

Appeal No. G055075

Rehearing due: 11/30/18

Opinion filed: 10/31/18

Opinion by: RMA/KOL/TMG

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

Adam Bereki
Defendant Below and Appellant

v

Karen and Gary Humphreys
Plaintiffs Below and Respondents

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

PETITION FOR REHEARING

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TO THE HONORABLE PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, 4th APPELLATE DISTRICT:

Pursuant to rule 8.268 of the California Rules of Court, appellant, Adam Bereki, petitions this Court for a rehearing in the above-entitled matter after an unpublished opinion, dated October 31, 2018, which affirmed the judgment of the trial Court and ordered costs.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	5
INTRODUCTION AND AUTHORITIES FOR REHEARING.....	6
A. ERROR IN LAW: THIS COURT ERRONEOUSLY RULED DISGORGEMENT IS NOT A “PENALTY” CONTRARY TO US SUPREME COURT JURISPRUDENCE	7
B. ERROR IN LAW: THE TRIAL COURT VIOLATED DUE PROCESS RULING ON AN ABANDONED (VOID) AGREEMENT THAT DOESN'T CONTAIN THE SCOPE OF WORK FOR THE ALLEGED PROJECT.....	9
C. ERROR IN LAW: THIS COURT VIOLATED DUE PROCESS AFFIRMING THE TRIAL COURT’S JUDGMENT DENYING NOTICE AND HEARING REGARDING COMPETENCY ...	13
D. ERROR IN LAW: A NATURAL PERSON IS REQUIRED TO QUALIFY <u>ON BEHALF OF</u> AN INDIVIDUAL AND THEREFORE <u>NOT</u> AN INDIVIDUAL. THE COURT IS NOT AT LIBERTY TO RECAST THE SPECIALIZED MEANINGS OF WORDS IN A STATUTE	15
E. ERROR IN LAW: THIS COURT VIOLATED DUE PROCESS WHEN IT CONFIRMED THE TRIAL COURTS’ RULING– THERE IS NO EVIDENCE ON THE RECORD THE HUMPHREYS PAID ANYTHING TO BE DISGORGED.....	19
F. MISSTATEMENT AND OMISSION OF FACTS– SUBSTANTIAL EVIDENCE	21
G. MISSTATEMENT AND OMISSION OF FACTS– JUDICIAL ESTOPPEL.....	23
H. MISSTATEMENT AND OMISSION OF FACTS/ ERROR IN LAW: THIS COURT’S OPINION MISSTATES THE FACTS THERE WAS EVIDENCE I PERFORMED THE WORK. IT FURTHER OMITS THE ISSUE RAISED OF WHAT LAW REQUIRES ME TO DISGORGE WORK PERFORMED BY SPARTAN AND/OR OTHER LICENSED CONTRACTORS	24
I. MISSTATEMENT AND OMISSION OF FACTS/ ERROR IN LAW- FRAUD ON THE COURT.	26

J. MISSTATEMENT AND OMISSION OF FACTS/ ERROR IN LAW- JURISDICTION: ROMAN CIVIL LAW.....	27
K. INEFFECTIVE ASSISTANCE OF COUNSEL.....	30
CONCLUSION.....	32
WORD COUNT.....	33

TABLE OF AUTHORITIES

<u>PAGE</u>	<u>CITATION</u>
(13)	<i>Bailey v Alabama</i> , 219 US 219
(20)	<i>Bank of Columbia v Okely</i> , 17 US 235, 243 (1819)
(18)	<i>Bass v US</i> 784 F.2d 1282
(8)	<i>Bennett v Wilson</i> 122 Cal. 509
(19)	<i>Cohens v Virginia</i> 19 US 264, 403 (1821).
(8), (13)	<i>County of Ventura v Tillett</i> , 133 Cal. App. 3d 105.
(23)	<i>Evidence Code</i> §623
(28)	<i>FRC v. General Electric Co.</i> , 281 U.S. 464 (1930)
(22)	<i>Government Code</i> 11120
(30)	<i>Hunt v County of Shasta</i> 225 Cal. App. 3d 432, 446. fn 12 (1990))
(20)	<i>Judiciary Act of 1789</i>
(80)	<i>Klugh v United States</i> , 620 F. Supp. 892
(7)	<i>Kokesh v SEC</i> , 581 US ____
(29)	<i>Lambert Run Coal Co. v. Baltimore & Ohio R. Co.</i> , 258 U.S. 377 (1922)
(30)	<i>Mounts v Uyeda</i> 227 Cal. App. 3d 111, 121 (1991)
(16)	<i>Ngiraingas v Sanchez</i> , 495 US 182 (1990).
(8)	<i>State Farm Mut. Automobile Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)
(27)	<i>Steel Co. v Citizens For a Better Envir.</i> 523 US 83, 103 (1998)
(13)	<i>The Estate of Buchman</i> 123 Cal App. 2d, 560
(18)	<i>Thompson v Louisville</i> 362 US 199, 204
(18)	<i>White v Cridlebraugh</i> (2009) 178 Cal. App. 4th 506, 517
(32)	<i>Windsor v McVeigh</i> , 93 US 274

INTRODUCTION AND AUTHORITIES FOR REHEARING

This petition is made on the grounds of substantial errors in law, substantive due and judicial process and the omission or misstatement of facts in this Court's Opinion dated October 31, 2018.

Appellant petitions this Court for rehearing every argument raised in Appellants Opening and Reply Briefs.

This Petition is based on the following authorities found in *In re Jessup's Estate* 81 C 408, 471,(1889):

A rehearing may be granted on the ground that the court's opinion misstated or omitted a material fact in the case, or misstated or failed to address any material issue.

A rehearing can also be granted on the ground that the court reached an erroneous decision because of a mistake of law.

This Petition also further elaborates upon structural jurisdictional errors raised in AOB. Jurisdictional defects are never waived and can be raised at any time, including in a Petition For Rehearing.

ARGUMENTS

A. ERROR IN LAW

THIS COURT ERRONEOUSLY RULED DISGORGEMENT IS NOT A “PUNISHMENT”
CONTRARY TO US SUPREME COURT JURISPRUDENCE

In it's Opinion p9, this Court stated: *“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...”*

In *Kokesh v SEC*, 581 US ____ the supreme Court unanimously ruled disgorgement constitutes a penalty because:

- 1) *it “...is imposed by the courts as a consequence for violating public laws...”*
- 2) *“...disgorgement is imposed for punitive purposes. Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because “deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e].” (citation)*
- 3) *“It sometimes exceeds the profits gained as a result of the violation. And, as demonstrated here”...“disgorgement may be ordered without consideration of a defendant's expenses that reduced the amount of illegal profit. In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off and is therefore punitive. Although disgorgement may serve compensatory goals in some cases, “sanctions frequently serve more than one purpose.” (citation). Because they “go beyond compensation, are intended to punish, and label defendants wrong-doers” as a consequence of violating public laws, (citation), disgorgement orders represent a penalty...”*

The trial Court's judgment and this Court's affirmation thereof violates due process and the provisions of punitive damage awards as stated in *State Farm Mutual v Campbell*, 538 US 408 (2003).

Therefore, in the instant case disgorgement in the form of punitive damages in excess of \$5,000 does not pass Constitutional muster. The Court's judgment is 169+ times this not including costs. Refer also to AOB Pp41-45.

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

The trial Court and this Court are without jurisdiction to render or affirm judgment which violates either State or Federal Constitutions. *County of Ventura v Tillett*, 133 Cal. App. 3d 105.

As such, the both of the trial Court's judgements (including sanctions) and this Court's affirmation thereof are void for want of jurisdiction. (A void judgment is in legal effect, no judgment. By it no Rights are divested. From it no Rights can be obtained. **Being worthless in itself, all proceedings founded upon it are equally worthless.** *Bennett v Wilson* 122 Cal. 509)

B. GROSS MISSTATEMENT & OMISSION OF MATERIAL FACTS ERROR IN LAW

THE TRIAL COURT RULED ON AN ABANDONED (VOID) AGREEMENT THAT DOESN'T CONTAIN THE SCOPE OF WORK FOR THE ACTUAL PROJECT.

In its Opinion under "Facts", p2, this Court misstates that I entered into an agreement with the Humphreys for remodeling and combining two condominium units into one.

The Humphreys admitted EXHIBIT [303] evidencing the agreement they claimed was between them and I. Their counsel represented to the trial Court it was the sole agreement between us.

Please refer to EXHIBIT [303] and read it in its entirety.

Where in this email is there any agreement discussing two units or the combination thereof?

I realize the following direction may be a bit unorthodox. However, I feel it to be **critical** given this advanced stage of litigation and that both the trial Court and this Court either misunderstood or did not actually consider this evidence despite repeat direction to the contrary:

Please do not continue reading this Petition until you have confirmed whether or not there is any mention of two units or the combination thereof in EXHIBIT [303]. The Petition will continue on the next page.

As you observed, EXHIBIT [303] contains a very specific list of work to be performed. Each item of work is also confirmed or denied by the Humphreys indicating a “yes” or “no” to move forward.

NOWHERE is there any mention of two units or combining them as stated in the “facts” of this Court’s opinion.

There was no mention of the two units in this agreement because the Humphreys didn’t own two units at the time these emails were created (April 2012). There weren’t two units to be combined.

It also appears this Court relied on yet another fraudulent misrepresentation by the Humphreys found on p7 of RRB: *“This action arises out of a home remodel project which began in April of 2012 on two units of a three unit condominium... the project consisted of combining what at the time, were two small separate adjoining units into a single unit. The [Humphreys] were... the owners of the two units and appellant Adam Bereki... was the contractor with whom the Humphreys contracted to perform the work.”*

The Humphreys presented an abandoned agreement for a specific project that never happened and fraudulently foisted it off on the trial Court and this Court as the only agreement between the parties when in fact it doesn’t even encompass the work of the project they claim transpired. In connection thereof, their counsel made the following misrepresentations at Trial:

“There simply was no other contract. There was no contract at any time proposed, offered, suggested by Spartan Associates and the Humphreys or proposed to the Humphreys.” (William Bissell, RT Vol 2. Pg 3, 6-9)

Months after this email the Humphreys bought a second adjacent unit and entered into numerous subsequent agreements for the remodel thereof. The one unit they did own, referenced in EXHIBIT [303] was ultimately torn down pursuant to the subsequent agreements such as the building permits and approved plans evidenced by EXHIBIT [34].

EXHIBIT [31] rebuts the Humphreys misrepresentations and provides relevant parts of the actual agreement for the specific work of combining the two units¹.

Please refer to EXHIBIT [31-12] annexed hereto. I have provided two copies. The first is the original [31-12], and the second, markups I made [31-12-A] to facilitate this discussion.

¹This agreement is omitted from this court’s opinion altogether and presents material jurisdictional facts required to be on the record.

[31-12]

You'll notice this is a floor plan for a 4 bedroom residence. Each of the condominium units the Humphreys purchased had 2 bedrooms. This floorplan actually represents the combination of the two units. Therefore, four bedrooms.

Each of the original two units was it's own residence complete with a kitchen, single bathroom, and living room. They desired to remove one kitchen and living room, add a bathroom, and expand the exterior deck as part of the new combination of units as reflected here.

[31-12-A]

I have drawn the original dividing wall between the center of the two units (E). This wall obviously was not pictured in [31-12] because that floor plan shows the proposed floorplan and work to be done, NOT what was existing.

You'll notice there is only one kitchen for the entire combined unit (B) and a new bathroom installed (C). The original unit kitchen found at (A) has been removed.

Although the original deck/patio size isn't represented in this image, it was increased in size to what is represented here. This deck is about four times the size of the original. (D).

Please verify once again NONE of this work is found in EXHIBIT [303].

The work in the agreement of EXHIBIT [31] is an entirely separate agreement as is EXHIBIT [34].,

This is precisely why, in their Motion For Summary Judgment, the Humphreys stated:

"This action was commenced by The Spartan Associates, Inc. the general contractor on the project..." (CT 237, 8)

"At all times relevant to this action, Spartan was a licensed contractor. As such the services to be performed by it under agreement with the Humphreys for home improvement work were not illegal." (CT 245, 25)

"Plaintiff Spartan Associates Inc. (Spartan)... both in contracting with the Humphreys for the renovation work for the condominium **units**... and in the performance of that work (CT 413, 3) [Units, plural NOT singular—ed]

And why their counsel stated:

“Now Spartan did perform work on the job.” (RT Vol. 2, 40–18)

This is also why they made payments directly to Spartan, and sent Spartan (not me or Glenn Overley) a notice of termination: EXHIBIT [38].

It is why Spartan (not me or Glenn Overley) obtained the building permits to perform the work, EXHIBIT [34]

It is why Spartan (not me or Glenn Overley) used its employees and hired subcontractors to perform the work, EXHIBIT [33]

* * *

7031(b) requires performance.

Therefore:

How were the Humphreys able to show performance and receipt of compensation from an agreement discussing a very limited scope project that was abandoned?

Where in the trial Court's record is there any evidence of the performance of any specific work whatsoever, let alone who performed it?

This Court omitted both of these material facts failing to address the trial Court's authority to render judgment in Respondents favor. These issues must be addressed.

Refer also to CACI 4560 (1) and (3):

To establish this claim, [name of plaintiff] must prove **ALL** of the following:

1. That **there was a contract** between [name of plaintiff] and [name of defendant] under which [name of defendant] was required **to perform services** for [name of plaintiff];
3. That [name of plaintiff] paid [name of defendant] for contractor services **that [name of defendant] PERFORMED AS REQUIRED BY THE CONTRACT.**

C. MISSTATEMENT & OMISSION OF FACTS ERROR IN LAW

THIS COURT VIOLATED DUE PROCESS AFFIRMING THE TRIAL COURT'S JUDGMENT DENYING NOTICE AND HEARING REGARDING COMPETENCY.

Quoting "White", supra on Pp8-9 this court reaffirmed: *"The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services."*

This is a presumption the People of California (including me) are incompetent and dishonest.

In order to determine my (or another's) incompetence or dishonesty – including in building and construction services– there must first be notice and a hearing commensurate with due/ judicial process.

At trial, **"No legal evidence was produced that he was incompetent to act."***The Estate of Buchman 123 Cal App. 2d, 560*

"The power to create presumptions is not a means of escape from Constitutional restrictions". *Bailey v Alabama, 219 US 219*

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

This Court entirely omitted this fundamental jurisdictional issue in its Opinion.

Are notice and a hearing no longer required to deprive People of their fundamental Rights?

* * *

I have never been notified of a competency hearing. Nor have I been presented with evidence of my incompetence as a living being, in the construction trades or any other occupation.

Please refer to EXHIBIT [MRH-A] annexed hereto. It is a true and correct certified copy of documents found in my airman file at the Federal Aviation Administration. MRH-A2² is a letter from Board Certified Forensic Examiner and Psychologist, Dennis Steele, PHD. Here is the relevant text of that document:

² I redacted my social security number for this EXHIBIT.

"I met with Adam again today-the first time in four years. He does not have a mental disorder. He is psychologically well suited to fly and poses no risk to himself or the public."

Moreover, I was the Qualifying Individual for Spartan's license. I was also Spartan's Responsible Managing Officer. §7096 BPC states:

For the purposes of this chapter, the term "licensee" shall include... and shall also include any named responsible managing ... or personnel of that licentiate whose appearance has qualified the licentiate under the provisions of Section 7068.

In short, it appears I'm a licensee.

If the licensing Board's examination for me to be Spartan's Qualifier hypothetically qualifies as a "competency hearing", I passed it and Spartan received it's license. Given this, how were the Humphreys deprived of the protections of the Contractors State License Laws?

How could I magically be transformed 'incompetent' again despite passing the exams?

This Court also omitted these material, relevant and jurisdictional issues raised.³

³ See also Statement of Issues On Appeal: *"How is a qualifying individual separate from a contractors license? In other words, if a license can't exist without a natural person as the qualifying individual, how can it be said the qualifying individual isn't licensed? (AOB p15)"*

D. MISSTATEMENT & OMISSION OF FACTS RESULTING IN ERROR IN LAW

A NATURAL PERSON IS REQUIRED TO QUALIFY ON BEHALF OF AN INDIVIDUAL AND IS THEREFORE NOT AN INDIVIDUAL. THE COURT IS NOT AT LIBERTY TO RECAST THE SPECIALIZED MEANINGS OF WORDS IN A STATUTE.

The issue raised was whether an “individual” (§7025) and a “natural person” have the same standing, and, consequently, whether a “natural person” is required to be licensed.

On p9 of its Opinion, this court misstates the following facts (underlined for emphasis):

“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.”

and: “There is nothing in the statutes that indicates a different, specialized meaning.”

The true facts are that I did cite multiple authorities found specifically in the statutes and that the statutes indicate a different, specialized meaning of these words as evidenced below:

Section §7068.1 cited in AOB p49 and ARB p22 defines the relationship among the statutes between these two different entities having different and unique standing. It states:

7068.1(a) The person qualifying **ON BEHALF OF an individual** or firm under paragraph (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer’s or principal’s construction operations to secure compliance with this chapter and the rules and regulations of the board...

(c)(2) “Person” [as used in this section] is limited to natural persons, **NOTWITHSTANDING the definition of “person” in Section 7025.**

Therefore:

- 1) an “individual” cannot qualify for its own license because it is not a natural person;
- 2) a natural person must be the one qualifying for the license **ON BEHALF OF an individual** or firm (§7025).
- 3) a “person” /“individual”(as defined by §7025) is different from a “natural person”.

Therefore, if a natural person must qualify **ON BEHALF OF an individual** and is **NOWITHSTANDING** the definition of “person” in §7025 which includes an “individual”, then clearly, a natural person is not a “person”/“individual”/“contractor⁴” required to be licensed.

Also found in Chapter 9 relating to contractors is an entire Article that applies **only** to natural persons:

§7150: “Person” as used in this article is limited to **natural persons, NOTWITHSTANDING** the definition of person in Section 7025.

Clearly, there is a specialized meaning for the term “natural person” and it in no way encompasses the definition of an “individual” as the Court misstates.

The Opinion on p9 states:

*“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.**” Halbert 's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238*

As evidenced a “natural person” has a different, specialized meaning within the codes and is not an “individual”.

In defiance of these clearly defined and specialized meanings, this Court then resorted to Webster's Third New International Dictionary 2002 ed (Op. p9). to define an individual essentially as a natural person.

Not only do the statutes give no authority to refer to this specific dictionary to clarify the meanings of certain terms, there is no authority for a Court to recast the specialized meanings of words provided in the statutes:

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

To interpret the meaning of a particular statute or statutory definition, one must employ the same rules of statutory interpretation which were used to compose such statute or definition.

⁴§7026 defines a contractor as:...”a contractor is any **person...**” (this section proceeds immediately after “person” is defined in §7025. §7025 **does not** include “natural person”

Of the eight rules of statutory interpretation, the rule *noscitur a sociis* (known by its associates) applies:

when a word or phrase is of uncertain meaning, it should be construed in the light of the surrounding words . . . A Dictionary of Law, 7th ed., Jonathan Law and Elizabeth Martin, eds. (Oxford: Oxford University Press, 2009), 295

The surrounding words of §7025 are all fictions of law. Therefore, just as a natural person must qualify for these other fictions of law, it must also do so for an individual as required by §7068.1.

The legislative intent of §7068.1 is to clearly evidence a fictitious entity cannot qualify for its own license. This is because a fiction has no cognitive function. It is why a natural person must qualify for an individual.

Chapter 9. Contractors only applies to fictions of law who have no cognitive functioning and therefore require a living man or woman (purportedly a natural person) with cognitive functioning to be the Qualifying Individual *on their behalf* providing the actual work experience to qualify for the license and supervise the operation.

I acknowledge use of the word “person” in everyday language can mean an individual or biological being. However use of this word has been given an opposite meaning in law with the clear intent and result of confusing the unsuspecting American People. (see eg *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77 (1938) *paying careful attention to the dissent*)

This Court needs to “show its work” and clearly evidence EXACTLY how it resolves this issue to arrive at the false conclusions in its Opinion. This should include how, according to its Opinion⁵;

- 1) a “natural person” and an “individual” are the same entity in spite of the specific language in the statutes differentiating them;
- 2) Adam Bereki has been determined to be an “individual” without a hearing, evidence or confrontation of witnesses (none occurred at trial) as commensurate with due process and in spite of the language of the statutes, *Bass v US*, *supra* and *Thompson v Louisville*, *supra*.

While it is understood Appellate procedure resolves factual disputes in favor of prevailing parties, it does not include the misstatement of facts such as “he cites no authority for his unique interoperation.” What would be factually correct – if it were the case – would be to say:

Bereki cited §7068.1 as the authority for his unique interpretation however we find no merit therein and here's why...

* * *

The Opinion further states that I claimed I was a natural person.

Rather, I raised the issue Respondents failed to meet their burden of proof I was a "person" (as opposed to a natural person) because Respondents failed to submit any testimony or evidence on this element of the offense. This Court omitted addressing this issue entirely.

I cited *Bass v US 784 F.2d 1282* indicating this is in fact an element of the offense required to be evidenced and *Thompson v Louisville 362 US 199, 204* regarding the requirement to prove each element of the offense to comply with due process.

Where exactly on the record did the Humphreys prove this? The court omits this critical information from its Opinion. It is critical to this case, and the jurisdictional challenge on Appeal.

* * *

On p6 this Court claims its Opinion "relies heavily" on *White v Cridlebraugh (2009) 178 Cal. App. 4th 506, 517, "White"*.

White is void for want of jurisdiction resulting from due process violations because:

- 1) the Courts enforced 7031(b) on the Cridlebraughs who are living beings and not fictions of law just as the trial Court did in the instant case.
- 2) The Court's judgement for disgorgement violated the provisions of punitive damage awards.

See also ARB p45.

A valid Opinion cannot be based on a void judgment.

E. MISSTATEMENT & OMISSION OF FACTS ERROR IN LAW

THIS COURT VIOLATED DUE PROCESS WHEN IT CONFIRMED THE TRIAL COURTS' RULING— THERE IS NO EVIDENCE ON THE RECORD THE HUMPHREYS PAID ANYTHING TO BE DISGORGED

7031(b) concerns compensation **paid** to an unlicensed contractor.

On p2 of its Opinion, this Court affirms the judgment of the trial Court whereby it found the Humphreys had **paid** me \$848,000.

This misstates the evidence in the trial Court's record. The record reflects that I received \$90,000 "dollars" from the Humphreys while Spartan received \$758,000. AOB Pp23-24

The real fact however, is there is no evidence either I or Spartan have been **paid** anything by the Humphreys.

The Humphreys have certainly extended negotiable instruments in the form of checks and money orders to discharge various obligations. However, this is not Lawful payment. *"Let it be that the act discharging the debt is a mere nullity, and that it is still due.".... "The Courts [State Courts—ed] have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation." ...Cohens v Virginia 19 US 264, 403 (1821).*

The Federal Constitution at Art. 1 §9 clearly states: No State shall...make any Thing but gold and silver coin Tender in **Payment** of Debts...

In the Statement of Issues on Appeal (AOB p13) I raised the following issues:

- 1) What is the definition of a dollar?
- 2) What form of payment is accepted to pay the judgment, or more accurately discharge the obligation in this case?
- 3) What jurisdiction does the payment for the judgement circulate in?

This Court's Opinion omitted all of these jurisdictional issues pertinent to the issue surrounding "compensation paid" found directly in §7031(b).

Competent jurists know and understand that "money" and law go hand in glove. Different forms of "money" circulate in different jurisdictions of law just as evidenced above in *Cohens, supra* and *Columbia, infra*.

Federal Reserve *Notes*, “dollars” – as they are deceptively and incorrectly termed⁶ – are not Lawful money or tender for payment of debts (Art 1 §9). They are negotiable instruments (notice the two signatures on the face of each “dollar”) capable only of discharging obligations.

In the instant case, the compensation for goods and services rendered were evidenced by the Humphreys to have been checks and money orders (EXHIBIT [32]). These are negotiable instruments purportedly governed by the Uniform Commercial Code which circulate either in commerce/Admiralty and/or Federal Regional Martial Law Rule (see eg: 12 USC 95a and 95b/ The Emergency Banking Relief Act pursuant to Congress’ War Powers).

In *Bank of Columbia v Okely*, 17 US 235, 243 (1819), the US Supreme Court ruled:

“By making the note negotiable at the Bank of Columbia, the debtor chose his own jurisdiction; in consideration of the credit given him, he voluntarily relinquished his claims to the ordinary administration of justice and placed himself only in the situation of an hypothecater of goods, with power to sell on default, or a stipulator in the admiralty, whose voluntary submission to the jurisdiction of that court subjects him to personal coercion.”

Each of the notes passed by the Humphreys were made negotiable at Chase bank.

Section 9 of the Judiciary Act of 1789 flatly prohibits State Courts from practicing Admiralty,. See also *Cohens*, *supra*.

This Court also omitted all of these relevant jurisdictional issues from its Opinion.

⁶ A dollar is defined by the Coinage Act of 1792 and does not include a “Federal Reserve Note”.

F. MISSTATEMENT & OMISSION OF MATERIAL FACTS SUBSTANTIAL EVIDENCE

On p10 of its Opinion this Court states “*There is **ample** evidence in the record supporting the court's conclusion*” yet fails to define what the ample evidence actually is and how it supports the elements of offense found in CACI 4560.

The Humphreys misrepresented the elements a cause of action for §7031(b) in Part 2 Section D of RRB p19. The elements of their cause of action do not at all align with the Council of California Civil Jury Instructions Section 4560.

The substantial evidence to support the trial Court's decision can't possibly be an email discussing a specific project that never transpired (EXHIBIT [303]); supported by misrepresentations of counsel this was the only agreement; when evidence of other agreements are on the record (EXHIBIT [31])

The substantial evidence can't possibly be the Humphreys estopped statements at trial they believed they only entered into an agreement with me and Mr. Overlay when:

Their earlier Motion For Summary Judgment claims “the undisputed facts” were that they entered into an agreement with Spartan (CT 231).

This Court needs to clearly and concisely evidence exactly what the substantial evidence is they are relying upon. Just to say there's “ample” evidence and not refer to exactly what each item of evidence is and how they found it to be material, relevant, and trustworthy leads to bewildering uncertainty and confusion.

Most especially because:

- 1) it's not anywhere in the trial Court's Minute Order,
- 2) the trial Court refused to produce a Statement of Decision, and;
- 3) a Findings of Facts and Conclusions of Law is not required pursuant to §632 CCP yet is required in all administrative proceedings which arguably the “trial” Court proceedings were, Government Code 11425.10 (6).

In order to present meaningful and substantive petitions to the California Supreme Court and/ or the supreme Court of the united States, these findings are **absolutely** essential. To deny them is a gross violation of due/judicial process.

How else are the People to defend themselves from violations of due process or notify our elected officials or other agencies of government to take remedial action if this information isn't going to be disclosed?

In like vein, opposing counsel claimed at oral argument I raised more than forty (40) issues in this case. In its Opinion, this Court appears to have selected seven (7) [Refer to Op. p5] and omitted all others.

Each of the issues raised are material and relevant to this action. If the Court did not understand my reasoning, I shared in AOB I would be happy to submit supplemental briefs for clarification. No such request was made.

I strongly intuit the Court did not want to touch these issues with a barge pole because doing so will reveal the complete and total dysfunction of this government. That's too bad. I am here to face these issues with integrity and it is your sworn duty to meet me there.

Refer also to Government Code §11120:

"...The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

You have been appointed to a position of honor, trust, and profit. I consider your Oaths of Office to be a contract you have entered into knowingly, voluntarily, and intelligently with me as one of "the People". You have signed this agreement and are being held accountable to it.

G. MISSTATEMENT & OMISSION OF FACTS JUDICIAL ESTOPPEL/EVID. CODE §623

Also omitted from its Opinion is any mention let alone resolution of the Humphreys Motion For Summary Judgment (CT 231) wherein they represented EXHIBIT [303] was actually an agreement between them and Spartan, and that the “undisputed facts” were that they had contracted with Spartan then reversed this position at Trial.

Evidence code §623 states:

“Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.”

This Court needs to evidence exactly how the Humphreys contradictory testimony was admitted as evidence in spite of this rule of Evidence and the doctrine of judicial estoppel . Their Motion (CT 231) had been heard and ruled by the same trial Court Judge and was already in the record though not addressed at “trial”. Specifically, what gave the trial Court jurisdiction to violate this Evidence Code or the estoppel doctrine? Is an issue “waived” if it’s already admitted as evidence on the record in a Summary Judgment Proceeding? If so, how does this waiver occur?

H. MISSTATEMENT & OMISSION OF FACTS RESULTING IN ERROR IN LAW

THIS COURT'S OPINION MISSTATES THE FACTS THERE WAS EVIDENCE I PERFORMED THE WORK. IT FURTHER OMITTS THE ISSUE RAISED OF WHAT LAW REQUIRES ME TO DISGORGE WORK PERFORMED BY SPARTAN AND/OR OTHER LICENSED CONTRACTORS.

The performance of work is an element of the offense required by 7031(b) and CACI 4560 (3):

To establish this claim, [name of plaintiff] must prove ALL of the following:

...3. That [name of plaintiff] paid [name of defendant] for contractor services **that [name of defendant] performed as required by the contract...**

Spartan evidenced it performed the work.

The Humphreys Motion For Summary Judgment (CT 231) repeatedly claimed Spartan performed the work:

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

"At all times relevant to this action, Spartan was a licensed contractor. As such the

SERVICES TO BE PERFORMED BY IT UNDER AGREEMENT WITH RESPONDENTS for home improvement work **were not illegal.**" (CT 245, 25)

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

The Humphreys counsel represented at trial Spartan performed work on the project (RT Vol. 2, 40-1)

There is substantial evidence Spartan performed the work.

The following issues were raised in AOB and omitted in this Court's Opinion. This Court needs to clearly evidence how it concluded:

1) there was substantial evidence I performed the work and what that evidence is;

2) how work evidenced to have been performed by Spartan and other licensed contractors is required to be disgorged in defiance of §7031 which states that only work performed by unlicensed contractors is subject to disgorgement;

3) where there is any evidence I performed any work at all;

4) where the evidence is that clearly separates work I allegedly performed from work I performed as Spartan's Responsible Managing Officer?

I. MISSTATEMENT & OMISSION OF FACTS
ERROR IN LAW
FRAUD ON THE COURT

Appellant's Opening and Reply Briefs present a plethora of misrepresentations, false and contradictory statements, and other unscrupulous behavior by the Humphreys and their counsel that rises to the level fraud on the court in the procurement of jurisdiction to receive judgment in their favor. Issue B in this Petition elaborates upon yet another aspect of this behavior. This Court omitted these issues entirely by claiming, at least in reference to one instance, they were factual issues resolved by the trial Court. This is not true. Fraud is a violation of due and judicial process and makes the issue jurisdictional. Most especially when it goes to jurisdictional elements of an offense which must all be proven empowering the Court to render judgment.

In further violation of due process, this Court refused to admit additional evidence in a separate Motion filed which provided further evidence of fraud on the Court. Jurisdictional issues are never waived and can be raised for the first time on Appeal.

J. MISSTATEMENT & OMISSION OF FACTS ERROR IN LAW– JURISDICTION: ROMAN CIVIL LAW

On p8 of it's Opinion, this Court, twice claims disgorgement is an “equitable remedy” and further classifies it as a “civil consequence”.

Disgorgement being an equitable remedy is erroneous as already evidenced in Part A of this Petition.

The jurisdiction of the proceedings of the trial Court were challenged in AOB. One of the issues raised was this action failed to comply with the “case or controversy” requirements of a justiciable cause of action as stated in *Steel Co. v Citizens For Better Environment*, 523 US 83, 103 (1998).

Among the nuances of this issue were that a cause of action under §7031(b) presents a hypothetical or conjectural as opposed to an actual injury. The Humphreys failed to evidence any injury whatsoever.

The trial Court's proceedings appear, for all intents and purposes to have been, jurisdictionally, in Roman Civil Law.

California was purportedly admitted as a common Law state, unlike Louisiana which was admitted under Roman Civil Law. So the issue effectively becomes a question I asked in AOB:

What constitutes “consent of the governed” [see Declaration of Independence 1776] for any members of the de jure body politic to be regulated other than by the common Law?

This Court omitted any answer.

In furtherance of this issue, I filed a Motion For Judicial Notice for this Court to take notice of legislation and mainly US Supreme Court decisions – amongst other supportive documents –

inextricably linked to this very significant issue.⁷ This Court denied the Motion which clearly provided case law and other documentary notice the practice of Roman Civil Law in a common Law State judicial Court is unconstitutional.

This also raised the issue even of whether California has been relegated from a State to a Territory where only “Legislative Courts” opposed to judicial “Constitutional Courts” capable of hearing and recognizing the Lawful status and standing of the American People as recognized in the Constitution for the United States exists:

This distinction has been repeatedly made throughout US supreme Court jurisprudence:

“This Court is a constitutional, as distinguished from a legislative, Court, and can have no jurisdiction other than of cases and controversies falling within the classes enumerated in the judiciary article of the Constitution; it cannot give decisions which are merely advisory, nor can it exercise or participate in the exercise of functions which are essentially legislative or administrative,” FRC v. General Electric Co., 281 U.S. 464 (1930).

It appears, based on the definition of “State” found in the General Provisions of the Business and Professions Code and referenced specifically in the statute at the heart of this case, “State” has been transmuted to mean “District of Columbia”. “

This issue is of such enormity it effects nearly every case in every so-called “State” of this nation.

Has every State been relegated a territory or some other political entity subject to the Roman Civil Law of the District of Columbia?

Under what Article of the Constitution does Congress have the power to un-admit “States”?

On what grounds can an action in Roman Civil Law proceed in a State admitted to the Union under the common Law?

⁷The Motion was denied in part on the grounds only citations were necessary. This isn't true when the Rules of Court pertaining to Judicial Notice require an explanation of how the items are relevant to the Appeal: *Rule 8.252 (2) “The Motion must state (A) why the matter to be noticed is relevant to the appeal”*. Moreover, if only citations were necessary, then why not allow the citations? Additionally, “Where Rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them”. The matters stated therein are unequivocally and as stated therein: “of substantial consequence to the determination of this action, most specifically the jurisdiction of the trial Court and this appellate Court”. This Courts denial of this Motion is a further violation of due process.

This issue goes to the heart of the direct jurisdictional challenge raised in this Appeal. The Humphreys have failed to substantiate jurisdiction, failing to even address these issues in their Reply Brief and even alluded to me being from another planet in their Reply to the Motion For Judicial Notice. Curiously, they fail to offer any factual dispute of the Notice given.

Jurisdiction cannot be effectively acquired by concealing for a time the facts which conclusively establish that it does not exist. *Lambert Run Coal Co. v. Baltimore & Ohio R. Co.*, 258 U.S. 377 (1922)

K. INEFFECTIVE ASSISTANCE OF COUNSEL (Request For Supplementary Brief)

Where good cause appears for the consideration of such new matters, a court has discretion to do so for the first time on a petition for rehearing. (*Mounts v Uyeda* 227 Cal. App. 3d 111, 121 (1991); *Hunt v County of Shasta* 225 Cal. App. 3d 432, 446. fn 12 (1990)).

Upon submission of Appellant's Opening and Reply Briefs, I strongly felt there was ample support in facts and substantive Law the trial Court was without jurisdiction to render judgment. I still believe this. However, based on this Court's Opinion including the denial of Motion For Consideration of New Evidence, it has become clear I should have raised the issue of ineffective assistance of counsel as well.

I respectfully request this Court to treat this issue as a Supplementary Brief and base it on the following issues regarding the ineffectiveness of Spartan's Counsel, Mr. Scott Russo:

From the outset of this case, Mr. Russo actually represented both Spartan and I. It was only about one month before trial when he began solely representing Spartan due to my inability to continuing paying for his services.

At trial, I felt Mr. Russo did a good job. This was again based on my belief the Humphreys had failed to prove their case and there was substantial evidence Spartan performed the work.

At trial, I was also suffering from very severe anxiety and panic– a health issue I'm being treated for. It was very difficult for me to formulate questions, think logically or clearly, and therefore I was entirely ineffective at representing myself let alone questioning witnesses or interacting with the court. As a former police officer, I've interviewed hundreds of People. Regardless, I was unable to discern the nature of exactly how the Humphreys and their counsel were pulling one over on the trial Court judge by numerous factual misrepresentations I have presented on Appeal. Most of us who experience fraud are often unaware it is being committed or we would take evasive action. Fortunately there is no statute of limitations and fraud is jurisdictional.

The Court can also consider my own ineffectiveness at raising this issue having had no experience or training in the factual Constitution, History, and Laws of the United States while attending the mandatory public education system. This curriculum – or at least any that would substantiate even remotely being able to satisfactorily represent oneself in Court is nowhere to be found.

While I take responsibility for my actions and health condition, Mr. Russo still had a duty to represent Spartan by:

- 1) calling supporting witnesses such as Glenn Overley who the Humphreys alleged they contracted with (neither he nor anyone was called or even arranged; Refer to Mr. Overley's testimony in Motion For Consideration of New Evidence);
- 2) challenging the integrity of the Humphreys misstatements at trial in contradiction to their Motion For Summary Judgement (Russo authored the reply to this Motion and appeared in Court behalf of both Spartan and I) and raising the issue of Judicial Estoppel and relevant evidence codes;
- 3) calling the Humphreys expert witness to testify. (he is a construction expert who testified in his deposition that he performed an analysis of Spartan's employee time cards, payroll and other documents provided by Spartan during discovery to evidence Spartan performed the work (as opposed to me or Glenn Overley) he was originally a witness the Humphreys hired to testify essentially that Spartan had performed the work but had taken too long, overcharged, and didn't know what it was doing;
- 4) failed to submit other agreements Spartan had with the Humphreys such as the the actual building plans for the work of combining the two units that would have more clearly evidenced EXHIBIT [303] was NOT the only agreement as both the Humphreys and their counsel told the court;
- 5) failed to file a statement of decision to prepare for a meaningful and substantive appeal;
- 6) failed to produce let alone admit a letter prior to lawsuit where the Humphreys claimed they contracted with Spartan (refer to MCNE);

All of these issues are basic to the practice of law and effective representation of one's client. Had Mr. Russo effectively performed his duties representing Spartan, he would have in turn provided this additional evidence proving I had not committed an offense under §7031(b) leading very likely to a different result in the Court's judgment.

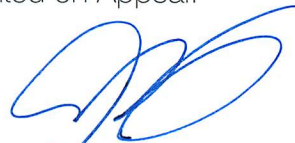
CONCLUSION

Based on the foregoing and all of the issues raised in Appellants Opening and Reply Briefs and Motions, this Court is entirely without jurisdiction to render any affirmation of the trial Court's judgments or to award costs. The trial Court's judgment is void for lack of subject matter jurisdiction, fraud, and violations of due process.

Certainly a "trial" and "appeal" have, on the surface, been conducted. Many issues I presented were omitted and/or distorted to create an alternate version of factual reality not in integrity with the actual evidence or US supreme Court Jurisprudence. This is not a hearing commensurate with judicial process (*Windsor v McVeigh*, 93 US 274). I have yet to be heard on the actual merits of this case and the issues presented on Appeal.

I respectfully request a rehearing.

November 13, 2018

A handwritten signature in blue ink, consisting of stylized, overlapping loops and curves, positioned above the closing text.

Respectfully submitted,

WORD COUNT CERTIFICATE

Including sections identified by CRC 8.204(c)(3), this brief has ⁷⁴⁹² words. I rely upon the word-counting function of Pages, the word-processing program used to generate this Petition, in making this certification.

Dated: November 13, 2018

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

Adam Bereki, In Propria Persona



SPARTAN
CONSTRUCTION

ENGINEERING • DESIGN • FABRICATION

Handwritten signature and date: 11-13-18

Interior Floorplan



Handwritten number: 31-12

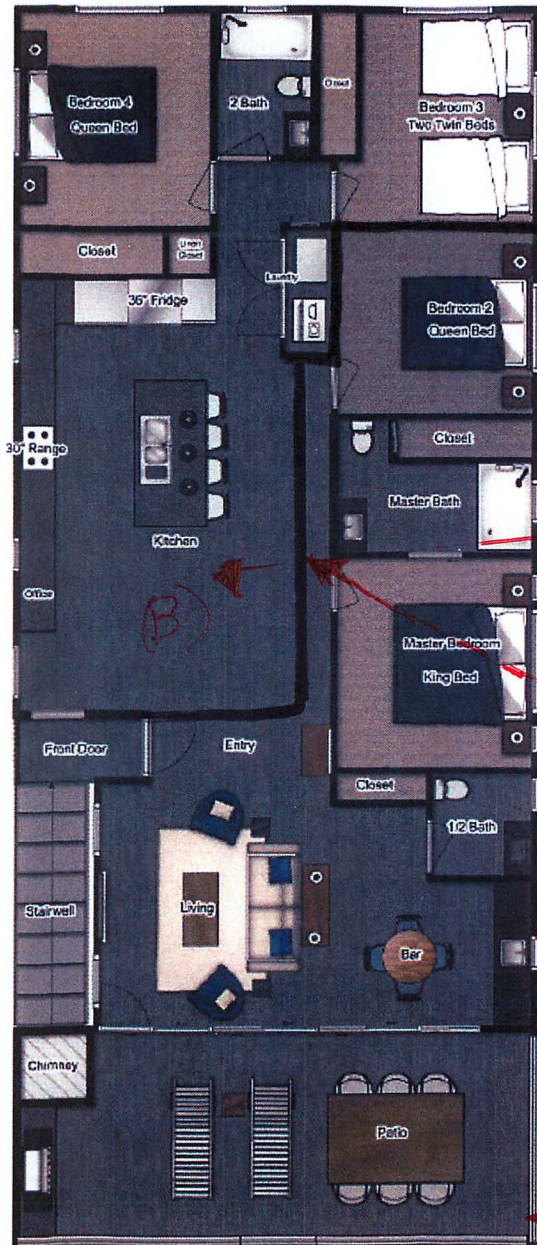


SPARTAN
CONSTRUCTION

ENGINEERING • DESIGN • FABRICATION

11-13-18

Interior Floorplan



2ND UNIT PURCHASED
(NEW KITCHEN) (B)
REDUCED TO ONE

DIVIDING WALL REMOVED (E)

NEW BATHROOM (C)

ORIGINAL UNIT KITCHEN (A)
REMOVED

BALCONY / DECK EXPANDED (D)

31-12-A

DEPARTMENT OF TRANSPORTATION

CERTIFICATE OF TRUE COPY

I HEREBY CERTIFY that the attached is a true copy of the official
medical records of **ADAM ALAN BEREKI** dating from July 2, 2012

file in the Aerospace Medical Certification Division
that I am the legal custodian thereof.

Signed and dated at Oklahoma City, Oklahoma
this 29th day of October, 2018
by Jacqueline Brown
JACQUELINE BROWN
Manager, Medical Systems Branch
Aerospace Medical Certification Division
(Title)
Civil Aerospace Medical Institute

I HEREBY CERTIFY that **JACQUELINE BROWN**

signed the foregoing certificate is now, and was, at the time of signing
the legal custodian of the aforesaid records,

and that full and credit should be given this certificate as such.

IN WITNESS WHEREOF, I have hereunto subscribed
my name and caused the seal of the Department of

Transportation to be affixed this 29th
day of October, 2018

at Oklahoma City, Oklahoma
David M. O'Brien
DAVID M. O BRIEN, M.D., M.P.H.
(Signature)

Manager, Aerospace Medical Certification Division
(Title)

Civil Aerospace Medical Institute
Department of Transportation

Pacific Coast Healthsystems, Inc.

17215 Studebaker Road, Suite 300
Cerritos, CA 90703
562-924-7307 (phone)
562-860-9398 (fax)

August 27, 2012

TO WHOM IT MAY CONCERN

RE: Adam Bereki
DOB: 6/18/79
SSN: [REDACTED]

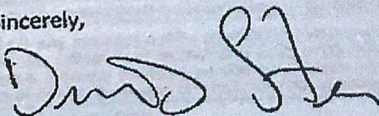
To whom it may concern:

I am writing in support of Adam Bereki, who is seeking a private pilot's license.

Adam is a 33 year old single male. He is a former police officer who came to my attention in 2004 due to some significant workplace issues. He saw me periodically over a four year period, until he successfully concluded a lawsuit vs. the City of Huntington Beach (CA).

I met with Adam again today-the first time in four years. He does not have a mental disorder. He is psychologically well suited to fly and poses no risk to himself or the public.

Sincerely,


Dennis D. Steele, PHD
Psychology License # PSY4331
Board Certified Forensic Examiner

MRH-A

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Adam Bereki FIRM NAME: STREET ADDRESS: 818 Spirit CITY: Costa Mesa STATE: Ca ZIP CODE: [92626] TELEPHONE NO.: 949.241.6693 FAX NO.: E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (name):		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 700 W. Civic Center Dr MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center		
Plaintiff/Petitioner: Defendant/Respondent:		CASE NUMBER: 30-2015-00805807
PROOF OF SERVICE—CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax		JUDICIAL OFFICER: Chaffee
		DEPARTMENT: C-20

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

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
818 Spirit Costa Mesa, California [92626]
- ☐ The fax number from which I served the documents is (complete if service was by fax):
- On (date): November 13, 2018 I served the following documents (specify):
Petition For Rehearing

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

CASE NAME:
Spartan v Humphreys

CASE NUMBER:

30-2015-00805807

6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) ☒ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date: November 13, 2018

ROSEANNE BEREKCI

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

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

DECLARATION OF MESSENGER

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

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

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

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

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)