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6 In Propria Persona
7

8 United States District Court
9 Central District of California
10

11 Adam Bereki, a man

12
13 Plaintiff

14 vs.

15 Gary Humphreys, a man;

16 Karen Humphreys, a woman;
17

18
19 Defendants
20

Case No.: 8:19–CV–02050
(CBM)(ADSx)

OPPOSITION TO DEFENDANTS
MOTION TO DISMISS

Hearing: Dec. 17, 2019, 10AM,
Courtroom 8B

Honorable Consuelo Bland
Marshall
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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES¹**
3

4 THE ROOKER–FELDMAN DOCTRINE DOES NOT APPLY TO
5 ARBITRARY, VOID JUDGMENTS WHERE THE DEFENDANT WAS
6 NOT GIVEN A FULL AND FAIR HEARING

7 Defendants erroneously rely on the Rooker–Feldman² doctrine
8 which does not apply to arbitrary, void judgments where the defendant
9 was not given a full, fair, and impartial hearing. In fact, the authority
10 cited by Defendants, *Allen v. McCurry*, 449 U.S. 90, 95 (1980), recognizes
11 the exception that (collateral estoppel cannot apply when the party did
12 not have a “full and fair opportunity” to litigate that issue in the earlier
13 case).

14
15 Plaintiff’s complaint demonstrates that the trial and appellate
16 Courts made determinations based upon evidence *that does not exist* on
17 the record and that neither Court had jurisdiction to violate the
18 Constitution by denying substantive due process. (“A judgment, whether
19 in a civil or criminal case, reached without due process of law is without
20 jurisdiction and void...because [California] is forbidden by the
21 fundamental law to take either life, liberty or property without due
22

23
24 ¹ Plaintiffs verified complaint/brief and the authenticated Exhibits annexed thereto
25 are incorporated and fully set forth herein. All references to Exhibits are to Plaintiffs
26 Exhibits. All references to the Constitution are to the Constitution for the United
27 States.

28 ² Based on the opinions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

process of law, and its courts are included in this prohibition”). *Bass v. Hoagland*, 172 F.2d 205, 219 (1949).

It is impossible for Plaintiff to have had a full and fair opportunity to litigate if he was adjudged upon evidence that doesn’t exist and was never given an opportunity to meet.

Most importantly, (“[t]he 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”). *Blonder-Tongue Labs v. University of Illinois Found*, 402 U.S. 313, 329 (1971).

THE ROOKER–FELDMAN DOCTRINE DOES NOT APPLY
BECAUSE CALIFORNIA’S POLICY ON CLAIM AND ISSUE
PRECLUSION SUPPORTS COLLATERAL ATTACK OF VOID
JUDGMENTS

(“If a state court judgment is not entitled to preclusive effect under the law of that state, subsequent litigation in federal court is no more precluded by that judgment than subsequent litigation in State Court.”) *Noel v. Hall*, 341 F.3d 1148, 1160 (9th Cir. 2003). California’s law pertaining to issue and claim preclusion is that (“[a] judgment void on its face ...rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time”). *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). Additionally, (“[t]he doctrine of res judicata is inapplicable to void judgments”). *Ibid*.

1 As held by the appellate Court, citing two federal authorities³ in
2 support of its decision that the action against Plaintiff was only intended
3 to take Plaintiff's profit as "disgorgement" under the laws of unjust
4 enrichment. At trial, Defendants presented no evidence⁴ of Plaintiff's
5 profit.

6 The trial Court ordered a general forfeiture of the entire amount
7 *paid* to Plaintiff and his company in the amount of \$848,000 (Exhibit
8 [C]). Under the laws of unjust enrichment, a claim for disgorgement
9 ("does not impose a general forfeiture: defendant's liability in restitution
10 is not the whole of the gain from a tainted transaction, but the amount
11 of the gain that is attributable to the underlying wrong." Restatement
12 (Third) of Restitution and Unjust Enrichment §51 Comment (i).

13
14 ("Disgorgement is remedial and not punitive. **The court's power**
15 **to order disgorgement only extends to the amount with interest**
16 **by which the defendant profited from this wrongdoing. Any**
17 **further sum would constitute a penalty assessment.**") *SEC v.*
18 *Blatt*, 583 F.2d 1325, 1335 (5th Cir.1978) (emphasis added). Because no
19 evidence was presented of Plaintiff's profits, the entire judgment by the
20

21
22 ³ *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469, "Opinion", citing *S.E.C.*
23 *v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993) and *U.S. v. Philip Morris USA*, 310
24 F.Supp.2d 58, 62-63 (D.C. 2004).

25 ⁴ ("What does not appear in the record, and what does not exist in fact, are one and
26 the same in law"). ("In a judicial proceeding, nothing is believed unless proved upon
27 oath"). A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings,
28 Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson,
Second Edition 1907, Maxims Applicable to the Practice of the Court, §62.

1 trial “Court” – later affirmed on “appeal” – was not disgorgement, but an
2 arbitrary, and wholly unconstitutional *in personam* forfeiture action
3 with a punishment is so severe it negates any intended remedial
4 mechanism whatsoever. *Kansas v. Hendricks*, 521 U.S. 346 (1997) citing
5 *United States v. Ward*, 448 U.S. 242, 248 (1980).
6

7 Without the crucial evidence of Plaintiff’s profits, not to mention
8 the requirements of offsets for benefits conferred and the application of
9 strict tracing as required in equitable actions, the “judgment” against
10 Plaintiff is clearly an arbitrary forfeiture which is *not* authorized by
11 Business and Professions Code §7031(b). (“The agreement or consent of
12 the parties cannot give the court the right to adjudicate upon any cause
13 of action or subject matter which the law withholds from its cognizance
14 and in such case the judgment of the court is void...”)
15 *Fletcher v. Superior Court of Sacramento*, 79 Cal. App. 468, 477 (1926).
16

17 (“As a general rule, the defendant is entitled to a deduction for all
18 marginal costs incurred in producing the revenues that are subject
19 to disgorgement. Denial of an otherwise appropriate deduction, by
20 making the defendant liable in excess of net gains, results in a
21 punitive sanction that the law of restitution normally attempts to
22 avoid”). §51, Comment (h).
23
24

25 (“Allegations that the defendant is a wrongdoer, and that the
26 defendant's business is profitable, do not state a claim in unjust
27 enrichment. By contrast, a claimant who is prepared to show a
28

1 causal connection between defendant's wrongdoing and a
2 measurable increase in the defendant's net assets will satisfy the
3 burden of proof as ordinarily understood"). Comment (i).

4
5 See also *Sereboff v. Mid Atlantic Med. Servs., Inc.*, 547 U.S. 356,
6 364-65 (2006) (finding that "strict tracing rules" were applied to
7 equitable restitution historically, such that the right to recover
8 restitution only existed where the proceeds sought were in the
9 defendant's possession).

10
11
12 The arbitrary forfeiture penalty ordered upon Plaintiff iultimately
13 amounting to \$930,000 is approximately 46 times his qualifying net
14 worth, and more than 186 times the comparable criminal monetary
15 penalty (a fine *up to* \$5000) for the same offense. Business and
16 Professions Code §7028. This penalty will force Plaintiff in bankruptcy
17 causing him to forfeit his entire qualifying life estate. Even if §7031
18 authorized penal relief (which it doesn't) a penalty of this severity is
19 flatly prohibited by Article 3, Section §3, paragraph 2 of the Constitution
20 which declares ("no attainder of Treason shall work Corruption of Blood
21 or Forfeiture except during the Life of the Person attainted"). This is
22 otherwise known as forfeiture of estate. In historic actions at common
23 Law, ([f]orfeiture of estate was a penalty applied to anyone convicted of
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1 treason or a felony)⁵. See also *United States v. Grande*, 620 F.2d 1026,
2 1038 (4thCir. 1980) stating (the irrationality that forfeiture of estate
3 cannot be imposed for treason but could be imposed for a pattern of
4 lesser crimes [such as a violation of §7031(b)]).

5 Not only was Plaintiff subjected to a forfeiture of estate, he was
6 denied the heightened protections of criminal proceedings and on
7 “appeal”, told the 8th Amendment’s protections against excessive fines
8 and cruel or unusual punishment did not apply because he wasn’t being
9 punished. (“The classical distinction between civil and criminal
10 forfeiture was founded upon whether the penalty assessed was against
11 the person or against the thing. Forfeiture against the person
12 operated *in personam* and required a conviction before the property
13 could be wrested from the defendant. [Citations]. Such forfeitures were
14 regarded as criminal in nature because they were penal; they primarily
15 sought to punish. Forfeiture against the thing was *in rem* and the
16 forfeiture was based upon the unlawful use of the *res*, irrespective of its
17 owner's culpability. These forfeitures were regarded as civil; their
18 purpose was remedial. [Citations]. Applying this distinction to the [*in*
19 *personam* forfeiture for allegedly violating the licensing laws] in
20 question here leads to the conclusion that the forfeiture [is] criminal in
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23

24 ⁵ Congressional Research Service, Crime and Forfeiture by Charles Doyle, January
25 22, 2015. p.2. (“The critical distinction between forfeiture of estate and statutory
26 forfeiture is that in the first all of the defendant’s property, related or unrelated to
27 the offense and acquired before, during, or after the crime, is confiscated. In the
28 second, confiscation is possible only if the property is related to the criminal conduct
in the manner defined by the statute”). *Id.* p.36.

1 nature: [Plaintiff] would forfeit [his] property because [he was]
2 ['convicted'] of the substantive offense. If the forfeitures are criminal, the
3 criminal forfeiture statutes and the rules of criminal procedure should
4 have been followed"). *United States v. Seifuddin*, 820 F.2d 1074, 1076-7
5 (9th Cir. 1987).

6
7 In further support of the penal nature of this arbitrary action, the
8 California Supreme Court has held that the purpose of §7031 is to
9 ("[deter] unlicensed persons from engaging in the contracting business").
10 *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*,
11 36 Cal. 4th 412, 423 (2005). ("[S]anctions imposed for the purpose of
12 deterring infractions of public laws are inherently punitive because
13 'deterrence [is] not [a] legitimate non-punitive governmental
14 objectiv[e].'" *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). The Court of
15 Appeal also held that ("the [judgment against Plaintiff] [was] not
16 remedial"). Opinion, p.14. ("[A] civil sanction that cannot fairly be said
17 **solely** to serve a remedial purpose, but rather can only be explained as
18 also serving either retributive or deterrent purposes, is punishment, as
19 we have come to understand the term".) *Austin v. United States*, 509 U.S.
20 602, 610 (1993). (emphasis added). For purposes of the Excessive Fines
21 Clause, ("the question is not . . . whether forfeiture . . . is civil or criminal,
22 but rather whether it is punishment"). *Ibid.* ("As to what is a penal
23 action the rule is that where an action is founded upon a statute and the
24 only object is to recover a penalty or forfeiture, it is clearly a penal
25 action"). *Gawthrop v. Fairmont Coal Co.*, 74 W. Va. 39, 40 (Sup. Ct. of
26 Appeals 1914).
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(“If the statute under which the forfeiture alleged is penal, it will be treated as a criminal forfeiture”). *Seifuddin*, p.1078 (9th Cir.)

Having been denied all of the heightened protections of criminal proceedings, including the assistance of counsel and the relief of the excessive fines, cruel and unusual punishment clause, the “trial” and “appellate” Courts were without *in personam* or subject matter jurisdiction to render or affirm “judgment”. The “judgments” are void as (“[a] Court of California does not have jurisdiction to render judgment that violates ...the Constitution for the United States”). *County of Ventura v. Tillet*, 133 Cal. App. 3d 105, 110 (1982); Code of Civil Procedure 410.10. (“A State of the United States may not exercise jurisdiction through its Courts when to do so constitutes a violation of any clause of the Constitution of the United States”). Restatement (First) of Conflict Laws §429– What Constitutes a Valid Judgment, Comment e. (“To act judicially, a court... must be an impartial tribunal and parties to be bound by the judgment or decree must have had a reasonable notice and an opportunity to be heard (see §§72 and 75)”). *Id.* Comment c.

See especially *Buis v. State*, 1990 OK CR 28 (1990) and *Johnson v. Zerbst*, 304 U.S. 458, 467 (1938) (“compliance with this constitutional mandate [requiring the assistance of counsel] is an essential

1 jurisdictional prerequisite to a federal court's authority to deprive an
2 accused of his life or liberty. If the accused, however, is not represented
3 by counsel and has not competently and intelligently waived his
4 constitutional right, U.S. Const. amend. VI stands as a jurisdictional bar
5 to a valid conviction and sentence depriving him of his life or his
6 liberty”). Also, (“[t]he difference in degree of burden of the burden of
7 proof in criminal and civil cases precludes application of the doctrine of
8 res judicata”). *Helvering v. Mitchell*, 303 U.S. 39, 397 (1938).

10 Defendants and/or their counsel know, or reasonably should know,
11 the “judgments” in this case were obtained through fraud on the Court
12 and other substantive and procedural due process and protected Rights
13 violations that denied Plaintiff a full and fair opportunity to be heard at
14 “trial” and on “appeal”. Counsel has been a practicing attorney for
15 nearly forty years and the record of this case is abound with Plaintiff’s
16 cries to the Court – all served upon Defendants – evidencing this
17 deprivation of Rights and excessive, cruel, and unusual punishment
18 upon which counsel had a duty to act– some of which is presented as the
19 documents appended to Defendants Motion.

22 Counsel’s duties, as declared by Business and Professions Code
23 §6068 are to: (“support the Constitution; to counsel or maintain those
24 actions, proceedings, or defenses only as appear to him.. legal or just...;
25 to employ, for the purpose of maintaining the causes confided to him or
26 her those means only as are consistent with truth, and never to seek to
27 mislead the judge or any judicial officer by an artifice or false statement
28

1 of fact or law; and not to encourage either the commencement or
2 continuance of an action or proceeding from any corrupt motive of
3 passion or interest. Each of these duties has been breached.
4

5 In concert, the judge and justices involved in this case and of the
6 Supreme Court of California have hundreds of years of experience— all
7 of whom have also deliberately chosen to fail to perform their
8 constitutionally mandated duty to exercise jurisdiction where it should
9 and deny it when it shouldn't. *Cohens v. Virginia*, 19 U.S. 264, 404
10 (1821).
11

12 Plaintiff's *verified* complaint provides facts and evidence that
13 impeach the presumptive jurisdiction/validity of the trial and appellate
14 Court "judgments" upon which Defendants rely as "res judicata". In
15 furtherance of their scheme, Defendants now appear to be committing
16 fraud on this Court by filing a Motion to have Plaintiff's valid claims
17 dismissed by asserting the purported validity of these void judgments as
18 grounds for them to continue their heinous criminal activity.
19

20 Defendants offer no declaration of facts or evidence specifically
21 controverting the evidence presented by Plaintiff, which is also self-
22 evident upon the face of the judgment roll⁶, now before this Court as
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25 ⁶ Pursuant to Federal Rules of Evidence, Rule 201(c)(2), Plaintiff requests this Court
26 take judicial notice of the judgment roll of the Superior Court of California, County
27 of Orange, Case number: 30-2015-00805807, and the Fourth District Court of
28 Appeal Case number G055075. Plaintiff has supplied the required materials
annexed hereto.

1 Exhibits [I], [J], [K]⁷, and [L]. (“The jurisdiction of any court exercising
2 authority over a subject may be inquired into in every other court, when
3 the proceedings in the former are relied upon, and brought before the
4 latter, by a party claiming the benefit [thereof]”). *Williamson v. Berry*,
5 *49 U.S. 495*, 540-543 (1850). (“Any judicial record may be impeached by
6 evidence of want of jurisdiction in the court...of collusion between the
7 parties, or fraud in the party offering the record, in respect to the
8 proceedings”). Cal. Code Civ. Proc. §1916. (“Fraud destroys the validity
9 of everything into which it enters. It affects fatally even the most solemn
10 judgments and decrees”). *Ira Nudd v. George Burrows*, 91 US 426, 440
11 (1875). See also Plaintiffs Declaration in Support of this Opposition
12 annexed hereto.
13

14 (“The inherent power of a federal court to investigate whether a
15 judgment was obtained by fraud, is beyond question...A federal court
16 may bring before it by appropriate means all those who may be affected
17 by the outcome of its investigation”). *Universal Oil Products Co. v. Root*
18 *Refining Co.*, 328 U.S. 575-6 (1946).
19

20
21 PLAINTIFF’S COMPLAINT PLEADS COLORABLE CLAIMS THAT
22 ARE PLAUSIBLE ON THEIR FACE AND SUPPORTED BY
23 COMPETENT SWORN TESTIMONY REGARDING
24 AUTHENTICATED EVIDENCE
25

26
27 ⁷ The Clerk’s Transcript is complete up to 11/17/17 and includes all transcript
28 documents submitted on “appeal”.

1 Plaintiff has plead colorable claims “arising under” Article 1,
2 section 10; Article 4, section 4; Article 6, section 2 and the 4th, 5th, 6th, 7th,
3 8th, and 14th Amendments to the Constitution that are not insubstantial,
4 frivolous or immaterial. *Bell v. Hood*, 327 U.S. 678, 681-685 (1946). He
5 spent 111 pages testifying and preparing a comprehensive brief on the
6 facts and law of the case evidencing the wholly unconstitutional nature
7 of the purported “judgments” against him and that his claims are
8 “plausible on [their] face”. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
9 The claims are plausible on their face because Plaintiff has (“plead
10 factual content [under oath pertaining to authenticated evidence] that
11 allows the court to draw the reasonable inference that the
12 defendant(s) [are] liable for the misconduct alleged” [and the judgment
13 against Plaintiff is void]). *Ibid*. His complaint contains specific, detailed
14 factual (“allegations [arising under the Constitution] plausibly
15 suggesting (not merely consistent with”) an entitlement to the relief he
16 is seeking. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

17
18
19 Plaintiffs testimony and the authenticated evidence presented in
20 his complaint and declaration annexed hereto reveals that the evidence
21 required to substantiate Defendants “disgorgement” claim at “trial” and
22 “appeal” is entirely absent from the record and that: (1) he was
23 repeatedly denied substantive and procedural due process by the
24 “Court’s” acting in concert with Defendants to deprive him of his
25 Constitutionally protected Rights; (2) that there has not been a *valid*
26 judicial determination effecting the Rights of the parties; (3) that the
27 matters herein have *not* been adjudicated and are therefore not barred
28

1 by preclusion or the Rooker–Feldman doctrine; (4) that Defendants and
2 their counsel engaged in a conspiracy to fraudulently procure the
3 jurisdiction of the trial Court (and ultimately the appellate Court
4 affirming judgment in their favor) by intentionally manipulating their
5 testimony, knowingly withholding evidence central to establishing the
6 elements of their “claim” and/or proving Plaintiff’s innocence; and
7 subjecting Plaintiff to a wholly arbitrary and unconstitutional civil and
8 criminal racket perpetrated by members of the California Bar
9 Association for decades, cloaked as an action for “disgorgement” under
10 the laws of unjust enrichment when what it really is/was is an *in*
11 *personam* penal forfeiture intended to require Plaintiff to forfeit his
12 entire qualifying life estate. This claim also includes relying upon a
13 judgment they know to be invalid to attach a fraudulent lien on the real
14 property held in the name of The Living Trust of Adam Bereki.
15

16 (“A “fraud on the court” occurs where it can be demonstrated,
17 clearly and convincingly, that a party sentiently set in motion some
18 unconscionable scheme which is calculated to interfere with the judicial
19 system's ability impartially to adjudicate a matter by improperly
20 influencing the trier or unfairly hampering the presentation of the
21 opposing party's claim or defense”). *Aoude v. Mobil Oil Corp*, 892 F.2d
22 1115, 1118 (1989) citing *England v. Doyle*, 281 F.2d 304, 309 (9th Cir.
23 1960). This is precisely what is occurring here.
24

25 (“[A] federal district judge can order dismissal or default where a
26 litigant has stooped to the level of fraud on the court”). *Aoude*, p.1119
27 citing *Wyle v. R.J. Reynolds Indus, Inc.*, 709 F.2d 585, 589 (9th. Cir 1983)
28

1 ("courts have inherent power to dismiss an action when a party has
2 willfully deceived the court and engaged in conduct utterly inconsistent
3 with the orderly administration of justice").
4

5 ROOKER–FELDMAN DOES NOT BAR INJURIES CAUSED BY
6 DEFENDANTS
7

8 (Where federal Plaintiff... [complains] of a legal injury caused by
9 an adverse party, Rooker–Feldman does not bar jurisdiction). *Noel v.*
10 *Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003).
11

12 ROOKER–FELDMAN AND THE PULLMAN ABSTENTION
13 DOCTRINE DO NOT BAR FACIAL CHALLENGES TO THE
14 CONSTITUTIONALITY OF STATE STATUTES WHEN THE STATE
15 HAS ALREADY UPHELD THE CONSTITUTIONALITY THEREOF

16 Plaintiff is also challenging the Constitutionality of three State
17 statutes on their face *and* as applied. The facial challenge to the
18 constitutionality of a statute (“[does] not require review of a judicial
19 decision in a particular case [and] [t]he federal Court therefore, has
20 subject matter jurisdiction to address that issue”)⁸, (“[because it is] a
21 challenge to the validity of the rule rather than a challenge to an
22 application of the rule”). *Hall*, p. 1157.
23
24
25

26
27 ⁸ *Hall*, *supra*, citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462,
28 486-7 (1983).

1 The People must have access to a fair and impartial tribunal
2 capable of adjudicating their Rights under the Constitution which, as
3 evidenced, is not available in CALIFORNIA in this instance. The People,
4 including Plaintiff, have nowhere else to go. This issue is also not barred
5 by the Pullman Abstention Doctrine because the California Supreme
6 Court has already upheld the Constitutionality of §7031(a) and (b). See
7 *MW Erectors*, supra; *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52
8 Cal. 3d 988 (1991). The federal Courts must step in when State Courts
9 are unable or unwilling to protect federal rights. See for e.g. *Allen*, supra
10 p.101. Furthermore, the appellate Court has repeatedly refused to
11 examine the public policy behind §7031 to determine there is a
12 reasonable relationship between its intent and the “remedy” enforced
13 thereby. See *Rambeau v. Barker*, 2010 Cal. App.4th (2010) Unpub. Lexis
14 5610 (“[a]s a judicial body, we are not permitted to second-guess these
15 policy choices”). *Id.* p.16. and Opinion, p.16. The Court in *Alatraste v.*
16 *Cesar’s Designs*, 183 Cal. App. 4th 656, 673 (2010) admits that both it and
17 the Legislature know that permitting reimbursement [under §7031] may
18 result in **harsh and unfair** results to an individual contractor. This is
19 evidence Plaintiff was also not given a fair hearing.

22 The harsh and unfair penalties and heinous abuses of legal process
23 perpetrated upon Plaintiff have resulted in and will continue to result
24 in irreparable harm in that Plaintiff is having to spend years of his life
25 in correcting these “judgments” Defendants never had authority to
26 ‘prosecute’ and the “Court’s” never had authority to render or affirm
27 thereof as they violate numerous Constitutional protections.

1 Furthermore, Plaintiff has been affirmatively disabled and restrained
2 from earning a living in his profession as a contractor based upon this
3 “judgment” for more than two years since he cannot afford to pay the
4 “judgment” or obtain a payment bond to restore his license and gain
5 employment. Business and Professions Code §7071.17. As a result, he
6 also cannot afford to pay an attorney and the Court has denied an
7 appointment thereof. The stress of the violation of these rights and the
8 necessity to protect his liberty and property has also resulted in ongoing
9 physical, psychological, and emotional suffering including health
10 complications causing him to regularly seek and receive ongoing medical
11 treatment from numerous physicians across multiple specialties. There
12 have been hundreds of appointments for various forms of treatment and
13 counseling, specialized tests and examinations, and emergency room
14 visits for panic and anxiety attacks. See also 18 USC §1859 (3)– forced
15 labor by means of the abuse, or threatened abuse of legal process.
16

17
18
19 **THERE WAS NO JUDICIAL DETERMINATION OF PLAINTIFF’S**
20 **RIGHTS AND PLAINTIFF WAS SUBJECTED TO AN EX POST**
21 **FACTO LAW.**

22 The absence of the evidence to substantiate a claim for disgorgement
23 under the laws of restitution and unjust enrichment as identified in
24 Plaintiff’s verified complaint and his Declaration in support hereof
25 clearly demonstrates the Court was without subject matter jurisdiction
26 to render judgment absent the evidence of a claim and that by doing so
27 and then punishing Plaintiff, it deprived him of a judicial hearing as
28

1 required by Article 1, section 10 and created an Ex Post Facto Law, also
2 in violation of Article 1, section 10. ("Laws considered ex post facto laws,
3 within the words and the intent of the prohibition, include: (1) Every law
4 that makes an action done before the passing of the law, and which was
5 innocent when done, criminal; and punishes such action. Every law that
6 alters the legal rules of evidence, and receives less, or different,
7 testimony, than the law required at the time of the commission of the
8 offence, in order to convict the offender. All these, and similar laws, are
9 manifestly unjust and oppressive"). *Calder v. Bull*, 3 U.S. 386 (1798). See
10 also ("Just as "[c]onviction upon a charge not made would be sheer denial
11 of due process," so is it a violation of due process to convict and punish
12 a man without evidence of his guilt") *Thompson v. City of Louisville*, 362
13 U.S. 199, 206 (1960).

14 15 16 JOINER 17

18 Because ("[a] void judgment is, in legal effect, no judgment. By it
19 no rights are divested. From it no rights can be obtained") *Bennett v.*
20 *Wilson*, 122 Cal. 509, 513-14 (Sup. Ct. 1898) it is unknown what interest
21 the State Courts have therein. Plaintiff is technically not asking this
22 Court to review anything, but instead to declare what is evident on the
23 face of the judgment. However, if the Court sees otherwise, Defendants
24 are error that the State Courts cannot be joined as parties. See *Ex parte*
25 *Young*, 209 U.S. 123, 152, 159-160 (1908) (superseded by statute on
26 other grounds). The addition of the California Superior and appellate
27
28

1 Courts and/or their officers as parties subject to an equitable action
2 seeking injunctive relief would not divest this Court of subject matter
3 jurisdiction. See *August v. Boyd Gaming Corp.*, 135 Fed. App. 731, 732
4 (5th Cir. 2005). There has been no prejudice to these potential parties
5 Plaintiff is aware of and Defendants have already stipulated to Plaintiff
6 filing an amended complaint pending the outcome of this Motion.
7

8 If the Court declares the judgment against Plaintiff is void, and/or
9 dismisses the action against Plaintiff as *required* by Cal. Penal Code
10 §1382 (“[c]ourt shall order the action to be dismissed... when a person
11 has been held to answer for a public offense and an information is not
12 filed against that person within 15 days”) this particular amendment
13 involving the State Courts may also not be necessary. However, it may
14 be necessary to make amendments to include the California Attorney
15 General and the Governor of California regarding the Constitutionality
16 of the State statutes claim and certainly for the addition of Defendants
17 counsel pursuant to the conspiracy claims. While counsel has not raised
18 this issue pursuant to Cal. Civil Code §1714.10, Plaintiff’s claims qualify
19 under both exceptions to this rule in that ((1) the attorney has an
20 independent legal duty to...Plaintiff, and (2) the attorney’s acts go
21 beyond the performance of a professional duty to serve the client and
22 involve a conspiracy to violate a legal duty in furtherance of the
23 attorney’s financial gain [Business and Professions Code §6068]). See
24 §1714.10 sub–section(c) and *Klotz, Milbank, Tweed, Hadley & McCloy*,
25 238 Cal. App. 4th, 1339 (2015).
26
27
28

CONCLUSION

For these reasons (“it is not beyond doubt that Plaintiff can prove no set of facts in support of his claim[s]”. *Platsky v. CIA*, 953 F.2d 26, 29 (2d. Cir. 1991) citing *Haines v. Kerner*, 404 U.S. 521, 595 (1972). FRCP 8(a)(2) (requires only a short and plain statement of a claim giving Defendants notice and the grounds it rests upon showing that Plaintiff is entitled to relief). *Twombly*, p.555. Plaintiff has done just that. Moreover, Plaintiff’s allegations and evidentiary support thereof rise far beyond mere speculation and are evidenced on the face of the judgment roll. *Ibid*. Defendants admit their understanding thereof on p.6 (lines 9-12) of their Motion and offer no contradictory testimony or evidence to Plaintiff’s evidence directly impeaching the record.

The declaratory, injunctive, restitutionary, and any other relief as the Court sees fit is, or will be appropriate to redress a portion of Plaintiff’s injuries. Plaintiff however, asks for leave of this Court to further amend his complaint to provide additional clarity regarding claims pursuant to 42 USC §1983 and conspiracy to commit deprivation of Rights under §42 USC §1983, amongst others. He further wishes to amend the relief requested to include damages and punitive damages and a demand for a jury trial and potentially other relief as his investigation continues.

For all these reasons herein and Plaintiff’s verified complaint this Court has the authority to hear and determine his claims.

1 This Court should dismiss Defendants Motion to Dismiss and
2 dismiss the case against Plaintiff in case 30-2015-00805807 as *required*
3 by Cal. Penal Code §1382 and/or pursuant to this Court's inherent
4 power to dismiss an action when a party has willfully deceived the court
5 and engaged in conduct utterly inconsistent with the orderly
6 administration of justice.
7

8 Plaintiff is entitled to continue to offer proof of his claims and
9 should be allowed to amend his complaint in the interest of justice.
10 (Court errs if court dismisses the pro se litigant without instruction of
11 how pleadings are deficient and how to repair pleadings). *Platsky v. Cia*,
12 953 F.2d 1251 (2d. Cir. 1993).
13

14 Respectfully submitted,
15

16 
17 Adam Bereki
18
19
20
21
22
23
24
25
26
27
28

11/27/19

ORIGINAL

Adam Bereki
818 Spirit
Costa Mesa, California [92626]
949.241.6693
abereki@gmail.com
In Propria Persona

United States District Court
Central District of California

Adam Bereki, a man

Plaintiff

vs.

Gary Humphreys, a man;

Karen Humphreys, a woman;

Defendants

Case No.: 8:19-CV-02050
(CBM)(ADSx)

PLAINTIFFS DECLARATION IN
SUPPORT OF HIS OPPOSITION
TO DEFENDANTS MOTION TO
DISMISS

REQUEST FOR ORAL
TESTIMONY

Hearing: Dec. 17, 2019; 10AM;
Courtroom 8B

Honorable Consuelo Bland
Marshall

1 (“In evaluating subject matter jurisdiction on a motion to dismiss, a
2 court may consider the ‘(1) the complaint alone, (2) the complaint
3 supplemented by undisputed facts evidenced in the record, or (3) the
4 complaint supplemented by undisputed facts plus the court’s resolution
5 of disputed facts”). *Tewaru De-Ox Sys. Inc v. Mountain States/Rosen*
6 *Ltd. Liab. Corp.*, 757 F. 3d 481, 483 (5th Cir. 2014).
7

8
9
10 DECLARATION OF ADAM BEREKI

11
12 I, Adam Bereki, declare:

13 I have personal knowledge of the matters set forth herein and if
14 called upon to testify, could and would competently testify to the
15 following which substantiates that I was not given a full, fair, and
16 impartial hearing because I was not allowed to meet and oppose the
17 following evidence that was never presented and I was denied numerous
18 constitutional safeguards:
19

20
21 It should first be noted that I scheduled a meeting with
22 Defendant’s counsel, William Bissell, on November 12, 2019 at 10AM in
23 an attempt to prepare a statement of undisputed facts (*Tewaru*, supra)
24 pursuant to rules 7b of the Standing Order of this Court and Local Rule
25 7–3. I interpreted Rule 7b to mean that we were to meet in person and
26 resolve all of the issues we could so as not to trouble the Court with
27 trifles or other matters that could be swiftly addressed without the use
28

1 of Court time. It was my intent to prepare a mutual statement of
2 undisputed facts in the cooperation of Mr. Bissell for use in a Motion for
3 Summary Judgment I intended to file, but also for purposes such as this
4 Opposition, which I conveyed to him. I began the meeting by providing
5 Bissell a printed copy of the email I had sent him on October 31, 2019,
6 which is a list of my proposed undisputed facts (Exhibit [M] p.599¹). As
7 I attempted to work through the list with him, Bissell stated:
8

9
10 *“That’s not how this is gonna work. How this works is were not*
11 *gonna come up with a joint statement for a motion for summary*
12 *judgment... I’m not gonna help you with your motion. You need to*
13 *come up with your facts and we will respond to those.”*

14 *“Frankly I really haven’t even looked at this [referring to the*
15 *proposed undisputed facts email, Exhibit [M] p.1] because I have*
16 *other things to do and this isn’t really high on the list”.*

17 I reaffirmed my intent that I was meeting to have meaningful
18 communication about the undisputed facts to be able to complete the
19 Motion and comply with the Court’s standing order. Bissell replied:
20

21 *“That’s not my function here... I’m not gonna sit here and lets work*
22 *on your motion so that you can put something together that is*
23 *undisputed. You need to hire your own attorney to do that cause I’m*
24 *not gonna do it”.*

25
26
27 ¹ All of Plaintiffs Exhibits are numbered sequentially since the inception of the case
28 for easier reference.

1 I reassured counsel I was not seeking his help to write this motion
2 and strictly wanted to work on a joint statement of undisputed facts.
3 Counsel continued to refuse and stated:
4

5 *"You've wasted so much time, so much court time, so much*
6 *Humphreys time, on frankly... clearly you understand it's been a*
7 *waste of time so far. You haven't accomplished a damn thing. It's*
8 *just one loss after another".*

9 An example of a simple resolution of facts I was seeking is
10 pertinent to share. Refer to Exhibit [C]. This is a document that was
11 created by Defendants or their agents that shows the payments they
12 made to either me or my company. While there are inaccuracies in it
13 which I will elaborate on below, the document superficially shows that
14 about half of the payments were made to me and the other to my
15 company, totaling \$848,000. My first proposed statement of undisputed
16 facts was: "There is no evidence on the record of this case that Adam
17 Bereki was paid \$848,000 by the Humphreys for the performance of
18 remodel construction work." Counsel refused to agree. He claimed
19 Defendants position was that all payments were made to me despite
20 their being no evidence of this fact on the record and their own evidence
21 clearly indicating otherwise. This is a very crucial matter because the
22 trial Court ordered me to disgorge compensation that was never paid to
23 me, but rather to a licensed contractor and payments to licensed
24 contractors are not illegal. §Business and Professions Code 7031(b) only
25 requires the return of compensation paid to unlicensed contractors.
26
27
28

1 There simply is no evidence on the record of this case that I was
2 paid \$848,000 as the judgment order, Exhibit [D] p.211, indicates. See
3 also Exhibit [M] pp.606-608 pertaining to my attempts after the meeting
4 to obtain Bissell's cooperation.
5

6 As will be further evidenced below, Defendants and their counsel
7 have established a repeat pattern and practice at "trial" and on "appeal"
8 of manipulating facts to change their testimony to the opposite of
9 previous representations or testimony and/or becoming evasive and
10 argumentative to simple, direct attempts at stating the facts supported
11 by actual evidence. In other words, the record reflects they have
12 significant credibility issues they have used in a manner to violate due
13 process and commit fraud on the court to gain a civil advantage and are
14 seeking to rely upon here to have my case dismissed.
15
16

17 It is imperative that this behavior be confronted and addressed
18 immediately because it continues to cause me harm for reasons
19 articulated in my pleadings. The method I feel most effective is to adduce
20 oral testimony from counsel at the Motion hearing with this Court's
21 permission pursuant to Local Rule 7-6 and *United Commer. Ins. Serv. v.*
22 *Paymaster Corp.*, 962 F.2d 853, 858 (9th Cir. 1992). ("Where...questions
23 of credibility predominate, the district court should hear oral
24 testimony"). The questions will be focused upon the presentation of
25 actual facts in the record as pertinent to the resolution of this Motion
26
27
28

1 whereby the Court can observe this unscrupulous behavior first hand–
2 evidence that cannot be produced or considered in any other way.
3

4 I hereby request this Court allow me to take the oral testimony of
5 William Bissell at the hearing on December 17, 2019.
6

7 *****
8

9
10 I. THERE IS NO SUBSTANTIAL EVIDENCE I PERFORMED
11 THE WORK AS A REQUIRED ELEMENT OF THE OFFENSE.
12

13 On March 27th and 28th, 2017, “civil” proceedings were conducted
14 in the form of a “trial” in the Superior Court of California, County of
15 Orange, Central Justice Center, in case number 30–2015–00805807. I
16 was present throughout the proceedings and witnessed all of the
17 testimony and evidence that was produced by all witnesses, including
18 myself.
19

20
21 Prior to the trial, I was informed through the First Cause of Action
22 of Defendants First Amended Cross Complaint (Exhibit [K] Part 2 of 3
23 p.744) and their subsequent Motion for Severance (Exhibit [K] p.780),
24 that the “trial” was to *solely* commence upon Defendant’s first cause of
25 action pursuant to Business and Professions Code §7031(b) for
26 “Disgorgement of funds paid” (Exhibit [K] p.744 (lines5–6). This claim
27 alleged that I – as opposed to my licensed company, Spartan – acted as
28

1 an unlicensed contractor in the remodel of Defendants vacation home.
2 The claim further alleged that Defendants had paid me \$848,000 and
3 were entitled to a full refund as §7031(b) declares that all compensation
4 paid to an unlicensed contractor shall be returned.
5

6
7 Before addressing the compensation issue, it's imperative to
8 examine the elements of a §7031(b) offense that amongst other things
9 require proof of who performed the work– see subsection three below:
10

11 Judicial Council of California Civil Jury Instruction, CACI §4560

12 (“[Name of plaintiff] claims that [name of defendant] did not have
13 a valid contractor’s license during all times when [name of
14 defendant] was performing services for [name of plaintiff] under
15 their contract. **To establish this claim, [name of plaintiff] must
16 prove all of the following:**

- 17 1. **That there was a contract between [name of plaintiff]
18 and [name of defendant] under which [name of defendant]
19 was required to perform services for [name of plaintiff];**
- 20 2. **That a valid contractor’s license was required to
21 perform these services; and**
- 22 3. **That [name of plaintiff] paid [name of defendant] for
23 contractor services that [name of defendant] performed as
24 required by the contract”). (emphasis added).**

25 See Exhibit (H), p.299. In February 2017, prior to Defendants filing
26 of their First Amended Complaint against me under §7031(b), they filed
27 a Motion for Summary Judgment against my company, The Spartan
28

1 Associates, Inc, "Spartan". Spartan had sued Defendants for about
2 \$82,000 in materials and labor services owed pursuant to the agreement
3 it had with Defendants to remodel their home.
4

5 In their Motion for Summary Judgment, p.300, Defendants
6 represented the following "undisputed facts" – in relevant part – to the
7 Court:
8

9 *"This Motion is made on the grounds that the "undisputed facts"*
10 *establish each element necessary for Defendants to prevail upon*
11 *each cause of action asserted by Plaintiff [Spartan] in its complaint*
12 *filed herein. Those material facts which are undisputed are:*

13 *1. In April of 2012 The Spartan Associates, or its predecessor was*
14 *doing business as a licensed general contractor doing home*
15 *improvement work...*

16 *6. In April of 2012, The Spartan Associates entered into an*
17 *agreement with the Humphreys for the performance of home*
18 *improvement work on the Humphreys condominium unit.*

19 *7. The home improvement work to be performed by the*
20 *Spartan Associates, Inc. on the Humphreys condominium unit*
21 *had a value in excess of \$500". (emphasis added).*
22
23

24 The purpose of Defendants representing these facts to the Court
25 was to invoke the judicial power of California to have Spartan's claims
26 dismissed on summary judgment because it had allegedly failed to
27 comply with some of the requirements of the Business and Professions
28

1 Code regarding the ingredients of a home improvement contract. See
2 page 300, (line 27):
3

4 *“The above listed undisputed facts entitle defendants to judgment*
5 *as a matter of law on [Spartan’s causes of action]”.*
6

7
8 The Court ultimately denied Defendants Motion on the grounds
9 that they did not establish they were entitled to the relief requested as
10 a matter of law. Exhibit [K] p.477.
11

12 It was *after* the denial of this Motion that both Defendants
13 suddenly reversed their position and claimed they had **never** entered
14 into an agreement with Spartan at trial, but instead with me and a man
15 named Glenn Overley:
16

17 Exhibit [I]: Reporters Transcript– Direct exam. Karen Humphreys:
18

19 Page 42 (lines 26–43)

20 Q(William Bissell, Defendants Counsel): Did you ever enter into
21 any agreement with Spartan Associates, on this project?

22 A: No.
23

24 Page 40 (lines 1-6)

25 Q: In April of 2012, did you believe you were contracting with
26 Spartan Associates?

27 A: No.
28

1 Q: Who did you believe you were contracting with?

2 A: I believed I was contracting with Adam Bereki and his partner
3 Glenn Overley.
4

5 Pages 86 (line 25)-87– Direct exam. Gary Humphreys:
6

7 Q(Bissell): Was there any point during Mr. Bereki's involvement
8 in this project in which you thought that you had contracted with
9 Spartan Construction?

10 A: No.
11

12 Page 84 (lines 6-11):

13 Q: Who did you believe you were contracting with as of April 5,
14 2012 for this particular project?

15 A: Adam Bereki and his partner, Glenn Overley.
16

17 At trial, Defendants testified that the same April 2012 agreement
18 they had entered into with Spartan (Exhibit [K] p.232 (lines 17-19) was
19 now the agreement they had entered into with me and Glenn Overley,
20 who was never a party to this action.
21

22
23 Defendants were flatly prohibited by the doctrine of unclean hands
24 from reversing their testimony. ("[A] party will not be allowed to file an
25 amendment contradicting an admission made in his original pleadings")
26 , 79 Cal. App. 2d 151, 172 (1947) citing *Bank of Woodland v. Heron*, 122
27 Cal. 107 (Cal. Sup. Ct. 1898). ("The misconduct which brings the 'clean
28

1 hands' doctrine into operation must relate directly to the transaction
2 concerning which complaint is made”) *Id.* p73. See also *The Maxims of*
3 *Practice and Pleadings*² of Equity §63, p.54³: (“*He who makes assertions*
4 *that are contrary to each other will not be heard.* This maxim applies to
5 both pleadings and proof. A bill or answer containing contradictory
6 statements becomes a nullity as to such statements; nor will the Court
7 allow a pleading to be amended, when the amendment is contradictory
8 or repugnant to the pleading”).
9

10
11 The April 2012 agreement is found at Exhibit [L] pp.541–546. As
12 exhibited, this email is a conversation between myself (as Spartan’s
13 qualifying individual and responsible managing officer⁴; see testimony
14 *infra* regarding who performed the work) and Karen Humphreys. The
15 email commemorates an in person meeting I had with both Defendants
16 at their vacation home several days prior regarding the work they
17
18

19
20 ² So fundamental are these maxims [of Equity] that he who disputes their authority
21 is regarded as beyond the reach of reason. *Gibson*, *supra* *Maxims and Principles of*
22 *Jurisdiction* fn. 2 citing Kent’s *Com.* 533.

23 ³ *A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice,*
24 *Proofs and Process of The Jurisprudence of Equity*, Henry R. Gibson, Second
25 Edition 1907

26 ⁴ Business and Professions Code § 7096. “For the purposes of this chapter, the term
27 “licensee” shall include.. any named responsible managing officer, ...or personnel of
28 that licentiate whose appearance has qualified the licentiate under the provisions of
Section 7068.” See Exhibit [] evidencing I was Spartan’s qualifying individual and
responsible managing officer.

1 requested to be performed. The conversation primarily consists of Karen
2 saying yes or no to each item of work I listed.
3

4 The significance of this email is that not only does it not
5 represent the agreement for work that was performed on the
6 project (CACI §4560 (1)), there is no known testimony or
7 evidence that I performed any of the specific work listed
8 therein, (CACI §4560 (3)). The truth is, nearly all of the work
9 in this email was abandoned because Defendants purchased a
10 second condominium unit and decided to combine the two
11 units into one large one. This email mentions nothing about a
12 second unit or the combination thereof.
13
14

15 The main agreement that governed the work on the project was the
16 building plans approved by the City of Newport Beach Building
17 Department listing Spartan as the general contractor. See Exhibit [L]
18 pp.499–501, carefully noting Spartan is listed as the contractor on each
19 page and the “Description” of the project on p.500 as: “188SF Demo to
20 Combine 2nd Floor Units (B&C) to Create 1, Reroof the Entire House
21 “Work in Progress”. Again, this work is not mentioned anywhere in the
22 April 2012 agreement.
23
24

25 On appeal, Defendants then represented to the Court of Appeal in
26 their Brief, Exhibit [M] p.696 (first paragraph):
27
28

1 *“this action arises out of a home remodel project which began in*
2 *April of 2012 on two units of a three unit condominium...The*
3 *project consisted of what at the time, were two small separate*
4 *adjoining units into a single unit”*

5
6 This is not the evidence Defendants presented at trial. The April
7 2012 email was a discussion about a “face lift” remodel work for \$68,000
8 for one unit with the possibility of adding a second phase project for
9 another \$75,000. It was not an agreement to completely remodel the
10 building for \$848,000. The record is devoid of evidence that any of this
11 work was ever conducted by me or anyone else.
12

13
14 The appellate Court relied upon these misrepresentations in its
15 Opinion *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469, p.2:
16 (“The couple hired Bereki to do some remodeling which would, among
17 other things, turn the two units into a single unit”).
18

19
20

21 There is no evidence on the record that I was hired to turn two
22 units into a single unit.

23 With regard to who performed the work on the project, I testified
24 to the following at trial when questioned by Spartan’s counsel:
25

26 Exhibit [I] p.125 (lines 2-8):
27
28

1 Q: Mr. Bereki, who performed the work at the via lido nord
2 project?

3 A: The Spartan Associates.
4

5 Q: Were you ever doing any of the work in your personal
6 capacity as opposed to on behalf of Spartan Associates?
7

8 A. No.
9

10 Exhibit [I] p.142 (line 25)– p.143 (line 6):

11 Q: And Spartan Associates performed all the work on this
12 project; correct?

13 A: Yes, well with the exception of these subcontractors that were
14 hired, yes.
15

16 This testimony was not rebutted by Defendants.
17

18
19 Defendants counsel even represented to the Court that Spartan
20 performed work on the project:
21

22 *“Now Spartan did perform work on the job.”* Exhibit [J] p.40 (lines
23 17-18).
24

25 There is no lawful authority under the Business and
26 Professions code requiring me to “disgorge” payments for work
27 I never performed.
28

1 In connection with their burden of producing evidence of who
2 performed the work on the project pursuant to CACI §4560 (3), one of
3 Defendants most egregious acts in the totality of their scheme to commit
4 fraud upon the Court was the knowing withholding of evidence they had
5 personally obtained through their own expert witness, Robert Brockway,
6 who evidenced that Spartan had performed the work on the project. Mr.
7 Brockway was the expert they needed to call to testify at trial as to who
8 performed the work on the project. But they never called him. Here's
9 why: Refer to Exhibit [M] p.626 (lines 16-20), Bissell's declaration
10 whereby he declares that Brockway will provide testimony as to who
11 performed the work on the project by Adam Bereki and/or Spartan. This
12 is significant in and of itself as the record reveals not only that Brockway
13 didn't testify, but that Defendants also failed to provide evidence on this
14 issue because Brockway's conclusions did not coincide with their earlier
15 representation of the undisputed facts to the Court that they contracted
16 with Spartan and Spartan performed the work. Exhibit [H] p.300.
17 Brockway's testimony would not support their scheme to commit fraud
18 on the Court.
19
20
21

22 I understand that testimony not subject to cross-examination is
23 ordinarily hearsay. However, Mr. Brockway's deposition testimony falls
24 under several exceptions to the hearsay rule – Federal Rules of Evidence
25 801(d)(2)(B)(C) and possibly (E) – whereby the statement is offered
26 against an opposing party and: (B) is one the party manifested that it
27 adopted to believe was true (Defendants Motion for Summary Judgment
28

1 “undisputed facts”) and (C) was made by a person whom the party
2 authorized to make a statement on the subject (Brockway was hired as
3 Defendants expert witness whom they authorized to provide testimony
4 on this subject matter, according to Bissell’s declaration). Additionally,
5 this information goes to further substantiate Plaintiff’s allegations of
6 Defendants successful scheme to commit fraud on the Court.
7

8
9 In his deposition, Brockway testified that he had reviewed
10 Spartan’s payroll records, W-2’s, and photographs of the work being
11 performed on the project (as provided by Spartan in discovery) to
12 determine the means and methods that were or were not applied to the
13 job and how long these tasks took. See Exhibit [M] pp.621-2. Brockway’s
14 examination, as he admits, was based on Spartan’s official business
15 records, (not mine).
16

17
18 An example of what it appears Brockway did based on his
19 testimony can be found at Exhibit [M] pp.635–638. Page 635 is an image
20 Spartan provided in discovery. The date and time stamp information
21 was added in the bottom right corner of this image by me and
22 authenticated by my signature thereon. It reflects what is stored in the
23 digital file’s data and indicates the image was taken on November 26,
24 2012. In the image are Spartan’s employee’s Shawn Jackson and Kevin
25 McClain performing work on the north side of defendant’s property at
26 the ground level. On pages 636 and 637 are Jackson and McClain’s
27 Spartan timecards for that pay period. The timecards both read “The
28

1 Spartan Associates, Inc.” Page 638 is the payroll summary from ADP, a
2 company Spartan hired to provide payroll and workers compensation
3 insurance for its employees working on the project. See Exhibit [L] pp.
4 509–523 for the ADP contract with Spartan. The summary lists the
5 correct pay period and the pay received by Jackson and McClain for this
6 specific work. This clearly evidences Defendants earlier “undisputed
7 facts” that Spartan performed the work. It also corroborates my and
8 Spartan’s testimony at trial.
9

10
11 In addition, Brockway also testified Spartan, (not me) was
12 terminated on or about 8-28-13. Exhibit [M] p. 623. See also Exhibit [L]
13 p.524, a “Notice of Cessation of Labor” addressed to Spartan. Finally,
14 Brockway further refers to the April email communication as “loosely,
15 what the scope of work is, certainly what intent of Spartan was then
16 they started the project.” Exhibit [M] p. 624. (Brockway specifically does
17 not refer to the April 5 email as the agreement between the Humphreys,
18 Mr. Overley and I.) Brockway never mentions Mr. Overley at any time.
19
20

21
22 Defendants did not present substantial evidence that I
23 performed any of the specific work listed in the April 2012 email
24 as required by CACI §4560 (2) and (3). I was not given a fair or
25 impartial hearing to meet evidence that was never presented
26 and that whatever evidence the Court relied upon is false.
27
28

1 The Court should also examine the Declaration of Glenn Overley,
2 Exhibit [M] p.662, admitted under the same hearsay exceptions as
3 Brockway's testimony. Overley declares that he has never entered into
4 an agreement with Karen and Gary Humphreys for any remodel
5 construction work; and (2) that he was hired by Spartan, not Adam
6 Bereki to perform work on Defendants project.
7

8
9 II. THERE IS NO EVIDENCE I WAS COMPENSATED \$848,000.
10

11 Refer to CACI §4560 (3):

12 3. That [name of plaintiff] **paid** [name of defendant] for
13 contractor services that [name of defendant] performed as
14 required by the contract"). (emphasis added).
15

16 And Business and Professions Code §7031(b) requiring the return
17 of all compensation **paid** to an unlicensed contractor.
18

19 Based upon the record, there was no evidence presented I was paid
20 \$848,000.
21

22 Refer to Exhibit [C], an extract of checks and wire transfers
23 Defendants or their agents created and provided to me and Spartan in
24 discovery. Exhibit [C] was admitted at trial. Reviewing the extract
25 *superficially* reveals that the Humphreys made checks payable to
26 Spartan/Spartan Associates/Spartan Const. (The Spartan Associates,
27 Inc.), in the amount of \$640,000. The Spartan Associates, Inc. was a
28

1 California Corporation (C2281697) and was a licensed general
2 contractor (lic #927244) for which I was the qualifying individual. “The
3 qualifying individual is the person who meets the experience and
4 examination requirements for the license and who is responsible for
5 exercising that direct supervision and control of their employer’s or
6 principal’s construction operations to secure compliance with CSLB’s
7 laws, rules, and regulations”⁵. I directly supervised and controlled
8 Spartan’s construction operations on Defendants project. Exhibit [I]:
9 Reporters Transcript, pp. 142 (line 25) – 143 (line 6).

11
12 At “trial”, I provided rebuttal testimony pertaining to inaccuracies
13 in the Extract. First, I testified that all of the checks after line 4 were
14 deposited in Spartan’s corporate checking account, including the checks
15 that were made payable to me. I had asked the Humphreys to make the
16 checks payable to Spartan (See Exhibit [K] p.313, (lines 25–28) and
17 p.251 (lines 15-19) whereby both Defendants testified “we were later
18 requested to by Mr. Bereki to make our checks...payable to The Spartan
19 Associates, Inc.”). In these instances, they clearly did not do so. See also
20 Exhibit [I]: Reporter’s Transcript, pp.141 (line 17) – 142 (line 24). I also
21 testified that of the \$90,000 initially made payable to me, \$10,000 was
22
23

24
25
26 ⁵ [http://www.cslb.ca.gov/Resources/FormsAndApplications/ApplicationForOriginalCo](http://www.cslb.ca.gov/Resources/FormsAndApplications/ApplicationForOriginalContractorsLicense.pdf)
27 [ntractorsLicense.pdf](http://www.cslb.ca.gov/Resources/FormsAndApplications/ApplicationForOriginalContractorsLicense.pdf) or Google: Application For Original Contractors License and
28 search “Qualifying Individual” within the application.

1 transferred to Spartan's account. Based upon this direct testimony and
2 evidence, Spartan was paid \$758,000. This testimony was not challenged
3 or rebutted by Defendants at "trial".
4

5 See Exhibit [D] p.211, whereby the judgment order signed by the
6 trial Court judge, David Chaffee, declares Damages in the amount of
7 \$848,000 payable to the Humphreys. See also pp. 38–41 of Defendants
8 Motion, reflecting arguments I made on "appeal" concerning this issue
9 in my opening brief. As represented by Defendants in their Motion on
10 p.8 (line 26) the appellate Court found no merit in my appeal, holding
11 there was substantial evidence to support the trial Court's judgment and
12 thereby affirming it.
13
14

15 Where is the evidence presented at trial I was paid \$848,000?
16

17 Defendants presentation of my Opening Brief on appeal reveals
18 the partial basis of my complaint– that I was not given a full, fair, and
19 impartial hearing and that substantive due process was violated by the
20 Courts. On appeal, I presented evidence of clear error by the trial Court
21 which ruled on evidence that does not exist. Instead of correcting these
22 errors, the appellate Court relied upon the same non-existent evidence
23 and affirmed the trial Court's judgment.
24
25
26
27
28

1 It is entirely unknown what evidence the trial and appellate
2 Court's relied upon because it is not stated in either the trial Court's
3 minute order after trial (Exhibit [A]) or in the appellate Court's opinion.
4

5
6 There is no evidence on the record of this case that I was paid
7 \$848,000. I was not given a full and fair opportunity to meet
8 this purported evidence that was never presented and which
9 does not exist in fact.
10

11
12 III. THERE IS NO EVIDENCE I WAS UNJUSTLY ENRICHED OR
13 GAINED OR PROFITED \$848,000 AS REQUIRED BY AN
14 ACTION FOR DISGORGEMENT UNDER THE LAWS OF
15 RESITUTION AND UNJUST ENRICHMENT
16

17 I have been unable to find a statutory definition of the term
18 "disgorgement" as used by the Defendants in their First Amended
19 Complaint and the trial and appellate Courts – in California State or
20 Federal law.
21

22
23 The most definitive definition and explanation of a cause of action
24 for "disgorgement" I've found is that of Restatement (Third) of
25 Restitution and Unjust Enrichment §51 (2011) titled: §51 Enrichment
26 by Misconduct; Disgorgement; Accounting.
27
28

1 In California law, the case of *Meister v. Mensinger*, 230 Cal. App.
2 4th 381 (2014) which references portions of Restatement §51 and
3 discusses how California’s public policy regarding disgorgement actions
4 is derived from Civil Code §3517 whereby “no one can take advantage of
5 his own wrong.”
6

7
8 The United States Supreme Court has also adopted portions of
9 Restatement §51 in *Kokesh v. SEC*, 581 U.S. ____ (2017) in reference to
10 Securities and Exchange disgorgement cases.
11

12 Subsequent to trial, the Court produced a Minute Order: Exhibit
13 [A]. The order states on pp. 203a-203b “The Court finds judgment for the
14 Cross Complainants, Karen and Gary Humphreys (First Cause of
15 Action, for **Disgorgement** of Funds Paid) against cross-defendant,
16 Adam Bereki.
17

18
19 On appeal, the Fourth District Court of Appeal, Division Three,
20 declared that “the disgorgement consequence is not remedial.”
21 *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469, “Opinion” p14.
22 The Court cited two authorities to hold that Disgorgement is not penal,
23 *Huffman and Morris*:
24

25 (“Bereki contends the disgorgement remedy is penal in nature and,
26 therefore, a contractor defending against such a claim must be
27 afforded all criminal rights and protections. Not so. Disgorgement
28

1 is a civil consequence — "an equitable remedy" — for performing
2 work without a required contractor's license. *S.E.C. v. Huffman*,
3 996 F.2d 800, 802 (5th Cir. 1993)... For similar reasons, Bereki's
4 attempt to characterize disgorgement as an award of
5 unconstitutional punitive damages is unavailing. As an equitable
6 remedy, disgorgement is not punishment and, therefore, it does not
7 implicate the excessive fines clause of the Eighth Amendment to
8 the United States Constitution. (*S.E.C.*, *supra*, 996 F.2d at p. 802;
9 see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-
10 63"). *Id.* p.10.
11

12
13 Based upon the Huffman and Morris cases cited by the appellate
14 Court and their holding §7031 is a non-punitive action for disgorgement
15 Defendants were required to produce evidence that I was unjustly
16 enriched in the amount of \$848,000.
17

18
19 There is no evidence on the record of this case that I gained or
20 profited – whether “unjustly” or otherwise – from any
21 involvement I had in interacting with the Humphreys on
22 behalf of Spartan, and certainly not in the amount of
23 \$848,000.
24

25
26 IV. THERE IS NO INFORMATION FILED ON THE RECORD OF
27 THIS CASE.
28

1
2 Pursuant to Penal Code §1382 (a), ("The Court, unless good cause
3 to the contrary is shown, **shall** order the action to be dismissed in the
4 following cases:

5 (1) When a person has been held to answer for a public offense
6 and an information is not filed against that person within
7 15 days").
8

9 See also *Buis v. State*, 1990 OK CR 28.

10
11 No information, indictment, or prosecution in the name of the
12 People of California appears on the record of this case.
13

14
15 At no time prior to trial, nor at any time during trial was I ever
16 informed: 1) that this action would subject me to punishment that would
17 cause me to forfeit an estimated 46 times my qualifying net worth; 2)
18 that I could and/or would be forced into bankruptcy to discharge the
19 "judgment" since I do not have the money to pay such a
20 punishment/judgment; 3) That further punishment would be imposed by
21 Business and Professions Code §7071.17 whereby the Contractors State
22 License Board would deny me the opportunity to obtain a contractor's
23 license in my own name until the judgment was paid or an equivalent
24 payment bond posted, without any hearing or opportunity to defend
25 myself or appeal of the Board's "judgment"; 4) that I was entitled, based
26 upon the nature and severity of the punishment to all of the heightened
27 protections of criminal proceedings including but not limited to: a) the
28

1 right to know the true nature and cause of the accusation including the
2 constitutionally cognizable jurisdiction and body of law applicable
3 thereto and venue; b) the right to a trial by jury; c) the Right to confront
4 my accuser(s); d) the assistance of counsel; e) the presumption of
5 innocence until proven guilty; and, f) proof beyond a reasonable doubt,
6 none of which were recognized as my Rights at “trial”.
7

8
9 V. THERE IS NO EVIDENCE I AM INCOMPETENT OR
10 DISHONEST TO ACT AS A CONTRACTOR.
11

12 The California Supreme Court has held (“the purpose of the
13 licensing law is to protect the public from incompetence and dishonesty
14 in those who provide building and construction services”). *Hydrotech*
15 *Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (Supreme Ct.
16 1991).
17

18
19 There is no evidence on the record of this case I am
20 incompetent or dishonest to act as a general contractor. See
21 Exhibit [M] pp.719–724 evidencing that the Contractors
22 State License Board determined I was competent to be the
23 qualifying individual for Spartan’s general contractor’s
24
25
26
27
28

1 VI. THE UNDISPUTED FACTS

2
3 I contend the undisputed facts in this case are those
4 numbered 1,2,6, & 7 as represented by the Humphreys in
5 their Motion for Summary Judgment, Exhibit [H] p. 300 and
6 all facts that I have attested to herein in support of these
7 undisputed facts.
8

9
10
11 V. EVIDENCE IN DEFENDANTS POSSESSION

12
13 Defendants are in possession of the official building plans approved
14 by the City of Newport Beach listing Spartan as the contractor. They
15 shall bring these plans to the hearing so the Court can compare them
16 with the April 2012 email to see the work required to be performed by
17 the plans does not remotely coincide with the April 2012 email, and that
18 the work found within the plans is not found anywhere evidenced on the
19 record of this case.
20

21
22 If Defendants are in possession of any of the evidence I have stated
23 herein that I am unable to locate on the record of this case, they shall
24 notify me immediately and provide me an authenticated copy thereof
25 and bring the original to the hearing for inspection.
26

27 VII. AUTHENTICATION OF EXHIBITS
28

1
2 Exhibit [K] pp. 1-1150 is a true and correct certified copy of the
3 Superior Court Clerk's Transcript in case 30-2015-00805807 as
4 provided to me by the Court of Appeal, Fourth Appellate District. Pp.
5 1151-1536 were provided to me by records and exhibits supervisor of the
6 Superior Court, Jim Rice and are a true and correct copy thereof.
7

8
9 Exhibit [L] is a true and correct copy of the Exhibits admitted or
10 referenced during testimony at trial by both parties and admitted on
11 appeal.
12

13 Exhibit [M] are true and correct copies the Exhibits therein.
14

15 VIII. CONCLUSION
16

17 I have not been given a full, fair, and impartial hearing because I was
18 not allowed to meet the evidence referenced herein that was never
19 presented against me at trial and upon which I was adjudged.
20

21
22 ("It is as much a violation of due process to [punish a defendant]
23 following a conviction on a charge on which he was never tried as it
24 would be to convict him upon a charge that was never made"). *Cole v.*
25 *Arkansas*, 333 U.S. 201 (1948).
26
27
28

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3
4
5 Respectfully Submitted,

6 
7
8
9 Adam Bereki
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