted on needing money ““right away.”” To facilitate the payments, Gary Humphreys had persons in his corporation with signing authority write checks from the corporate account. The amounts paid on the Humphreys behalf were then accounted for through a reduction in the regular income Gary Humphreys received from the corporation. He paid income taxes on those amounts because they were included in the figures listed on his annual W-2 form.

Under these circumstances, we find ample evidence to support the trial court’s factual finding that although certain payments to Bereki were made from the Humphreys’ business account, they ultimately were accounted for in a way that ensured they were personal payments from the Humphreys, as individuals. Accordingly, the Humphreys were entitled to “all compensation paid.” (§ 7031, subd. (b).)

We recognize that the provisions of section 7031, including the disgorgement remedy, are harsh and may be perceived as unfair. As courts have explained, however, they stem from policy decisions made by the Legislature.

(*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151; see *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896; *Alatrisme, supra*, 183 Cal.App.4th at p. 672.) “[T]he choice among competing policy considerations in enacting laws is a legislative function” (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25; *Alatrisme, supra*, 183 Cal.App.4th at p. 672.)

D. Statement of Decision

Though he admits he did not timely request a statement of decision, Bereki claims the trial court should have nevertheless provided one after he made an untimely request. To the contrary, “[n]o statement of decision is required if the parties fail to request one.” (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970; see also Code Civ. Proc., § 632.) The trial court’s denial was proper. (See *In re Marriage of Steinberg* (1977) 66 Cal.App.3d 815, 822 [upholding court’s refusal to make findings of fact and conclusions of law due to party’s failure to timely request them].)

III

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.

Appendix [D]

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare

CLERK: Martha Diaz

REPORTER/ERM: Jamie Jennings CSR# 13434

BAILIFF/COURT ATTENDANT: Loretta Schwary

CASE NO: **30-2015-00805807-CU-CO-CJC** CASE INIT.DATE: 08/21/2015

CASE TITLE: **THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 72990898

EVENT TYPE: Motion to Vacate

MOVING PARTY: Adam Bereki

CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

APPEARANCES

Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross -
Complainant, Defendant, Respondent on Appeal(s).

Adam Bereki, self represented Defendant, present.

Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. The arguments presented on this motion were already raised and rejected, and the appellate decision affirming the underlying judgment on the merits is now final. Upon remittitur, the trial court is revested with jurisdiction of the case only to carry out the judgment as ordered by the appellate court. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1365-1366.) Arguments on the merits of the underlying judgment cannot be entertained anew here. The Motion is therefore Denied.

Counsel for the Humphreys to give notice.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C16

THE SPARTAN ASSOCIATES, INC.,)

Plaintiff,)

vs.) No. 30-2015-00805807

GARY HUMPHREYS, an individual;)

KAREN HUMPHREYS, an individual, and)

DOES 1 THROUGH 25, inclusive,)

Defendants)

GARY HUMPHREYS, an individual and)

KAREN HUMPHREYS, an individual;)

Cross-Complainants,)

vs.)

ADAM BEREKI, an individual, et al.,)

Cross-Defendants.)

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 15, 2019

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS,
CROSS-COMPLAINANTS:

WILLIAM G. BISSELL
ATTORNEY AT LAW

FOR THE CROSS-DEFENDANT:

ADAM BEREKI
IN PROPRIA PERSONA

JAMIE JENNINGS, CSR NO. 13434
OFFICIAL COURT REPORTER

INDEX

(NO WITNESSES)

(NO EXHIBITS)

1 SANTA ANA, CALIFORNIA - MARCH 15, 2019

2 MORNING SESSION

3 (PROCEEDINGS IN OPEN COURT:)

4 * * *

5 THE COURT: Thank you. Is there an appearance
6 on court call, please.

7 Someone on court call, please.

8 THE CLERK: Mr. Bereki?

9 MR. BEREKI: Your Honor, can you hear me?

10 THE COURT: We can now. Please state your
11 name.

12 MR. BEREKI: Adam Bereki in propria persona.

13 THE COURT: Thank you. Welcome.

14 MR. BEREKI: Thank you.

15 THE COURT: And then counsel for the
16 plaintiff.

17 MR. BISSELL: William Bissell, Your Honor, for
18 the opposing parties, Karen and Gary Humphreys.

19 THE COURT: Thank you very much. Okay. So we
20 do have a court reporter here. I do want to find out
21 how much time that you wanted to take to argue the
22 matter, then I'll put that into my consideration as to
23 when I'll call the case.

24 So, Mr. Bissell, did you have a time estimate,
25 if any?

26 MR. BISSELL: Your Honor, we would submit on

1 the tentative.

2 THE COURT: Okay. Mr. Bereki, do you have a
3 time estimate at all?

4 MR. BEREKI: 10 -- 10 minutes, Your Honor. I
5 just have some questions to ask of you for clarity
6 because my next step is obviously to go to the US
7 Supreme Court, so I just want some clarity on your
8 tentative.

9 THE COURT: Okay. Do you have -- do you have
10 the tentative? Have you been able to pull it off the
11 internet?

12 MR. BEREKI: Yes. I'm looking at it,
13 Your Honor.

14 THE COURT: All right.

15 Okay. Very good. So I'll come back to you
16 then.

17 MR. BEREKI: Thank you.

18 THE COURT: Thank you for your patience.

19 (Recess.)

20 THE COURT: Okay. The matter is Spartan
21 Associates versus Humphreys.

22 MR. BISSELL: Good morning, Your Honor.
23 William Bissell for Respondents, the Humphreys.

24 THE COURT: Thank you.

25 Mr. Bereki, would you make your experience.

26 MR. BEREKI: Yes, Your Honor. Adam Bereki in

1 propria persona. Your Honor, this case hinges upon
2 whether federal constitutional protections were denied
3 and whether the trial in appellate court had
4 jurisdiction to deny these protections. The matter goes
5 to the jurisdiction of the Court, not the merit as was
6 cited in the tentative.

7 While the rule that Your Honor cited may be
8 applicable, it cannot be used to overrule the federal
9 constitutional protections that I'm contending were
10 denied here. This is held in *Miranda v. Arizona* at 384
11 US 436 at 491. The US Supreme Court stated there:
12 Where rights secured by the Constitution are involved,
13 there shall be no rule-making or legislation that would
14 abrogate them.

15 The law of case doctrine that was cited in the
16 tentative authority, which is *People v. Dutra*, does not
17 apply here. It states: Because the rule is merely one
18 of procedure and does not go to the jurisdiction of the
19 Court, the doctrine will not be adhered to where its
20 application will result in an unjust decision. For
21 example, where there has been a manifest misapplication
22 of existing principles resulting in substantial
23 injustice.

24 That is exactly what I'm claiming here,
25 Your Honor, that there's been a substantial injustice.
26 And so, because this is a motion to vacate a void

1 judgment, I'm challenging the jurisdiction of the court
2 to issue the Humphreys costs, and they have not
3 substantiated the jurisdiction of the court to violate
4 the Constitution and award the costs or even to have
5 judgment awarded in their favor.

6 THE COURT: Thank you very much. Thank you.
7 Counsel, did you want to say something?

8 MR. BISSELL: I'm not sure how to respond to
9 that, Your Honor. It's clear that the question of
10 jurisdiction has been determined not once but twice:
11 Once at the trial court level, once at the appellate
12 court level, and presented to the California Supreme
13 Court and rejected as a -- as grounds for review at that
14 level. The -- you know, the Superior Court is a court
15 of general jurisdiction; it has jurisdiction over all
16 matters not exclusively reserved to the Courts of Appeal
17 or the California Supreme Court. It had subject matter
18 jurisdiction over this action.

19 Mr. Bereki appeared at the trial in this
20 matter, he presented his case, he presented evidence, he
21 questioned witnesses, he cross-examined witnesses. So,
22 clearly, he had submitted to personal jurisdiction in
23 this case. So the jurisdiction question is, to me, put
24 to rest. If he wants to raise it, he has to raise it at
25 another level.

26 Now, Mr. Bereki here is -- he's unhappy with

1 the Court's ruling, with the Court's decision. He
2 thinks it's in error. Well, that's not a void judgment.
3 That's a judgment you take up on appeal. He's done
4 that. He's lost on appeal. If he's still unhappy, he
5 has another level to go. That's where he has to go. He
6 has no business being in this court today to present
7 this motion.

8 THE COURT: Thank you.

9 Mr. Bereki?

10 MR. BEREKI: Yes, Your Honor. This is not
11 just a matter of me being unhappy with the judgment.
12 The Supreme Court in Kokesch v. SEC recently heard this
13 matter regarding disgorgement. And what the Court --
14 what the matter was before that court was, I believe,
15 Mr. Kokesch -- there was a judgment awarded, a
16 disgorgement judgment awarded against him for about
17 \$40 million. And there was a statute in this case --
18 the determination was to whether that disgorgement
19 penalty was -- was a penalty or not, because, if it was,
20 then the statute of limitations would apply and he would
21 not be liable for that disgorgement.

22 So the court heard the matter and determined
23 that the disgorgement in that case was a penalty.

24 So, in this case, there's been a
25 near-million-dollar disgorgement judgment awarded
26 against me. And I'm claiming that that judgment, based

1 upon the Kokesh decision by the Supreme Court, is a
2 penalty. And if you apply the same holdings that they
3 did in Kokesh to this case, it clearly evidences that
4 the holding in this case is punitive as well.

5 So here's where the constitutional protections
6 apply and why I'm challenging the jurisdiction of the
7 court: Because a court does not have jurisdiction to
8 violate either the California Constitution or the
9 Constitution of the United States.

10 So if the trial in Appellate Court found that
11 this award was not punitive, in spite of the fact that
12 the US Supreme Court held that it was, I'm contending
13 that the 14th Amendment protections for excessive
14 punitive damage awards have to apply here and that
15 essentially due process was violated because the court
16 did not recognize that the judgment was punitive in
17 nature.

18 So, in my mind, if the constitution's been
19 violated, that's not a judicial act and the court
20 doesn't have jurisdiction to do that, which is why I
21 keep challenging jurisdiction. And, on appeal and in
22 the trial court, I have not yet seen one authority
23 presented by the Humphreys or by the courts that
24 overrule the Supreme Court's authority in Kokesh or the
25 more than 100 years' authority case cited in that case
26 that discuss exactly what a punitive judgment is. And

1 the judgment in this case, disgorgement, strictly to be
2 nonpunitive under the laws of restitution -- nonpunitive
3 restitutionary disgorgement can only apply to the
4 profits that I made acting as the, quote/unquote,
5 unlicensed contractor in this case. Can't order
6 disgorgement of all the moneys were paid whatsoever,
7 because, once you go beyond profits, as the Court held
8 in Kokesh, it becomes punitive.

9 So the Humphreys have to be able to
10 substantiate how they got a near-million-dollar award
11 that wasn't punitive. And nowhere in this case and
12 nowhere in any of the decisions of the Appellate Court
13 or anywhere else do they do that. So it's very clear to
14 me that this award that goes beyond any compensation
15 that I received is punitive.

16 And if you look at the Exhibit B, which is the
17 order for judgment in this case, it lists damages at
18 \$848,000. Well, my contention is these are punitive
19 damages. Well, if they are, then the 14th Amendment's
20 protections for excessive punitive damages apply. And
21 if you apply those protections in this case, the maximum
22 award that they could have got is \$5,000; not a million.

23 So, I mean, this is hugely, hugely
24 significant, and the jurisdictional issue is not just me
25 being upset with the Court's judgment. I'm happy to
26 take a lick and keep going on with life, but I want to

1 see the authorities for the Court to do this, and they
2 just aren't here.

3 The two cases that the Appellate Court cited
4 are actually SEC versus Huffman. That one was overruled
5 or superseded by Kokesh. And the other one was
6 United States versus Phillip Morris, and that one is
7 also, so to speak, in my favor because it says that it's
8 not in the Court's equity powers to issue punishment.
9 And it -- disgorgement only applies to the ill-gotten
10 gains or profits, not to all of the compensation that
11 was paid for a project.

12 THE COURT: Thank you very much.

13 Did you want to retort, for a moment only?

14 MR. BISSELL: Just for a moment only,
15 Your Honor.

16 These arguments go to the merits of the case
17 that has been determined as final and remitted to the
18 Superior Court for one purpose only: For the entry of
19 an award of costs. Even a case where the Court has made
20 an error of law, even if the error of law is apparent on
21 its face, which it's not here, that is not a void
22 judgment and cannot be attacked at this level.

23 THE COURT: Mr. Bereki, you did read the
24 tentative; right?

25 MR. BEREKI: I did, Your Honor. And what I'm
26 saying is that appears to be a legislative rule that is

1 attempting to over -- to supersede the Constitution.
2 Because the Miranda v. Arizona decision states, quote:
3 Where rights secured by the Constitution are involved,
4 there shall be no rule-making or legislation that would
5 abrogate them. And under the supremacy clause of
6 Article 6, Section 2, the Constitution has authority
7 here.

8 So if these are punitive damages and the Court
9 violated the Constitution, it does not have jurisdiction
10 to issue a remittitur and award costs or to affirm the
11 judgment of the Humphreys, period.

12 THE COURT: Well, what I --

13 MR. BEREKI: And the authorities that I've
14 established here are -- Kokesch is one. I mean,
15 literally 100 years of precedent of determining what a
16 punitive damage award is, which is clearly punishment
17 because --

18 THE COURT: No, I got it. No, I understand.
19 Your papers make that clear and your argument makes that
20 clear. The tentative, however, is the present state of
21 the law, and so it will have to be the order of the
22 Court.

23 I want to thank you very much for your very
24 articulate presentation and --

25 MR. BEREKI: No problem, Your Honor. Can I
26 ask you a couple of questions?

1 THE COURT: Well, the Court doesn't really
2 answer questions. The Court reviews the papers and then
3 gives tentatives. So I can really offer no direction.
4 The issues that you're dealing with and have argued
5 involve substantive law, and that is something that
6 really has to be addressed, in this circumstance, with
7 the Court of Appeal. Already been to the Court of
8 Appeal. Petition to the Supreme Court. And you may
9 have other remedies, but I really cannot comment on any
10 of those or offer you any assistance.

11 MR. BEREKI: I'm not interested in you
12 practicing law or doing that. I just had some questions
13 about how -- the decision that you made to issue the
14 tentative in this case.

15 THE COURT: Yeah. It is in the tentative. It
16 is in the tentative. So I have other people in the
17 courtroom, and I'm going to have to get to their case,
18 but I really want to appreciate -- tell you that I
19 appreciate your fine argument and that of counsel.

20 So have a good day. The tentative --

21 MR. BEREKI: Okay. Your Honor, can I wait
22 until the other people are done so that we can go
23 through this?

24 THE COURT: Well, I really do not want to get
25 involved in doing any more than I've already done. I
26 cannot give any legal advice or give any direction, and

1 the --

2 MR. BEREKI: I'm clearly not asking for that,
3 Your Honor.

4 THE COURT: Excuse me.

5 MR. BEREKI: I have questions -- just to give
6 an example, the judgment order says there's damages in
7 \$848,000. So I have questions as to what specific type
8 of damages these are.

9 THE COURT: Yeah, no, I'm not prepared --

10 MR. BEREKI: I need to know that to be able to
11 prepare a meaningful and substantive petition to the
12 Supreme Court. If no one's going to answer these
13 questions, well, I feel that that's denying me a
14 hearing, and I have a right to know what the actual
15 judgment order is and how the --

16 THE COURT: The Appellate Court -- excuse me.

17 As a matter of fact, the Appellate Court, in
18 its opinion, did address those issues. So I do have to
19 move on. The tentative is the order of the Court.

20 You have a very nice day. Thank you.

21 MR. BEREKI: Thank you.

22 THE COURT: Bye-bye.

23 MR. BISSELL: Thank you, Your Honor.

24 (Proceedings concluded.)

25

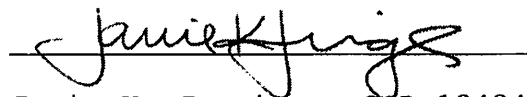
26

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

I, Jamie K. Jennings, CSR 13434, Official
Court Reporter in and for the Superior Court of the
State of California, County of Orange, do hereby certify
that the foregoing transcript, consisting of Pages 1
through 11, inclusive, is a true and correct transcript
of my shorthand notes and is a full, true and correct
statement of the proceedings had in said cause.

Dated this 20th day of March, 2019.

A handwritten signature in cursive script, appearing to read "Jamie K. Jennings", written over a horizontal line.

Jamie K. Jennings, CSR 13434

Appendix [E]

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G055075 JAN 30 2019

S252954

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix [F]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-2050-CBM-(ADSx) Date November 12, 2019

Title Bereki v. Humphreys et al.

Present: The Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

YOLANDA SKIPPER
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff:
NONE PRESENT

Attorneys Present for Defendants:
NONE PRESENT

Proceedings: **IN CHAMBERS- ORDER RE: REQUEST FOR ASSISTANCE OF
COUNSEL**

The matter before the Court is Plaintiff's Request for Assistance of Counsel (the "Request").

The Request is **DENIED** because the Court does not appoint counsel in civil cases.

The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside, and Santa Ana to provide information and guidance to *pro se* litigants, such as Plaintiff, who are not represented by counsel. Below is information regarding the Pro Se Clinics:

Los Angeles Federal Pro Se Clinic

The Edward Roybal R. Federal Building and U.S. Courthouse

255 East Temple Street, Suite 170 (Terrace Level)

Los Angeles, CA 90012

Hours (by appointment only): Mondays, Wednesdays, and Fridays, 9:30 am - 12:00 pm
and 2:00 pm - 4:00 pm

To make an appointment, contact Public Counsel at 213-385-2977, Ext. 270.

Riverside Joint Federal Pro Se Clinic

George E. Brown Federal Building

3420 Twelfth Street, Room 125

Riverside, CA 92501

Hours: Tuesdays and Thursdays, 10:00 am – 2:00 pm

Santa Ana Federal Pro Se Clinic

Ronald Reagan Federal Building and United States Courthouse

411 W. 4th Street, Room 1055 (first floor)

Santa Ana, CA 92701

Hours: Tuesdays, 1:00 pm – 4:00 pm; Thursdays, 10:00 am – 12:00 pm and 1:30 pm – 3:30 pm

Plaintiff can find more information about the Pro Se Clinics, including contact information, at <http://prose.cacd.uscourts.gov/federal-pro-se-clinics>.

IT IS SO ORDERED.

Appendix [G]

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 Adam Bereki,
12 Plaintiff,
13 v.
14 Gary Humphreys;
15 Karen Humphreys,
16 Defendants.
17
18

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: DEFENDANTS’
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT
PURSUANT TO RULE 12(B)(1), (6)
& (7) OF THE FEDERAL RULES
OF CIVIL PROCEDURE AND
REQUEST FOR JUDICIAL
NOTICE [JS-6]**

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

24 **I. BACKGROUND**

25 This action arises from a state court judgment in favor of Defendants and
26

27 ¹ Following the hearing on the Motion, Plaintiff filed a document entitled
28 “Additional Authorities and Corrected Testimony To Be Considered By the Court
re: Defendants Motion to Dismiss Filed 11/19/19,” which has been reviewed by
the Court. (Dkt. No. 30 (hereinafter, “Additional Authorities”).)

1 against Plaintiff in connection with remodeling work performed by Plaintiff. On
 2 April 20, 2017, following a bench trial, the Superior Court, County of Orange,
 3 entered judgment in favor of The Humphreys and against Plaintiff in the amount
 4 of \$848,000 (plus costs).² (FAC Exs. D, G.) The Superior Court found Plaintiff
 5 (as opposed to his company Spartan Associates) was the contractor who
 6 performed the remodel work for The Humphreys, and found Plaintiff was not a
 7 licensed contractor. Accordingly, the superior court awarded The Humphreys
 8 disgorgement of all compensation paid by The Humphreys to Plaintiff for the
 9 remodel work pursuant to Cal. Bus. & Prof. Code § 7031.³ Plaintiff appealed the
 10 state court judgment. The California Court of Appeals affirmed the judgment in
 11 favor of The Humphreys. Plaintiff's request for review by the California Supreme
 12 Court was denied, and Plaintiff's writ for certiorari with the United States
 13 Supreme Court was also denied.

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

21 II. STATEMENT OF THE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **III. DISCUSSION**

27 **A. Request for Judicial Notice**

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

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

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

B. Rooker-Feldman Doctrine

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

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

⁴ Plaintiff did not oppose Defendants' request for judicial notice.

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

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

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

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

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

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

6 (2) Constitutional Challenge

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

24 * * *

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

C. Res Judicata / Collateral Estoppel

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

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

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

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

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

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

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

1 “equitable remedy”).)

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

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

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

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1 **IV. CONCLUSION**

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

6
7 **IT IS SO ORDERED.**

8
9 DATED: February 6, 2020.

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

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

Appendix [H]

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 Adam Bereki,
12 Plaintiff,
13 v.
14 Gary Humphreys;
15 Karen Humphreys,
16 Defendants.
17
18

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: NINTH CIRCUIT'S
REFERRAL AND REVOCATION
OF PLAINTIFF'S IN FORMA
PAUPERIS STATUS [34]**

19 Plaintiff filed the Complaint in this action on October 28, 2019. (Dkt. No.
20 1.) On October 31, 2019, the Court granted Plaintiff's Request to Proceed in
21 Forma Pauperis. (Dkt. No. 5.) On February 6, 2020, this Court issued an order
22 granting Defendants' Motion to Dismiss, and dismissed the action with prejudice
23 because Plaintiff is collaterally estopped from bringing this action and the action is
24 barred pursuant to the Rooker-Feldman doctrine. (Dkt. No. 31 (the "Order").)

25 Plaintiff filed a notice of appeal of the Order on February 10, 2020. (Dkt.
26 No. 32.) On February 24, 2020, the Ninth Circuit referred the matter to this Court
27 "for the limited purpose of determining whether in forma pauperis status should
28 continue for this appeal or whether the appeal is frivolous or taken in bad faith."


1 (Dkt. No. 34.)

2 The Court finds Plaintiff's in forma pauperis status should not continue for
3 the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the
4 Court revokes Plaintiff's in forma pauperis status. *See* 28 U.S.C. § 1915(a)(3)
5 ("An appeal may not be taken in forma pauperis if the trial court certifies in
6 writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091,
7 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where
8 the district court finds the appeal to be frivolous).

9 The clerk of this Court shall provide notice to the Ninth Circuit and the
10 parties of this Order.

11
12 **IT IS SO ORDERED.**

13
14 DATED: February 27, 2020.



CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

16 CC: 9TH COA
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Appendix [I]

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

NOV 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADAM BEREKI,

Plaintiff-Appellant,

v.

GARY HUMPHREYS; KAREN
HUMPHREYS,

Defendants-Appellees.

No. 20-55181

D.C. No. 8:19-cv-02050-CBM-
ADS

Central District of California,
Santa Ana

ORDER

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

Appendix [J]



f: 7/13/20

State of California
Commission on Judicial Performance
155 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: <http://cjp.ca.gov>

July 9, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

At its July 2020 meeting, the Commission on Judicial Performance voted to close your complaint dated June 8, 2020.

Your complaint concerns legal rulings made by the judges. This commission is not a court and does not have the authority to reverse judicial decisions. Even if a judge's decision is later determined to be legally incorrect by an appellate court, that by itself is not a violation of the Code of Judicial Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. The information you have provided is not sufficient to establish any of those factors.

If you wish to provide additional information regarding your complaint, it will be considered. You should provide specific information that fully describes what the judges said or did that you believe was misconduct. You may wish to consult the "Filing a Complaint" and "FAQ's" tabs on the commission's website (<http://cjp.ca.gov>) for further information about what a complaint should contain.

With respect to the legal proceedings that gave rise to your complaint, you may wish to consult an attorney or legal services provider to see if they can help you. This office cannot provide individuals with legal assistance.

Adam Bereki
July 9, 2020
Page 2

We appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anjuli Fiedler', with a large, stylized flourish extending to the right.

Anjuli Fiedler
Staff Counsel

AF:aap/L070920Bereki

Appendix [K]

MAYOR
Vicente Sarmiento
MAYOR PRO TEM
David Penaloza
COUNCILMEMBERS
Phil Bacerra
Johnathan Ryan Hernandez
Jessie Lopez
Nelida Mendoza
Thai Viet Phan



CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA
SANTA ANA POLICE DEPARTMENT
20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

Police Department

December 22, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92646

Subject: Citizen's Complaint – PSU2020-0035

Mr. Bereki,

Your complaint regarding the actions of our police employee(s) has been investigated. Your allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct.

The Santa Ana Police Department is committed to providing quality service. You can be assured that your complaint was treated seriously and a thorough investigation was conducted. Should you have any questions about this investigation, you may contact Commander J. Rodriguez at (714) 245-8705.

Sincerely,

David Valentin
Chief of Police

Robert Rodriguez, Commander
Internal Affairs

SANTA ANA CITY COUNCIL

Vicente Sarmiento
Mayor
vsarmiento@santa-ana.org

David Penaloza
Mayor Pro Tem, Ward 2
dpenaloza@santa-ana.org

Thai Viet Phan
Ward 1
tphan@santa-ana.org

Jessie Lopez
Ward 3
jessielopez@santa-ana.org

Phil Bacerra
Ward 4
pbacerra@santa-ana.org

Johanathan Ryan Hernandez
Ward 5
jryanhernandez@santa-ana.org

Nelida Mendoza
Ward 6
nmendoza@santa-ana.org

Appendix [L]

INFORMATION REPORT

ORIGINAL

Reporting Area: North Uninc

EVENT SUMMARY

Date Occurred: Wednesday, 9/2/2020 08:17

Date Reported: Wednesday, 9/2/2020 08:17

Incident Location: 550 N Flower St, Santa Ana CA 000000000

Naloxone Deployed? ☐Use of Force ☐

Brief Description of Incident: INFORMATION REPORT

OTHER

Name: CHAFFEE, DAVID

Age:

Position/Title: JUDGE

Sex
M Race**REPORTEE**

Name: BEREKI, ADAM ALAN

DOB: 6/18/1979

Age: 41

Address: 818 Spirit, Costa Mesa CA 92626

Email: ABEREKI@GMAIL.COM

Cell Phone: (949)241-6693

Home Phone:

Other Phone:

Sex
M Race
White**OTHER**

Name: HUMPHREYS, GARY

Age:

Sex
M Race**OTHER**

Name: HUMPHREYS, KAREN

Age:

Sex
F Race**PROPERTY/EVIDENCE**

Related Offense: INFO REPORT

Property Description: PAPERWORK

NARRATIVE

On Wednesday, September 2, 2020, Deputy D. Foster #3340 and I were dispatched to Orange County Sheriff's Department Headquarters, located at 550 N. Flower Street in the City of Santa Ana, reference a report.

Upon arrival, we spoke to Adam Alan Bereki (06/18/1979). Adam told us the following: Adam is a former police officer with the Huntington Beach Police Department and was medically retired about 10 years ago. After retiring, Adam started a construction company, Spartan Associates. Adam obtained a contractor's license under Spartan Associates and not under his own name.

From April 2012 to August 2013, Spartan Associates was contracted by Gary and Karen Humphreys

INFORMATION REPORT

ORIGINAL

Reporting Area: North Uninc

(NFD) to remodel a condominium in Newport Beach. In August of 2013, Gary and Karen terminated Spartan Associates. At that time, Gary and Karen had paid Spartan Associates \$848,000.00 and still had a pending balance of \$82,000.00 that they refused to pay Spartan Associates. Spartan Associates attempted to negotiate the price owed with Gary and Karen but they rejected all negotiations. In August of 2015, Spartan Associates filed a lawsuit [Case#2015-00805807] against Gary and Karen, for the time and materials owed, which amounted to \$82,000.00.

On February 16, 2016, Gary and Karen filed a motion for summary judgement. Gary and Karen initially asserted they entered an agreement with Spartan Associates for construction on their condominium. In early 2017, Gary and Karen filed a 1st amended cross complaint with new info. Gary and Karen amended that they contracted with Adam and not Spartan Associates.

On April 20, 2017, the court found that Adam did not have a contracting license in his name, therefore he violated B&P 7031(b). Judge David R. Chaffee ruled that Adam was to pay Gary and Karen \$848,000 in Disgorgement. Adam disagreed with the judgement based on the fact that Adam felt they had contracted with his company. Neither Adam nor Spartan Associates ever had a formal contract with Gary and Karen and all agreed to items were in an email chain which Adam did not provide. Adam provided me a statement with a list of checks written by Gary and Karen for all work completed. In this list there are 7 checks written to Adam and 10 checks written to Spartan Associates.

Due to the \$848,000.00 owed by Adam, a lien was placed on 818 Sprint, Costa Mesa, CA. 92626. Adam stated in November 2010, his mother Roseanne Bereki (09/25/1953) took over as legal owner of the residence and Adam's name is on the legal title. Adam also lost his business' contractors license.

On March 18, 2017, Adam filed a Writ of Error with the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after, Adam received an email stating they denied the request to vacate judgement.

On June 6, 2017, Adam again went to the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after the court responded and fined Adam approximately \$1,500.00, for abuse of discovery. Adam's motion was again denied.

On January 10, 2018, Adam filed an appeal with the Fourth Appellate District Court of Appeal. On October 31, 2018, Adam received the Appeal Court judgement, stating all arguments had no merit.

On October 28, 2019, Adam filed a complaint with the US Supreme Court. On February 27, 2020, the court denied Adam's case, due to the appeal being frivolous.

Adam believes that B&P 7031(b) is unconstitutional and the \$848,000.00 disgorgement was given to him as a fine and a fine can only be levied if he is charged with a crime. Adam cited MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412 and Rambeau v. Barker, 2010 Cal. App. Unpub. Lexis S610 to prove that the violation of B&P 7031(b) and subsequent penalties were imposed illegally and unjustly. Adam stated the fine levied under B&P 7031(b) is actually criminal forfeiture. Adam provided a definition of criminal forfeiture under US v. Seifuddin, 820 F.2d 1074, "If the statute under which the forfeiture alleged is penal, it will be treated as criminal

INFORMATION REPORT

ORIGINAL

Reporting Area: North Uninc

forfeiture." Under People V. Cowan, 47 Cal. App. 5th 32, Adam believes his forfeiture was an excessive fine and his ability to pay was not taken into consideration. The courts rejected these claims stating his amount owed is Disgorgement and not a fine.

Adam also believes the amount was excessive because it did not take into consideration the amount of materials and work completed on the construction project. Adam asserted that his company completed \$848,000.00 worth of work therefore he should only have to pay back any profit he made on the project. Adam cited, US Supreme Court Case Liu V. SEC, 2020 Lexis 3374. This case states: "the profit-based measure of unjust enrichment reflects a foundational principle: It would be inequitable that a wrongdoer should make a profit out of his own wrong. At the same time courts recognize that the wrongdoer should not profit by his own wrong, they also recognized the countervailing equitable principle that the wrongdoer should not be punished by paying more than a fair compensation to the person wronged."

Adam stated his rights have been violated under Title 18, U.S.C., Section 242 –Deprivation of Rights under the Color of Law. Adam believes he has been given an excessive fine by the courts that is cruel and unusual punishment. Adam believes his 5th, 6th, 7th, 8th and 14th Amendment Rights have been violated. Adam believes that Judge Chaffee is in violation of CPC 211- Robbery and CPC 484g Theft by False Pretense, by imposing the \$848,000.00 fine. At the conclusion of the initial judgment, Adam has subsequently represented himself in every court with self-taught legal knowledge. Adam has met with attorneys regarding his case but does not have the funds necessary to retain them as council. Adam has exhausted all legal avenues in the courts to rectify his perceived constitutional violations.

Adam came to the Sheriff's Department as a last resort in an attempt to prove his Constitutional rights have been violated. As the Sheriff's Department is an agent of the Executive Branch of the State Government, Adam would like to use our agency as Checks and Balances with the Legislative and Judicial Branches of the State Government. Adam stated he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Reporting Officer	Milbery, B. 09838	<input type="checkbox"/>	9/6/2020
Assisting Officer	Foster, D. 03340	<input type="checkbox"/>	9/6/2020
Approving Officer	Castro, M. 05307	<input type="checkbox"/>	9/6/2020



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

REQUEST AUTHORIZATION FORM RELEASE OF CASE INFORMATION

NAME ADAM BEREKI DATE 11/25/2020
ADDRESS _____ CASE # 20-029161
CITY _____ STATE CA ZIP _____

CONTACT PHONE _____
YOUR INVOLVEMENT supplemental
(ex: victim, witness, suspect, attorney for , insurance for)
REQUESTOR'S SIGNATURE See attachment

BELOW SECTION TO BE COMPLETED BY ORANGE COUNTY SHERIFF PERSONNEL

RECORDS SIGNATURE reynarg
FEE \$ 0.00 CHECK # _____ RECEIPT # _____
REQUEST ☒ Approved ☐ Approved / Redacted ☐ Denied

Document(s) released:

- | | |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Initial Crime Report | <input type="checkbox"/> Fees returned <u>0.00</u> |
| <input type="checkbox"/> Initial Crime Rpt Supplemental | <input type="checkbox"/> Released pursuant to Family Code Section 6228 |
| <input type="checkbox"/> Deputy Follow Up | <input type="checkbox"/> Released pursuant to Welfare and Institutions Code section 827 and Juvenile Court Administrative Order No. 12/003-903 "Exchange of Information". |
| <input type="checkbox"/> Initial Follow Up | <input type="checkbox"/> Released pursuant to Vehicle Code section 20012 |
| <input type="checkbox"/> Traffic Accident | <input type="checkbox"/> Released pursuant to Court Authorization and Penal Code Section 1203.097(a)(7)(B) |
| <input type="checkbox"/> CHP180 | |
| <input type="checkbox"/> TC Property Damage | |
| <input type="checkbox"/> Property Report | |
| <input type="checkbox"/> Casualty Report | |
| <input type="checkbox"/> Supplemental DV Report | |
| <input type="checkbox"/> CAD Report <input type="checkbox"/> ID Theft | |
| <input checked="" type="checkbox"/> Other <u>Information Report; Two (2) Sup</u> | |

Authorized Signature Jeffrey Deutsch
Mailed ☐ Pick Up ☐ Date 12/01/2020 By jd
Emailed ☒ 320 N. FLOWER STREET, SANTA ANA, CA 92703

Integrity without compromise | Service above self | Professionalism in the performance of duty | Vigilance in safeguarding our community

SUPPLEMENT

ORIGINAL

Reporting Area: North Investigations

NARRATIVE

Phone Call from Adam Bereki, 09/15/2020:

On Tuesday, 09/15/2020, at approximately 1105 hours, I received a telephone call from a male subject verbally identifying himself as Adam Bereki wanting to check on the status of his report and to provide additional details. I recorded the conversation on my department issued digital audio recorder and later placed a copy of the audio recording onto a compact disc which I booked into Sheriff's Evidence in Santa Ana, Sheriff's Evidence Item# OS20-029161.3. I referred to the digital audio recording when preparing the following summary of my phone conversation with Mr. Bereki:

Bereki was advised I had been assigned this case and wanted to know if I was familiar with it. I summarized for Bereki that he was alleging several of his Constitutional Rights had been violated by a judicial officer and that there were additional criminal allegations against the same Judiciary based on judgements occurring in Civil Court. Bereki emphasised that in addition to the specific judicial officer he feels violated his constitutional rights, the "Whole State" of California's "Judicial Branch" has perpetuated a "Policy" in violation of persons constitutional rights. Bereki further stated that this policy, enacted into law by the California Legislature and "Upheld" by the Judicial Branch is supporting an unconstitutional "Policy" or law and one of the only remedies is for the Executive Branch of the government to perform its "Duty to enforce the law". Bereki has reached out to the following:

- California Commission on Judicial Performance
 - Bereki "Filed a complaint" which was returned to him stating he was "Complaining about legal errors by the judge". Bereki told me that in addition to the legal errors, he was also filing the complaint to address his "Deprivation of Rights".
- Federal Bureau of Investigation
 - Bereki has contacted the FBI three times within the last two to three months; however, the first time he called the "Crime Tip Line" and was told "We don't investigate that" and the second time he was told a "Complaint" was taken but no case number was provided to Bereki and the person taking the "Complaint" did not provide their name to Bereki. Bereki called the FBI again approximately two to three weeks after the second call to inquire about the status of his complaint, obtain the case number, and obtain the Agents name and he said, "They refused to give me all of those". Bereki believes he contacted the FBI office in Orange the second time.
 - Bereki served a Public Records Act Request on the FBI to try to obtain a copy of his phone call and was told they did not have a copy of the call.
- California State Assemblywoman Cottie Petrie-Norris
- California State Senator John Moorlach
- California Attorney General's Office
 - Approximately one week ago, Bereki emailed the California Attorney General's Office Public Information Unit. Bereki'sl requested information about how to file a complaint regarding a deprivation of rights complaint regarding a public official and has not yet received a response.

Bereki also wanted to clarify the following information from the initial report taken by deputies on 09/02/2020:

- Where the Initial Information Report reads, "Adam filed a complaint with the US Supreme Court". Bereki clarified that he went to the Federal District Court for The Central District Court of California to attempt to have the Federal District Court "Vacate" the "Void Judgement" from the California Court.
 - Bereki stated the Federal District Court Judge "Dismissed" his case, advising Bereki that the



SUPPLEMENT

ORIGINAL

Reporting Area: North Investigations

Federal Court did not have the authority to "Hear and determine the case".

When Bereki attempted to file an Appeal, the same Federal District Court Judge advised the Federal Appeals Court that Bereki's Appeal was "Of bad faith and frivolous".

- In Response to this, In March of 2020, Bereki filed a "Statement" regarding why the Appeal should move forward and he has not yet heard a response.
- Bereki also wanted to note that in the Initial Report's closing sentence where it states "...he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims", that in addition to the Sheriff's Department's "Duty to investigate" it is also the Sheriff's Department's duty to "Protect" him and "Intervene" when his "Rights and property are being violated and unlawfully taken".

I advised Bereki that his initial report was being reviewed and I would be working on attempting to identify the appropriate Executive Branch agency to investigate the matter or defer the matter back for further review through the Judicial Branch in the appeal process.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	Anderson, M. 07279	<input type="checkbox"/>	9/15/2020
Approving Officer	Weidenkeller, E. 04050	<input type="checkbox"/>	9/23/2020

SUPPLEMENT

ORIGINAL

Reporting Area: North Investigations

NARRATIVE

On Wednesday, November 25, 2020, at approximately 1240 hours, I received a phone call from Sgt. S. Millhollon that he had inadvertently been forwarded a call reference this case from Bereki. Sgt. Millhollon gave me the number Bereki called him from (949-241-6693) and asked that I call him back.

At approximately 1300 hours, I contacted Bereki and asked him how I could help. He told me he was looking for a status update on his case. I advised him that the case had been reviewed by the California Department of Justice and that both they and the Orange County District Attorney's Office would not prosecute the case, or investigate it any further. I provided him with my full name and pin number and we ended the call.

At approximately 1305 hours, Bereki called my office line back, and asked if the Orange County Sheriff's Department was refusing to protect him from, "Lawless actions by government officials acting without authority." I advised him that our investigation into his allegations had ended. Bereki thanked me for my time and the conversation ended.

Both phone calls were recorded. The recordings were placed onto a compact disc and booked into Sheriff's Evidence under this case number.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	Leeb, M. 08787	<input type="checkbox"/>	11/25/2020
Approving Officer	Weidenkeller, E. 04050	<input type="checkbox"/>	11/26/2020



Adam Bereki <abereki@gmail.com>

20-029161

Adam <abereki@gmail.com>

Mon, Dec 14, 2020 at 4:06 PM

To: mleebe@ocsd.org

Hi Mike,

I called and left a message for you last week to speak about your findings pertaining to the complaint I filed that you closed and have not received a return call. I am interested in knowing the factual findings and legal basis associated with your determination to close my case. These findings don't appear to be documented in your report and reasonably should be given each of the issues I raised.

My phone number is 949 241 6693.

Thank you for your help.

Sincerely,

Adam Bereki



Bereki Dr 20-029161

Bereki Dr 20-029161

Adam <abereki@gmail.com>

Thu, Dec 17, 2020 at 12:59 PM

To: eweidenkeller@ocsd.org, mleebe@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org

Lt. Knutson,

Pursuant to a recent public records act request on your agency, I received a copy of the information report I filed as well as the supplemental investigation reports by Sgt. Andersen and Inv. Leeb pertaining to my allegations of fraud and deprivation of constitutional rights by judges and other public officials that I recently spoke with you and Commander Hallock about.

After receiving the supplemental reports made by Inv. Leeb, I called and left a message to speak with him on 12/2/20 . He has not returned my call. On 12/14/20, I also sent him an email and have not received a reply.

The essence of Inv. Leeb's findings in his supplemental report dated 11/4/20 states: "given that there is no criminal activity able to be discovered from what has been reported, this case will be closed pending any additional information." The report was approved by whom I suspect is Leeb's supervisor, E.Weidenkeller.

My phone message and email specifically asked Inv. Leeb to share the factual findings and legal basis of his conclusions that "there [was] no criminal activity able to be discovered." This information should very reasonably be part of his investigation report but is nowhere to be found. Inv. Leeb needs to explain exactly how he resolved each issue presented in my complaint. This includes but is not limited to how he determined there was constitutional authority for the judge/State of California to fine me \$930,000 without any of the heightened protections of the excessive fine clause and in direct violation of the separation of powers declared in Article V of the California Constitution. A person, whether a civilian or public official who takes property without Constitutionally prescribed due process commits theft and/or fraud and potentially robbery if done under the full force of the State as in this case.

The fact that Inv. Leeb contacted the OCDA and CA DOJ who allegedly were not interested in prosecuting the case does not absolve him or the OCSD of their duty to fully and impartially investigate my valid claims and take remedial action including action to protect my liberty and property from unlawful taking.

If the OCSD or Inv. Leeb do not understand the law surrounding the claims I have made, I remain totally willing and available to help. I provided a significant amount of case law to the reporting officer who told me it would be booked into evidence so it could be reviewed by the investigator. Despite this, there no indication in Inv. Leeb's reports that he read any of the cases or how he determined them to be incorrect or not relevant in relation to my claims. This is also information that should reasonably be included in his investigation report.

While I cannot be sure, it feels to me like Leeb spoke with County Counsel and perhaps the other aforementioned agencies and concluded, with little to no research of the actual law pertaining to the issues in my complaint, that what the judge/Court did was lawful based on the Opinion of the appellate Court that was also involved and then subsequently closed the case. This is not acceptable. How under any rational basis could a \$930,000 fine for a simple licensing law violation could be lawful without any of the Constitutional protections of the excessive fines clause that specifically prohibit this behavior?


In another public records act request to your agency, I received copies of police academy training manuals from POST known as Learning Domains ("LD"). LD2 specifically reviews Constitutionally protected rights and Law Enforcement's duties to enforce the law and protect the public against the arbitrary deprivation thereof by government. I have enclosed it for reference. On page 1-5 it says "To be effective leaders, peace officers must be aware of the constitutional rights of all individuals [...] and the role the criminal justice system has in protecting those rights."

Investigator Leeb has clearly not performed an adequate and full investigation before arbitrarily closing my case and told me the OCSD is not going to protect me or my property in this situation. Please inform me if this is in fact the official position of the OCSD or order Inv. Leeb to fully perform his sworn duties.

Please feel free to contact me with any questions.

Sincerely,

Adam Bereki
949.241.6693

 **LD_02_V-6.4.pdf**
441K



Adam Bereki M...@gmail.com

Bereki Dr 20-029161

Knutson, Gary L <gknutson@ocsd.org>
To: Adam <abereki@gmail.com>

Fri, Dec 18, 2020 at 9:00 AM

Adam,

Thank you for contacting me with this matter. I will look into it and get back to you.

Lieutenant Gary Knutson

Orange County Sheriff's Department

North Patrol Bureau Commander

Chief of Villa Park Police Services

Ofc. (714) 647-4094

From: Adam <abereki@gmail.com>
Sent: Friday, December 18, 2020 8:55 AM
To: Weidenkeller, Ehren J <eweidenkeller@ocsd.org>; Leeb, Michael C <MLEEB@ocsd.org>; Knutson, Gary L <gknutson@ocsd.org>; Hallock, Jeffrey A <JHallock@ocsd.org>; Rcauoette@ocsd.org
Subject: [EXTERNAL] Fwd: Bereki Dr 20-029161

Correction, after reviewing my records, I spoke with Commander Caouette not Assist. Sheriff* Hallock before speaking with you, Lt. Knutson. I have therefore included him in this communication.

Read more (1 of 1) images

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links.

Appendix [M]

		INCIDENT/INVESTIGATION REPORT				Case# 21008880			
		Agency Name Newport Beach Police Department		Date / Time Reported 12/07/2021 10:35 Tue					
I N C I D E N T I F I C A T I O N	ORI CA0301400		Last Known Secure 04/20/2017 09:00 Thu		At Found 10/28/2021 14:04 Thu				
	Location of Incident 870 SANTA BARBARA DR, Newport Beach CA		Gang Relat NO	Premise Type Other Location	Beat/Tract A3				
	# 1	Crime Incident(s) Suspicious Circumstances 925	(Att)	Weapon / Tools NONE		Activity			
			Entry	Exit	Security				
	# 2	Crime Incident	()	Weapon / Tools		Activity			
		Entry	Exit	Security					
# 3	Crime Incident	()	Weapon / Tools		Activity				
		Entry	Exit	Security					
MO									
V I C T I M	# of Victims 0		Type:		Injury: Domestic: N				
	V1	Victim/Business Name (Last, First, Middle)		Victim of Crime #	DOB Age	Race Sex Relationship To Offender Resident Status Military Branch/Status			
	Home Address				Home Phone				
	Employer Name/Address				Business Phone	Mobile Phone			
	VYR	Make	Model	Style	Color	Lic/Lis VIN			
O T H E R S	CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)								
	Type: INDIVIDUAL/ NOT LAW ENFORCEMENT Injury:								
	Code IO	Name (Last, First, Middle) BEREKI, ADAM ALAN		Victim of Crime #	DOB Age	Race Sex Relationship To Offender Resident Status Military Branch/Status			
	Home Address 818 SPIRIT COSTA MESA, CA 92626				Home Phone 949-241-6693				
	Employer Name/Address SELF				Business Phone 714-960-8825	Mobile Phone			
I N V O L U N T A R Y	Type:		Injury:						
	Code	Name (Last, First, Middle)		Victim of Crime #	DOB Age	Race Sex Relationship To Offender Resident Status Military Branch/Status			
	Home Address				Home Phone				
	Employer Name/Address				Business Phone	Mobile Phone			
	1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)								
P R O P E R T Y	VI #	Code	Status Frm/Tc	Value	OJ	QTY	Property Description	Make/Model	Serial Number
Officer/ID# JOE, D. (1219)									
Invest ID# JOE, D. (1219) Supervisor RODRIGUEZ, B. (1208)									
Status	Complainant Signature			Case Status Cleared Non-crime 12/10/2021			Case Disposition:		Page 1

INCIDENT/INVESTIGATION REPORT

Newport Beach Police Department

Case # 21008880

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown						
D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type	
Assisting Officers						

Suspect Hate / Bias Motivated:

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 21008880

Newport Beach Police Department

NARRATIVE

The listed Involved Other party contacted NBPD Detectives to report suspicious circumstances.

REPORTING OFFICER NARRATIVE

Newport Beach Police Department

OCA

21008880

Victim

Offense

SUSPICIOUS CIRCUMSTANCES

Date / Time Reported

Tue 12/07/2021 10:35

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Alcohol Related: No Involved Location: N/A
Reportable Use of Force: No
Hate Crime Related: No Weapon Involved: N/A
Victims' Bill of Rights Provided to Victim(s): No
Victim Advised of Confidentiality Provisions Per 293 PC: No
Victim Desires Confidentiality: N/A

On 10-28-2021, I was working as a detective sergeant, assigned to the Property Crimes Unit-West of the Newport Beach Police Department. I received a voice message from a subject who identified himself as Adam Bereki. In the message, Bereki stated he was dealing with "some very peculiar circumstances," and that he needed some help with "crimes being perpetrated by judges."

I contacted Bereki, a Costa Mesa resident, by telephone. Over the course of the following four weeks, I had several separate telephone conversations with Bereki, some lasting over an hour in length, where he described his situation. In summary, Bereki had a civil judgment against him in 2017 for \$848,000.00 after a court (Orange County Superior Court in Santa Ana) determined he operated as a contractor without a license during a residential remodel project in Newport Beach. In 2018, Bereki appealed the decision to the California Court of Appeals, Fourth Appellate District, Division 3 in Santa Ana. The appellate court affirmed the lower court's decision.

Bereki insisted I investigate this case as a criminal matter, stating as a police officer, I was bound by the Constitution of the United States and the Constitution of the State of California to investigate the violation of his constitutional rights; in this case a violation of the 8th Amendment prohibiting excessive fines. Bereki also stated the crimes of fraud, theft, forgery, and robbery were committed by the judges involved in this decision, based on his interpretation of the judicial process and subsequent case law, as well as his belief the involved judges have been misinterpreting the law for years leading up to his case.

On 12-7-2021, I contacted Orange County Deputy District Attorneys Bill Feccia and Clyde Von Der Ahe to discuss this case. Both DAs were in agreement that criminal courts have no jurisdiction to intervene in sustained civil judgments. They also stated that the Constitution protects people against the deprivation of life, liberty, or property in circumstances when they were not afforded the benefit of due process of law. DDA Feccia advised me to recommend Bereki either file a motion for re-hearing of his case through the appellate court, or petition the Supreme Court of the United States to hear his case.

I relayed this information to Bereki, who adamantly disagreed. Bereki asked if he was permitted to contribute a written statement to this case. I told him he was free to do so. Bereki reminded me that he has contacted numerous different law enforcement agencies and spoken to numerous different police officers about this case, all of whom have refused to assist him. Bereki said a potential next step for him would be to sue all the departments and officers who did not investigate this case further, including me and the Newport Beach Police Department.

This case shall be categorized as a Suspicious Circumstance due to the lack of probable cause to indicate a violation of the California Penal Code has occurred. A printout of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki.



Aaron Harp <aharp@newportbeachca.gov>

PDF Version of Brief in Support of Law

Harp, Aaron <aharp@newportbeachca.gov>

Fri, Dec 10, 2021 at 12:07 PM

To: Adam <abereki@gmail.com>

Cc: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Joe, Darrin" <DJoe@nbpd.org>

Good afternoon Mr. Bereki,

Our office has reviewed this matter and it is our opinion that the Police Department has acted appropriately regarding your complaint. In our view, this is civil dispute that is properly handled by the judiciary and not by the Police Department. Hence, the City of Newport Beach will be taking no action related to this matter.

We appreciate your reaching out to the City of Newport Beach and we sincerely hope that you can resolve this dispute.

Aaron C. Harp

City Attorney

City of Newport Beach

100 Civic Center Drive

Newport Beach, CA, 92660

Phone: (949) 644-3131

Fax: (949) 644-3139

Email: aharp@newportbeachca.gov

CONFIDENTIALITY NOTICE: The information in this e-mail message is intended

Appendix [N]

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

September 22, 2021

Adam A. Bereki
695 Town Center Dr., Ste. 700
Costa Mesa, CA 92626

RE: In Re Bereki

Dear Mr. Bereki:

The above-entitled petition for an extraordinary writ of habeas corpus was received on September 22, 2021. The papers are returned for the following reason(s):

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

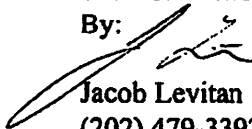
No motion for leave to file a petition for an extraordinary writ of habeas corpus is required. However, a petition for an extraordinary writ of habeas corpus may not be combined with any other filing, and the Rules of the Court make no provision for the filing of a petition for a writ of error.

The Rules of the Court make no provision for the filing of documents via digital media.

Please be advised that the Court does not appoint counsel for the purpose of preparing a petition.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:


Jacob Levitan
(202) 479-3392

Enclosures

Appendix [O]



Arbitration Award
Contractors State License Board Arbitration Program

CSLB Case Number: AS2014-087

Jamie Handrick, Esq.
Tamerville Homeowners Association
8220 University Ave., Suite 100
La Mesa, CA 91942

Adam Alan Berekl
Blackrock General, Inc.,
dba Handyman Connection San Diego
7343 Ronson Rd., Suite H
San Diego, CA 92111
License #: 944018

TO THE ABOVE PARTIES AT INTEREST, IN THE MATTER OF CSLB CASE NO: AS2014-087

The undersigned Arbitrator, in accordance with California Business and Professions Code §7085, has investigated and considered all the material facts and available information pertaining to this case and has decided upon a final and binding Arbitration Award as described below.

DECISION	REMEDY
Respondent shall reimburse Complainant the costs paid to correct balcony/deck repair. The repair performed by Respondent did not meet the minimum workmanship standards of the industry resulting in safety issues. Remedy includes cost of permit never obtained by Respondent.	\$ 7,943.46
Complainant's claim for refund of the amount paid to Respondent is denied.	\$ 0.00
TOTAL:	\$ 7,943.46

☒ Respondent shall pay the Complainant the Sum of **\$7,943.46**.

THIS ARBITRATION AWARD SHALL BE VALID AND BINDING UPON ALL PARTIES CONCERNED.
PARTIES SHALL HAVE THIRTY (30) DAYS FROM DATE OF THIS AWARD TO SATISFY REMEDIES.

SIGNED:


ARBITRATOR Fobian, Don

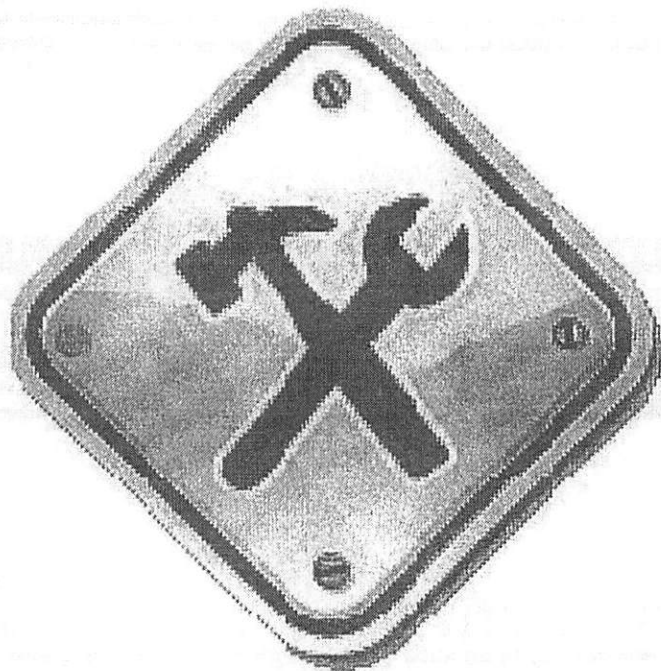
DATE: 11/21/2014

927244 - Associated
entity -

WWW.AMCCENTER.COM
(800) 845-4874

3055 Wilshire Blvd., Suite 510
Los Angeles, CA 90010
(213) 487-8560 Fax: (415) 946-3486

**THE CONTRACTOR
DID NOT
RETURN A
“SUBMISSION TO
MANDATORY
ARBITRATION”**





SACRAMENTO CASE MANAGEMENT
8821 BUSINESS PARK DRIVE
P O BOX 26888
SACRAMENTO, CA 95828
(916)255-4632

DATE: December 29, 2014**CSLB ARB CASE NO:**
A S 2014 87**LICENSE NO:** 944018

HANDYMAN CONNECTION OF SAN DIEGO * BLACKROCK
GENERAL INC
7343 RONSON RD STE H
SAN DIEGO, CA 92111

**NOTICE OF AUTOMATIC SUSPENSION OF
LICENSING BY OPERATION OF LAW**
(Business and Professions Code Section 7085.6)

The noted arbitration matter has become a final order of the Registrar and you have failed to comply with the provisions of the award as ordered.

Effective **01/28/2015**, the license listed above will be suspended. By the provisions of Business and Professions Code 7097, any additional license issued to you or for which you have provided qualifying experience or appearance under the provisions of Business and Professions Code 7068 will be suspended.

The license(s) will remain under suspension for ninety (90) days. During that time you may end the suspension by complying with the award and have your license reinstated provided you meet all other licensing requirements.

If you do not comply with the arbitration award during the ninety (90) day period of suspension, your license will be automatically revoked. Any other Sole Owner, Partnership, Corporate or Joint Venture license(s) of which you are a member will also be revoked.

YOU WILL NOT RECEIVE FURTHER NOTICE !

If you wish to appeal the automatic suspension, you may submit a written statement to the office listed above within 15 days of the date of this notice. Your appeal must contain the specific reasons you did not comply with the arbitration award. You will be notified of the determination by mail.

REVOCAION IS AUTOMATIC !

After the license is revoked you must wait from one to five years to reapply for licensure. In addition, before being issued any new license, you will be required to fully comply with the arbitration award. Also, you will be required to post a disciplinary bond for two to five years. You may write to the Legal Action Deputy for the Contractors State License Board for the specific requirements when you wish to re-apply.

Case Management Unit

ARBITRATION FILE COPY



SACRAMENTO CASE MANAGEMENT
9821 BUSINESS PARK DRIVE
P O BOX 28888
SACRAMENTO, CA 95828
(916)255-4832

DATE: December 29, 2014

SPARTAN ASSOCIATES INC THE
818 SPIRIT
COSTA MESA, CA 92626

CSLB ARB CASE NO:
A S 2014 87

LICENSE NO: 944018

ASSOCIATED LICENSE # 927244

LICENSEE:
HANDYMAN CONNECTION OF
SAN DIEGO * BLACKROCK
GENERAL INC

**NOTICE OF AUTOMATIC SUSPENSION
OF QUALIFIER'S LICENSE**

(Business and Professions Code Section 7097 and 7085.6)

Our records indicate that the above referenced arbitration case has become a final order of the Registrar. The licensee that was named in the arbitration case has failed to comply with the arbitration award. Therefore, effective **01/28/2015** the license number listed above will be automatically suspended by operation of law.

This is also to inform you that, as the qualifier for the above referenced license, your license **927244** will also be suspended effective **01/28/2015**.

The licenses will remain under suspension for ninety (90) days. During that time the suspensions may be lifted by complying with the provisions of the arbitration award. The licenses will then be reinstated, provided that all other licensing requirements are met. If the arbitration award is not complied with during the period of suspension, the licenses will be automatically revoked by operation of law. Other licenses will also be affected.

Case Management Unit

ARBITRATION FILE COPY

ARBIT. NO A S 2014 87
LIC 927244

To Whom It May Concern:

I just received the attached letter of license revocation dated 1/14/16.

I have sent multiple letters regarding this matter and seem to receive no response that addresses the situation or fosters resolution.

In short, allegations were made against a license I am the RMO of and an arbitration hearing was conducted. I was NEVER notified as the RMO of these arbitration proceedings and therefore did not attend.

A judgment was made during the arbitration proceedings.

I have NEVER been provided any documentation whatsoever about the claims against this license. What I mean by documentation is any evidence showing the alleged damages and associated costs were actually incurred by the complainant. In fact, the complainant had a year to notify my company of any problems per our contractual agreement and to my best knowledge did not comply.

I have contacted the attorney who is handling the case for the complainant. I have requested they send me documentation of the claim repeatedly however no documentation has been received. I have also negotiated a settlement with the complainant pending their providing of documentation (assuming I was responsible) but have still NOT received any documentation. The CSLB has also not provided any evidence of these claims.

As all of this has been unfolding, the CSLB seems to keep taking actions against my license based upon this arbitration proceeding I was NOT privy to. I was not able to defend myself to something I had no idea was happening. As a result a judgment was filed and my license revoked.

I have telephoned the CSLB numerous times about this matter as well as written several letters to no avail. Can someone please help me? I tried again this morning, to the Sacramento Case Management Division that apparently sent this letter and every mailbox I tried was full. No one answered the phone.

I am truly interested in the integrity of my license and doing the right thing.

If there is some type of rebuttal process I can go through to challenge the arbitration decision please provide that information along with any forms to me.

I think a phone call could resolve things much more expediently. Please feel free to call.

Sincerely,

Adam Bereki
949 241 6693



CONTRACTORS STATE LICENSE BOARD

9821 Business Park Drive, Sacramento, California 95827

Mailing Address: P.O. Box 26000, Sacramento, CA 95826

800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com

STATE OF CALIFORNIA

Governor Edmund G. Brown Jr.

October 15, 2015

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Application Fee # 2014 01 08850

Dear Mr. Bereki:

This responds to your letter dated August 7, 2015, to the Contractors State License Board (CSLB) regarding the status of your license, # 944018.

I hope it will be helpful to provide some background on this matter. CSLB records confirm that you are the qualifier on two licenses, Spartan Associates, license # 927244; and Handyman Connection of San Diego, license # 944018. Handyman Connection is the license that was revoked on April 30, 2015. After a complaint was received against this license on July 25, 2013, the case was sent to mandatory arbitration on September 30, 2014. You are responsible as the qualifier to be aware of and comply with the terms of the arbitration (Business and Professions Code [BPC] section 7068.1). The license of Handyman Connection was revoked on April 30, 2015 per BPC section 7085.6 – failure to comply with an arbitration award.

Regarding the matter at issue, you made application for a license on January 8, 2015, prior to the revocation. You had a case that had been sent to arbitration with an outstanding award during the application process; therefore, your application was returned to provide verification that you had complied with the arbitration award. When you did not provide that verification, your application went void. A letter to that effect was sent to you (copy enclosed) on March 24, 2015.

As is explained in the application documents, the \$300 application fee is an earned fee and cannot be refunded because of the expense incurred in handling the application (BPC 7138). For this reason, the following notice is provided at the top of the application form: "The application fee for a single classification (\$300) is not refundable once the application has been filed." CSLB staff has initiated a refund of your \$180 two-year license fee. I have asked that the processing time be expedited for you. You should receive your refund in a few weeks.

You may reapply on April 30, 2017. However, you will need to show rehabilitation, post a \$15,000 disciplinary bond, and resolve any outstanding arbitration award before the license will be issued.

Sincerely,


David Fogt, Chief
Enforcement Division

Enclosure (1)



Adam, Ellen <Ellen.Maier@cslb.ca.gov>

PRA REQUESTS- BEREKI

Maier, Ellen@CSLB <Ellen.Maier@cslb.ca.gov>

Mon, Mar 22, 2021 at 3:17 PM

To: Adam <abereki@gmail.com>

Good afternoon Adam,

Please see attached. There was 8275 mandatory arbitration cases referred to AMCC since January 1, 2006.

2 attachments



CSLB Copier_20210322_141609.pdf
5670K



CSLB Copier_20210322_141641.pdf
6128K

Appendix [P]



PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

February 25, 2022

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General.

While we appreciate the time and effort it has taken to contact our office, we are unable to assist you. The role of the Attorney General is to represent the People of California, collectively, in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States. However, the Attorney General is prohibited by law from representing private individuals or providing legal advice, legal research or legal analysis to private individuals under any circumstances. As a result, the Attorney General cannot represent you in your private litigation or intercede on your behalf.

Therefore, we suggest that you consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Your complaint about the judge(s) involved in this case should be directed to the Commission on Judicial Performance. The Commission has exclusive jurisdiction over complaints against judges. You may contact the Commission as follows:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266
Internet: <http://cjp.ca.gov>

Your complaint about the attorney(s) involved in this case should be directed to the State Bar. The Bar has exclusive jurisdiction over complaints against attorneys. You may contact the Bar as follows:

State Bar of California
Intake Unit
845 S. Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 765-1000 (outside of CA) or (800) 843-9053 (toll free)
Internet: <http://www.calbar.ca.gov>

We regret that we are unable to assist you. However, we hope the information we have provided clarifies our restrictions in regard to your request. Thank you again for writing.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For ROB BONTA
Attorney General

Appendix [Q]

STATUTES INVOLVED

Cal. Business and Profession Code §7028

(a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

(1) The person is not licensed in accordance with this chapter.

(2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars (\$5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars (\$5,000) nor more than the greater amount of ten thousand dollars (\$10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the unlicensed person engaging in the business of or acting in the capacity of a contractor has agreed to furnish materials and labor on an hourly basis, "the contract

price” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(g) Notwithstanding any other law, an indictment for any violation of this section by an unlicensed person shall be found, or information or a complaint shall be filed, within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether he or she had knowledge that the person was unlicensed.

(i) The changes made to this section by the act adding this subdivision are declaratory of existing law.

Cal. Business and Professions Code §7031

(a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that they were a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing in

this subdivision shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding subdivision (b) of Section 143, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (e) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (e) and (f) enacted during the 1994 portion of the 1993–94 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

Cal. Business and Professions Code § 7071.17

(a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is

filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

(b) (1) Notwithstanding any other provision of law, all licensees shall notify the registrar in writing of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied final judgment.

(2) The suspension shall not be removed until proof of satisfaction of the judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar.

(3) If the licensee notifies the registrar in writing within 90 days of the imposition of any unsatisfied final judgment, the licensee shall, as a condition to the continual maintenance of the license, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to all unsatisfied judgments applicable under this section.

(4) The licensee has 90 days from the date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. In lieu of filing the bond required by this section, the licensee may provide the board with a notarized copy of any accord reached with any individual holding an unsatisfied final judgment.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied final judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section does not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(j) (1) If a judgment is entered against a licensee or any personnel of record of a licensee, then a qualifying person or personnel of record of the licensee at the time of the activities on which the judgment is based shall be automatically prohibited from serving as a qualifying individual or other personnel of record on any license until the judgment is satisfied.

(2) The prohibition described in paragraph (1) shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee or with any of the same judgment debtor personnel to be suspended until the license of the judgment debtor is reinstated, the judgment is satisfied, or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure, may be submitted in lieu of the bond.

(l) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of an unsatisfied final judgment in accordance with this section is cause for disciplinary action.

Cal. Business and Professions Code §7085

(a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and

any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

- (1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement.
- (2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.
- (3) The licensee does not have a history of repeated or similar violations.
- (4) The licensee was in good standing at the time of the alleged violation.
- (5) The licensee does not have any outstanding disciplinary actions filed against him or her.
- (6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.
- (7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means damages greater than the amount of the bond required under subdivision (a) of Section 7071.6, but less than fifty thousand dollars (\$50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price, or the demand for damages is equal to or less than the amount of the bond required under Section 7071.6, but, regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

Cal. Business and Professions Code §7085.6

(a) (1) The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law.

(2) The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator’s award, and that the license shall be automatically suspended 30 calendar days from the date of that notice.

(3) The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar.

APPENDIX [R]

To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

QUESTIONS PRESENTED

OVERVIEW

Petitioner is a former police officer in southern California with more than twenty years of forensic investigation experience, specializing in cases of highly sophisticated fraud, corruption, and theft schemes. He directly experienced one of these schemes when private parties conspired with officials of California and the United States to fine him \$930,000 – an amount more than 42 times his qualifying net worth and 146 times the maximum criminal monetary penalty – for allegedly not having a construction license, even though he was a general contractor. When he was unable to pay the outrageous fine, the license he allegedly didn't have was summarily suspended without any hearing or means of appeal by operation of statute. As “[a] power over a man's subsistence amounts to a power over his will,”¹ Petitioner has been restrained from earning a living in his profession as a general contractor for more than five years causing an estimated three million dollars in lost earnings and the consequent impairment of his private contracts and obligations. This has culminated in the attempted robbery of his and his elderly mother's home, and the equity therein, by force of wrongful foreclosure proceedings that began on July 7, 2022.

Over the past five years, Petitioner has reported these crimes and deprivation of rights to four Police departments, the FBI, the California Assembly and Senate, California Governor and Attorney General, the Commission on Judicial Performance, U.S. Dept. of Justice and more than twenty State and Federal Judges. In every instance, the officials have refused to fully, fairly, and impartially investigate or intervene to stop the irreparable harm. He has been unable to obtain relief in *any* branch of government, State or Federal.

¹

This complaint will evidence Petitioner’s forensic investigation throughout the entire process of seeking relief and will expose the egregiously anti-Constitutional policies and procedures that have been established under color of law but without lawful authority to take his rights, money, property, and liberty (and that of all like-situated American People) without lawful authority, while at the same time providing no means of redress or protection, rendering our governments of supposed defined and limited powers, perpetrators of lawless domestic violence.

Unless this Court makes an emergency intervention to stop the enforcement of these judgments and the wrongful foreclosure proceedings, these crimes and irreparable harm will continue, forcing Petitioner into involuntary bankruptcy and financial destruction without any lawful remedy.

I

The following sections are an overview of the nature and effect of the aforementioned anti-Constitutional policies and how they operate, individually or collectively, to undermine and/or overthrow the Constitutional governments of California and the United States of America.

The State of California has a public policy, policy 1, whereby the “Legislature”, acting without any lawful representative quorum, arbitrarily converted the private inalienable right to one’s time and labor in construction – an ordinary avocation of life – into a revocable public privilege in Interstate Commerce under the guise of “protecting the public” to obtain total domination and control of the construction industry in California.

Prior to the unlawful taking/conversion of this inalienable right, there was no notice or a judicial hearing. Instead, the People were summarily stripped of this right and declared “incompetent and dishonest” in construction *unless* they passed the arbitrary licensing requirements and paid a recurring fee for the *privilege* of doing business.

As part of the enforcement of this scheme, policy 2, the “Legislature” *arbitrarily* delegated the Executive power (vested *exclusively* in the office of the Governor) to private parties to conduct criminal prosecutions, disguised as remedial civil actions in Equity, in order to prosecute and punish suspected unlicensed contractors. In these

commercial administrative actions disguised as judicial trials, all of the heightened protections of criminal proceedings, including the assistance of counsel, are withheld. If “convicted”, the defendant in every known case is also excessively fined and cruelly and unusually punished, like Petitioner, without any of the protections of the Eighth Amendment.

The Constitutionality of policy 2 has been repeatedly challenged and upheld by the Supreme “Court” of California despite the blatantly obvious usurpations of power by every branch of government inherent therein.

When the defendants cannot afford to pay the unconscionable fines, they are further punished by policy 3 whereby their vested right in a license (and/or their ability to obtain a license) is summarily suspended without any hearing at all by operation of statute. There is also no known process of appeal.

When a defendant in these cases eventually discovers that there is no judicial remedy available in *any* Court of California, they might believe they had a right under the U.S. Constitution to appeal to the U.S. Supreme Court. Even though Article III of the Constitution *mandates* that the judicial power of the United States “**shall** extend to **all** Cases in Law and Equity”² the Supreme Court Justices have created policy 4, whereby they believe they can vote on whether or not to hear a case and arbitrarily determine who will or won’t receive the protections guaranteed by the Constitution.³

In connection with policy 4, the Judges of the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Ninth Circuit have arbitrarily created and enforced policy 5, whereby they also summarily deny the protections of the Constitution on the grounds that they have no authority to provide any relief. Equally troubling, is the fact that Congress has not vested the judicial

² Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 “The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;” §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985; p230.

³ See for e.g. https://www.supremecourt.gov/orders/courtorders/100719zor_m648.pdf.

power of the United States in *any* case at Law or Equity in any District Court of the United States.

As declared by the U.S. Supreme Court more than two hundred years ago, “[t]he constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided.”⁴ Policies 4 and 5 not only result in giving the full faith and credit of the United States to the lawless acts of State officials, but also deny the People their right to a judicial determination of their rights under the U.S. Constitution. In the Supreme Court’s own words, policies 4 and 5 amount to “treason”⁵ to the Constitution and the effective denial of all rights, privileges, and immunities secured thereby.⁶

In further unconscionable abuse of authority is policy 6, whereby the Supreme Court has exercised purely legislative powers to craft immunity doctrines for public officials, shielding them from accountability and liability for the harm they cause in failing to abide by their sworn mandatory duties. Our Constitutions were carefully crafted to provide absolute immunity too all officials who follow the law. The immunity doctrines created by the Supreme Court, however, have given immunity to officials who break the law and thereby promote lawlessness, inequality, and fundamental unfairness.

To fabricate the doctrine of judicial immunity, the Supreme Court has held that Judges who are authorized to hear and a determine a case in the first instance are immune from civil damages for subsequently violating the Constitution no matter how malicious or corrupt their actions.⁷ This policy, “policy 7”, relies upon the deception that limits the scope of a Judge’s authority to take action in a case (subject matter jurisdiction) and applies it only to the issue of whether or not a Judge has

⁴ *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

⁵ “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. Virginia*, 19 U.S. 264, 404 (1821).

⁶ See also *Heck v. Humphrey*, 512 U.S. 477 (1994) whereby if anyone has been harmed as a result of an unconstitutional conviction or imprisonment, they are denied a claim for damages unless the sentence has first been declared invalid.

⁷ *Stump v. Sparkman*, 435 U.S. 439 (1978).

authority to hear the case. In truth, a Judge's authority is limited by the Constitution in *every* issue in a case, not just whether they can hear a certain type of case or not. This absurd "policy" is like saying that because you give someone permission to enter your home, they consequently have permission to commit criminal acts upon you with immunity. No Judge has authority to violate the Constitution whether they are authorized to hear a certain class of case or not. The Court used this policy to declare that a State Court "Judge" was immune from civil damages for approving a petition that a young woman be sterilized without giving her notice or a right to be heard—an unconscionable act of oppression and domestic violence, blatantly inviolate of fundamental fairness and due process.

In policy 8, "Congress" has refused to apportion the number of representatives in the House to the population of the People of the States. One of the chief complaints of the American colonists at the time of American Revolution was that they believed they were not represented in British Parliament that consistently took action adverse to their interests and without their consent. The famous political slogan "No taxation without representation" originated at this time. In the Declaration of Independence, it was therefore declared that the newly established governments of the thirteen united States of America were to "deriv[e] their just powers from the consent of the governed[.]" As one of the checks and balances subsequently framed into the Constitution to ensure this consent and representation of the People, Article I, §2, Cl. 3 clearly and unambiguously set forth a minimum and maximum ratio of representation in the House of Representatives of Congress. Today, with a population nearing 330,000,000 People, a proper ratio of representation in the House of Representatives in Congress would be close to 11,000 members.

In 1929 however, "Congress", acting without any lawful representative quorum, arbitrarily decided to amend the Constitution in violation of the amending procedures set forth in Article V, by fixing the number of "representatives" at 435. Consequently, there has been no lawful representative quorum in "Congress" for nearly 100 years. A similar situation has occurred in the "Legislature" of California with its 80 "representatives" for nearly 40 million people, policy 9.

In policy 10, the Executive branches of California and the United States refuse to investigate and/or intervene in complaints for deprivation of Constitutionally protected rights or to investigate the criminal behavior of Judges and/or Legislators

acting without lawful authority thereby joining the conspiracy to aiding and abet these crimes by dereliction of duty.

II

Acting in concert with the aforementioned policies, the Contractors State License Board of California has created and enforced a “mandatory arbitration program” without any statutory or “administrative” authority whatsoever to subject contractors to summary administrative proceedings without a judicial determination of their rights and trial by jury, policy 11.

The Board uses this program to force contractors into mandatory arbitration hosted by a private company with arbitrators that appear to have not been elected or appointed by the Governor or taken an oath of office, and therefore have no accountability to the People. In furtherance of this scheme, the Board uses several highly deceptive tactics to “con” unsuspecting contractors into consenting to the proceedings under the guise that they are “mandatory” and that they have no choice but to participate.

These racketeer influenced and corrupt organization practices are funded by extorting millions of dollars from unsuspecting contractors under the pretense of “licensing fees” to ultimately funnel the money to the CSLB and the private arbitration company to sustain their parasitic existence.

Even if contractors never receive notice of the proceedings or refuse to consent, the arbitration company conducts the proceedings anyway to get its cut. The Board admits to referring more than 8.275 cases to the private company since 2006.

When the contractors either refuse to comply with the illegal “awards” or cannot afford to pay them, their license is summarily suspended/revoked by operation of statute, policy 12. Even more troubling, the suspension/revocation does not just affect a single license, but every license associated with that licensee without any notice, hearing, or opportunity for appeal. The obvious intent is not to fairly remediate a civil dispute, but to eviscerate competition. “[B]y taking away his

opportunity to earn a living, you can drain the blood from his veins without even scratching his skin.”⁸

III

“To ensure against [...] tyranny, [...] [t]he Framers regarded the checks and balances that they had built into the tripartite [systems of State and] Federal Government[s] as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.”⁹ They recognized that “the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”¹⁰

All of these policies, including others yet to be evidenced, operate by methods of tyranny the People and Founders intended to directly protect against— bills of attainder and bills of pains and penalties. These “bills”— what are really just another name for the arbitrary edicts of tyrants – operate by imposing punishment (the taking of rights, liberty, and/or property) without a judicial determination of rights.

The evidence presented in this complaint will reveal, without any ambiguity, that as a result of these anti-Constitutional policies that (1) the officials of each of the branches of State and Federal government involved herein have, intentionally or otherwise, united to form a centralized totalitarian¹¹ government; and, as result, (2) there is no lawful Republican form of government of checks and balances based on the rule of law or the consent of the governed in California or the United States.

Justice Thomas recently said that “we are in danger of destroying the institutions [...] required for a free society.” With a “national debt” nearing 31 trillion

⁸ *Flemming v. Nestor*, 363 U.S. 603, 629 (1960).

⁹ *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57-8 (1982) citing *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). (Internal quotations omitted).

¹⁰ *Id.* p.57 citing *The Federalist* No. 47, p. 300 (H. Lodge ed. 1888) (J. Madison).

¹¹ A form of government and a political system that prohibits all opposition parties, outlaws individual and group opposition to the State and its claims, and exercises an extremely high degree of control and regulation over public and private life. It is regarded as the most extreme and complete form of authoritarianism. In totalitarian States, political power is often held by autocrats, such as dictators and absolute monarchs, who employ all-encompassing campaigns in which propaganda is broadcast by state-controlled mass media in order to control the citizenry.

“dollars” accrued without any consent of the People, nearly every aspect of their lives intimately controlled by untold hundreds of thousands of rules and regulations, and no ability to obtain a meaningful and substantive remedy anywhere in sight, America is not (and never has never been) a “free society”. Indeed, America has one of the most prolific forms of tyrannical government as it persuasively disguises totalitarianism as freedom, duping generations of billions of People.¹² None are more hopelessly enslaved than those who falsely believe they are free.¹³

The corruption of our institutions is apparent. More insidious is that the fraud and deception has ensued at the hands of the very officials who have taken oaths to protect and defend the rights and liberties our Constitutions were intended to protect. One must also notice that at the heart of the creation and enforcement of all of these “policies” is membership by Legislators, Executives, and Judges, whether active or not, in the malevolent monopolies of local, State, and American Bar Associations.¹⁴ As they derive life support from these predatory, criminal policies, they have a real vested interest in their continuance. Not only would no “attorney” Petitioner contacted represent him, several admitted it would be “career” suicide to do so. Another told him that he would never be heard unless represented by an attorney.

The American People, however, cannot idly stand by and wave their fingers in blame. This would be an act of immense disempowerment and denial of their true sovereignty. The truth is, the People have a duty to keep their agents within the bounds of the carefully defined and limited powers they have bestowed upon them. When the People neglect this duty as one of the fundamental checks and balances of a Republican government, thereby refusing to stand in their integrity as sovereign beings, others will seek to (and have) enslave(d) them as a direct reflection of their ignorance¹⁵.

This case presents a monumental opportunity to turn the tide toward real Justice. Let us use it, and the many issues it presents, as an opportunity to shine the

¹² Petitioner is by no means suggesting that anyone “take his word for it”. Instead, he has carefully documented his entire investigation for anyone to discover this for themselves. A good place to start may be the audio recordings of some of his complaints found in Exhibit [E].

¹³ Johann Wolfgang von Goethe.

¹⁴ See for e.g. Parties William G. Bissell; Quentin L. Kopp; Edmund G. Brown Jr. (membership in Cal. State Bar while actively serving as Governor of Cal.) Cal. State Bar and Orange County Bar participation in creation of jury instructions for policy 2; Kevin J. Albanse serving as member of the Contractor Licensing Board while also actively practicing as an attorney etc.

¹⁵ Used in this context to mean the act of ignoring one’s true nature.

light of truth on our situation that is in dire need of our humanity and heart-centered change.

Let us work together in dignity and peace, bringing equanimity, harmony, and justice to ourselves, each other, and our planet.

QUESTIONS

1. Cal. Business and Professions Code §7031(b) (policies 1 and 2) requires that an unlicensed contractor “return all compensation paid” to a consumer *without* equitable offsets for the value of work performed under a contract and *without* any evidence of profit.
 - a. Is a violation of §7031(b) a public offense as defined by Cal. Penal Code §15?
 - b. Is the “remedy” under §7031(b) a penal forfeiture (fine) or equitable disgorgement?
 - c. If the remedy is a penal forfeiture, by what authority(ies) can the “Legislature” of California transfer the Executive power (*exclusively* vested in the governor) to private parties to commence criminal and/or quasi-criminal prosecutions?
 - d. By what authority(ies) did the Superior Court of California have subject matter jurisdiction to conduct a criminal prosecution commenced by private parties?
 - e. Did Petitioner have a right to a jury trial and to all of the heightened protections of criminal proceedings, including the assistance of counsel?
 - i. By what authority(ies) did the Superior Court deny Petitioner all of these protections?
2. The Supreme Court of California has repeatedly held that the purpose of the Licensing Laws are to “protect the public from incompetence and dishonesty in those who provide building and construction services”¹⁶.
 - a. Is there an irrebuttable presumption under Chapter 9. Contractors of the Business and Professions Code (the “Licensing Laws”) that unless one is licensed they are “incompetent and dishonest” in the performance of the skills of a contractor as defined in §7026?
 - i. Is whether or not one is competent and/or honest an issue of fact to be determined by a jury or Judge at trial?
 - ii. By what authority(ies) can the “Legislature” arbitrarily make determinations of the competency and/or integrity of Petitioner/the People?
 1. Was Petitioner entitled to a judicial determination and trial by jury on both of these issues?
 - iii. No known evidence was presented at “trial” pertaining to Petitioner’s level of competence and/or integrity. By what authority(ies) did David Chaffee direct a verdict of guilt and/or

¹⁶ *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 436 (Cal. Supreme Ct. 2005).

arbitrarily and summarily determine that Petitioner was incompetent and/or dishonest?

1. Did this determination result in a violation of due process?
A bill of pains and penalties?
2. If so, what effect did this determination have on the validity of the “Judgment”?
- iv. See license #927244. How could Chaffee presume Petitioner to be incompetent and/or dishonest at “trial” when the Licensing Board had determined that he was competent to act as the qualifying individual for a general contractor license?
- v. Why are the People of California not presumed competent to make their own determinations of who is competent/qualified to perform work as a contractor for them?
 1. By what authority(ies) can the agents of the People summarily determine their incompetence to make themselves principals and thereby reverse the foundational structure of Republican government?
3. According to the “Judgment” **Appendix [A] p.** and California Civil Jury Instructions §4561, the hiring of an unlicensed contractor results in “damages” to a consumer.
 - i. What is the definition of “damages” as used in each of the aforementioned contexts?
 - ii. Are these “damages” an irrebuttable presumption?
 - iii. Are these “damages” purely hypothetical?
 1. What competent authenticated evidence was relied upon at “trial” to establish a finding of “damages” in the amount of \$848,000 against Petitioner?
 2. What effect does the fact that there was no competent authenticated evidence presented at “trial” have on the validity of the “Judgment”?
 3. In what subject matter jurisdictions (and by what authority(ies)) arising under the California and U.S. Constitutions can Petitioner be subjected to a claim for hypothetical and/or fictitious damages?
 - iv. How could Petitioner make any meaningful and substantive defense against a claim involving hypothetical and/or fictitious injury(ies) that don’t exist in reality and upon which
 - v. Is whether or not “damages” occurred an issue of fact to be determined by a jury or Judge at trial?
 1. By what authority(ies) can “damages” be summarily determined by the “Legislature” or a “Judge” without any competent evidence?
 - vi. Who specifically is/are the accuser(s) making the claim of damages against Petitioner?
 1. How could Petitioner meaningfully and substantively confront this(ese) accuser(s) when their identity was unknown/was not disclosed? and they rely upon hypotheticals or fictions that don’t exist in truth?

2. By what authority(ies) can the State of California create
 - b. Keeping in mind that *only* the subject matter jurisdictions of Law and Equity arise under the Constitution for the United States¹⁷, that offsets and other equitable remedies were denied/not available, that Admiralty jurisdiction does not recognize offset, and that each of the transactions occurred in Interstate Commerce, in what subject matter jurisdiction did the “trial” proceed and was the “Judgement Order” issued? (2) What was the venue of the “trial”? (3) In what jurisdiction(s) do contracts made and/or performed under Chapter 9 of the Cal. Business and Professions Code operate?
 - c. See Article I, §1 of the Cal. Constitutions of 1849 and 1879. Prior to the purported enactment of Chapter 9 of the Cal. Business and Professions Code, the People of California had an inalienable right to their time and labor in performing carpentry and construction work. Keeping in mind that according to the Attorney General of California in Opinion 47-174, “a license to conduct any of the regulated activities [in California] is a mere statutory privilege [not an inalienable right] – a creature of statute – [and] is at all times subject to legislative control, including destruction or termination by the legislative process”:
 - (i) by what authority(ies) can the “Legislature” of California convert the private inalienable rights to contract¹⁸ and to property (in the form of one’s time and labor, Cal. Const. Article I, §1) into a revocable privilege/public right?
 - (ii) By what authorities can this conversion/taking of rights occur without notice and a judicial hearing? See for e.g. Article I, §10 forbidding the taking of rights, liberty and property without judicial process and Section 14 of Article II of the Northwest Ordinance of 1787 as reenacted by the First Congress guaranteeing “judicial proceedings according to the course of the common law” even to inhabitants of territories.
 - (iii) See Cal. Civil Code §3521 “[h]e who takes the benefit must bear the burden” and Exhibit [J]– Invisible Contracts by George Mercier:
 1. Is an Application for Original Contractor License considered an application for benefits as the term “benefit” is used in §3521?
 2. Does an Application for Original Contractor License constitute a contract?
 3. Is there a waiver of any rights, privileges, or immunities as secured by the Constitutions of California and the United States implicit in an Application for Original Contractor License? If yes, which specific rights are waived and how

¹⁷ Unless otherwise noted, all references to the “United States” are to the United States of America.

¹⁸ Article I, §10 U.S. Const., and Section 14, Article II of the Northwest Ordinance of 1787 as reenacted by the First Congress, whereby “no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements[.]”

does this waiver occur knowingly, voluntarily, and intelligently?

4. Provide the authenticated evidence that Petitioner made a knowing, voluntary, and intelligent waiver of the rights in iii.
- d. See for e.g. *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986). Is whether or not one is a “person” and therefore subject to the Business and Professions Code (or any statutory enactment) an element of claim and/or the offense?
 - i. No evidence was presented at “trial” that Petitioner was a “person” subject to the Licensing Laws. Was this a violation of due process? What effect does the lack of evidence on this issue have on the validity of the “Judgment”?
 - ii. “Person” as used in §7025 to do define who the Licensing Laws apply to includes corporations and other fictitious entities. How could Petitioner have the same status and standing as a corporation or other fiction of law?
 - iii. On appeal, the Justices of the Fourth District Court of Appeal directed a verdict or summarily determined that Petitioner was an “individual” and therefore that the Licensing Laws applied to him.
 1. Define “individual”.
 2. What status and standing (rights, privileges, and immunities) does and “individual” have under the Constitution and Laws of California and the United States? Is an individual a State Citizen? A “citizen of the United States”? “United States citizen”?
 3. Did the summary determination that Petitioner was an “individual” violate due process in that he was not afforded the right to confront his accusers and oppose any such claims with evidence of his own?
 4. It has become apparent throughout Petitioner’s investigation that many statutory schemes, State and Federal, intentionally use the word “person” (which most ordinary People consider to mean a biological, sentient being) to also mean a corporation or other fiction of law or statute. The word “individual” is also used in like fashion. Is it a general violation of fundamental fairness and due process to use words of art that have the opposite meaning in common usage to trick or confuse People into submitting to or taking some action that in truth doesn’t apply to them?
- e. Is performance of work by an unlicensed contractor an element of the offense under §7031(b)?
4. Are all of the elements of a claim, whether in a civil or criminal case (including quasi-criminal cases), required to be met by competent authenticated evidence?

- i. What effect does the lack of competent authenticated evidence of any element of an offense or claim have on the validity of a judgment?
- ii. What effect does the lack of competent authenticated evidence of any element of an offense or claim have on the subject matter jurisdiction (authority) of the Judge to deprive a litigant of life, liberty, and/or property?
- iii. By what authority(ies) is a Judge empowered to legislate new claims or offenses into existence by only requiring that certain elements of an offense or claim are met? In other words, if a claim or offense has five elements and only three are proved, by what authority(ies) can a Judge deprive a litigant of their life, liberty, and/or property?
- iv. In the example in iii (with only 3/5 elements), would the deprivation of a litigant's life, liberty, or property be considered an ex post facto law?
 1. Was Petitioner subject to an ex post facto law?
 - a. Specifically, what were the elements of the offense and which of these elements were met at "trial"?
 - b. If Petitioner was subject to an ex post facto law, what effect did this have on the subject matter jurisdiction (authority) of Chaffee to deprive Petitioner of his rights, liberty, and/ property?
 - v. Does the prohibition against ex post facto laws also apply in civil and quasi-criminal cases?
 - vi. What heightened protections (like those required in criminal proceedings) are required in quasi-criminal proceedings?
5. As part of fundamental due process, are findings of facts and conclusions of law for each element of a claim *and* every issue in a case requisite to a valid final judgment?
 - i. If not, how can the People be required to guess these determinations in order to present a meaningful and substantive Motion for New Trial, appeal, or other challenge to jurisdiction?
 - ii. Was it a violation of due process for Chaffee to refuse to create and file a findings of facts and conclusions of law addressing his specific findings and conclusions for each element of the offense and every issue in the case against Petitioner?
 - iii. Does Cal. Code of Civil Procedure §632 violate due process and/or (Article I, §10 securing the right to a judicial determination of rights) by not requiring a Superior Court Judge to file a finding of facts and conclusion of law upon questions of fact?
 - iv. What effect did the fact that Chaffee refused to create and file a findings of facts and conclusion of law have on the validity of "Judgment"?
 - v. What effect did the fact that Chaffee refused to create and file a findings of facts and conclusion of law have on the Petitioner's ability to make a meaningful and substantive appeal?

6. Under Cal. Business and Professions Code §7071.17 (policy 3), if a contractor is unable, or refuses to comply with an unlawful “Judgment” pursuant to §7031(b), their license is summarily suspended by operation of statute and without any right to appeal (policy 3).
 - a. As held by this Court, “[e]xclusions from any of the professions or any of the ordinary avocations of life [...] can be regarded in no other light than as punishment for such conduct.”¹⁹ Was the suspension/ revocation of Petitioner’s status as the qualifying individual of a general contractor license penal/punitive?
 - i. Did Petitioner have the right to a judicial determination of rights on this issue? A right to trial by jury? To the heightened protections of criminal proceedings, including the assistance of counsel? By what authority(ies) were these protections denied?
 - ii. Did the “Legislature” of California unlawfully exercise the Judicial power of California to summarily suspend and/or revoke Petitioner’s license status and punish him?
 1. Did this act of the “Legislature” constitute a bill of pains and penalties?
 - b. Given that Licensing Board had determined Petitioner was qualified to act as a general contractor and had issued a general construction license naming him as a licensee (license #92744), did Petitioner have a vested right to a license?
 - i. Was the suspension and/or revocation of Petitioner’s status as a qualifying individual for a general contractor license, (Appendix [O] pp.75-77, Exhibit [F]) punitive?
 - ii. Did Petitioner have a right to a judicial determination of his rights on this issue?
 - iii. Did Petitioner have a right to a trial by jury of this issue?
 - iv. Was the suspension/ revocation of Petitioner’s status as a qualifying individual a bill of pains and penalties?
 - v. Is Petitioner entitled to just compensation for the entire period of deprivation?
7. See Appendix [O] pp.73-79 and Exhibit [F]. Under Cal. Business and Professions Code §7085 (policy 11), the Contractors State License Board has created and enforced a “mandatory arbitration program”.
 - a. Does §7085 authorize mandatory arbitration?
 - b. By what authority(ies) did officials and employees of the State of California and the Contractors State License Board create and/or enforce the mandatory arbitration program?
 - c. Keeping in mind that *only* the subject matter jurisdictions of Law and Equity arise under the Constitution for the United States, in what subject matter jurisdiction do proceedings under the “mandatory arbitration program” occur?

¹⁹ *Ex Parte Garland*, 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that “[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature.”

- d. Did Petitioner make a knowing, voluntary, and intelligent waiver of rights to be subjected to the “mandatory arbitration”? If yes, provide the authenticated evidence of this waiver of rights.
 - e. Did Petitioner have a right to (1) a judicial determination of his rights? (2) A trial by jury?
 - f. Petitioner as Spartan’s Responsible Managing Officer and the Qualifying Individual of Blackrock and Spartan’s licenses was not given notice of the proceeding? Did this failure to notify him of the proceedings constitute a violation of due process?
 - g. Petitioner was not provided with any evidence of the claim to prepare for a meaningful and substantive defense at the arbitration hearing. Did this failure to provide him evidence of the claim constitute a violation of due process?
 - h. Was the arbitration award a bill of pains and penalties?
 - i. By what authority(ies) can the Executive and Judicial powers of California be transferred to and/or exercised by a private arbitration company known as the Arbitration Mediation Conciliation Center, Inc. (“AMCC”)?
 - i. By what authority(ies) can employees of the AMCC exercise the Executive and/or Judicial power(s) of California?
 - ii. By what authority(ies) can employees of AMCC who have not (1) been elected or appointed; and/or (2) taken an Oath of Office, exercise the Executive and/or Judicial power(s) of California?
 - j. Petitioner reasserts all questions under 2b.
8. See complaints to public officials made by Petitioner in Exhibits [C-F] and “Parties”. Do officials of the Executive and Legislative branches of California and the United States have a mandatory, non-discretionary ministerial duty to investigate and/or intervene when they receive a complaint that an official of the Judicial and/or Legislative branch(es) has acted without authority to deprive one of the People of their rights, liberty, and/or property secured by the California and/or United States Constitution(s)?
- a. By what authority(ies) can the officials of the Legislative, Executive, and Judicial branches of the governments of California and the United States refuse to enforce the provisions of the Constitutions of California and/or the United States?
 - b. Which officials listed in “Parties” breached their duty to investigate and/or to intervene in Petitioner’s complaints for deprivation of Constitutionally protected rights?
 - i. Provide a detailed description of which duties each of these officials had and what rights, privileges, and immunities Petitioner was entitled to under both the Constitutions of California and the United States that were violated.
 - c. See Exhibits [E31] and [D] pp.5166-5178 whereby Sean Paul Crawford refused to investigate and intervene in Petitioner’s complaints on the grounds that he lacked jurisdiction because the incidents did not occur within the City of Irvine. By what authority(ies) does municipal law overrule and/or supersede the Constitutions of California and the United States? Do the Constitutions of California and the United States

not apply within certain Cities and/or Counties in California? If yes, which?

- d. Please explain the precise contours of all facets of the duties for officials of each branch of State and Federal government upon receipt of a complaint for deprivation of Constitutionally protected rights. If there is no such duty, please provide the authorit(y)ies and reasons why the officials of each branch of the government of California and the United States are exempt from these duties and how this exemption effects the separation of powers and system of checks and balances.
9. Keeping in mind that *only* “Cases in Law and Equity” arise *under* the Constitution, Laws of the United States and Treaties made under their authority, that the Constitution is the “supreme Law of the Land” and “the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding” by what authority(ies) did Chaffee and the Fourth District appellate Justices exercise a jurisdiction called “all other causes” (Art. VI, §10, Cal. Const. 1879)?
- a. Define “all other causes”, the precises means and methods of proceeding, and the limitations/extent of this jurisdiction.
 - b. Is “all other causes” foreign to the Constitution and unacknowledged by its law?
 - c. Is the jurisdiction of “all other causes” considered to be “in pursuance of” the Constitution and Laws of the United States? If so, define what “in pursuance thereof” means and specifically how “all other causes” is in pursuance thereof.
 - d. Is the Business and Profession Code considered administrative “law”?
 - e. Keeping in mind that *only* “Cases in Law and Equity” arise *under* the Constitution, in what subject matter jurisdiction does a case of administrative law proceed?
 - f. See *Parsons v. Tuolumne Co. Water Co.*²⁰ Is a case pursuant to §7031 considered a “special case”?
 - i. In what capacity (administrative, judicial, etc.) is a Court proceeding to a “special case” exercising subject matter jurisdiction?
10. Does the Cal. Constitution of 1879 vest any power in the “Legislature” to create Courts? If yes, by what authority(ies)?
11. Does the Cal. Constitution of 1879 vest any power in the “Legislature” to vest any Courts of California with subject matter jurisdiction of any special and/or statutory cases? If yes, by what authority(ies)? Which Courts?
- a. By what authority did the “Legislature” vest the Superior Court of California with subject matter jurisdiction under Cal. Business & Professions Code §7031(b) in the case against Petitioner?
 - b. Did the Superior Court of California have subject matter jurisdiction in the case against Petitioner? By what authority(ies)?

²⁰ *Parsons v. Tuolumne Co. Water Co.*, 5 Cal. 43 (Cal. Supreme Ct. 1855). (Citations omitted).

12. See sections I and J. By what authority(ies) have the Judges of the United States District Court for the Central District of California and the Ninth Circuit Court of Appeals created and/or enforced each of the policies stated in their “Judgments”/Appendices [] p. and [] p.?

- a. Did the District Court have subject matter jurisdiction over *every* issue Petitioner’s claims? If not, which issues did it have subject matter jurisdiction over? Of the issues in which the District Court didn’t have subject jurisdiction matter (if any) by what authority(ies) did it lack subject matter jurisdiction?
- b. Given that Petitioner was “prosecuted” for the commission of a public offense and never informed of nor afforded the right to assistant counsel at “trial”, did he have a right to the assistance of counsel in his proceedings in the District Court? If not, by what authority(ies) was he not entitled this assistance?
- c. Did Petitioner have a right to a meaningful and substantive appeal of Marshall’s “Judgment”?
 - i. If yes, did the Judges of the Ninth Circuit deny Petitioner’s right to appeal?
- d. The United States government has refused to provide Petitioner with all of the official documents pertaining to the appointment to the office of District Court Judge for Consuelo Bland Marshall and the office of Judge of the United States Court of Appeals for the Ninth Circuit for Judges Fletcher, Tashima, and Thomas. Pursuant to his request made under the Freedom of Information Act, Exhibit [D] p.5357-5377, you will please submit the requested documents to the record of this case.

13. Define “assistance of counsel” as used in the Sixth Amendment and the Cal. Constitution. More specifically, define “assistance” and “counsel”

- a. In what specific cases and actions is the “assistance of counsel” limited only to attorney’s licensed by a Bar Association?
- b. Does this limitation reflect a presumption that the Petitioner (and the American People) are incompetent in the practice of law and/or the assistance in the practice of law of others?
 - i. Given that the State Bar of California (founded in 1927) did not exist at the time of the enactment of the Cal. Constitutions of 1849 and 1879, and the American Bar Association (founded in 1878) did not exist at the time of the enactment of the U.S. Constitution, by what authority(ies) and historical facts can the term “assistance of counsel” mean only a Bar licensed attorneys?
 - ii. By what authority(ies) can the Sixth Amendment be amended such that “assistance of counsel” means *only* a Bar licensed attorney?
- c. Petitioner has contacted an estimated fifteen lawyers/ law firms and all have refused to “represent” or “assist” him in this matter. Does the fact that he has not been able to find meaningful and substantive assistance from a Bar licensed attorney result in the effective denial of assistance of counsel?
- d. Does Petitioner have a right to the assistance of counsel in this matter?

- e. Given the evidence presented herein that the State Bar of California and its members (active and/or inactive) are allegedly involved the conspiracy against Petitioner (and all like-situated litigants), by what authority(ies) could Petitioner be compelled to only receive “assistance” from one of its members?
 - f. Given the appearance of gross incompetence and severe psychological issues of all of the active and inactive members of the State Bar of California involved in this case, would it not be an effective denial of meaningful and substantive assistance of counsel to require Petitioner to be assisted and/or represented by a member of the Bar?
 - g. Does the State Bar of California constitute a monopoly under the Sherman Antitrust Act (26 Stat. 209 Ch. 647)?
 - i. If so, how can Petitioner be compelled to only receive assistance from an organization in violation of Federal Statutes?
14. Petitioner submitted a meaningful and substantive complaint for deprivation of rights arising under the Constitution to this Court on or about September 16, 2021. Exhibit [A43]. By alleged authority vested in the Clerk of Court under the Rules of the U.S. Supreme Court, Petitioner’s complaint was never given to the Justices and was returned unfiled. Exhibit [A44], Appendix [N] p.72.

Keeping in mind that Rule 5 of the FRCP declares that “[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”, and that this Court has held: (1) “the Constitution does not require that the case or controversy should be presented by traditional forms of procedure”;²¹ (2) that “[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation that would abrogate them”;²² (3) that “[t]he exaltation of form over substance is to be avoided”;²³ and, (4) that “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury”:

- a. Did the refusal to file Petitioner’s complaint constitute:
 - i. a denial of the right to a judicial determination of his rights *and* all of the rights prayed for in his complaint?
 - ii. a violation of due process?
 - iii. a denial of the right to Petition a Federal Court for Redress of Grievance pursuant to Article III, §2 and/or the First Amendment?
 - iv. a bill of pains and penalties?
- b. By what authority(ies) can the Clerk be vested with and/or exercise the judicial power of the United States under Rule 1 of the Rules of the U.S. Supreme Court to refuse to file and thereby adjudicate Petitioner’s complaint by summary denial of all of the issues he presented?
- c. By what authority(ies) did the Justices of this Court create, enact, and or/enforce the Rules of U.S. Supreme Court, such as Rule 1, that have

²¹ *Nashville, C. & St. Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

²² *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

²³ *United States v. DiFrancesco*, 449 U.S. 117, 142 (1980).

the force and effect of law, without the approval of Congress or the President?

- d. By what authority(ies) did the Justices of this Court create, enact, and or/enforce the Rules of U.S. Supreme Court, such as Rule 1, that result in a summary denial of rights secured by the Constitution?
15. See Exhibit [D] p.5435. By what authority(ies) can a Clerk and/or Deputy Clerk of the Supreme Court of California refuse to file a Petition for Writ of *Habeas Corpus*?
- a. Has the Writ of *Habeas Corpus* (Art. I, §9, Cl.2) been suspended in whole or in part? If so, which parts and by what authority(ies)?
 - b. By what authority(ies) do the Courts of California not have concurrent jurisdiction of a Federal Court?
16. Keeping in mind that *only* “Cases in Law and Equity” arise *under* the Constitution, Laws of the United States and Treaties made under their authority, and that the Constitution makes these jurisdictions of Law and Equity separate:
- a. By what authority(ies) can “Congress” combine these jurisdictions along with admiralty (a jurisdiction that does *not* arise *under* the Constitution, Laws of the United and Treaties made under their authority) to create “one form of action” as declared in Rule 2 of the Federal Rules of Civil Procedure (policy 14)?
17. See Exhibit [K] p.98. According to the California Secretary of State, the California Constitution of 1849 has never been repealed.
- a. Is the Cal. Constitution of 1849 still in force and effect? (i) If yes or not, by what authority(ies)?
 - b. The Cal. Constitution of 1879 does not define who the People and Citizens of California are. Who are the People and/or Citizens of California? Is there a difference between a People and a Citizen?
 - c. Provide a complete list (and therefore full disclosure) of all amendments to the Cal. Constitution of 1879.
 - i. Which of these amendments have been required to be approved by Congress?
 - ii. Which of these amendments have been approved by Congress?
18. Keeping in mind the facts presented by Lysander Spooner in No Treason, No VI, The Constitution of No Authority (1870) (Exhibit [G]), what specifically constitutes “consent of the governed” to be subject to the Cal. Constitutions of 1849 and 1879, Chapter 9. Contractors of the Cal. Business and Professions Code, the law merchant/Cal. Commercial Code, Interstate Commerce as defined by Article I, §8, Cl.3, and the Constitution for the United States of America?
19. Do the Constitutions of California and the United States of America each establish a trust?
- a. Are the public officials of California and the United States of America trustees either or both of these trusts?

- b. Provide a comprehensive list of which provisions of the Constitutions of California and the United States are discretionary.
- c. Provide a comprehensive list of which provisions of the Constitutions of California and the United States are ministerial.
- d. Does the Oath of Office of a public official have the same force and effect as a contract?
- e. Does violation of an Oath of Office have constitute intent to “advocate the overthrow of our constitutional form of government” as declared in 5 U.S.C §7311?
- f. Which officials involved in this case have violated their Oath of Office?
- g. Pursuant to Article XX, §3 of the Cal. Constitution of 1879 are officials required to take *and* subscribe an Oath of Office for each position they hold? For e.g. is a Police Officer required to take and subscribe an Oath of Office when promoted to the position of Police Sergeant– a position with different duties, responsibilities, and pay than that of a Police Officer?
 - i. Based upon the answer to (d), which officials listed in “Parties” are lawfully in office?
 - 1. If any officials in “Parties” are not lawfully in office: (1) what effect does this have on their ability to accept compensation from the public treasury; and, (2) on their ability to make lawful determination(s) of Petitioners claims (claims for deprivation of Constitutionally protected rights, privileges, and/or immunities)?
- h. See Exhibit [D] pp.5159-5161. By what authority(ies) can Executive officials overrule, supersede, or amend the Cal. Constitution of 1879 by creating and/or implementing policies to not subscribe an Oath of Office?
- i. See Exhibit [D] p.5200. By what authority(ies) can “officials” make up their own Oath of Office?
- j. See for e.g. Parties: Brian Wadkins, Mike Manson et al. who have not subscribed an Oath of Office.
 - i. What effect does the failure to *subscribe* an oath of office have on an official’s ability to receive compensation from the public treasury? On the official’s authority to make any *lawful* orders or commands or to *lawfully* perform the function of their office?
 - 1. Based upon the answer to (i), which officials listed in “Parties” are not lawfully in office?

20. Article III of the Constitution *mandates* that the judicial power of the United States “shall extend to all Cases in Law and Equity”²⁴. In furtherance of this

²⁴ Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 “The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;” §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985; p230.

declaration, this Court has held that “[t]he constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided.”²⁵ Consequently, the judicial power of the United States must be *fully* vested in Federal Courts in both original *and* appellate forms. Despite the foregoing, Congress has not vested any judicial power of the United States at Law or Equity in any known District Court of the United States. See “Statement of Jurisdiction”. Furthermore, pursuant to at least 28 U.S.C. §1257, this Court has enforced a policy created by “Congress” whereby appellate review of State Court judgments “is not a matter of right, but of judicial discretion.”²⁶ The result being, as directly evidenced by this case, that Petitioner (and all like situated litigants) have no apparent access to a Constitutional Court exercising the judicial power of the United States as conferred by Article III.

- a. See sections I, and J (policy 5). By what authority(ies) has “Congress” refused to vest the judicial power of the United States in any original case at Law or Equity in any District Court of the United States?
 - b. By what authority(ies) has “Congress” refused to vest the judicial power of the United States in any appellate case at Law or Equity in any District Court of the United States?
 - c. See case# 18-1416 (policy 4). By what authority(ies) has “Congress” refused to vest the judicial power of the United States in the Supreme Court of the United States in *all* appellate cases at Law or Equity involving review of State Judgments in violation of the Constitution?
 - i. By what authority(ies) has this Court created and/or enforced Rule 10 of the Rules of the Supreme Court whereby this Court refuses to exercise appellate review of State Judgments claimed to be in violation of the Constitution?
 - d. Based on the fact that Congress has refused to vest the full judicial power of the United States in any original case at Law or Equity, does this Court consequently have original jurisdiction in all cases at Law or Equity? If not, in what Court would Petitioner file such a case?
21. Pursuant to Article I, §10, was Petitioner entitled to a judicial determination of his rights in the first instance in all cases in which his rights, liberty, and/or property were to be taken under the authority of the State of California?
- a. Define the terms “Bill of Attainder” and “Bill of Pains and Penalties”.
 - b. Carefully noting that the Constitution imposes the restrictions of these Bills on a “State” specifically and not any specific branch of government or official, does the restriction against these Bills apply whenever a State action imposes punishment by taking the rights, liberty, and/or property of one of the People by force of the Legislative, Executive or Judicial power of the State?

²⁵ *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

²⁶ Rules of the Supreme Court, Rule 10.

22. By what authority(ies) have the Justices of this Court created, enforced, and/or in any way sanctioned policies 4, 5, 6, 7, 8, 9, 10?
23. According to the *Slaughterhouse Cases*²⁷, “there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.” See also *Van Valkenburg v. Brown*,²⁸ holding that the People of California do not owe their Citizenship to the “14th Amendment”, and the definition of “Citizen” in Bouvier’s Law Dictionary of 1859²⁹. Based on the foregoing, there appear to be two separate bodies politic in at least the State of California if not every other State admitted into “this Union”. Those bodies politic are the Citizens of California and citizens of the United States and/or United States citizens.
 - a. Given that this Court has declared that corporations are “citizens of the United States”³⁰, who and/or what is a “citizen of the United States” (as used in the “14th Amendment”) and “United States citizen” (as used in the Cal. Elections Code)?
 - b. State precisely “all characteristics or circumstances in the individual” that determine whether one is a Citizen of a State, “citizen of the United States” or “United States citizen”.
 - c. State precisely all rights, privileges and immunities for Citizens of California, “citizens of the United States” and “United States citizens”
 - d. Who and/or what specifically is subject to the “jurisdiction thereof” as declared in the “14th Amendment”
 1. What specifically is the “jurisdiction thereof” and what is its extent?
 - e. By what authority(ies) can Congress dictate to the States who are to be its Citizens?
 - f. In Petitioners research, it has appeared that the acceptance of Federal benefits such as Social Security, results in the fact that one also is considered a resident of the District of Columbia even though they may actually physically reside in a State. Does the fact that one is a “citizen of the United States”, “United States citizen”, or accept any Federal benefits also mean, in any instance (other than if one actually physically resides in the District of Columbia) that one is a resident of the District of Columbia? If yes, state all instances in which this is the case.
 - g. What is Petitioner’s status and standing? In other words, is he a Citizen of California? citizen of United States? Both? Neither? Where is he considered to reside? Where is he considered to be domiciled?
 - h. Was the “14th Amendment” lawfully ratified?

²⁷ *Slaughterhouse Cases*, 83 U.S. 36, 74 (1872). See also *Scott v. Sanford*, 60 U.S. 393, 399 (1857).

²⁸ *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

²⁹ The then Congressionally approved definitions of the words and phrases of the Constitution, as “[o]ne who, under the Constitution and laws of the United States, has the right to vote for representatives in Congress, and other public officers, and who is qualified to fill all offices in the gift of the people. In a more extended sense, under the word citizen, are included all white male persons born in the United States ...”

³⁰ *Connecticut Insurance v. Johnson*,

24. Connecticut insurance v. johnson

25. According to section 201 of the Cal. Elections Code, “no person is eligible to be elected or appointed to an elective office unless that person is a registered voter.” Under section 2101, “[a] person entitled to register to vote shall be a United States citizen.”

- a. If the People of California must be a “United States citizen” to vote, who specifically is the sovereign body politic of California (see for e.g. Cal. Gov. Code §100)?
- b. In what State admitted into “this Union” do “United States citizen[s]” reside or inhabit?
- c. Keeping in mind that Article I, §2, requires that members of the House of Representatives be inhabitants of States, by what authority(ies) can a “United States citizen” become a representative in Congress?
 - i. By what authority(ies) can the Citizens of California be excluded from all offices of the governments of California and the United States?
 - ii. Is there any elected or appointed official of California lawfully in office? If so, provide the names and offices held for each official.
 - iii. See Cal. Elections Code §7100. By what authority(ies) can a “United States citizen” designate a presidential elector for the State of California?
 - iv. Provide the names of all Citizens of California who voted in the 2020 Presidential Election.
 - v. Provide the names of all Electors of California (as chosen by the Citizens of California) who voted in the 2020 Presidential Election?
 - vi. Are the Electors certified by Gavin Newsom as declared in Citizens of California or the United States?
 - vii. How many lawful Electoral College votes were received by Joseph R. Biden and Donald J. Trump from the State of California?
 - viii. How many lawful Electoral College votes were received by Joseph R. Biden and Donald J. Trump from every other State (other than California) admitted into “this Union”?
 - ix. What effect if any, does any of the foregoing have upon the Presidential Election of 2020.

26.

27. Under our Constitutional governments of *defined and limited* powers, “whenever an act of [...] government is challenged a grant of power must be shown, or the act is void.”³¹ Pursuant to the First and Fifth Amendments, Petitioner has a right to petition every branch of State and National government for Redress of Grievance. Commensurate with this right is the

³¹ *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866); See also Article 6, §2.

requirement that the office petitioned be lawfully occupied in order that a lawful investigation and/or intervention to redress the grievance(s) be made.

Pursuant to Petitioner's investigation, a number of the Parties that purported to be duly elected, appointed, or employed as public officials, do not appear to lawfully be in office and thereby have no apparent authority to accept compensation from the public treasury or provide any lawful redress of his complaints.

As one of the checks and balances framed into the Constitution to ensure the meaningful representation of the People, Article I, §2, Cl. 3 clearly and unambiguously set forth a minimum and maximum ratio of representation in the House of Representatives of Congress. The People of each State admitted into the Union had a right to a minimum of one representative and a maximum of one representative for every 30,000 inhabitants. It also required that the number of the representatives "shall be apportioned [...] within every subsequent term of ten years". See especially Federalist Papers No. 55, 56, Congressional Globe of February 9th, 1866, pages 763, and 764, and Commentaries on the Constitution by Joseph Story, §642–§645, and Section 14 of Article II of the Northwest Ordinance of 1787 guaranteeing, *even to inhabitants of territories*, the right of proportional representation. as reenacted by the First Congress Today, with a population nearing 330,000,000 People, a proper ratio of representation in Congress of the United States would be close to 11,000 members, not 435.

- a. By what authority(ies) did "Congress" pass the Act of June 18, 1929, otherwise known as the Permanent Apportionment Act, 46 Stat. 21, Pub. Law 71-13, fixing the number of Representatives in the House at 435?
- b. Would an Act of this type and magnitude not have required a Constitutional Amendment by conventions of the People in the States as required by Article V?
- c. Was there a lawful quorum in the House to pass the Act?
- d. If the Act of June 18, 1929 is not Constitutional, please determine the Constitutionality of all acts of "Congress" dating back to when it began operating without a lawful quorum.
- e. Additional safeguards pertaining to the separation of powers enumerated in the Constitution are (1) Article IV, §4 (whereby the United States shall guarantee a Republican Form of Government and protect the States (of whom the People are the sovereign bodies politic) from invasion and domestic violence upon Application of the Legislature); and (2) the First Amendment right to petition any branch of government for redress of grievance. If the Act of June 18, 1929 is not Constitutional and there is effectively no Congress to guarantee these protections and remedies, has Petitioners rights secured by Article IV, §4 and the First Amendment been violated?
- f. Do the Judges of State and Federal Courts have a duty *prior* to the enforcement of any Act of a State Legislature or Congress to ensure that it was lawfully ratified?

In his attempt to stop the irreparable harm being perpetrated upon him, Petitioner made numerous complaints to the FBI, the principal law enforcement agency of the Executive branch of the United States. To his knowledge and belief, the FBI has refused to investigate and/or intervene and appears to have an unwritten policy and practice to refuse to investigate and/or intervene in complaints for deprivation of Constitutionally protected rights.

The Chief Executive of the United States (and the FBI) is the President. As the right to Petition the office of the President for Redress of Grievance is guaranteed at any time, especially when his subordinates refuse to execute their sworn duties, and pursuant to Article IV, §4,³² there must be a lawfully enacted President in office to receive a complaint and make lawful redress of each grievance.

As there is no known complete certified public official record available for Petitioner (or any of the American People) to meaningfully and substantively verify the results of the most recent Presidential election (or any election for that matter), there is no known way to verify that Joseph R. Biden is lawfully in office and consequently has any authority to address any of Petitioner's complaints (or take any Executive action whatsoever).

Elections aren't determined simply because certain public officials (who also may not lawfully be in office) just say so by declaring a certain candidate "won the race" and was elected.³³ The results of all elections must be *completely* transparent and verifiable to any of the People at any time.

The fact that there is no complete certified record publicly available for Petitioner to be able to expeditiously, meaningfully, and substantively verify the most recent President Election results is an egregious violation of due process and consequently of the rights to Petition for Redress of Grievance, and to a Republican form of Government.

Under the forms and modes of proceeding at common Law, "[t]he writ of quo warranto is [...] used to determine whether one is properly qualified and eligible to hold a public office. The writ is utilized to test whether a person may lawfully hold office, unlike impeachment, which is the removal of an officeholder for inappropriate acts while lawfully holding office. Stated another way, the purpose of the writ of quo warranto is to ascertain whether an officeholder is constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim."³⁴

³² According to Article IV, §4, "The United States shall guarantee to every state in this union a republican form of government, [...] and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence. If, as Petitioner has alleged, the Legislature cannot be convened because there is no lawful representative quorum in the House, then, in addition to the rights secured by the First and Fifth Amendments, there must be a lawfully occupied office of the Executive.

³³ See

³⁴ *Ex parte Sierra Club*, 674 So.2d 54, 56-57 (1995). Internal quotations and citations omitted.

- (a) By what authority(ies) does Joseph R. Biden occupy the office of President of the United States?

Article I, §14 of the Cal. Constitution of 1849 provides that “Representation shall be apportioned according to population.” Mysteriously, this right was entirely removed from the purported Cal. Constitution of 1879 and there has been no apportionment since at least its “ratification”. Petitioner has not been able to find any meaningful and substantive notification to the People of California that this right would no longer be recognized upon “ratification” of the Constitution of 1879. Today, with a population nearing 40,000,000 People, a proper ratio of representation would be close to 1300 members, not 80. If the Constitution of 1849 is still in full force and effect:

- (a) By what authority(ies) has the California “Legislature” or “Assembly” refused to apportion representation according to population?
- (b) Is proportionate representation a critical aspect of a Republican Form of Government based on the rule of law and the consent of the governed secured by Article IV, 4?
 - i. If yes, by what authority(ies) did “Congress” approve the Cal. Constitution of 1879? (A) Would this approval not be in direct dereliction of their duty prescribed by Article IV, §4? (B) Has Petitioner (and the People of California) been deprived of a Republican form of government?
 - ii. If yes, by what authority(ies) has the “Legislature” of California refused to apportion representatives according to California’s population? (A) Please determine the Constitutionality of all acts of the Cal. “Legislature” dating back to when it began operating without a lawful quorum.

If California was a State admitted under English/ American/common law (see *Fowler v. Smith* 2 Cal. 568, 568-9 (1852) and not Roman civil law, how can the “Legislature” of California change and/or alter this fundamental process of governance (and the means and methods of adjudicating disputes) without the explicit consent of the People and Congress? (a) Please carefully distinguish between these the systems of jurisprudence known as the common Law and Roman civil law. See especially *Excellence of Common Law: Compared and Contrasted with Civil Law: In Light of History, Nature, and Scripture* by Brent Allen Winters.

By what authority(ies) has this Court created and enforced the doctrines of Legislative, Judicial, and Executive immunity? Please evidence specifically how each of these policies, crafted under a completely different and incompatible form of government, apply under the Constitutional Republican form of government for the United States of America of carefully defined and limited powers.

The Constitution vests the judicial power in Judges while also clearly defining and limiting the extent of this power (subject matter jurisdiction) by specific Articles and Amendments that articulate the ways and means by which a Court must proceed before depriving anyone of life, liberty, or property. Consequently, a Court must have subject matter jurisdiction over each issue in a case before the judicial power can be exercised to deprive anyone of anything. Explain how under this Court’s

jurisprudence subject matter jurisdiction only applies to the type of the case and not to every issue in a case? (a) How can a Judge exceed authority that was never granted to begin with? In other words, if the Constitution explicitly forbids a Judge from imposing an excessive fine, how can it be an excess of authority for a Judge to impose an excessive fine?

because that there are no common law courts and no juries empowered to rule on the facts and the law to act as a check and balance to *ultra vires* government action, that any act of the “Legislature” is a bill of attainder or pains and penalties.

Keeping in mind that historically rights have been tied to Land and that the Constitution for the United States of America “and Laws of the United States, which shall be made in Pursuance thereof” are declared to be the “supreme Law of the Land” (Article VI, 2), are the inalienable rights or any other rights, privileges, or immunities whether guaranteed to Petitioner or otherwise by the Cal. Constitution and U.S. Constitutions tied to or in any way associated or dependent upon whether he or anyone claims ownership (stake’s a claim) in Land? (a) If yes, please fully explain the full nature and scope of this connection and precisely how one stake’s a claim.

Keeping in mind that Article I, §8, Cl. 5 only gives Congress the power “[t]o coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures” by what authority(ies) did Congress pass the Federal Reserve Act of 1913 (Pub. Law. 63-43)?

(a) Define “coin money” and “elastic currency” (as used in Pub. Law. 63-43).

(a) In what jurisdiction does gold and silver coin and bullion circulate?

(b) In what jurisdiction do Federal Reserve Notes circulate?

i. Keeping in mind the Coinage Act of 1792 and the Seventh Amendment, what is the definition of a “dollar” as stated on a Federal Reserve Note?

ii. See Exhibit [D] pp.5239-40. By what authority(ies) has Petitioner’s Certificate of Live Birth been monetized and assigned a Bank Note Number? (A) In what jurisdiction does this Certificate circulate? (B)Provide all obligations that are in any way associated with Petitioner’s Certificate of Live Birth and the means by which Petitioner (or anyone else including his parents) made a knowing, voluntary and intelligent waiver of rights and thereby consented to said monetization and/or pledge.

iii. See *Bank of Columbia v. Okely*, 17 U.S. 235 (1819). (A) Does section 4 of the “14th Amendment” make all “citizens of the United States” hypothecators of goods and/or stipulators in the admiralty? (B) By what authority(ies) can “citizens of the United States” be restrained from questioning the fiscal policies of their government?

- iv. According to Marriner S. Eccles, former chairman of the Federal Reserve Board, “if there were no debt in our money system [...] [t]here wouldn’t be any money.”³⁵ See also Congressional Record— House, August 19, 1940, pp.10548-10555 stating that “the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone’s debt [...]”) *Id.* p.10550. See also *Cohens v. Virginia*, 19 U.S. 264, 403 (1821) stating that “the act discharging [a] debt is a mere nullity and that it is still due.” (A) How can the American People possibly own real and/or personal property if they can only discharge the obligation and the means of purchasing said property is mere evidence of debt? (B) How can the National Debt ever be repaid?
- v. Can specie as defined by the Coinage Act of 1792 be subjected to any State (of California) and Federal taxes? If so, which specific taxes and by what authority(ies)?
- vi. What specifically is/are the difference(s) between discharging an obligation and paying an obligation?
- (d) By what specific authority(ies) does Petitioner become a “taxpayer” and (i) subject to the Internal Revenue Code; and (ii) subject to the Revenue and Taxation Code of California? (iii) What role does obtaining a social security number have in this process?

Was there a lawful representative quorum in “Congress” at the time of the purported passage of Pub. Law. 63-43?

(c) Even if there were a lawful representative quorum and Congress possessed the power to perform the acts in Pub. Law. 63-43, by what authority(ies) did/can Congress delegate these powers? (1) By what authority(ies) can Congress perform the acts in Pub. Law. 63-43?

(d) Keeping in mind that “[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted to secure private rights [...]”, *Calder v. Bull*, 3 U.S. 386, 390 (1798), what effect(s) does the use of Federal Reserve Notes have on private rights and the obligations of private contracts?

(e) By what authority(ies) can Petitioner and/or the American People be security in any way for the so-called National Debt when it was created by fraud, without his/their consent, and without any Constitutional authority?

(f) Explain the entire process by which “money” is created under the Federal Reserve System.

(g) Who and/or what specifically is security and/or collateral for the “National Debt”? (1) By what authority(ies) is Petitioner and/or the American People security and/or collateral for the “National Debt”? (2) What constitutes consent of the governed to be security and/or collateral for the “National Debt”? (3) By what specific legal and/or administrative process(es) can Petitioner/ the American People sever the contract and/or bond as a security and/or collateral

³⁵ Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2, p.1338.

for the “National Debt”? (4) Is there a summary remedy for this severance process? (5) Is Petitioner considered a voluntary or involuntary servant to the “National Debt”?

(h) Where specifically is all of the gold coin, bullion, and gold certificates held in trust for the American People? Provide a complete statement of account, including anything that was received (confiscated by force of the Executive Power of the United States) pursuant to Executive Order 6102.

(i) Who is/are the real party(ies) in interest and/or the beneficial owner(s) of the United States? The United States of America?

(j) What status does Petitioner have to state a claim in Law?

(k) Does Petitioner have absolute right, title, and interest in his body and the products of his faculties? If not, by what authority(ies) and who or what entity does?

14. By what authority(ies) can Petitioner/ the People of California be denied a judicial determination of their rights in foreclosure proceedings and be subjected to summary administrative proceedings, such as the proceeding for the foreclosure of the real property at 818 Spirit Costa Mesa, California? See Exhibit [D] pp.5217-5230 and Cal. Civil Code §2924. (Just so there is no confusion, Petitioner considers this question to be a challenge to the jurisdiction of the foreclosure proceedings and has properly served the related parties carefully noting that ‘they’ have not answered his requests under the Fair Debt Collection Practices Act and the Freedom of Information Act (Exhibit [D] pp.5334-5341, 5254-5333)).

(a) Keeping in mind that only the jurisdictions of Law and Equity arise under the Constitution, in what jurisdiction do these foreclosure proceedings occur?

(b) Provide the authenticated evidence that Petitioner made a knowing, voluntary, and intelligent waiver of rights to be subjected to these summary foreclosure proceedings.

(c) Is the mortgage contract for a loan or exchange of equal value for equal value? (1) Define “loan” as used in the

(d) Please explain the entire process with specificity for so-called mortgage and/or credit lending, including how all assets and liabilities with regard to a “loan” are created and extinguished on bank records using the mortgage for the real property located at 818 Spirit, Costa Mesa, California as an example. Be sure to carefully define all terms, including those in the Promissory Note, Deed of Trust and any other official documents. See Exhibits [D] pp.5288-5303, 5330-5333.

(e) In foreclosure proceedings, how is the property foreclosed upon when it is only the Deed of Trust that is the security for the note?

(f) Define the differences between a land patent, allodial title, and fee simple title and how they affect ownership rights in real property? (1) In which jurisdiction(s) do cases arising under these different means of acquiring and holding title proceed?

(g) By what authority(ies) can the Promissory Note secured by the Deed of Trust be converted into a security and/or Trust Certificate? (1) In what jurisdiction(s) does this security and/or Trust Certificate circulate? (2) By what authority(ies) can such a conversion take place without Petitioner’s consent/ knowing, voluntary, and intelligent waiver of rights?

(h) Who is/are the real party(ies) in interest in THE NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2?

(i) Can a Deed of Trust be separated from the Promissory Note? What effect does a transfer of a Deed of Trust without the Note have? See Exhibit [D] p.5218-9.

(j) Does Petitioner have a vested right/interest in the property and/or the equity in the title to the property located at 818 Spirit, Costa Mesa, California?

(1) By what authority(ies) can he be summarily divested of this right/interest in the administrative foreclosure proceedings pursuant to Cal. Civil Code §2924? (2) Please produce the authenticated exhibits whereby Petitioner has consented to/ made a knowing, voluntary, and intelligent waiver of right(s) to this(ese) right(s)/interest(s).

(a) The United States government has refused to provide Petitioner with all of the official documents pertaining to the appointments to the offices of Chief and/or Associate Justice of the U.S. Supreme Court for every Justice of this Court (with the exception of Ketanji Brown Jackson). Pursuant to his request made under the Freedom of Information Act, Exhibit [D] pp.5357-5377, you will please submit these documents to the record of this case.

Based upon the fact that the evidence presented by Petitioner proves, without any ambiguity that there is no republican form of government in California, exactly what is the status and standing of the entity masquerading as the lawful de jure State: California? By what authority(ies) can a State be unadmitted from the Union?

17. What specifically is a “republican form of government” as stated in Article 4, §4? Please compare and contrast this form of government with that of a “democracy”. Does a republican form of government as intended by the Founders and People who ratified the Constitution include an administrative form of government? If so, to what extent and by what authority(ies)?

1Petitioner considers all other issues raised anywhere in this Petition as issues before the Court even if not addressed in this section of questions. The Court will please address all of them and shall not use any self-promulgated anti-Constitutional doctrines such as the Ashwander Doctrine, *Ashwander v. TVA*, 297 U.S. 288 (1936), to avoid or refuse to answer these questions. See *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) “[w]e 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. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty.”

Define “inalienable” as used in Article I, §1 of the California Constitution and “unalienable” as used in the Declaration of Independence. Please list and clearly define all inalienable and unalienable rights.

(a) Are these inalienable and unalienable rights recognized in cases not arising under the Constitution and laws of the United States but within U.S. territory (for example in cases pursuant to Admiralty or Maritime Jurisdiction)?

(b) Keeping in mind *De Lovio v. Boit*, 7 F. Cas. 418 (1815), by what authority(ies) can Petitioner/ the American People be forcibly subjected to cases arising in the Admiralty/Maritime jurisdiction (see for e.g. Cal. Vehicle Code §16028(a) requiring motor-vehicle insurance, Cal. Labor Code §3700 requiring workers compensation insurance, and policy 4)?

What behavior Constitutes treason to the Constitution by an official of the Legislative, Executive, Judicial, and “Administrative” branch? (a) What behavior in this case meets this criteria? (b) Provide an analysis for each issue raised herein.

State which principals of “natural law” as found in the First and Second Treatises of Government by John Locke are embodied within the Constitutions of California and the United States of America.

Define “State” when used in reference to a State admitted into the union of States known as the United States and/or the United States of America.

Define “United States” and “United States of America”.

Keeping mind that Article IV, §4 mandates that “[t]he United States shall guarantee to ever State in this Union a Republican Form of Government” how can Petitioner/ the People of California be subjected to a municipal form of government or council-manager form of government such as that of the City of Costa Mesa?

What constitutes “domestic violence” as stated in Article IV, §4?

See Article III, §2, carefully noting that cases at Law and Equity are separate, that neither jurisdiction has paramount authority over the other, and that a case in Equity does not require that there is no “plain, adequate and complete remedy at law”.³⁶ By what authority(ies) are equitable suits limited to cases in which there is no “plain, adequate and complete remedy at law”?

Keeping in mind all the claims made herein, including the monetization of Petitioner’s Certificate of Live Birth and this Court’s decision in *Reno v. Condon*, 521 U.S. 141 (2000), is Petitioner considered an entity in Interstate Commerce? Did the “trial” in the Superior Court occur in Interstate Commerce? What is the definition of Interstate and Intrastate Commerce? What rights secured by the Constitutions of California and the United States of America are recognized in cases involving Interstate Commerce? How can any of the avocations of ordinary life on Land arise in Interstate Commerce/ Admiralty? Define and contrast “Public” and “Private”.

Make an accounting of all “Debts contracted and Engagements entered into, before the Adoption of this Constitution” as declared in Article VI, §2, including the current status of these engagements and obligations.

Define “in this state” as used in Cal. Business and Professions Code §7031(b). (a) See Cal. Business and Professions Code §21, and Cal. Code Civil Procedure §17(13). Does “in this state” as used in §7031(b) in any way mean the District of Columbia, the Territories, or the United States? If yes, by what authority(ies)? If not, why not?

See Senate Report 93-549. Define “emergency” and “state of emergency”. What “emergencies” and/or “states of emergency” are currently purportedly in effect? By

³⁶ *Guaranty Trust v. York*, 326 U.S. 99, 105 (1945). See also *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, fn. 3 (2020).

what authority(ies) have each of these “emergencies” and/or “states of emergency” been declared and remain in effect? By what authority(ies) does a President have to issue an Executive Order? If there is such a power to issue an Executive Order, precisely define its nature and extent. By what authority(ies) can Congress transfer or delegate any of its powers to the President? By what authority(ies) can an Executive Order in any way amend the Constitution in violation of Article V? By what authority(ies) can an Executive Order grant power(s) to any branch of government that it does not already possess by the Constitution?

Based upon all of the foregoing and all evidenc presented herein, How can California possibly be a State admitted into “this union” if its alleged “voters” do not constitute its sovereign body politic?

Describe all rights, privileges, and immunities secured by the Cal. Constitution and the U.S. Constitution that were violated as a result of the actions taken against Petitioner under §7085 and 7085.6.

Contracts impaired?

Right to recordings

Right to know nature and cause of accusations

Many politicians repeayedly tell the ameriucam people democracy. Does the Constitution for the United States of America establish a democracy? A republic? What

Are Constitutional rights subject to political majorities? What safeguards are in place to ensure

Change the number of justices “Pack the supreme court”

By what authority(ies) are the People of Californi required to register their personal and or real property with the State of California? What effect does registration have

Certificate of live birth

Requisites of final judgment

Define “assistant counsel” as used in the require Bar licenssec attorney?

Why aren’t people competent to choose representative?

Monopoly?>

Keeping in mind the facts presented in An Essay on Trial by Jury by Lysander Spooner, (incorporated and fully set forth herein), did Petitioner have a right to a trial by jury according to the course of the common law where the jury was empowered to rule on the facts *and* the law?

In Petitioners observation, facts are required to be proven in order to establish a claim and therefore a violation of law. In this way, the facts and the law are opposite sides of the *same* coin– a valid claim cannot exist without either the

facts or the law. In other words, there is no apparent line separating facts from law. By what authority(ies) and rational bases are facts separated from law during a trial by jury such that a jury can only rule on the facts?

Why can one person as a Judge rule on the law of a case, but not twelve members of the sovereign body politic who ordained, established, and/or maintain government that is purportedly based upon their consent?

In a Constitutional republican form of government of defined and limited powers based on the rule of law and the consent of the governed, are the People considered principals and government officials their agents?

As principals and part of the system of checks and balances, do the People have a duty to supervise their agents and ensure that they follow the established law?

Is a trial by jury where the jury is empowered to rule on the facts *and* the law an *essential* component of the system of checks and balances *and* consent of the governed to ensure that Legislative and/or Judicial officials do not transcend the limits of their authority?

Is the rights to a trial by jury where the jury is empowered to rule on the facts and the law an essential component of due process? Of a judicial determination of rights (Art. I, §10)?

Was Petitioner denied the right to a trial by jury where the jury was empowered to rule on the facts and the law?

When the Northwest Ordinance of 1787 speaks of a proceedings according to the course of the common law, what *specifically* is meant by “proceedings according to the course of the common law?”

Trail by jury common law violation of separation of powers

Good vs. Bad behavior article III, violate due process or provisions of Constitution?

CORPORATE DISCLOSURE STATEMENT

There are no known public corporations involved in this case.

DIGITAL VERSION AVAILABLE

For a digital version of this Petition, Appendix, and the referenced Exhibits, please visit <http://www.thespiritoflaw.com>. The digital version has active underlined links that can be clicked for reference.

NOTICE TO THE COURT, ALL PARTIES, AND AMICUS CURAE

I

At the bottom of thespiritoflaw.com homepage is a link to a subpage named “Administrative Files”. It contains the .docx files for the Petition, Proof of Service, and other administrative documents for download to aid in your response(s) or submissions.

II

Some of the following claims contain voluminous Exhibits. Based on the costs associated with reproducing and shipping more than one thousand pages of these documents to the Court and all parties and the fact that Petitioner filed a Motion to proceed *In Forma Pauperis*, they have not been included but are incorporated as if fully set forth herein. They can downloaded at:

<https://www.thespiritoflaw.com/exhibits>

PARTIES TO THE PROCEEDINGS

Petitioner’s rights, liberty, and/or property have been deprived or taken by the following State and Federal Officials and private people conspiring with these officials as a direct result of either their arbitrary exercise of jurisdiction over his person and/or property under color of law but without lawful authority and/or their refusal under color of law but without lawful authority to investigate and intervene to stop the unlawful acts being perpetrated upon him.³⁷ In all cases the refusal of public officials to investigate and intervene in Petitioner’s complaints has resulted in their sanctioning lawless domestic violence and participation in the conspiracy to deprive him of his rights, liberty, and property without lawful authority.

<u>Name</u>	<u>Office and Function</u>
Abel Alcantar	Sergeant, Santa Ana Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner’s deprivation of rights complaints; (b) to intervene to protect

³⁷ Due to the volume and complexity of the claims made herein and the fact that Petitioner is under extreme duress and coercion, he reserves the right to amend these claims at any time. While diligent efforts have been made to ensure that Exhibits related to each party have been included, the entirety of the Exhibits should be consulted as the final authority.

Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten SAPD policy to (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Appendix [K] p.56, Exhibits³⁸ [E4, E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509. Has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant.

AMCC

Arbitration Mediation Conciliation Center, Inc. Conspired with State of California officials and employees to enact and/or enforce an unlawful “mandatory arbitration” program used to deprive Petitioner of his rights to a judicial determination of his rights, trial by jury, and republican form of government (amongst others). Appendix [O] pp.73-79.

Richard Aronson

Justice (ret.), Fourth District Court of Appeal. See *infra* and Appendix [C] pp. 9-22.

Don Barnes

Sheriff, Orange County Sheriff-Coroner Department. Without authority created and/or enforced an unwritten OCSA policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the department were lawfully occupied. Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D]

pp.4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 4540 [C] pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691.

Adam Bereki

Petitioner is one of the People domiciled in California. He is not a “citizen of the United States”, or “person subject to the jurisdiction thereof” according to the so-called “14th Amendment” or a statutory resident of the District of Columbia, a municipal corporation³⁹ chartered⁴⁰ by Congress masquerading as a “State”⁴¹ or as the “United States.”⁴² According to the Supreme Court of California, the People of California do not owe their Citizenship to the “14th Amendment”.⁴³

Petitioner also cannot possibly be “subject to the jurisdiction [of the United States]” by virtue of the so-called “14th Amendment” because it was never lawfully ratified commensurate with Article V,⁴⁴ having been forced upon the People without a lawful representative quorum in Congress and by means of federal regional martial law rule imposed by the Reconstruction Acts. Martial law appears nowhere in the Constitutional amending processes found in Article V. Moreover, Petitioner has not made any knowing, voluntary, or intelligent waiver of

³⁹ MUNICIPAL CORPORATION “A public corporation, created by government for political purposes, and having subordinate and local powers of legislation.” [e.g., cities, towns etc.] Black’s Law Dictionary by Henry Campbell Black, Revised Fourth Edition, St. Paul, Minn.: West Publishing Co., 1968, pp.1168-9.

⁴⁰ “An Act to provide a Government for the District of Columbia,” ch. 62, 16 Stat. 419, February 21, 1871; later legislated in “An Act Providing a Permanent Form of Government for the District of Columbia,” ch. 180, sec. 1, 20 Stat. 102, June 11, 1878, to remain and continue as a municipal corporation (brought forward from the Act of 1871, as provided in the Act of March 2, 1877, amended and approved March 9, 1878, *Revised Statutes of the United States Relating to the District of Columbia . . . 1873-’74* (in force as of December 1, 1873), sec. 2, p. 2); as amended by the Act of June 28, 1935, 49 Stat. 430, ch. 332, sec. 1 (Title 1, Section 102, District of Columbia Code (1940)).

⁴¹ See for e.g. The Act of June 30, 1864 (13 Stat. 223, 306), at section 182 SEC. 182. “And be it further enacted, [t]hat wherever the word state is used in this act it shall be construed to include the territories and the District of Columbia, where such construction is necessary to carry out the provisions of this act.”

⁴² Cal. Code of Civil Procedure §17 (13) “State” includes the District of Columbia and the territories when applied to the different parts of the United States, and the words “United States” may include the district and territories.

⁴³ *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

⁴⁴ *Dyett v. Turner*, 20 Utah 2d 403 (UT Supreme Ct. 1968); Congressional Globe April 5, 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967 pp.15641-15646; Tulane Law Review Volume 28, 14th Amendment. (Unknown source; accuracy unverified).

rights to be subject to the jurisdiction of the “14th Amendment” which is, on account of having never been ratified and in violation of all six Articles of the Constitution, “foreign to our Constitution and unacknowledged by its law.” Any claims for privileges or “rights” pursuant to the “14th Amendment” are made under extreme duress and coercion.

William Bissell

Attorney. Conspired with State and Federal officials and Karen and Gary Humphreys to fraudulently prosecute, punish, and steal Petitioners property and deprive him of rights and liberties secured by the California and U.S. Constitutions. See *infra*, Appendix [A-I] pp. 1-53.

Rob Bonta

Attorney General of California. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner’s deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten IPD policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Appendix [P] p.80, Exhibit [D] pp. 4403-4411, 5378-5379

Edmund G. Brown Jr.

Governor (former) of California. Conspired with Legislative, Executive, and Judicial officials of California to deprive Petitioner of his rights, liberty, and property by and through the enforcement of Cal. Business and Professions Codes §7028, §7031 and §7071.17. Conspired with Legislative and/or Executive officials and/or Employees of the Contractors State License Board to create and/or implement and/or enforce a “mandatory arbitration program” and automatic summary suspension of vested licensing rights pursuant to Cal. Business and Prof. Code §7085 and §7085.6 to deprive Petitioner of his rights, liberty, and property without lawful authority. Appendix [A-D] [O] pp.73-79, Exhibit [F].

Tani Cantil- Sakouye	Chief Justice, California Supreme Court. See <i>infra</i> and Appendix [E] p.38.
Ross Caouette	Assistant Sheriff, Orange County Sheriff-Coroner Department. See Ehren Wiedenkiller.
Joseph Cartwright	Deputy Chief, Newport Beach Police Department. See Keith Krallman.
David Chaffee	Judge (ret.) Superior Court of California. See <i>infra</i> and Appendix [A-B] pp.1-8.
Carrol A. Corrigan	Justice, California Supreme Court. See <i>infra</i> and Appendix [E] p.38.
Sean Paul Crawford	Sergeant, Irvine Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten IPD policy to: (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of any office with the IPD (Exhibit [D] p.5200) and the IPD has an unwritten policy to "move away from signing Oaths of Office". Exhibit [D] pp.5159-5161.
Mariano Florentino-Cuellar	Justice, California Supreme Court. See <i>infra</i> . and Appendix [E] p.38.
Gray Davis	Governor (former) of California. Without authority: (1) conspired with officials of the California "Legislature" and Quentin Kopp to enact Cal. Business and Professions Code §7031(b) that he knew, or reasonably should have known was in violate of the Constitutions of California and the United States. Exhibit [B].
Sherry Demaio	Deputy, Orange County Sheriff-Coroner Department. See Mike Leeb.

James Di Cesare

Christopher Duff

Judge (ret.) Superior Court of California. See *infra* and Appendix [D] pp.23-37.

Deputy District Attorney, Orange County District Attorney's Office. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten OCDA policy to (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D] pp.4348-4352, 4356-4363, 4469-4506, 4531-4533, 4537, 4540, [C] pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691.

Bill Feccia Deputy District Attorney, Orange County District Attorney's Office. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten OCDA policy to (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Exhibits: [E24-E27], [D] pp.4571-4904, 5060-5068, Appendix [M] pp.68-71.

Anjuli Fiedler

Counsel. Commission on Judicial Performance. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to

	intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten policy to (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Exhibit [D] pp.4168-4201, Appendix [J] pp.54-55.
William Fletcher	Justice, Ninth Circuit Court of Appeals. See <i>infra</i> and Appendix [I] p.53.
Don Fobian	Arbitrator, Arbitration Mediation Conciliation Center, Inc. Exhibit [F], Appendix [O] pp.73-79.
David Fogt	Registrar, Contractors State License Board. Conspired with State officials and private parties to: (1) fraudulently convert the inalienable rights of the People of the California into arbitrary privileges to implement and/or enforce an unlawful licensing scheme
fraudulently use the Executive,	Judicial, and Legislative powers of California without lawful authority and by means of force and lawless violence, to implement and/or maintain and/or enforce an unlawful “mandatory arbitration program” whereby contractors (including Plaintiff) were forced into mandatory arbitration proceedings and denied a judicial determination of their rights, due process, and trial by jury; and, (2) punish Petitioner by suspending hi Exhibit [F], Appendix [O] pp.73-79.
Thomas Goethals	Justice, Fourth District Court of Appeal. See <i>infra</i> and Appendix [C] pp. 9-22.
Joshua Groban	Justice, Supreme Court of California. See <i>infra</i> and Appendix [E] p.38.
Jamie Handrick	Attorney
Jeff Hallock	Undersheriff, Orange County Sheriff-Coroner Department. See Ehren Weidenkeller.
Aaron Harp	Attorney, City of Newport Beach. (1) Maintained a City policy whereby Executive officials were not properly trained to investigate and intervene in the deprivation of Constitutional rights complaints; (2)

	Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) to supervise Executive officials to ensure they abided their sworn duties. Complaint Exhibits: [E24-E27], [D] pp.4796-4821, Appendix [M].
Gil Hernandez	Sergeant, Santa Ana Police Department. See Abel Alcantar.
Karen Humphreys	Private person. Conspired with State and Federal officials, Gary Humphreys, and William Bissell to fraudulently prosecute, punish, and steal Petitioners property and deprive him of rights and liberties secured by the California and U.S. Constitutions. See <i>infra</i> , Appendix [A-I] pp. 1-53.
Gary Humphreys	Private person. Conspired with State and Federal officials, Karen Humphreys, and William Bissell to fraudulently prosecute, punish, and steal Petitioners property and deprive him of rights and liberties secured by the California and U.S. Constitutions. See <i>infra</i> , Appendix [A-I] pp. 1-53.
Darrin Joe	Police Sergeant, Newport Beach Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten NBPD policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. It should be carefully noted that Darrin Joe did, at least in part, attempt to perform the duty of investigation. However, he told Petitioner that he had never been taught and trained to perform investigations for deprivation of Constitutionally protected rights. Petitioner asked the City of Newport Beach to (1) provide Joe with the proper training; or, (2) assign Petitioner's case to an official with the proper training and experience. The City appears to have denied

	request 1 and certainly denied request 2. It is apparent that Joe's superior officers and officials of the Orange County District Attorney's Office were instrumental in Joe's determination to discontinue his investigation and to not intervene. Exhibits: [E24-E27], [D] pp.4571-4904, 5060-5068, Appendix [M] pp.68-71.
Gary Knutson	Lieutenant, Orange County Sheriff-Coroner Department. See Ehren Weidenkeller.
Quentin Kopp	Judge (ret.), Superior Court of California. Sponsored Assembly Bill 678 (2001) (Cal. Business and Professions Code §7031(b). Conspired with the Cal. "Legislature" and "Governor" to enact Assembly Bill 678 (2001) that in effect and as applied violates the Constitutional provisions as stated herein. See <u>Exhibit [B]</u> . (Search "Kopp").
Keith Krallman	Lieutenant, Newport Beach Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten NBPD policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the department were lawfully occupied. Exhibits: [E24-E27], [D] pp.4571-4904, Appendix [M] pp.68-71.
Leondra Kruger	Justice, California Supreme Court.
Ronald Lawrence	Chief, Costa Mesa Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) enforced an unwritten CMPD policy to: (1) not fully, fairly, impartially, and independently investigate Citizen complaints

Jon T. Lewis

for deprivation of Constitutionally protected rights and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the department were lawfully occupied. Exhibits [E29, E30], Exhibit [D] pp.5110-5158.

Chief, Newport Beach Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten NBPd policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the department were lawfully occupied. Exhibits: [E24-E27], [D] pp.4571-4904, 5060-5068, Appendix [M] pp.68-71.

Mike Leeb

Deputy, Orange County Sherrieff-Coroner Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten OCSD policy to (1) not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by Constitutions; (3) to not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D] pp.4348-4352, 4356-4363,4469-

<p>Goodwin Liu</p>	<p>4506, 4531-4533, 4537, 4540, [C] pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691. Justice, California Supreme Court. See <i>infra</i> and Appendix [E] p.38.</p>
<p>Legislature of California⁴⁵ Michelle Macchiaroli</p>	<p>Legislature of California Sergeant, Santa Ana Police Department. See Abel Alcantar. Additionally, enforced an unwritten SAPD policy to (1)refuse fully, fairly, impartially, and independently investigate Citizen complaints for deprivation of Constitutionally protected rights; and, (2) refused to investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Appendix [K] p.56, Exhibits [E4, E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509. Has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant. Refused to provide Oath of Office for police officer.</p>
<p>Mike Manson</p>	<p>Sergeant, Costa Mesa Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner’s deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property. Exhibit [E29]. Has not subscribed an oath of office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant (no records exist).</p>
<p>Consuelo Marshall John MW Moorlach</p>	<p>U.S. District Court Judge. See section. Senator (former) of California. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) to supervise subordinates to ensure they abided their sworn mandatory, non-discretionary duties to investigate and intervene in deprivation of rights complaints. Exhibit [E10]; Exhibit [D] pp.4335-4347</p>

⁴⁵ Pursuant to Cal. Business and Professions Codes §7071.17 and §7085.6 the Legislature exercised the Judicial power of California to suspend Petitioner’s status as qualifying individual for a contractor license.

Gavin Newsom

Governor of California. (1) Maintained a State policy whereby Executive officials were not required to investigate and intervene in complaints for deprivation of Constitutionally protected rights and/or not properly trained to investigate and intervene in these complaints; (2) Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner claims; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) to supervise Executive officials to ensure they abided their sworn mandatory, non-discretionary duties to investigate and intervene in deprivation of rights complaints. Has refused to fill vacancies in House of Representatives in Congress pursuant to Article I, §2. Exhibits: [E24-E27], Exhibit [D] in its entirety, and, in particular pp.: 4089–4101; 4309-4334; 4348-4350; 4356-4363; 4469-4506, 4510-4522; 4531-2; 4537; 4540; 4547-4551; 4556-4563; and Exhibit [C] pp. 2559-2594.

Kathleen O’Leary

Justice, Fourth District Court of Appeal. See *infra* and Appendix [C] pp. 9-22.

Greg Palmer

Attorney, City of Costa Mesa. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner’s deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) enforced an unwritten CMPD policy to: (1) not fully, fairly, impartially, and independently investigate Citizen complaints for deprivation of Constitutionally protected rights and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise city personnel to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the police department were lawfully occupied. Exhibits [E29, E30], Exhibit [D] pp. 5110-5158.

Cottie Petrie-Norris

Assemblywoman, California Legislature.

Roberto Rodriguez

Commander, Santa Ana Police Department. See Michelle Macchiaroli. Has not subscribed an Oath of Office pursuant to Cal. Const. Art.

Alejandro Salceda	XX, §3 for the position of any rank beyond police officer. Sergeant (ret.) Orange County Sheriff-Coroner Department. See Ehren Weidenkeller.
Karen Smith	President, Arbitration Mediation Conciliation Center, Inc. Conspired with State officials to implement and/or enforce an unlawful mandatory arbitration program and thereby deprived Petitioner of rights, liberty, and property. Exhibit [F], Appendix [O] pp.73-79. See section **.
Atsushi Tashima	Justice, Ninth Circuit Court of Appeals. See <i>infra</i> and Appendix [I] p.53.
Sidney Thomas	Chief Justice (former), Ninth Circuit Court of Appeals. See <i>infra</i> and Appendix [I] p.53.
Unknown Employees or Agents of the FBI	Exhibits [C], [D], [E3, E14, E19],
Brian Wadkins	Police Lieutenant, Costa Mesa Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioner's rights, liberty, and property; and, (c) enforced an unwritten CMPD policy to: (1) not fully, fairly, impartially, and independently investigate Citizen complaints for deprivation of Constitutionally protected rights and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties. Has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for any position within the department (no records exist). Exhibits [E29, E30], Exhibit [D] pp.5110-5158.
Bill Wagner	Investigator, California Department of Justice. Attorney General of CA refused to provide copy of Oath of Office.
Garrett Wait	Attorney, Kriger Law Firm. Conspired with State officials to execute an unlawful mandatory arbitration program and enforce "judgments" thereunder, deprived Petitioner of rights, liberty, and property. Exhibit [F]. Appendix [O] pp.73-79. See section **.

Ehren Weidenkeller

Sergeant, Orange County Sheriff-Coroner Department. See Mike Leeb. Additionally, refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties. Has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for any position beyond Deputy Sheriff/Officer.

Christopher Wray
David Valentin

Chief, Federal Bureau of Investigation
Chief, Santa Ana Police Department. Without authority, refused: (1) to perform a full, fair, impartial, and independent investigation of Petitioner's deprivation of rights complaints; (b) to intervene to protect Petitioners rights, liberty, and property; and, (c) created and/or enforced an unwritten SAPD policy to: (1) not fully, fairly, impartially, and independently investigate complaints for deprivation of Constitutionally protected rights; and, (c) not investigate Superior Court Judges for criminal behavior and deprivation of Constitutionally protected rights. Refused to properly supervise subordinates to ensure they performed their sworn mandatory, non-discretionary duties and failed to ensure that all offices within the department were lawfully occupied. Appendix [K] p.56, Exhibits [E4, E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509.

Clyde Von Der Ahe

Deputy District Attorney, Orange County District Attorney's Office.

Additional Public Entity Parties: Superior Court of California, County of Orange; Fourth District Court of Appeal of California, Div. 3; Supreme Court of California; Contractors State License Board; California Assembly; United States District Court, Central District of California; United States Court of Appeals for the Ninth Circuit; United States House of Representatives.

Additional Parties: Prestige Default Svcs., LLC; Citibank, N.A. As Owner Trustee for NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2

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⁴⁶ Due to time constraints and the emergent nature of the issues presented herein, Petitioner was unable to reformat all of the items included in the Appendix and therefore did not submit one to the Court for reason that the Clerk may, based on previous history, refuse to file the Petition and summarily deny Petitioner's rights to judicial relief. An Appendix is

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Article I, §2 declares that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including

those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 14, Article 2 of the Northwest Ordinance of 1787 as reenacted by the First Congress declares that “The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

Article I, §9 declares that “[n]o Bill of Attainder [...] shall be passed.”

Article I, §10 declares that “No State shall [...] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.

The First Amendment declares that

The Fifth Amendment declares that

The Sixth Amendment

The Seventh Amendment

The Eighth Amendment

The Fourteenth Amendment declares that

STATEMENT OF JURISDICTION & WHY RELIEF IS NOT AVAILABLE IN ANY OTHER COURT

“Whenever an act of [...] government is challenged a grant of power must be shown, or the act is void.”⁴⁷ This Petition for Writs of *Quo Warranto*, *Mandamus*, and non-statutory *Habeas Corpus* challenging the authority of officials of the State of California and the United States to excessively, cruelly, and unusually punish and/or to conspire to punish Petitioner and deprive him of his rights without a judicial determination thereof are writs of *right* and are not to be confused with any so-called “discretionary” writs. See for e.g. Rule 20 of the Rules of the Supreme Court declaring that petitions for extraordinary writs are “not a matter of right, but of discretion.” The Constitution for the United States of America, (“Constitution”) is the “supreme Law of the Land” not the edicts of officials acting without lawful authority.

On petition for non-statutory Writ of *Habeas Corpus*, this Court has jurisdiction over the subject matter pursuant to Article I, §9, Cl. 2 and Article III, §2, which declares, that “[t]he judicial Power **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution [...]” Emphasis added. See also *Ex parte Siebold*,⁴⁸ holding that “[t]he only ground on which this Court, or any court, without some special statute authorizing it, will give relief on habeas corpus [...] is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void.” Petitioner asserts that the officials in the challenged actions herein lacked jurisdiction over his person and/or of the cause and that he has been falsely constructively imprisoned and subjected to involuntary servitude as a result of an *ultra vires* prosecution and other issues addressed forthwith. Accordingly, this Court has power to grant this writ pursuant to 28 U.S.C. §2241(c)(1) and (2) because Petitioner is in custody “under or by color of the authority of the United States[,] [an] act done or omitted in pursuance of an Act of Congress, [and] order[s], [and] judgment[s] of judge[s] of the United States.”

⁴⁷ *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866); See also Article 6, §2.

⁴⁸ *Ex parte Siebold*, 100 U.S. 371, 375 (1879).

On Petition for Writs of *Quo Warranto* and *Mandamus*, this Court has jurisdiction pursuant to Article III, §2, Article I, 9 (mandating a judicial determination of rights in the first instance), the First Amendment (right to petition for redress of grievance), the Fifth Amendment (right to due process), and §28 U.S.C. §1651(a).

This Court has a mandatory *non-discretionary* ministerial duty to exercise jurisdiction over this case based on the following facts evidenced herein: (1) there is no judicial Constitutional Court in the State of California with subject matter jurisdiction upon which Petitioner can present these claims (see “Additional Issues” *infra*, section 1 and Exhibit [D] p.5435 whereby a Clerk of the Supreme Court of California refused to file a Petition for Writ of Habeas Corpus on the grounds that “the question[s] raised [...] are beyond the jurisdiction of the California courts as they appear to raise Federal issues”); (2) the officials of all three branches of California government involved in this case are either engaged in fraud, deceit, and/or treason to deprive Petitioner of his rights, liberty, and property and/or have refused to perform their sworn duties as a check and balance to the other officials usurping their authority; (3) Congress has not vested any inferior Court of the United States with subject matter jurisdiction at Law or Equity to adjudicate Petitioners claims; and, (4) Petitioner has thus far been denied the right to a judicial determination of his rights by all State and supposed Article III Courts.

A. There is no other Federal Constitutional Court with Subject Matter Jurisdiction to Hear and Determine These Claims

1. *This Court Refused to Hear Petitioner’s Appeal Challenging the Jurisdiction of the Fourth District Court of Appeal of California (Policy 4)*
2. *The U.S. District Court for the Central District of California Refused to Hear Petitioner’s Independent Action in Equity on the Grounds That it Lacked Subject Matter Jurisdiction (Policy 5)*
3. *Congress Has Not Vested the Judicial Power of the United States at Law or Equity in Any Inferior Court.*

28 U.S.C. §1331 also known as “Federal question jurisdiction” declares that: “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” According to the United States House of Representatives Committee on Revision of the Laws,⁴⁹ the “[w]ords ‘all civil actions’ were substituted for ‘all suits of a civil nature, at common law or in equity’ to conform with Rule 2 of the Federal Rules of Civil Procedure, [“FRCP”]”. FRCP Rule 2 states “There is one form of action—the civil action.”

In further explanation of the meaning of “the civil action”, the 1966 Amendment to the FRCP in the Notes of the Advisory Committee on Rules, declares that “[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty.”⁵⁰

The obvious problem here is that the Constitution does not confer the judicial power of the United States in any jurisdiction known as “the civil action”. The principles and distinctions between Law, Equity, and Admiralty upon which the judicial power of the United States is vested and separately and exclusively distributed by Article III cannot be “abolished”, “unified”, or blended together in one suit known as “the civil action”. This is not only because “[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,”⁵¹ but also because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures have not been followed. Moreover, “Congress” is without any authority to delegate it’s law-making power to the Judicial branch to create these rules that have the force and effect of law.⁵²

⁴⁹ Revision of Title 28, United States Code, Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646. p. A111.

⁵⁰ https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

⁵¹ *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

⁵² On June 19, 1934, “Congress” (the one allegedly without a lawful representative quorum to do any business) purportedly enacted the Rules Enabling Act, (48 Stat. 1064, Pub. Law 73-416) to give the U.S. Supreme Court the power to promulgate the Federal Rules of Practice and Procedure to “govern the conduct of trials, appeals, and cases under Title 11 of the United States Code.” The creation and revision of these rules, “which have the force and effect of law[,]” is usually carried out by the Judicial Conference’s Committee on Rules of Practice and Procedure and it’s five advisory committees. <https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works>.

“The Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity, not according to the practice of State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles.”⁵³ See also *Mc Faul v. Ramsey*,⁵⁴ holding that “[i]n those States where the courts of the United States administer the common law,⁵⁵ [National Courts] cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either.” “While in many of the states statutes exist which permit the joinder of causes of action at law and in equity in the same suit, this course is not permissible in the federal courts. In truth, the difference between causes of action at law and in equity is matter of substance and not of form, and no legislative enactment can really remove it. In the national courts this meradicable [sic eradicable] difference is as sedulously preserved in the forms and practice available for their maintenance as it is in the natures of the causes themselves and in the principles upon which they rest.”⁵⁶

“Courts created by the general Government [of the United States other than the U.S. Supreme Court] possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer.”⁵⁷ Without being vested with a jurisdiction as precisely declared by the Constitution (either Law or Equity), “the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing

⁵³ *Thompson v. R.R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

⁵⁴ *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

⁵⁵ California was admitted as a free State under English common Law having repealed the Roman civil law then in effect, as held by the Supreme Court of California case of *Fowler v. Smith*, 2 Cal. 568, 568-9 (1852).

⁵⁶ *Schurmeier v. Connecticut Mut. Life Insurance Co.*, 171 F. 1 16-17 (8th Cir. 1909). Numerous citations omitted.

⁵⁷ *United States v. Hudson & Goodwin*, 11 U.S. 32, 33 (1812). See also *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) holding that federal courts, being courts of “limited jurisdiction,” “possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” Citations omitted.

the fact and dismissing the cause.”⁵⁸ See also *Mayor v. Cooper*,⁵⁹ holding that “two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and a [Constitutional] act of [Congress] must have supplied it. Their concurrence is necessary to vest it. [...] It can be brought into activity in no other way.”

The means of properly conferring subject matter jurisdiction vested by the Constitution upon an inferior Court can be found in section 11 of the Judiciary Act of 1789 (1 Stat. 73), whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature “[...] at common law or in equity[...],” with omitted exceptions. (It is no coincidence that Circuit Courts have been abolished as a fundamental part of this scheme.)

Finally, the Federal Rules of Civil Procedure which “have the force and effect of law”⁶⁰ were not given “any affirmative consideration, action, or approval of the rules by Congress or by the President”⁶¹ as required by Article I, §7, Cl.2. Therefore, Congress has not vested any inferior Court of the United States with the judicial Power of the United States in any Case at Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case. See also section I, whereby even if the District Court were, despite the foregoing, vested with jurisdiction at Law or Equity, it claimed it lacked jurisdiction to vacate a void judgment which are fundamental powers Courts of Law and Equity (policy 4).

4. This Court Has Inherent Equitable and/or Supplemental Jurisdiction of Petitioner’s Claims for Emergency Restitution

Because (1) there is no Constitutional Court in California vested with subject matter jurisdiction in Equity for Petitioner to present these claims; (2) “Congress” has not vested any District Court with jurisdiction at Equity; (3) this Court refused to exercise jurisdiction over Petitioner’s appeal; and, (4) the District Court refused to

⁵⁸ *Ex Parte McCordle*, 74 U.S. 506, 512 (1869).

⁵⁹ *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

⁶⁰ <https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works>. Accessed 8/16/22.

⁶¹ 374 U.S. 865-66.

exercise jurisdiction over Petitioner's claims, this Court must either, pursuant to the basic tenants of due process, its inherent equitable powers, or supplemental jurisdiction, have subject matter jurisdiction to grant Petitioner emergency restitution.

VERIFIED STATEMENT OF THE CASE

A. Background of the Case

This case arose under a simple and straightforward civil dispute over non-payment for materials and labor services rendered by Petitioner's company, The Spartan Associates, Inc. ("Spartan"), pursuant to its agreement with Karen and Gary Humphreys, ("the Humphreys"), to perform custom remodel construction work on their condominium in Newport Beach, California.

In a Motion for Summary Judgment before "trial" the Humphreys claimed that the "undisputed facts" established that "[...] [Spartan] [...] was [...] a licensed building contractor [...and that Spartan] entered into an agreement with [them] for home improvement work on [their] condominium unit." Exhibit [A3] pp.231-233. At "trial" however, the Humphreys took the *opposite* position and claimed they never contracted with Spartan, but instead with Petitioner, and that since Petitioner was allegedly unlicensed, they were entitled to "disgorgement of all funds paid". In other words, they sought to keep all of the custom remodel work performed by Spartan while also receiving a complete refund.

A. Procedural History

On March 27-28th, 2017, Petitioner was criminally prosecuted in the Superior Court of California, County of Orange, under the fraudulent pretense of a remedial civil action in Equity for allegedly performing construction work without a license pursuant to Cal. Business and Professions Code §7031(b). Appendix [Q] pp.83-84. At "trial" he was denied all the heightened protections of criminal proceedings including the assistance of counsel and trial by jury. Upon "conviction" he was excessively fined \$930,000 without any of the protections of the excessive fines clause pursuant to §7031(a) and (b).

Despite the facts that: (1) Spartan was listed on the City of Newport Beach Building Permits as the contractor (Exhibit [A5] pp.499-501); (2) Petitioner was the qualifying individual for Spartan’s general contractor license; (3) the Humphreys and Gary Humphreys company, directly paid Spartan \$758,000 (Exhibit [A5] pp.475-488, Exhibit [A4] pp.); (5) the Humphreys never proved Petitioner was a “person” required to be licensed⁶²; (6) the Humphreys never presented any known evidence that Petitioner, independent of Spartan, performed any specific work on their project; and, (7) that the Licensing Board had determined Petitioner was “qualified” as a general contractor, “Judge” David Chaffee, found that Petitioner (not Spartan) was the contractor, that he was unlicensed, and “subject to the forfeiture”. Chaffee awarded the Humphreys “disgorgement of funds paid” in the amount of \$848,000 pursuant to Cal. Business and Professions Code §7031(b). Appendix [Q] pp.83-84. See *The Spartan Associates, Inc. v. Humphreys*, case #30-2015-00805807, incorporated and fully set forth herein, and Appendix [A]– Minute Order pp.4-5 and [B]– Judgment p.7. Chaffee also held that Petitioner was barred from recovering the approximate \$82,000 allegedly due Spartan because he was the contractor, not Spartan, and that since he was unlicensed he was barred from recovering any compensation pursuant to §7031(a). Appendix [B]– Minute Order, p.5. The Reporters Transcript for both days of “trial”, selected documents of the Clerk’s transcript, and other Exhibits can be found at thespiritoflaw.com under the “Procedural History” tab as Exhibits [A1-A4] or by clicking [here](#).

Ninety days after the “Judgment Order” was issued on April 20, 2017, Petitioner’s vested right to act as a qualifying individual for a general contractor license was summarily suspended by operation of Cal. Business and Professions Code §7071.17 (Appendix [Q] pp.84-86) without a hearing or any known appeal process.

On appeal to the California Fourth District Court of Appeal, “Justices” Aronson Goethals, O’Leary (CJ) affirmed the Superior Court’s “Judgment” in its entirety holding that all of Petitioner’s claims were “meritless” and that he was not being punished because the \$930,000 fine was not penal, but instead an “equitable remedy” known as “disgorgement”.⁶³ By refusing to abide their sworn, mandatory, non-

⁶² See *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986).

discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial appeal and to vacate the void judgment to stop the irreparable harm and other damages being perpetrated upon him, the Justices sanctioned the lawless behavior and joined the conspiracy to deprive Petitioner of his rights, liberty, and property without lawful authority. See *Humphreys et al v. Bereki*, case #G055075, fully incorporated and set forth herein, Appendix [C]– Opinion pp.9-22 dated October 31, 2018, and Procedural History Exhibits [A5-A18].

When the Court of Appeal awarded costs against Petitioner (to further take his money and property without lawful authority) and remitted the case to the Superior Court, he again challenged jurisdiction. “Judge” Di Cesare refused to vacate the void “Judgment” finding that the appellate “Court’s” arbitrary edict was “final”. By refusing to abide his sworn, mandatory, non-discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial hearing and to vacate the void judgment to stop the irreparable harm and other damages being perpetrated upon him, Di Cesare sanctioned the lawless behavior and joined the conspiracy to deprive him of his rights, liberty, and property without lawful authority. See Appendix [D]– Minute Order p.23 dated March 15, 2019, Reporter’s Transcript pp.24-37, Procedural History Exhibits [A19-A23], and an audio tape of the hearing, Exhibit [E1].

On Petition for Review to the Supreme “Court” of California, “Justices” Tani Cantil-Sakouye (CJ), Carol A. Corrigan, Goodwin H. Liu, Mariano-Florentino Cuellar, Leandra R. Kruger, Joshua P. Groban, and Ming W. Chin, sitting en banc, denied his Petition for Review. Ordinarily review by the Supreme Court is discretionary. In this case, however, it was *mandatory* because Petitioner never had a full, fair, or impartial trial or appeal and there was no other Court of California to obtain a remedy. By refusing to abide their sworn, mandatory, non-discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial appeal and to vacate the void judgment to stop the irreparable harm and other damages being perpetrated upon him, the Justices sanctioned the lawless behavior and joined the conspiracy to deprive him of his rights, liberty, and property without lawful authority. See *Humphreys v. Bereki*, case #S252954, fully incorporated and set forth herein, Appendix [E] p.38, and Procedural History Exhibits [A24-A27]. Conveniently, the

⁶³ *Humphreys v. Bereki*, 2018 Cal. App. Unpub. LEXIS 7469 p.14 (2018).

“Court” has no record of which “Justices” voted to arbitrarily deny his Petition. Exhibit [C] pp.2595-2608.

On Petition for Writ of Certiorari to the U.S. Supreme Court, the “Justices” arbitrarily denied Petitioner’s challenge to jurisdiction (policy 4) despite the fact that the Article III, §2 of Constitution mandated the Court hear and determine his case especially because he had never been afforded a full, fair, impartial or independent trial or appeal and there was no Court in California to obtain a judicial remedy. By refusing to abide their sworn, mandatory, non-discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial appeal and to vacate the void judgment to stop the irreparable harm and other damages being perpetrated upon him, the Justices sanctioned the lawless behavior and joined the conspiracy to deprive him of his rights, liberty, and property without lawful authority. See *Bereki v. Humphreys*, case# 18-1416, incorporated and fully set forth herein or by clicking [here](#).

In an Independent Action in Equity in the United States District Court for the Central District of California, Petitioner challenged the jurisdiction of the State “Court” “Judgments” and the Constitutionality of policies 2 and 3. District “Judge” Marshall refused to perform a full, fair, impartial, and independent investigation into his claims and arbitrarily stated that she lacked subject matter jurisdiction to grant him relief because of the doctrines of collateral estoppel and Rooker-Feldman. By refusing to abide her sworn, mandatory, non-discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial trial and to vacate the void judgment to stop the irreparable harm and other damages being perpetrated upon him, Marshall sanctioned the lawless behavior and joined the conspiracy to deprive him of his rights, liberty, and property without lawful authority. See *Bereki v. Humphreys*, case# 8:19–CV–02050, fully incorporated and set forth herein, Appendix [G]– Opinion pp.41-50 dated February 6, 2020, and Procedural History Exhibits [A29-A36]. Upon notice of appeal, Marshall found Petitioner’s appeal “frivolous” and denied his *in forma pauperis* status. Appendix [H] pp51-52.

On appeal to the Ninth Circuit Court of Appeals, “Judges” Thomas (CJ), Tashima, and W. Fletcher, dismissed Petitioner’s appeal as “frivolous” on November 12, 2020. By refusing to abide their sworn, mandatory, non-discretionary, ministerial duties to ensure Petitioner received a full, fair, and impartial appeal and to vacate the void judgments of the State Courts and the District Courts to stop the irreparable

harm and other damages being perpetrated upon him, the Judges sanctioned the lawless behavior and joined the conspiracy to deprive him of his rights, liberty, and property without lawful authority. See *Bereki v. Humphreys*, case# 20-55181, fully incorporated and set forth herein, Appendix [I] p.53, and Procedural History Exhibits [A38-A42].

On September 16, 2021, Petitioner sent an Emergency Petition for Writs or Error and/or non-Statutory Habeas Corpus to this Court. It was received on September 22, 2021. Exhibit [A43]. The Clerk refused to file the Petition and returned it to Petitioner because it was not in the proper form as required by the Rules of Court. Appendix [N] p.72. This policy, policy 13, resulted in the Clerk unlawfully exercising the judicial power of the United States to summarily deny all .

Petitioner filed Petitions for Redress of Grievance with the Governor of California, Attorney General of California, California Commission on Judicial Performance, Assembly of California through the office of Assemblywoman Cottie Petrie-Norris, the Senate of California through the office of Senator John MW Moorlach, Santa Ana Police Department, Orange County Sheriff-Coroner Department, Newport Beach Police Department, Costa Mesa Police Department, Irvine Police Department, and the Federal Bureau of Investigation. On information and belief, all of the officials of these agencies have refused to perform a full, fair, impartial, and independent investigation into his claims and refused to intervene to stop the irreparable harm being perpetrated on him. By refusing to abide their sworn, mandatory, non-discretionary, ministerial duties to investigate and intervene these officials sanctioned the lawless behavior and joined the conspiracy to deprive Petitioner of his rights, liberty, and property without lawful authority. See “Parties” and Exhibits [C]– Public Records Requests and Complaints, [D]– Complaints, and [E]– Audible Exhibits of Complaints.

As a direct and proximate result of the facts that

C. The Nature and History of Business and Professions Code §7031(b)

The statute under which Petitioner was prosecuted, California Business and Professions Code §7031(b), is a public regulatory penal statute that governs

contractor licensing under California’s Contractor Licensing Laws, Business and Professions Code §§7000 et seq.

According to the Supreme Court of California, “the Legislature’s obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing penalty for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it.”⁶⁴

More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture⁶⁵ because an unlicensed contractor is required to forfeit “all compensation paid” by a customer *without* offsets for the reasonable value of goods and services provided if they perform work without a license.⁶⁶ In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

One august authority addressing the precise issues in this case is the *Town of Gilbert Prosecutors Office v. Downie*,⁶⁷ which Petitioner cited on appeal to the Fourth District. Exhibit [A6] pp.29-30. The *Gilbert* case involved “disgorgement” and the criminal prosecution of an unlicensed contractor where the Supreme Court of Arizona found that “a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim [...] may lead to absurd or troubling results.” Discussing the issue, the high Court found that “when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim,” *Id.* p.18. and, that restitution “should not compensate victims for more than their actual loss.” *Id.* p.13. Citing both the Seventh⁶⁸ and Ninth⁶⁹ Circuit Courts of

⁶⁴ *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (Cal. Supreme Ct. 2005). Italicized emphases original. Internal quotations omitted.

⁶⁵ *Asdourian v. Araj*, 38 Cal. 3d 276, 282 (Cal. Supreme Ct. 1985) “In view of the severity of this sanction and of the forfeitures which it necessarily entails [...]” Quotations and citation omitted; *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882, 895 (2015). “Because the remedies of subdivisions (a) and (b) of section 7031 are essentially two sides of the same coin in denying compensation to an unlicensed contractor, we will refer to the remedies jointly as forfeiture.” Internal quotations omitted. See also *Austin v. United States*, 509 U.S. 602, 614 (1993) stating forfeit is the word the First Congress used for a fine.

⁶⁶ *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469 (2018) p.14, *Lewis & Queen v. N. M. Ball Sons*, 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957) “[T]he courts may not resort to equitable considerations in defiance of section 7031.” *Ebbert v. Mercantile Trust Co.*, 213 Cal. 496, 499-500 (Cal. Supreme Ct. 1931).

⁶⁷ *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (2008).

⁶⁸ *United States v. Shephard*, 269 F. 3d 884 (7th Cir. 2001).

⁶⁹ *United States v. Matsumaru*, 244 F.3d 1092, 1109 (9th Cir. 2001). See also *People v. Fortune*, 129 Cal. App. 4th 790 (2005).

Appeal, the Gilbert Court declared that they “[found] no significant difference between returning cash, one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is [...] rooted in value, not solely in the exchange of money.” *Id.* p.25.

In his concurring opinion, Justice Hurwitz added that under the pretense of a total forfeiture of “disgorgement” without offsets for the value conferred, “a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but would nonetheless also retain the work performed.” He concluded “[i]t is impossible for me to view such a victim as having suffered any loss, economic or otherwise...” *Id.* p.30.

Notably, the Fourth District “Justices” refused to even acknowledge this case and found all of Petitioner’s claims “meritless”.

In the instant case, Petitioner was denied all offsets for the alleged \$930,000 in work Spartan performed on the Humphreys custom remodel project. He was further ordered to pay the Humphreys an additional \$848,000 and denied the right to compensation for the approximate \$82,000 that the Humphreys refused to pay pursuant to §7031(a) even though it was *never* evidenced that he (as opposed to Spartan) performed any of the work on the project– the central element of the offense of performing construction work without a license.

The legislative history of §7031(b) confirms the aforementioned draconian punishment was indeed intended by the California “Legislature” and “Governor” upon its enactment. See Exhibit [B] p.860 or click [here](#).

“Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid.”

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over “[i]f the [intent] of the legislature was to impose punishment [...]”⁷⁰

⁷⁰ *Smith v. Doe*, 538 U.S. 84, 92 (2003).

Another obvious indication of §7031's purely penal nature is that the same conduct is made criminal by Cal. Business and Professions Code §7028 and §16240. Notably, the *maximum* fine for a first offense under §7028 is \$5,000, not \$930,000.

§7031(b) also falls squarely within the definition of a crime or public offense as defined by Cal. Penal Code §15: “[a] crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction [...] [a] [f]ine”.

It should also be carefully noted that Chaffee had direct knowledge of §7031's penal nature by the fact that he was the trial “Judge” in the *MW Erectors* case that went to the Cal. Supreme Court where the Court found that §7031 imposed “a stiff all-or-nothing penalty”. Chaffee also cited *MW Erectors* in his discussion of the “Judgment” at “trial” and identified it as the “bellwether case on the issue of [...] unlicensed contractor responsibility”⁷¹ and further admitted he was imposing a forfeiture on Petitioner.⁷²

D. An Action Under Business and Professions Code §7031 is Not Equitable and Does Not Authorize the Court to Award the Equitable Remedy of “Disgorgement”

Business and Professions Code §7031 mentions nothing about “disgorgement”. Nor is an action for “disgorgement” defined anywhere by California statute. The word disgorgement is also not used *anywhere* in the legislative history of §7031. And, as previously evidenced, the “Legislature” was perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

According to this Court's recent decision in the case of *Liu v. SEC*,⁷³ a claim for “disgorgement” is an equitable remedy designed to strip a wrongdoer of illegal profits, not the total penal forfeiture of an entire transaction *without* offsets for benefits conferred.

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is unaware of any evidence on the trial “Court's” record that he profited even one dollar let alone the \$930,000 awarded by Chaffee, or that he was unjustly enriched by allegedly performing the custom remodel work requested by the

⁷¹ fgffg

⁷² Exhibit [G] Reporter's Transcript, Second Day of Trial 3/28/17, p.29.

⁷³ *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

Humphreys. See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

“Allegations that the defendant is a wrongdoer, and that the defendant’s business is profitable, do not state a claim in unjust enrichment. By contrast, a claimant who is prepared to show a causal connection between defendant’s wrongdoing and a measurable increase in the defendant’s net assets will satisfy the burden of proof as ordinarily understood.”

The Humphreys evidenced that they (and Gary Humphreys company, Humphreys and Associates, Inc.) paid a total of \$848,000 to Petitioner and Spartan, which was undisputed. In an action for unjust enrichment, however, “[t]he emphasis is on the wrongdoer’s enrichment, not the victim’s [payments]”.⁷⁴ Therefore, if §7031(b) actually provided a claim for disgorgement, Petitioner was entitled to offsets for the compensation that had *already* been returned to the Humphreys.

Under the Maxims and Principles of Equity Adjudication, “[n]o one is presumed to give something for nothing. And no one can in reason and conscience expect to receive something for nothing. Whenever a person parts with a consideration he is presumed to intend to acquire whatever that consideration pays for; and he who acquires the legal title to property for which another’s money has paid, is bound in reason and conscience to hold it subject to the orders of the person whose money went into it.”⁷⁵

Not only does §7031(b) not authorize a claim for “disgorgement”, the punishment provided by §7031(b) is neither equitable nor remedial. The Supreme Court of California and lower Courts have also repeatedly held that “courts may not resort to equitable considerations in defiance of section 7031”.⁷⁶ Consequently, the Humphreys never stated a claim for equitable disgorgement or unjust enrichment and Chaffee clearly imposed a total penal forfeiture. A Court of Equity lacks subject matter jurisdiction to order a penalty or a forfeiture.⁷⁷

⁷⁴ *Meister v. Mensinger*, 230 Cal. App. 4th 381, 390 (2014) citing *County of San Bernardino v. Walsh*, 158 Cal. App. 4th 533 542-543 (2007). See also Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *h*.

⁷⁵ A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907, §43, p.37.

⁷⁶ *Lewis & Queen v. N. M. Ball Sons*, 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957).

⁷⁷ *Liu v. SEC*, 140 S. Ct. 1936, 1941 (2020) holding “equity never lends it’s aid to enforce a forfeiture or penalty.” Internal quotations and citation omitted.

E. An Action Under Business and Professions Code §7031 is Not Remedial and Does Not Authorize the Court to Award “Damages”

Even though Chaffee’s Minute Order stated that he awarded the Humphreys “disgorgement”, the “Judgment Order”, he later signed, Appendix [B] pp.7-8, is for “[d]amages”. Petitioner is also unaware of any evidence on the trial “Court’s” record of any “damages” even remotely commensurate with either this Court or California Courts’ definitions thereof.

In *Birdsall v. Coolidge*,⁷⁸ this Court defined damages as “a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant” and “the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party.”

Under Cal. Civil Code §3281, which purportedly codified the common law definition of damages in California, “[e]very person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.” “[A] [p]laintiff has [the] burden of proving, with reasonable certainty, damages actually sustained by him as result of defendant’s wrongful act, and [the] extent of such damages must be proved as fact. [The] burden of proving damages placed on plaintiff is not lessened by his presentation of [a] prima facie case of negligence against [the] defendant”⁷⁹ “[and] [d]amages cannot be recovered if the evidence leaves them uncertain, speculative, or remote.”⁸⁰

According to the California Second District Court of Appeal’s opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*,⁸¹ “the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor” and “[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm

⁷⁸ *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

⁷⁹ *Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960).

⁸⁰ *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal App. 2d 762, 774 (1966). See also *Frustuck v. Fairfax*, 212 Cal. App. 2d 345, 368 (1963) “[a] wrong without damage does not constitute a cause of action for damages” and “nominal damages to vindicate a technical right cannot be recovered in a negligence action where no actual loss has occurred.”

⁸¹ *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*, 53 Cal. App. 5th 1201, 1213 (2020). Internal parenthesis omitted.

other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law.” In other words, the so-called “injury” from hiring an unlicensed contractor upon which the licensing laws are founded is purely hypothetical.

Under California law, “any provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty [...]”⁸²

The case against Petitioner was clearly not to remediate damages for an *actual* injury that Petitioner caused the Humphreys, if there was any. The Humphreys introduced no evidence of damages, including any damages that arguably could have been caused by Petitioner’s purported lack of having a license. In other words, there was no evidence presented of a traceable connection or nexus between the Humphreys claim and the remedy they sought. Their non-existent “injury” was purely hypothetical and speculative and not based in reality, absent actual evidence to the contrary. Accordingly, the Humphreys also failed to state a claim for “damages”.

F. State and Federal History of §7031 Enforcement Actions

The case against Petitioner is not an anomaly. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.*,⁸³ where the so-called “Judicial” Council of California sought a \$22.7 million dollar forfeiture under the same false and fraudulent veil of equitable “disgorgement” against *Jacobs*, a company it hired to maintain the California Court buildings that had admittedly done a good job. In response to a public records request,⁸⁴ the “Judicial” Council admittedly spent over \$3 million “dollars” of the People’s tax “dollars” in its attempts to prosecute, punish, and likely financially destroy *Jacobs* due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. One has to wonder just what degree of sociopathy⁸⁵ it must take to spend more than 3 million “dollars” to try to ruin a company that provided quality service and caused no harm. This is precisely the lack of humanity and direct

⁸² *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1357 (2015).

⁸³ *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015).

⁸⁴ Exhibit [C] p. 1815. \$3,307,408.78.

⁸⁵ “Sociopathy refers to a pattern of antisocial behaviors and attitudes, including manipulation, deceit, aggression, and a lack of empathy for others.”

Source: <https://www.psychologytoday.com/us/basics/sociopathy>.

evidence of the severe mental illness that is rampant in the behavior of the officials of this case (and many others) to use one's position of honor, profit, and trust as a weapon of oppression.

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a default rule, [...] not of flexibility but of omnipotence".⁸⁶ "Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."⁸⁷

It is unknown exactly how many other similar cases have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases Petitioner was able to locate because an appeal was filed. (Please note that the facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.): (1) *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of \$917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS. ; (2) *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of \$1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a) upheld by the Cal. Supreme Court, awarded by "Judge" Chaffee; (3) *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of \$212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a); (4) *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of \$110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a); and, (5) *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of \$84,621.45

⁸⁶ *Grupo Mexicano De Desarrollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). Internal quotations omitted.

⁸⁷ *Id.* p.333. Internal quotations omitted.

plus interest and “Court” costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District “Courts” enforce these same public policies. See for e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,⁸⁸ where the “Court” awarded a forfeiture in the amount of \$168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a). See also the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In each and every case Petitioner examined, the so-called “Judges” not only refused to recognize the penal nature of the forfeiture they imposed – and consequently any protections guaranteed by State and Federal Constitutions (especially the excessive fines clause protections) – they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that “a private citizen lacks a judicially cognizable interest in the prosecution [...] of another.”⁸⁹

G. The Humphreys Lacked State and Federal Constitutional Standing to Criminally Prosecute Petitioner in a Civil Action

1. *The history of criminal forfeiture laws.*

In the case of *United States v. Seifuddin*,⁹⁰ the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

“the classical distinction between civil and criminal forfeiture was founded upon whether the penalty assessed was against the person or against the thing. Forfeiture against the person operated *in personam* and required a conviction before the property could be wrested from the defendant. Such forfeitures were regarded as criminal in nature because they were penal; they primarily sought to punish. Forfeiture against the thing was *in rem* and the forfeiture was based upon the unlawful use of the *res*, irrespective of its owner’s culpability. These forfeitures were regarded as civil; their purpose was remedial.”

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* forfeiture intended to punish him for allegedly committing the public offense of performing construction work without a license. A total forfeiture like the one imposed on Petitioner would be appropriate if he

⁸⁸ *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566.

⁸⁹ *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

⁹⁰ *United States v. Seifuddin*, 820 F.2d 1074, 1076-7 (1987). Citations omitted.

committed a robbery or defrauded the Humphreys by taking their money and running away without conferring any value upon them. But that's clearly *not* what happened.

In *United States v. Shapleigh*, the Circuit Court of Appeal for the Eighth Circuit stated that “[t]o protect the substantial rights of the parties [and] to wisely administer the law, courts must frequently look beyond the outward form to the real substance and nature of things.”⁹¹ When specifically looking to the real substance of things to discover a criminal action lurking behind the veil of a civil remedy, the Court particularly asked, “is a wolf in sheep’s clothing, a wolf or a sheep.”

The *Shapleigh* Court cited *Wisconsin v. Pelican Ins. Co.*,⁹² where this Court “looked through the form of the civil suit before it, and through the form of the suit in which the judgment was rendered, to the real nature of the original controversy, and refused to take jurisdiction because [it] was a suit to recover a penalty, and was not of a civil nature.”

In analyzing the differences between traditional civil and criminal actions, the *Shapleigh* Court found that “[i]n controversies of a civil nature the purpose is generally to obtain the determination of some right of person or property, or to recover compensation for some injury. [...]. In controversies of a criminal nature the purpose is to punish the accused for some violation of his duty to the public.” Therefore, “[i]t is not the form, but the nature of the proceeding that must determine the rule to be applied to it.”

2. The Humphreys Intended to Prosecute and Punish Petitioner

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the licensing laws by seeking an \$930,000 fine/total forfeiture upon him. They claimed that “Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028. As a consequence of Mr. Bereki’s unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from

⁹¹ *United States v. Shapleigh*, 54 F. 126 (1893).

⁹² *Wilson v. Pelican Insurance Co.*, 127 U.S. 265, 299 (1888).

cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total \$848,000.”

The Humphreys lacked Constitutional standing to prosecute Petitioner for the commission of a public offense because Article V, §1 of the California Constitution vests the Executive power of the California *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that “a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a [...] political society, and incorporates into a commonwealth.”⁹³ Therefore, only officials of the Executive branch of California could prosecute Petitioner, not the Humphreys.⁹⁴ “A lack of standing is a jurisdictional defect.”⁹⁵

See also Justice Thomas’s concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, “[c]ommon-law courts, [...] have required a further showing of injury for violations of “public rights” — rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory law.”⁹⁶ And that “[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community.”⁹⁷

The Humphreys neither alleged nor proved that they were caused any extraordinary damage and no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov’t Code §100 to vest the

⁹³ *Robertson v. Watson*, 560 U.S. 272, 282-3 (2010) citing Locke, Second Treatise §128, at 64. Internal quotations and brackets omitted.

⁹⁴ *Robertson v. Watson*, 560 U.S. 272, 273 (2010). See also Cal. Gov’t Code §100(b) requiring that all prosecutions be conducted in the name of “The People of the State of California” and by their authority; and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

⁹⁵ *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). Citation, brackets and internal quotation omitted.

⁹⁶ *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations omitted. Citing Blackstone and Woolhandler & Nelson, 102 Mich. L. Rev. at 693.

⁹⁷ *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations and brackets omitted. Citing Blackstone.

Superior Court with personal and subject matter jurisdiction⁹⁸ to prosecute and punish Petitioner. As a result, Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.⁹⁹ Instead, he arbitrarily chose to proceed with a faux “trial”, knowing or reasonably knowing he had no lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of the fraudulent *ultra vires* “Judgment Order”.

3. *The Constitution for the United States of America deprived the Humphreys of standing to Prosecute Plaintiff.*

While the Cal. Constitution of 1879 does not *overtly* have a case or controversy standing requirement like the Constitution for the United States of America, this standing requirement is implicit in the Cal. Constitution’s separation of powers provisions. Of equal importance, because the Constitution for the United States of America is the “supreme Law of the Land”, the judicial power thereof must be capable of acting upon *all* State action which comes into conflict with that superior authority, especially when a defendant in State Court invokes the concurrent jurisdiction of the United States by claiming rights secured by the Constitution. All State judicial action therefore, must meet the standing requirements of State Constitutions *and* those of Article III as declared in *Steel Co. v. Citizens for a Better Env’t*.¹⁰⁰

The Humphreys claim under §7031(b) fails to meet even one of these standing requirements. They presented no evidence of an injury in fact that was concrete and actual; no evidence of a fairly-traceable connection between their non-existent injury and Petitioner’s conduct; and no evidence that their non-existent injury would be redressed by fining him \$930,000.

⁹⁸ “[J]urisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act.” *Buis v State*, 1990 OK CR 28, p.4 (1990). Internal quotations omitted. “A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court.” *Albrecht v. United States*, 273 U.S. 1, 8 (1923). See also Cal. Penal Codes §949, §959.

⁹⁹ Cal. Penal Code §1382.

¹⁰⁰ *Steel Co. v. Citizens for a Better Env’t*, 523 U.S 83, 102-3 (1998).

The Court has repeatedly declared that the judicial power of the United States is “limit[ed] [...] to the resolution of cases and controversies[,]” “otherwise the power is not judicial.”¹⁰¹ As the power being exercised against Petitioner was not judicial, it is arbitrary and lawless.

H. Post “Trial” Actions

1. False and Fraudulent Abstract of Judgment Filing

Following “trial”, the Humphreys continued the conspiracy with their Attorney, William Bissell, and Chaffee, to steal Petitioner’s money, property, and liberty by filing a false and fraudulent Abstract of Judgment with the Clerk-Recorder for the County of Orange on April 27, 2017. Exhibit [D] pp.5249-5253. This Abstract was false and fraudulent because it was based upon the “Judgment Order” they collectively knew, or reasonably should of known, was fraudulent and without any lawful authority whatsoever. The Abstract became automatic on the real property at 818 Spirit Costa Mesa, California held in Petitioner’s living trust and thereby operated to unlawfully restrain him and his mother (the true owner) from their rights to the free and unrestricted use of the property and the equitable assets therein.

2. Denial of Inalienable Right and Summary Suspension/Revocation of Vested Right to Earn a Living as a General Contractor.

Petitioner contends that he had an inalienable right to his time and labor as recognized by Article 1, §1 of the Cal. Constitution and as a result could not be required to obtain a license and pay a recurring fee for the privilege of earning a living in an ordinary avocation of life such as carpentry and construction. The Cal. “Legislature” was therefore without authority to arbitrarily convert his inalienable (not lienable, non-commercial) right into a revocable commercial public privilege in Interstate Commerce. Even if this inalienable right was not Constitutionally secured and he was required to obtain a license, the fact that he became a qualifying individual a general contractor license was a vested right that could not be taken without judicial process. Moreover, since the State had already determined him

¹⁰¹ *Valley Forge Christian College v. American United for Separation of Church & State*, 454 US. 464, 472 (1982). Internal quotations and citations omitted.

“competent” it is unknown how he could be magically transformed to “incompetent” by Chaffee at “trial”.¹⁰²

Ninety days after the fraudulent “Judgment Order” was issued on April 20, 2017, Petitioner’s vested right was summarily suspended/revoked by operation of Cal. Business and Professions Code §7071.17 ((Appendix [Q] pp.84-86) without hearing or any known appeal process because he was unable to pay the “Judgment” or meet any of the other requirements thereof to obtain or maintain a license. As held by this Court, “[e]xclusions from any of the professions or any of the ordinary avocations of life [...] can be regarded in no other light than as punishment for such conduct.”¹⁰³

In comparison, when members of the State Bar of California are faced with discipline or a licensing suspension or revocation, there is a full-time State Bar Court comprised of trial judges and a three-judge appellate Court that makes recommendations to the Supreme Court of California who is the final arbiter of attorney discipline.¹⁰⁴ No such substantive and equal protections exist for contractors – or any other known regulated profession – in California. Nor is review by the Supreme Court of California mandatory prior to licensee discipline like it is for attorneys. As a result, Petitioner contends that he was denied equal protection of the law.

I. Proceedings in the United States District Court for the Central District of California (policy 5)

There being no apparent judicial Constitutional Court of California to obtain relief, and no appellate relief in this Court (policy 5), Petitioner filed a verified complaint in the form of an Independent Action in Equity in the United States District Court for the Central District of California. His First Amended Complaint rebutted the presumptive validity of the State Court “Judgements” and included a request for the assistance of counsel, declaratory relief, injunctive relief, and restitution. The case was assigned to District Court “Judge” Consuelo B. Marshall.

¹⁰² See for e.g. *Vlandis v. Kline*, 412 U.S. 441, 446-8, 452 (1973).

¹⁰³ *Ex Parte Garland*, 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that “[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature.”

¹⁰⁴ Cal. Business & Professions Codes §6078, §6097.1 and §6086.65.

In response to Petitioner’s Complaint, the Humphreys filed a Motion to dismiss pursuant to FRCP, Rules 12(b)(1), 12(b)(6), and 12(b)(7). Notably, they failed to address any of the issues relating to Petitioner’s challenge to the lack of subject matter jurisdiction of the “Judgments” that rebutted their presumptive validity.

Assuming Marshall retained subject matter jurisdiction based upon her denial of counsel (Appendix [F] pp.39), she had a mandatory, non-discretionary, ministerial duty to investigate Petitioner’s claims that he was not given a full, fair, and impartial trial or appeal. Under this Court’s precedents “the requirement of determining whether the party against whom an estoppel is asserted [has] had a full and fair opportunity to litigate is a most significant safeguard,”¹⁰⁵ and “collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case.”¹⁰⁶ “If a defendant were convicted and punished for an act that the law does not make criminal, there can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief.”¹⁰⁷

Marshall refused to abide her sworn duty to perform the mandatory investigation and arbitrarily granted the Humphreys Motion to Dismiss *with prejudice* based on the collateral estoppel and Rooker-Feldman doctrines. Appendix [G]– Opinion pp.41-50. She declared that “[t]he purpose of the [Rooker-Feldman] doctrine is to protect state judgements from collateral federal attack,”¹⁰⁸ and “[that Petitioner’s] action is barred pursuant to the Rooker-Feldman doctrine because [he] seeks relief from the state court judgment and alleges legal error by the state trial and appellate court.”¹⁰⁹

Marshall’s ruling would be lawful if the word “valid” were inserted such that “the purpose of the Rooker-Feldman doctrine was to protect *valid* state judgements from collateral attack”– not just any State judgment, and certainly not one that is void for lack of personal and/or subject matter jurisdiction. “Unless a court has

¹⁰⁵ *Blonder-Tongue Labs v. University of Illinois Found.*, 402 U.S. 313, 329 (1971).

¹⁰⁶ *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Internal quotations and citations omitted.

¹⁰⁷ *United States v. Stoneman*, 870 F.2d 102, 104 (3d. Cir. 1989). Internal brackets, quotations, and citation omitted.

¹⁰⁸ Opinion p.45, lines 19-20.

¹⁰⁹ Opinion p.47, lines 25-28.

jurisdiction, it can never make a record which imports uncontrollable verity to the party over whom it has usurped jurisdiction, and he ought not, therefore, to be estopped from proving any fact which goes to establish the truth of a plea alleging the want of jurisdiction.”¹¹⁰ “The constitutional provision that full faith and credit shall be given in each state to the judicial proceedings of other states, does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject matter or the parties affected by it, nor into the facts necessary to give such jurisdiction.”¹¹¹ See also Federalist No. 28 declaring that “[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People’s] rights are invaded by either, they can make use of the other as the instrument of redress”¹¹² and *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*,¹¹³ finding that Courts have a non-discretionary duty to grant relief and vacate a void judgment where the Court lacked jurisdiction.

Marshall acknowledged Petitioner’s claims: (1) that the State trial and appellate Courts violated due process; (2) lacked subject matter jurisdiction; and, (3) that §7031 was unconstitutional because it is penal in nature. Despite this, she declared that each of these issues “were actually litigated by [him] in the state court action[s] and necessarily decided in a final judgment,”¹¹⁴ concluding as a result that he was “collaterally estopped from bringing [the] action.”¹¹⁵ Despite these conclusions, her opinion fails to include any independent analysis, investigation, or resolution of these issues demonstrating that they were fully, fairly, and impartially adjudicated by the State trial and appellate “Courts” acting with personal and subject matter jurisdiction to render and affirm these “Judgments” and thereby make them “final”. It also unknown how the personal and/or subject matter jurisdiction of these “Courts” (if ever lawfully acquired) was not lost through due process violations and/or fraud.

¹¹⁰ *Harris v. Hardeman*, 55 U.S. 334, 341 (1853).

¹¹¹ *Simmons v. Saul*. See also *Thompson v. Whiteman*, 85 U.S. 457, 467 (1873)

¹¹² Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

¹¹³ *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1256 (9th Cir.1980). See also Moore’s Federal Practice 3D, §60.44[5][b] “[i]f judgement is void, Court has no discretion and must grant relief.”

¹¹⁴ Opinion p.49, lines 16-17.

¹¹⁵ *Id.* p.49, lines 20-23.

Marshall's opinion also fails to cite any authority whereby an arbitrary void judgment in violation of the Constitution can be collaterally estopped or is subject to the Rooker-Feldman doctrine. Because judgments rendered without personal or subject matter jurisdiction are void and not entitled to full faith and credit elsewhere, the doctrines of collateral estoppel and Rooker-Feldman do not apply and cannot be used to overrule or supersede the Constitution.¹¹⁶ A fake "trial" put on by a "Judge" acting *coram non judice* cannot in any manner be considered a *judicial* proceeding whose fraudulent "Judgment Order" results in finality or full faith and credit. "[T]he principle of finality rests on the premise that the proceeding had the sanction of law [...]"¹¹⁷ Furthermore, as the supremacy clause *mandates* and this Court has declared, "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."¹¹⁸

As "[a] court is a place where justice is legally administered, [where a court lacks subject matter jurisdiction] the defendant has had no trial under the laws of the land."¹¹⁹ This Court has also held that it is a "universal principle" that judgments can be collaterally attacked when questions of *power in the officer* or fraud in the party are raised.¹²⁰ A State has no interest in the form of standing to enforce a void judgment because its powers are limited only to those delegated to it which are carefully defined and limited in our Constitutions. A State can't transcend the Federal Constitution and then claim its judgment is *res judicata* and/or collaterally estopped.

This Court has also made it repeatedly clear that District Courts can entertain independent actions that attack State Court judgments as void. See *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post *Rooker*); and *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre *Rooker*). See also *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*,

¹¹⁶ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."

¹¹⁷ *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) citing Restatement (second) of Judgments §12, Comment a.

¹¹⁸ *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

¹¹⁹ *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

¹²⁰ *Vorhees v. Jackson*, 35 U.S. 449, 478 (1836) citing *U.S. v. Arredondo*, 31 U.S. 691 (1832).

495 U.S. 604, 608–9 (1990) and *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

District Courts can also entertain independent actions to vacate void judgments when such claims are also authorized by State law. In *Parsons Steel Inc. v. First Alabama Bank*,¹²¹ this Court held that pursuant to 28 U.S.C. §1738 (the Full Faith and Credit Act), a “federal court *must* give the judgment *the same effect* that it would have in the courts of the State in which it was rendered.”¹²² Under California law a void judgment is subject to attack at any time, either directly or by way of an independent action in equity.¹²³ See also Cal. Code of Civil Procedure §1916 whereby “[a]ny judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.”

On this issue, Marshall’s opinion relies on the holding of the Supreme Court of California in the case of *DKN Holdings LLC v. Faerber*,¹²⁴ where the Court declared the circumstances in which collateral estoppel and issue preclusion apply: “(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” Not one of these constitutes a holding that collateral estoppel/issue preclusion applies to an arbitrary judgment by a “Court” acting without personal and/or subject matter jurisdiction. And none of these overrule Art. 6, §2 of the Constitution. Once again, “[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”¹²⁵

Marshall also arbitrarily denied Petitioner’s challenges to the Constitutionality of Business and Professions Codes §7031(a), §7031(b), and §7071.17 on the grounds that the relief he sought was an “order vacating or voiding the state court judgment.”¹²⁶ While Petitioner’s prayer for relief admittedly requested

¹²¹ *Parsons Steel Inc. v. First Alabama Bank*, 474 U.S. 518 (1986).

¹²² *Id.* at 523. Italicized emphasis added.

¹²³ *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). Italicized emphasis original. Citations omitted.

¹²⁴ *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 825 (2015).

¹²⁵ *Miranda v. Arizona*, 384 U.S. 436, 491 (1966); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (1990) (Citations omitted). *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoy v. Neff*, 95 U.S. 714, 732-3 (1877).

¹²⁶ *Id.* p.47, lines 10-11.

vacating and declaring the State “Judgment” void, Marshall *omitted* the fact that his request also included “any other relief [that] the Court determine[d] reasonable and just.” “[U]nder [a] general prayer, other relief may be granted than that which is particularly prayed for.”¹²⁷

Contrary to Marshall’s arbitrary “Judgments”, *Feldman* actually held that the facial challenge to the constitutionality of a State statute could not be precluded because it “[does] not require review of a judicial decision in a particular case” and “is a challenge to the validity of the rule rather than a challenge to an application of the rule.”¹²⁸ Petitioner therefore had a right to challenge the Constitutionality of these statutes and to a judicial remedy. “Whenever the legislature passes an act which transcends the limits of the police power, it is the duty of the judiciary to pronounce it invalid.”¹²⁹ Furthermore, “an unconstitutional law is void and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment. [...] If laws are unconstitutional and void, the [...] Court acquired no jurisdiction of the causes [...]”¹³⁰

Therefore, if §7031(a) or §7031(b) were found to be unconstitutional, declaring the judgments void would be the precise relief Marshall had a *mandatory* non-discretionary, ministerial duty to grant. “Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.”¹³¹

Finally, while Petitioner’s complaint was not captioned as a Petition for *non-statutory* writ of *habeas corpus* (Art. I, §9, Cl. 2), the *substance* was in fact a challenge to the jurisdiction of the State Courts to bind him indefinitely in constructive custody and financially destroy him amounting to civil capital punishment with prejudice. “The writ of *habeas corpus* is the fundamental instrument for safe-guarding

¹²⁷ *English v. Foxall*, 27 U.S. 595, 612 (1829).

¹²⁸ *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

¹²⁹ *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

¹³⁰ *Ex parte Siebold*, 100 U.S. 371, 376-7 (1879).

¹³¹ *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998).

individual liberty against arbitrary and lawless state action.”¹³² *Habeas* relief is also not barred by any of the estoppel doctrines asserted by the Humphreys.¹³³

But Marshall’s lawless assault on Petitioner’s rights, liberty, and property did not stop there. On February 26, 2020, he filed a timely notice of appeal of her *ultra vires* “Order” granting the Humphreys Motion to Dismiss. In response, Marshall filed another arbitrary and *ultra vires* “Order” on February 27, 2020, revoking his previously granted *in forma pauperis* status and declaring his appeal “frivolous”. Appendix [H] pp.51-52. According to this Court, an appeal is frivolous if it lacks any arguable issue in law or fact.¹³⁴ As Petitioner’s appeal contained arguable issues of law, it was clearly not frivolous.

J. “Appeal” to the United States Court of Appeals for the Ninth Circuit
(Policy 5)

On March 20, 2020, Petitioner filed a Motion for the Appointment of Assistant Counsel and to proceed *in Forma Pauperis* on appeal in the United States Court of Appeals for the Ninth Circuit. Exhibit [A38]. See case# 20-55181, fully incorporated and set forth herein. He also filed a “Statement of Why This Appeal Should Go Forward.” Exhibit [A39].

While Petitioner’s appeal was pending, this Court issued its decision in *Liu v. SEC*, supra, a case in which it vacated the Ninth Circuit’s affirmation of the District Court’s judgment imposing yet another *ultra vires* penal forfeiture disguised as “equitable disgorgement”.¹³⁵ Pursuant to *Liu*, Petitioner immediately filed a Notice/Request for Consideration of Additional Authorities. Exhibit [A41].

Despite the resounding clarity evidencing the purported nature of “disgorgement” declared in *Liu* and that Petitioner had in fact been subject to a penal forfeiture, “Chief Judge” Sidney Thomas and “Associate Judges” Atsushi Tashima and William Fletcher arbitrarily dismissed his appeal as “frivolous” with no further explanation. Appendix [I], p.53.

¹³² *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969); *Ex parte Siebold*, supra.

¹³³ *Noel v. Hall*, 341 F.3d 1148, 1151 (9th Cir. 2003).

¹³⁴ *Nietzke v. Williams*, 490 U.S. 319, 325 (1989).

¹³⁵ See *SEC v. Liu*, 262 F. Supp. 3d 957 (2017) and *SEC v. Liu*, 754 Fed. Appx. 505 (9th Cir. 2018).

K. Additional Issues

Due to the number, severity, and complexity of the issues raised by Petitioner directly related to this case and the Rules of this Court, he is unable to meaningfully and substantively present all of them and therefore asks this Court for leave to file an amended Petition without any word count restrictions so that he may fully address each of the issues. He considers every issue raised *anywhere* in this Petition, including those in the “questions presented” and the following in annotated form:

1. The Superior and Appellate “Courts” of California Lacked Personal and/or Subject Matter Jurisdiction for the Following Additional Reasons

a. The California Constitution of 1879 Fails to Vest Any Superior Court of California With Subject Matter Jurisdiction In Any Case At Law or Equity and Fails to Vest the Legislature With Any Power to Create Lower Courts or Assign Them Any Special Statutory Jurisdiction

While the States were supposedly comprised of separate sovereign bodies politic, as a unified political entity, they surrendered certain immunities to Federal supervision, like those of Article I, §10. But there is also a less known limitation on the judicial power of the States found in Article III. Under Article III, there are *only* two jurisdictions that arise under the Constitution, Laws of the United States, and Treaties made under their authority. Those jurisdictions are Law and Equity. At the time of the founding of America, it was proceedings “according to the course of the common Law” where the rights to jury trial by jury, due process of law, and many other rights, privileges, and immunities were known and also became enshrined in the Constitution.¹³⁶ It was also why every State in the Union (with the exception of Louisiana) was admitted under the common Law and not Roman civil law.

Another jurisdiction known as Admiralty was specifically excluded as a direct result of its abuses by King George III that became one of the principle causes of the American Revolution.¹³⁷ Consequently, the States were deprived of all judicial power

¹³⁶ Section 14, Article II Northwest Ordinance 1787, 7th Amendment.

¹³⁷ “He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation”. Declaration of Independence. The British parliament “claiming a power, of right, to bind the people of America by statutes in all cases [...] and extended the jurisdiction of courts of admiralty, not only for collecting the

to exercise Admiralty jurisdiction as it was vested exclusively in the United States.¹³⁸ As States also had no authority to transcend the Constitution and subject the People thereof to a jurisdiction foreign to their Constitution, they are only empowered to vest their Courts with jurisdiction in cases at Law and Equity.

Up until recently, the California Constitution of 1849 and the purported “Constitution of 1879” vested the Courts of California with these separate and distinct jurisdictions. However, as part of the National scheme to abolish proceedings according to the course of the common Law and to further the agenda to impose Roman civil law upon the People of California and the United States, common Law jurisdiction was removed from the Constitution of 1879 by the repeal of Article VI, §5. (Please confirm that there is no Article VI, §5 in the current version of the Constitution). This “repeal” is akin to removing Article III, §2, Cl. 1 from the Constitution.

Instead, the “Constitution of 1879” vests the Superior “Courts” of California with jurisdiction in “all other causes”. “All other causes” is not a jurisdiction known to the Constitution, history and laws of California or the United States and does not reveal the form or nature of the proceedings by which the Superior Courts exercise jurisdiction. “All other causes” is another way of saying that the “Courts” have unlimited jurisdiction to obscure the fact that in truth all Constitutional Courts are Courts of limited jurisdiction that can *only* proceed within Constitutional bounds.

The “Constitution of 1879” also does not vest the Legislature with any authority to create lower Courts or to vest them with any special statutory jurisdiction.¹³⁹ Article VI, §1 of the *original* “Constitution of 1879” which conferred judicial power on inferior Courts established by the Legislature, and Article VI, §13, which vested power in the Legislature to define the subject matter jurisdiction of these Courts,¹⁴⁰ have both been repealed. Unless the power or authority of a Court to perform a contemplated act can be found in the Constitution or laws enacted

said duties, but for the trial of causes merely arising within the body of a county”. Declaration of Resolves of the First Congress, October 14, 1774.

¹³⁸ Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).

¹³⁹ “Article VI, §10 is silent to any jurisdiction-setting power of the Legislature” *Communities for a Better Environment v. Energy Resources Conservation & Development Com.*, 57 Cal. App. 5th, 786, 798 (2020).

¹⁴⁰ See also *In re Application Guerrero*, 69 Cal. 88, 99 (Cal. Supreme Ct. 1886).

thereunder, the “legislature cannot either limit or extend that jurisdiction.”¹⁴¹ Consequently, the Superior Courts of California lack subject matter jurisdiction in all cases arising under Business and Professions Code §7031.

All of the foregoing purported Amendments to the “Constitution of 1879” and many others substantively altering California’s form of government have not, in Petitioner’s research, been approved by “Congress”. Nor there is any apparent Congress to approve such changes.

b. Superior Courts of California Lack Subject Matter Jurisdiction in All Cases of Admiralty Jurisdiction

As all competent jurists know, currency and law operate as opposite sides of the same coin. In other words, there are different forms of currency and each of these circulates under different modes of proceedings or jurisdictions of law. Therefore, one’s choice of currency determines what rights, privileges, and immunities as well as the means and methods of adjudicating disputes that arise thereunder. For this reason, the Founding Fathers specifically chose gold and silver coin (also known as “specie”) as the *only* “tender for payment of debts” under the Constitution and laws of the United States. Another form of tender such as checks, money orders, promissory notes, and other negotiable instruments also known as “commercial paper” that circulate in Interstate Commerce/Admiralty were specifically excluded. See especially Exhibit [G]– Memorandum of Law: The Money Issue, fully incorporated and set forth herein.

Unlike gold and silver coin that circulate according to the course of the common law (see the 7th Amendment)¹⁴², commercial paper circulates in commerce/Admiralty¹⁴³ and international law and *not* under the Constitution and laws of the United States.¹⁴⁴ See Art. III, §2 carefully noting that (1) cases in

¹⁴¹ *Pacific Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 647 (Cal. Supreme Ct. 1913). Citations omitted.

¹⁴² “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.”

¹⁴³ “The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power.” *New Jersey Steam Navigation Co. v. Merchants’ Bank*, 47 U.S. 344, 392 (1848). “The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. R. 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world.” *Swift v. Tyson*, 41 U.S. 1, 19 (1842).

¹⁴⁴ *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

Admiralty jurisdiction do not arise under the Constitution and laws of the United States; and, (2) that the judicial power for all cases arising under the Constitution and laws of the United States extends *only* to cases in Law and Equity.

Because commerce involves the relationship between debtors and creditors, commercial paper (ie Federal Reserve Notes) *cannot* be made tender for the *payment* of a debt under the Constitution because commercial paper can only *discharge* an obligation.¹⁴⁵ Moreover, the judicial power of all State Courts and the United States (as defined by Article III §2, Cl.1) would be incapable of acting upon any case involving commercial paper because it does not circulate at Law or Equity.¹⁴⁶

Article I, §8, Cl.5 gives Congress the power to “coin money” which means to “stamp pieces of metal for use as a medium of exchange [...] according to fixed standards of value.”¹⁴⁷ See also *Calder v. Bull*, declaring that “[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted [in the Constitution] to secure private rights [...]”¹⁴⁸

Article I, §8, Cl.5 does *not* give “Congress” or this “Court” the power to: (1) unilaterally Amend the Constitution in violation of Article V by making commercial paper legal tender; (2) delegate this non-existent power to the President or to a private banking institution such as the Federal Reserve; or, (3) to subject the American People to a jurisdiction foreign to their Constitution and unacknowledged by its laws. Furthermore, the People’s contracts cannot be impaired by forcing them to accept debt instruments or to be bound to a currency in which they cannot lawfully pay their debts, and by virtue thereof, become indentured servants or slaves to an ever expanding “national debt” upon which they have not consented to. Not only was there no lawful representative “Congress” to authorize the “Federal Reserve Act of 1913” and any related “Acts”, there is also no lawful representative “Congress” to

¹⁴⁵ “Let it be that the act of discharging the debt is a mere nullity and that it is still due”. *Cohens v. Virginia*, 19 U.S. 264, 403 (1821). See also *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).

¹⁴⁶ “The case of a State which pays off its own debts with paper money, no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation.” *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

¹⁴⁷ The General Principles of Constitutional Law in the United States of America by Thomas M. Cooley, Little Brown and Company 1880, p.79.

¹⁴⁸ *Calder v. Bull*, 3 U.S. 386, 390 (1798). Underlined and italicized emphasis added.

authorize any expenditures on behalf of the American People to bind them in anyway whatsoever.

Federal Reserve Notes (that can *only* discharge an obligation) are not lawful money and cannot be made legal tender like gold and silver coin that actually pay a debt.¹⁴⁹ Federal Reserve Notes are also *undefined* in American law and are not truly “dollars” as defined by the Coinage Act of 1792.

Federal Reserve Notes have no intrinsic value as true “credit” as most People have been led to believe and are only evidence of the so-called “national debt”. According to Marriner S. Eccles, former chairman of the Federal Reserve Board “if there were no debt in our money system [...] [t]here wouldn’t be any money.”¹⁵⁰ See also Congressional Record— House, August 19, 1940, pp.10548-10555 stating that “the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone’s debt [...]”) *Id.* p.10550. In other words, if the national debt were “repaid,” there wouldn’t be any “money”.

With the exception of Louisiana, all of the American States were admitted to the Union under English/American common law, not Interstate Commerce/Admiralty. Absent an unequivocal knowing, voluntary, and intelligent waiver of rights and Constitutional Amendment, neither Petitioner nor any of the American People can have their form of government altered to be subjected to Roman civil law/Interstate Commerce/Admiralty. Petitioner has not made any such waiver of rights, including to be subjected to the modern codified version of the law merchant in the form of the Uniform Commercial Code.

Based on the facts that: (1) all of the transactions involved in this case involved negotiable instruments circulating in Interstate Commerce/Admiralty; (2) claims for set off which are recognized in actions at common law and equity were denied; (3) Admiralty cannot entertain pleas of setoff;¹⁵¹ (4) the proceedings were not according to the course of the common law or equity (and thereby *not* a case arising *under* the

¹⁴⁹ See H.J.R. 192 and the Coinage Act of 1792 (1 Stat. 246) defining dollar “to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver.”

¹⁵⁰ Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2.p.1338.

¹⁵¹ *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

Constitutions of California or the United States); and, (5) Petitioner was subjected to strict liability akin to claim for *liquidated* damages, the case against him clearly arose and proceeded according to the course of Roman civil law in Admiralty jurisdiction.

2. The Contractor's State Licensing Board's "Mandatory Arbitration Program" is Unconstitutional (Policies 11 and 12)

On November 21, 2014, Petitioner was subjected to a "mandatory arbitration" proceeding by a conspiracy between Handrick, the Contractors State Licensing Board, AMCC, and Fobian to deprive him of his rights to judicial proceedings, trial by jury, and his money, property, and liberty without lawful authority, (policy 11). Appendix [O] pp.73-79, Exhibit [F]. According to the arbitrary "decision", Appendix [O] p.73, the proceeding occurred under the authority of Cal. Business and Professions Code §7085. Appendix [Q] pp.86-87. §7085 does *not* authorize the CSLB and AMCC to create and/or enforce a mandatory arbitration proceeding. Rather, it purports to authorize a voluntary arbitration process requiring "the concurrence of both the licensee and the complainant".¹⁵² Petitioner has not made any knowing, voluntary, or intelligent waiver of any rights to be subjected to this or any other mandatory arbitration proceeding as recognized by the CSLB. Appendix [O] p.74, Exhibit [F].

When Petitioner failed to comply with the award, his vested right to remain the qualifying individual of a general contractor license was arbitrarily suspended without any hearing or known process of appeal by operation of Cal. Business and Professions Code §7085.6, (policy 12). Appendices [O] pp.75-78 and [Q] pp. 87-88; Exhibit [F].

L. Deprivation of Rights Secured by the Constitution

Based upon all of the foregoing, Petitioner contends that he was deprived of the following rights, privileges, and/or immunities as secured by the Constitutions of California and/or the United States¹⁵³:

¹⁵² The CSLB admits to referring 8,275 mandatory arbitration cases to the AMCC since January 1, 2006. Appendix [O] p.79.

¹⁵³ Petitioner has not listed the specific sections of all rights secured by the Cal. Constitution but intends them to be incorporated. This is not an exhaustive list. Due to the limitations of this brief by

- (1) The inalienable (not lienable, non-commercial) rights to liberty and property in the form of his time and labor to meaningfully support himself as secured by Article 1, §1 of the Cal. Constitution and the Ninth Amendment. He was deprived/sized of these rights without due process and a judicial determination of his rights in violation of the Fourth, Fifth, and Fourteenth Amendments, and Article 1, §10 (bill of pains and penalties. Petitioner was also deprived of the right to just compensation for the taking/conversion of his rights and property for public use without lawful authority violation of the Fifth Amendment;
- (2) the right to not be excessively fined and cruelly and unusually¹⁵⁴ punished as secured by the Fifth (due process), Eighth, and Fourteenth Amendments (due process);
- (3) the right to access to the Courts and to a judicial determination of his rights as secured by Cal. Constitution 1849 Article VI, §6, Article III, Article I, §9 (policies 4 and 5) and Article I, §10 (policies 1 and 2);
- (4) equal protection of the law in violation of the Fourteenth Amendment;
- (5) all of the heightened protections of criminal proceedings in violation of the Fifth, Sixth, and Fourteenth Amendments and Article I, §10;
- (6) the right to trial by jury according to the course of the common law whereby the jury have the power to rule on the facts and the law;
- (7) the rights to safety and protection, and privacy;
- (8) the right to a republican form of government based on the rule of law, consent of the governed, and proportionate representation in violation of Article IV, §4;¹⁵⁵

the Rules of Court, Petitioner is unable to meaningfully and substantively address every action resulting in a deprivation of rights taken by each official.

¹⁵⁴ Cruel and unusual punishment under the Eighth Amendment is rather easy to understand because of the fact it was copied verbatim from the English Bill of Rights of 1689. The English Bill of Rights tells us the evil remedied by the words “cruel and unusual punishments” was to prohibit the practice of “illegal and cruel punishments,” because such punishments were “utterly and directly contrary to the known laws and statutes and freedom of this realm.”

¹⁵⁵ This cannot possibly be a “political question” because this Court’s power is coextensive with the Legislative branch and the Court has a duty to decide all questions concerning claims for deprivations of rights secured by the Constitution. See *Cohens v. Virginia*, 19 U.S. 264, 384, 404-5 (1821). Moreover, Petitioner claims there is no lawful representative quorum in “Congress”.

- (9) the right to petition each branch of government for redress of grievance and to thereby receive a full, fair, impartial, and independent investigation and meaningful and substantive redress of each grievance.
- (10) The right to not be subjected to involuntary servitude as secured by the Thirteenth Amendment. As a result of the lawless actions of the officials named herein, Petitioner was forced into performing a multi-year forensic investigation without any compensation to clear his good name and reputation and stop the fraud, treason, and other crimes being perpetrated upon him.

Petitioner further contends that as a result of all of the foregoing he is in the constructive custody of each of the officials named herein as a direct result of either their exercise of authority over his person and/or property under color of law but without lawful authority or their refusal to investigate or intervene in his complaints thereby sanctioning the fraud, treason, and other crimes being perpetrated upon him.

CONCLUSION

Unless the jurisdiction of this Court, as directly and unambiguously conferred by the Constitution be exercised over this case, the Constitution has been and will continue to be violated and Petitioner will continue to suffer irreparable injury and be unable to bring his case before *any* judicial tribunal to which the People of the United States of America have assigned all such cases.¹⁵⁶

Application for Emergency Stay

Madam Justice Kagan, you will please grant this Application for the Emergency Stay of (1) the foreclosure proceedings for the real property located at 818 Spirit Costa Mesa, California (Exhibit [D] pp.5225-5230 (2) Superior Court case #30-2022-01271693; (3) the enforcement of any of the challenged “Judgments” or “Orders” herein pending the Court’s resolution of all issues presented.

Application for Preliminary Injunction/Restraining Order

You will please grant this Application for Preliminary Injunction/Restraining Order to (1) restrain the Executive officials of California and the United States (if applicable) from enforcing any of the challenged “Judgments” or “Orders” herein; (2)

¹⁵⁶ *Cohens v. Virginia*, 19 U.S. 264, 403-4 (1821).

restrain the “Legislature” of California and the “Congress” of the United States from conducting any business without a lawful representative quorum, with the exception of any emergency business to maintain the governments of California and the United States under this Court’s direct supervision; (3) restrain the Contractors State License Board and the AMCC from conducting any mandatory arbitration proceedings and suspending any vested licensing rights pursuant to any provisions of the Licensing Laws; (4) restrain

Petition for Writs of *Quo Warranto*, *Mandamus* and *Habeas Corpus*

The Court will please order every official named herein to declare by what authority(ies) (1) he or she holds office; (2) has exercised personal and subject matter jurisdiction over Petitioner pertaining to every issue raised herein; or, (3) if they have refused to exercise any power pursuant pertaining to every issue presented herein, by what authority(ies) he or she has so refused. The official shall state all facts, lawfully enacted statutes, and Constitutional provisions in support of their position(s).

In the event the official cannot provide competent authority(ies) to hold their office and for their action(s) pertaining to every issue raised herein, you will please (1) to cease and desist any action of the office for which they have not been duly appointed or elected (2) declare their act(s) without authority and/or void; (3) order them to perform their non-discretionary, mandatory duty(ies) as required by California or Federal Constitution law and/or lawfully enacted statute(s); and (4) anything else the Court deems lawful and just in order to carry out Petitioners remaining requests for relief or as the interests of justice may require.

Other Relief

The Court will please:

1. Take all lawful action to restore the republican forms of government based on the rule of law, consent of the governed, and proportionate representation to the governments of California and the United States;
2. Declare the judgment in cases 30-2015-00805807, G055075, and AS2014-087 (arbitration award) void for want of personal and/or subject matter jurisdiction and dismiss the cases in their entirety *with* prejudice (to include any remaining claims of the Humphreys in 30-2015-00805807 by virtue of their egregious violations of due process);
3. Declare Business and Professions Codes §7028, §7031, §7071.17, §7085.6 and the CLSB’s “mandatory arbitration program” unconstitutional for all of the reasons stated herein and all others the Court determines inviolate of the Constitutions of California and the United States;

4. Exercise its inherent Equity powers or those of supplemental jurisdiction to grant Petitioner emergency restitution (see for e.g. Cal. Code of Civil Procedure §908);
5. Either grant Petitioner leave to file a Bill of Complaint for damages, punitive damages, declaratory relief and other claims in this Court or direct to that a District Court of the United States be properly vested with subject matter jurisdiction at Law to hear and determine his claims;
6. Provide a meaningful and substantive findings of fact and conclusions of law for every issue raised herein, including the issues raised in the “questions presented”;
7. Declare policies 1–12 unconstitutional in effect and/or as applied;
8. Any other relief this Court deems lawful and just.

(4) Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the license and any other contractor's license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the arbitration award. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of that person by another licensee shall constitute grounds for disciplinary action. A qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

APPENDIX [S]



PRINT ON BLUE PAPER

Superior Court of California,
County of Orange
COMPLAINT FORM

(Complaints Regarding a Judge, Commissioner, Assigned Judge, Temporary Judge or Court Referee)

Name: Adam Alan Bereki
First Middle Last

Address: 818 Spirit Costa mesa, CA 92626
Street City State Zip

Telephone: 949 241 6693 ()
Daytime Evening

E-mail address: abereki@gmail.com

What is your status?

- ☐ Plaintiff/Petitioner ☒ Defendant/Respondent ☐ Juror ☐ Attorney
☐ Witness (Incident) ☒ Witness (Court) ☐ Volunteer
☐ Other: _____

What type of case are you involved in?

- ☒ Civil ☒ Criminal ☐ Small Claims ☐ Traffic
☐ Family Law ☐ Probate ☐ Other: _____

Case # 30-2015-00805807 Judge: CLAFFEE (ret) Courtroom#: C20

Write a brief summary of your concern (include dates, names of officials or individuals involved).

SEE ATTACHED.

Write a brief summary of your concern:

In March of 2017, I was the defendant in an unlicensed contractor case heard before Judge David Chaffee (ret.). I was told the case was civil, but in reality, it was a highly penal action designed to prosecute and punish me without any of the heightened protections of criminal proceedings or the excessive fines clause. Following the “trial” in which I was never told the true nature and cause of the accusation or that I had a right to counsel, I was excessively fined and cruelly and unusually punished by being ordered to pay \$930,000 to the Plaintiffs, Karen and Gary Humphreys. Chaffee’s Minute Order reflects an award on the Humphreys first cause of action for “disgorgement” but this was not an action for disgorgement. Disgorgement is an action in equity that requires a defendant to give up their illegal profits. There is no evidence on the record of the case that I profited even one dollar. The Judgment Order also reflects “damages” in the amount of \$848,000. There was also no evidence of any damages presented at “trial”.

In a true claim for disgorgement or unjust enrichment, the Humphreys would be required to evidence the amount that I profited and this would be the amount that I would be required to “disgorge” or give up. Instead, Chaffee took the entire amount that the Humphreys paid me and my company (\$848,000) and ordered me to give it back to them despite the fact that my company had already returned it to them in the form of labor and materials on their custom remodel project. In other words, Chaffee refused to allow offsets for the benefits that were conferred on the Humphreys and rather than determine the specific amount that I profited, awarded the Humphreys a full refund. Because this award was not equitable (“disgorgement”) or compensation for any damages, it was a purely penal fine. I arrive at the amount of \$930,000 (not \$848,000) because of the fact that the Humphreys also received another approx. \$82,000 in value that they had not paid for that Chaffee also refused to account for.

On “appeal” the Fourth District Court of Appeal affirmed Chaffee’s ruling stating the order was not punishment but was instead the equitable remedy of disgorgement. I have attached the Court’s Opinion.

Please refer to the case of *Liu v. SEC*, 591 U.S. ____ (2020) where the US Supreme Court defined disgorgement and that it only applies to profits, not the forfeiture of an entire transaction.

Because the action against me was purely penal and intended to fine and punish me for violating the licensing laws (see Cal. Penal Code §15), the action had to be prosecuted in the name of the People of California as the Executive power is exclusively vested in the Governor and cannot be delegated to private parties such as the Humphreys.

As a result of all of the foregoing, Chaffee lacked subject matter jurisdiction not only to proceed to “trial” but to render any punishment at all resulting in a Bill of Pains and Penalties in violation of Article I, §10. His unconscionable behavior is not an isolated incident, see also *MW Erectors v. Neiderhauser*, 36 Cal. 4th 412 (2005). This heinous abuse of authority is also occurring in “Courts” throughout the State of California and has been sanctioned by the Supreme “Court”.

As a result of the illegal “Judgment”, my vested right as a qualifying individual for a general contractors license was suspended without even an administrative hearing by virtue of Business and Professions Code §7071.17 because I was unable to pay the fine. (It is more than 42 times my qualifying net worth). I have thereby been unlawfully restrained from working in my profession as a general contractor for more than four years. This has resulted in my inability to meet my private financial obligations and a violation of Article I, §10 (impairing the obligations

of contracts). Foreclosure proceedings have begun on my home and creditors are suing me as I am unable to pay these obligations. See case#30-2022-01271693.

What action would you like the court to take?

It is my understanding that the Court can, and indeed has a mandatory, non-discretionary ministerial duty to, on its own motion, immediately begin a full, fair, and impartial investigation into these allegations and intervene to protect my rights, liberty, and property from being taken under color of law but without lawful authority. I request the Court take this action immediately and also: (1) that the Court issue an emergency stay in the foreclosure proceedings for the real property located at 818 Spirit, Costa Mesa, CA, and in case #30-2022-01271693 pending investigation into this complaint; (2) that the Court grant me leave to file an emergency Motion for restitution so that I may receive equitable financial relief as quickly as possible to stop the irreparable harm being perpetrated and so that I can meet my financial obligations and be compensated for some of the harm caused; (3) that the Court issue a temporary injunction barring the enforcement of actions pursuant to Cal. Business and Professions Code §7031 and §7071.17 pending its investigation and/or declare these statutes unconstitutional in effect and as applied; (4) that the Court vacate the void judgment in case#30-2015-00805807 with prejudice to all of the Humphreys remaining claims as a result of the egregious violations of due process and their conspiracy with State officials to violate due process and take my liberty and property without lawful authority; (5) that the Court grant me leave to file a complaint for damages and other claims declaratory and injunctive relief; and, (6) all other relief the Court deems reasonable and just.

What action would you like the court to take?

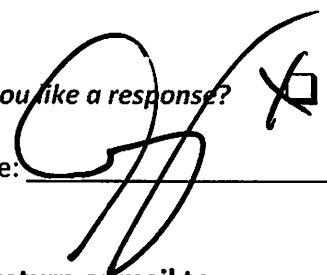
SEE ATTACHED

Would you like a response?



☒ Yes

☐ No

Signature: 

Date: 8/16/22

Please return or mail to:

Office of the Presiding Judge
Superior Court, County of Orange
Central Justice Center, Dept. C1
700 Civic Center Drive, West
Santa Ana, CA 92701-4045



Document:

Humphreys v. Bereki, 2018 Cal. App. Unpub. LEXIS 7469

Actions



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

October 31, 2018, Opinion Filed

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Reporter**2018 Cal. App. Unpub. LEXIS 7469 *** | 2018 WL 5639287

GARY HUMPHREYS et al., Cross-complainants and Respondents. v. ADAM BEREKI, Cross-defendant and Appellant.

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Subsequent History: US Supreme Court certiorari denied by [Bereki v. Humphreys, 2019 U.S. LEXIS 5324 \(U.S., Oct. 7, 2019\)](#)

Prior History: [*1] Appeal from a judgment of the Superior Court of Orange County, No. 30-2015-00805807, [David R. Chaffee](#) ▼, Judge.

Disposition: Affirmed.

Core Terms

disgorgement, Associates, contractor, remodel, subdivision, licensed, contractor's license, trial court, unlicensed contractor, licensing requirements, cause of action, perform work, unlicensed, e-mails, courts, hired


Counsel: Adam Bereki, pro per, for Plaintiff and Appellant.

William G. Bissell for Defendants and Respondents.

Judges: [ARONSON](#) ▼, J.; O'LEARY, P. J., [GOETHALS](#) ▼, J. concurred.

Opinion by: [ARONSON](#) ▼, J.

Opinion

This case involves the purported general contractor for a condominium remodel project, Adam Bereki, on one side, and the condominium owners, Gary and Karen Humphreys (the Humphreys), on the other. After the Humphreys terminated Bereki's involvement, a now defunct corporation formerly owned by Bereki, Spartan Associates, Inc. (Spartan Associates), sued Humphreys, claiming they still owed approximately \$83,000 for work on the project. The Humphreys denied the allegations and cross-complained against Bereki and Spartan Associates. Among the remedies they sought was disgorgement of all payments made for the project, pursuant to [Business and Professions Code section 7031, subdivision \(b\)](#) , due to Bereki's alleged failure to possess a required contractor's license.

Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work — \$848,000. [*2] Its ruling and a stipulation by the parties disposed of the remainder of the case and Bereki appealed. He challenges the disgorgement on a variety of constitutional, legal, and factual grounds. We find no merit in his contentions and, therefore affirm the judgment.

I

FACTS

The Humphreys own a condominium on Lido Isle in the City of Newport Beach. It was originally two separate units. The couple hired Bereki to do some remodeling which would, among other things, turn the two units into a single unit. After an on-site walkthrough, the Humphreys exchanged e-mails with Bereki to confirm the scope of the project. In one of his e-mails, Bereki stated he and his partner would perform the work for a specified rate.

The Humphreys agreed to the proposed scope and rates, and also inquired whether a written contract was necessary. Bereki responded that it was not; their "'words/commitment [was] enough.'" To start the project, Bereki asked the Humphreys for a \$15,000 check deposit payable to him, personally.

Several months into the remodel the Humphreys, at Bereki's request, started making their progress payments to Spartan Associates instead of paying Bereki directly as an individual. Bereki never [*3] gave them an explanation for the change or what, if any, involvement Spartan Associates had in the project, but the accountings he sent included the name "Spartan Associates."

After approximately a year and a half, the Humphreys terminated Bereki's involvement and later hired a different general contractor to complete the project.

Believing the Humphreys still owed approximately \$82,800 for materials used in the remodel and labor performed, Spartan Associates sued to recover that amount. The Humphreys generally denied the allegations in the complaint, and filed a cross-complaint against Bereki, Spartan Associates, and a surety company. Among the allegations were causes of action for negligence, intentional misrepresentation, and negligent misrepresentation. The trial court later granted them leave to amend the cross-complaint to include a cause of action for disgorgement of funds paid to an unlicensed contractor, pursuant to [section 7031, subdivision \(b\)](#).

At the Humphreys' request, the trial court bifurcated the disgorgement claim from the remainder of the claims in the cross-complaint, and it held a trial on that issue first. During the course of the two-day bench trial on the disgorgement cause of action, the court [*4] heard testimony from the Humphreys and Bereki.

Karen Humphreys testified it was her understanding, based on the initial e-mails exchanged with Bereki, that she and her husband were contracting with Bereki and his partner to do the work. They wanted a licensed contractor to do the work and obtain all the necessary permits, and she "took [Bereki] at his word that he had a license." She also testified there was no mention of Spartan Associates until months after the project began and insisted they never entered into a contract with Spartan Associates.

Gary Humphreys concurred with his wife's testimony about the remodel details, the series of events that transpired between them and Bereki, and the agreement he believed they entered into with Bereki. In addition, he confirmed Bereki told him he was a licensed contractor and stated he would not have hired him if he knew it was otherwise.

In contrast, Bereki testified the contract for the couple's remodel project was between the Humphreys and Spartan Associates. He nevertheless acknowledged his initial e-mail communications to the Humphreys made no mention of Spartan Associates, including the one which set forth the proposed scope of work and [*5] hourly rates. When asked about contractor's licenses, he admitted he never possessed one as an individual or as a joint venture with his partner. Spartan Associates, however, did have a contractor's license at the time of the project.

As for the work done for the Humphreys, Bereki testified he believed Spartan Associates performed all of it. He testified that the three city permits for the project were all obtained by, and issued to, Spartan Associates. Additionally, he produced contracts with subcontractors who performed aspects of the remodel work. The majority of these contracts were between the given subcontractor and Spartan Associates.²

The trial court found in favor of the Humphreys on the disgorgement cause of action based on its determination that Bereki, not Spartan Associates, was the contractor who performed all the remodel work. As a result, the court also found in favor of the Humphreys on Spartan Associates's complaint. The remainder of the cross-complaint was dismissed without prejudice at the Humphreys' request.

II

DISCUSSION

Bereki challenges the portion of the judgment disgorging all compensation paid to him for his work on the Humphreys' remodel project.³ Though articulated [*6] in various ways, his arguments boil down to the following: (1) disgorgement under [section 7031, subdivision \(b\)](#), is unconstitutional or, alternatively, criminal in nature; (2) the trial court erred in ordering disgorgement because Spartan Associates, not Bereki, performed the work and Spartan Associates held a contractor's license; (3) even assuming Bereki performed the work, the state's contractor licensing requirement does not apply to him as a "natural person"; (4) there was insufficient evidence to support disgorgement, including no evidence of injury due to Bereki's failure to be individually licensed; (5) the court should have offset the disgorgement amount by the value the Humphreys received through the remodel work; (6) it was improper to order full disgorgement because certain payments were not made from the Humphreys' personal accounts; and (7) the court erroneously failed to provide a written statement of decision.⁴ We find no merit to any of these contentions.

A. Disgorgement Remedy Under [Section 7031](#)

Relying heavily on [White v. Cridlebaugh \(2009\) 178 Cal.App.4th 506, 517](#) (White), the decision in [Alatrisme v. Cesar's Exterior Designs, Inc. \(2010\) 183 Cal.App.4th 656, 664-666](#) (Alatrisme) aptly summarizes the nature, purpose and scope of the litigation prohibition and the disgorgement remedy provided in [section 7031, subdivisions \(a\) and \(b\)](#).

"[Section 7031](#)[, subdivision] (b) is part of the [*7] Contractors' State License Law ([§ 7000 et seq.](#)), which 'is a comprehensive legislative scheme governing the construction business in California. [This statutory scheme] provides that contractors performing construction work must be licensed unless exempt. [Citation.] 'The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]' [Citation.] The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services. [Citation.]' [Citation.]

"This statutory scheme encourages licensure by subjecting unlicensed contractors to criminal penalties and civil remedies.

[Citation.] The civil remedies 'affect the unlicensed contractor's right to receive or retain compensation for unlicensed work.' (*Ibid.*) The hiring party is entitled to enforce these remedies through a defensive 'shield' or an affirmative 'sword.' [Citation.]

"The *shield*, contained in [section 7031](#) [subdivision] (a), was enacted more than 70 years ago, and provides that a party has a complete defense to [*8] claims for compensation made by a contractor who performed work without a license, unless the contractor meets the requirements of the statutory substantial compliance doctrine. [Citation.] [Section 7031](#) [subdivision] (e), the substantial compliance exception, provides relief only in very narrow specified circumstances, and 'shall not apply . . . where the [unlicensed contractor] has never been a duly licensed contractor in this state.' [Citation.]

"The California Supreme Court has long given a broad, literal interpretation to [section 7031](#) [subdivision] (a)'s shield provision. [Citation.] The court has held that [it] applies even when the person for whom the work was performed *knew* the contractor was unlicensed. [Citation.] . . . [It] explained that ""[Section 7031](#) represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . ."" [Citation.] "Because of the strength and clarity of this policy [citation]," the bar of [section 7031](#) [subdivision] (a) applies [*9] "[r]egardless of the equities."" [Citations.]

"In 2001, the Legislature amended [section 7031](#) to add a *sword* remedy to the hiring party's litigation arsenal. This sword remedy, contained in [section 7031](#) [subdivision] (b), currently reads: 'Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.' [¶] By adding this remedy, the Legislature sought to further [section 7031](#) [subdivision] (a)'s policy of deterring violations of licensing requirements by 'allow[ing] persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. [Citation.]' [Citation.]" (*Alatraste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatraste* and *White* "concluded that the Legislature intended that courts interpret [sections 7031](#) [subdivision] (a) and 7031 [subdivision] (b) in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant." (*Alatraste, supra*, 183 Cal.App.4th at p. 666, citing *White, supra*, 178 Cal.App.4th at pp. 519-520.) These principles are well-settled under the law. [*10]

Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence — "an equitable remedy" — for performing work without a required contractor's license. (*S.E.C. v. Huffman* (5th Cir. 1993) 996 F.2d 800, 802 (S.E.C.); see *Walker v. Appellate Division of Superior Court* (2017) 14 Cal.App.5th 651, 657 [[§ 7031](#) contemplates civil proceedings].) The Legislature created a separate criminal penalty. Specifically, [section 7028](#) provides that acting or operating in the capacity of a contractor without a required license is a criminal misdemeanor subject to jail time, or fines, and restitution. ([§ 7028, subds. \(a\)-\(c\), \(h\).](#))

For similar reasons, Bereki's attempt to characterize disgorgement as an award of unconstitutional punitive damages is unavailing. As an equitable remedy, disgorgement is not punishment and, therefore, it does not implicate the excessive fines clause of the [Eighth Amendment to the United States Constitution](#). (*S.E.C., supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-63.)

B. Contractor Licensing Requirement

Before turning to application of [section 7031, subdivision \(b\)](#), we address Bereki's claim that he, in his individual capacity, did not need a contractor's license. His argument is twofold, one part legal and the other part factual. We reject both.

As for the legal argument, Bereki asserts that licensing requirements only apply to [*11] "fictitious" persons, not "natural" persons such as himself. He cites no authority for his unique interpretation of the relevant statutes. And, the statutes provide otherwise. Contractors who are required to obtain a license include "[a]ny person . . . who . . . undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any . . . home improvement project, or part thereof." ([§ 7026.1, subd. \(a\)\(2\).](#)) In turn, "[p]erson" is defined to include "an individual[.]" as well as a variety of types of business entities and associations. ([§ 7025, subd. \(b\).](#)) "In ordinary usage[.]" the word 'individual' denotes a natural person not a group,

association or other artificial entity. (See Webster's Third New Internat. Dict. (2002 ed.) p. 1152 [giving a primary definition of 'individual' as 'a single human being as contrasted with a social group or institution'].)" (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 623, disapproved of on other grounds in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 416.) There is nothing in the statutes that indicates a different, specialized meaning. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 ["In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them [*12] a special meaning"].)

Bereki's factual attack concerns the trial court's conclusion that he, not Spartan Associates, was the contractor who performed the remodel work for the Humphreys. Though he implores us to engage in de novo review of this issue, it is a factual determination which we review for substantial evidence. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) There is ample evidence in the record supporting the court's conclusion. [5](#)

Both of the Humphreys testified that on the first day they met Bereki for a walkthrough of the site, he informed them that he and his partner would act as the general contractor for the project. Bereki followed up with a written proposal and estimate, which he sent to the couple from his personal e-mail address. When they inquired whether he had a contractor's license, he assured them he did, and when they asked him to whom they should make out their payment checks, he told them to put them in his name.

At no time during this series of events did Bereki ever mention Spartan Associates. Notably, Bereki did not apply to the State Board of Equalization to register Spartan as an employer until roughly three months after [*13] the remodel work began. Then, about four months into the project, he introduced the corporation into the mix by asking the Humphreys, without any explanation, to make future payments to Spartan Associates. Based on what transpired, the couple believed they contracted with Bereki, in his individual capacity, to complete the remodel work.

While Bereki claims the Humphreys lied when they testified at trial because some of their factual statements purportedly contradicted those they made at the summary judgment stage, our role is not to resolve factual disputes or to judge the credibility of witnesses. (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) The trial court bore that responsibility in this case, and our review of the record reveals substantial evidence to support its conclusion that Bereki, not Spartan Associates, was the contractor for the job.

C. Disgorgement Remedy Under [Section 7031](#)

Separate from his general attacks on [section 7031, subdivision \(b\)](#), Bereki challenges its application under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit — the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have [*14] uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. (See, e.g., *Alatraste, supra*, 183 Cal.App.4th at pp. 672-673; *White, supra*, 178 Cal.App.4th at pp. 520-521; see also *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521.) Full disgorgement is required; offsets and reductions for labor and materials received are not permitted.

Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor's license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute. The disgorgement consequence is not remedial in nature. Similar to the licensing requirement, it is a proactive measure intended to decrease the likelihood of harm due to "incompetent or dishonest providers of building and construction services." (*White, supra*, 178 Cal.App.4th at pp. 517.)

We also are not persuaded by Bereki's objection to the amount the court ordered him to repay to the Humphreys. He highlights evidence showing that some of the payment checks came from Gary Humphreys' corporation, and he argues the Humphreys are not entitled to those amounts given they did not pay them in the first instance. While we do not necessarily see eye-to-eye with Bereki's legal reasoning, [*15] we need not reach the legal aspect of his argument due to the trial court's factual findings.

The trial court, relying on Gary Humphreys' uncontradicted testimony, found that the contested payments ultimately were attributable to Gary Humphrey himself. Substantial evidence supports this conclusion. The Humphreys testified that the business is an S corporation, and at the relevant time Gary Humphreys was the sole shareholder and an employee. Gary Humphreys explained he was traveling often for business during the remodel, including at times when Bereki insisted on needing money "'right away.'" To facilitate the payments, Gary Humphreys had persons in his corporation with signing authority write checks from the corporate account. The amounts paid on the Humphreys behalf were then accounted for through a reduction in the regular income Gary Humphreys received from the corporation. He paid income taxes on those amounts because they were included in the figures listed on his annual W-2 form.

Under these circumstances, we find ample evidence to support the trial court's factual finding that although certain payments to Bereki were made from the Humphreys' business account, they ultimately were [*16] accounted for in a way that ensured they were personal payments from the Humphreys, as individuals. Accordingly, the Humphreys were entitled to "all compensation paid." (§ 7031, subd. (b).)

We recognize that the provisions of [section 7031](#), including the disgorgement remedy, are harsh and may be perceived as unfair. As courts have explained, however, they stem from policy decisions made by the Legislature. (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151; see *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896; *Alatrisme, supra*, 183 Cal.App.4th at p. 672.) "[T]he choice among competing policy considerations in enacting laws is a legislative function" (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25; *Alatrisme, supra*, 183 Cal.App.4th at p. 672.)

D. Statement of Decision

Though he admits he did not timely request a statement of decision, Bereki claims the trial court should have nevertheless provided one after he made an untimely request. To the contrary, "[n]o statement of decision is required if the parties fail to request one." (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970; see also *Code Civ. Proc.*, § 632.) The trial court's denial was proper. (See *In re Marriage of Steinberg* (1977) 66 Cal.App.3d 815, 822 [upholding court's refusal to make findings of fact and conclusions of law due to party's failure to timely request them].)

III

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

[ARONSON](#) ▼, J.

WE CONCUR: [*17]

O'LEARY, P. J.

GOETHALS, J.

Footnotes

[1]

All further statutory references are to the Business and Professions Code unless otherwise indicated.

2

Bereki filed an unopposed motion to augment the record on appeal with certain exhibits admitted in the trial court. We deny the request because the exhibits already are "deemed part of the record" by Court Rule. ([Cal. Rule of Court, rule 8.122\(a\)\(3\)](#).) We have considered the copies of the exhibits he provided in conjunction with our review of this appeal.

3

Bereki appears to also challenge a postjudgment sanctions order the trial court issued based on Bereki's motion to compel a response to a demand for a bill of particulars filed after entry of judgment. The sanctions order is not encompassed by his earlier appeal from the judgment. And although such a postjudgment order is separately appealable ([Code Civ. Proc., § 904.1, subds. \(a\)\(2\) & \(b\)](#)), Bereki did not file another appeal. Accordingly, the issue is not before us. ([Silver v. Pacific American Fish Co., Inc. \(2010\) 190 Cal.App.4th 688, 693](#) [court without jurisdiction to review postjudgment order from which no appeal is taken].)

4

After briefing was complete, Bereki filed a motion asking that we take judicial notice of a plethora of items, among which are the federal Constitution and other foundational documents for this country, federal and state statutes, and a variety of case law. To begin, "[r]equests for judicial notice should not be used to 'circumvent []' appellate rules and procedures, including the normal briefing process." ([Mangini v. R. J. Reynolds Tobacco Co. \(1994\) 7 Cal.4th 1057, 1064](#), overruled on another point as stated in [In re Tobacco Cases II \(2007\) 41 Cal.4th 1257](#).) Further, "[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient." ([Quelimane Co. v. Stewart Title Guaranty Co. \(1998\) 19 Cal.4th 26, 45, fn. 9](#).) We therefore deny Bereki's request as unnecessary to the extent it included such materials. As for the remaining items, we likewise deny the request because we find them not properly the subject of a request for judicial notice and/or irrelevant to resolution of the matters before us. ([Evid. Code, §§ 451, 452](#); [Schifando v. City of Los Angeles \(2003\) 31 Cal.4th 1074, 1089, fn. 4](#) [appellate court will not take judicial notice of irrelevant material].)

5

Bereki filed a motion asking us to consider additional evidence not presented in the trial court, among which are two declarations, an e-mail correspondence and a letter. He believes the documents are relevant to establishing the identity of the contracting parties. We deny the motion as "[i]t has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.'" ([In re Zeth S. \(2003\) 31 Cal.4th 396, 405](#), italics added.) Circumstances warranting an exception to this rule are very rare and we do not find them extant here, particularly in light of the conflicting evidence weighed by the trial court. (See [Diaz v. Professional Community Management, Inc. \(2017\) 16 Cal.App.5th 1190, 1213](#) ["The power to take evidence in the Court of Appeal is never used where there is conflicting evidence in the record and substantial evidence supports the trial court's findings."].)