

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)

FIRST AMENDED VERIFIED
COMPLAINT FOR:

AN INDEPENDENT ACTION/
CHALLENGE TO THE
JURISDICTION OF A STATE
COURT PURSUANT TO: ART. 1,
§10, ART. 4, §4, ART. 6, §2; 5TH,
6TH, 7TH, 8TH, 13TH& 14TH
AMENDMENTS

REQUEST FOR ASSISTANCE OF
COUNSEL

DECLARATORY RELIEF

INJUNCTIVE RELIEF

RESTITUTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	4
FOREWORD	10
NOTICE	10
JURISDICTION & VENUE.....	13
PARTIES	13
STATUTES.....	16
INTRODUCTION.....	16
BRIEF IN SUPPORT	25
“TRIAL”	25
REQUEST FOR APPOINTMENT OF COUNSEL.....	37
ANALYSIS OF §7031(b) & NO SUBSTANTIAL EVIDENCE AT TRIAL	45
§7031 ACTIONS ARE INTENDED TO PRODUCE “HARSH AND UNFAIR” RESULTS AND VIOLATE PRINCIPLES OF EQUITY JURISPRUDENCE	53
“APPEAL”	69
THERE WAS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURTS FINDINGS.....	69
NO JUSTICIABLE “CASE OR CONTROVERSY”	73
THE HYPOTHETICAL PRESUMPTION OF PLAINTIFF’S <i>ALLEGED</i> INCOMPETENCE	74
HYPOTHETICAL DAMAGES.....	78
NO CLAIM FOR “COMPENSATION”	78

CONCLUSION	82
THE TRIAL AND APPELLATE COURT’S LACKED SUBJECT MATTER JURISDICTION RESULTING IN A VOID JUDGMENT	82
APPLICATION TO THE INSTANT CASE.....	90
FRAUD IN THE PROCUREMENT OF JURISDICTION	94
CHALLENGE TO JURISDICTION– TRIAL.....	97
STANDARD(S) OF REVIEW.....	101
PRAYER FOR RELIEF	105
DECLARATION	110

TABLE OF AUTHORITIES

CASES

<i>Adams v Murakami</i> , 54 Cal. 3d 105, 117-118 (Sup. Ct. 1991)	27
<i>Austin v. United States</i> , 509 U.S. 602 (1993)	passim
<i>Bailey v. Alabama</i> , 219 U.S. 219, 239 (1911)	73
<i>Bank or America Nat'l Trust & Sav. Assoc. v. McLaughlin</i> , 37 Cal. App. 2d 415, 417 (1940)	104
<i>Bass v. Hoagland</i> , 172 F.2d 205 (1949)	83, 99
<i>Bauers v. Heisel</i> , 361 F.2d 581, 587 (1966)	56, 77
<i>Bell v. Wolfish</i> , 441 U.S. 520, 539 (1979)	38, 68
<i>Bennett v. Wilson</i> , 122 Cal. 509 (Sup. Ct. 1898)	98
<i>BFI v. Kelco Disposal Inc.</i> , 492 U. S. 257, 271 (1989)	26
<i>Birdsall v. U.S.</i> , 93 U.S. 64 (1876)	78
<i>BMW of North America v. Gore</i> , 517 U.S. 559 (1996)	26
<i>Board of Education v. Barnette</i> , 319 U.S. 624, 638 (1943)	57
<i>Breedlove v. Breedlove</i> , 161 Cal. App. 2d 712 (1958)	105
<i>Calder v. Bull</i> , 3 U.S. 386 (1798)	91
<i>Casey v. Albertson's Inc.</i> , 362 F.3d 1254, 1260 (9th Cir. 2004)	9
<i>Chaparkas v. Webb</i> , 178 Cal. App. 2d 257, 259 (1960)	78
<i>Cohen v. Wright</i> , 22 Cal. 293, 319 (1863)	12, 34
<i>Cohens v. Virginia</i> , 19 U.S. 264, 404 (1821)	55, 86
<i>County of Ventura v. Tillet</i> , 133 Cal. App. 3d 105 (1982)	15
<i>Cross v. Berg Lumber Co.</i> , 7 P.3d 922 (2000)	22
<i>Ctr. for Individual Freedom v. Carmouche</i> , 449 F.3d 655, 662 (5th Cir. 2006)	100
<i>Cummings v. Missouri</i> , 71 U.S. 277 (1867)	91
<i>Dyett v. Turner</i> , 20 Utah 2d 403 (1968)	15
<i>Energy Mgmt. Corp. v. City of Shreveport</i> , 467 F.3d 471, 481 (5th Cir. 2006)	100
<i>Estate of Buchman</i> , 123 Cal. App. 2d 546, 559 (1954)	83
<i>Ex Parte Knowles</i> , 5 Cal. 300 (Sup. Ct. 1855)	86
<i>Ex Parte Va.</i> , 100 U.S. 339, 348 (1879)	87
<i>FCC v. Beach Commc'ns</i> , 508 U.S. 307, 315 (1993)	101

1	<i>Flemming v. Nestor</i> , 363 U.S. 603, 629 (1960)	32
2	<i>FRC v. General Electric Co.</i> , 281 U.S. 464 (1930)	12
3	<i>Frustuck v. Fairfax</i> , 212 Cal. App. 2d 345, 368 (1963)	79
4	<i>Furman v. Georgia</i> , 408 U.S. 238, 258 (1972)	57
5	<i>Gable v. Patton</i> , 142 F.3d 940, 944 (6th Cir. 1998)	100
6	<i>Gawthrop v. Fairmont Coal Co.</i> , 74 W. Va. 39, 41 (Sup. Ct. of Appeals 1914)	29
7	<i>Gen. Offshore Corp. v. Farrelly</i> , 743 F. Supp. 1177, 1188 (D.V.I. 1990)	100
8	<i>Goldberg v. Kelly</i> , 397 US 254 (1970)	32
9	<i>Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.</i> , 232 Cal. App. 4th 1332 (2015)	25
10	<i>Grannis v. Sup. Ct. of San Francisco</i> , 146 Cal. 245, 255 (Cal. Sup. Ct. 1905)	16
11	<i>Great-West Life & Annuity Insurance Co. v. Knudson</i> , 534 U.S. 204 (2002)	18, 45, 49
12	<i>Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.</i> , 527 U.S. 308 (1999)	18, 22, 49
13	<i>Haines v. Kerner</i> , 404 US 459 (1972)	10
14	<i>Hale v. Henkel</i> , 201 U.S. 43, 74 (1906).	12
15	<i>Heller v. Doe</i> , 509 U.S. 312, 319-20 (1993)	100
16	<i>Hydrotech Systems, Ltd. v. Oasis Waterpark</i> , 52 Cal. 3d 988, 955 (Supreme Ct. 1991)	66, 73
17	<i>In re admission to practice law</i> , 1 Cal. 2d. 61, 63, 67 (1934)	12, 34
18	<i>Ira Nudd v. George Burrows</i> , 91 US 426, 440 (1875)	84
19	<i>John Wills v. Citizens Nat. Bank</i> , 125 N.J.L. 546, 548 (1940)	47
20	<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	35, 42, 85
21	<i>Judicial Council of California v. Jacobs Facilities, Inc.</i> , 239 Cal. App. 4th 882 (2015)	53
22	<i>Kendall v. United States</i> , 37 U.S. 524, 613 614 (1838)	87
23	<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144 (1963)	36
24	<i>Klugh v. United States</i> , 620 F. Supp 892, 901 (1985)	97
25	<i>Knick v. Twp. of Scott</i> , 139 S. Ct. 2162 (2019)	33
26	<i>Kokesh v. SEC</i> , 581 U.S. ____ (2017)	18, 47, 69
27	<i>Lewis & Queen v. N. M. Ball Sons</i> , 48 Cal. 2d 141, 152 (CA Sup. Ct. 1957)	68
28	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560 (1992)	72

1	<i>MacMillan Petroleum Corp. v Griffin</i> , 99 Cal. App. 523, 533 (1929)....	98
2	<i>Marbury v. Madison</i> , 5 U.S. 137, 177-78 (1803)	56, 86
3	<i>Martin v. Hunter's Lessee</i> , 14 U.S. 304 (1816)	12
4	<i>McFaul v. Ramsey</i> , 61 U.S. 523, 525-6 (1858).....	11
5	<i>McKnight v. United States</i> , 98 U.S. 179, 186 (1879)	47
6	<i>Meadows v. Dominican Republic</i> , 817 F. 2d 517, 519 (1987)	98
7	<i>Meister v. Mensinger</i> , 230 Cal. App. 4th 381 (2014)	44
8	<i>Mertens v. Hewitt Assocs.</i> , 508 U.S. 248, 258 n.8 (1993)	50
9	<i>Miranda v. Arizona</i> , 384 U.S. 436, 491, (1966).....	72
10	<i>Murdock v. Pennsylvania</i> , 319 U.S. 305 (1943)	34
11	<i>MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.</i> ,	
12	36 Cal. 4th 412, 423 (CA Sup. Ct. 2005).....	38, 68
13	<i>Nashville, C. & St. Louis Ry. Co. v. Wallace</i> , 288 U.S. 249, 264 (1933) .	9
14	<i>Nebbia v. New York</i> , 291 U.S. 502 (1934).....	101
15	<i>Pac. Mut. Life Ins. Co. v. Haslip</i> , 499 U.S. 1, 47 (1991)	25
16	<i>Page v. Bakersfield Uniform & Towel Supply Co.</i> , 239 Cal App. 2d 762,	
17	774 (1966).....	78
18	<i>Parker v. Murdock</i> , 959 N.E.2d 1219, 1222 (2011)	97
19	<i>People ex rel. Becerra v. Superior Court</i> , 29 Cal. App. 5 th 486, 495 (2018)	
20	88
21	<i>People v. Greene</i> , 74 Cal. 400, 405 (Cal. Sup. Ct. 1887).....	17
22	<i>Perry v. Perry</i> , 270 Cal. App. 2d 769 (1969)	105
23	<i>Platsky v. Cia</i> , 953 F.2d 1251 (2d. Cir. 1993).....	10
24	<i>Powell v. Pennsylvania</i> , 127 U.S. 678, 696 (1889)	33, 55
25	<i>Rambeau v. Barker</i> , 2010 Cal. App.4 th (2010) Unpub. Lexis 5610	53
26	<i>Rochin v. Pat Johnson Manufacturing Co.</i> , 67 Cal. App.4 th 1228, 1239	
27	(1998).....	16, 82
28	<i>Romer v. Evans</i> , 517 U.S. 620, 633-34 (1996)	101
	<i>Root Ref. Co. v. Universal Oil Prods. Co.</i> , 169 F.2d 514, 534-5 (3 rd	
	Cir.1948)	96
	<i>Rufo v. Simpson</i> , 86 Cal. App. 4th 573, 620 (2001)	27
	<i>S.E.C. v. Huffman</i> (5th Cir. 1993) 996 F.2d 800, 802.....	70
	<i>Schomig v. Keiser</i> , 189 Cal. 596, 598 (1922)	32
	Scrutinizing Strict Scrutiny by Roy G. Speece, Jr. & David Yokum ..	101
	See <i>Cary v. Curtis</i> , 44 U.S. 236 (1845)	12
	<i>Sereboff v. Mid Atlantic Med. Servs., Inc.</i> , 547 U.S. 356, 364-65 (2006)	51
	<i>Shapiro v. Thompson</i> , 394 U.S. 618, 627-33 (1996).....	101

1	<i>Sinclair Paint Co. v. State Bd. Of Equalization</i> , 15 Cal. 4 th 866, 878	
2	(1997).....	76
3	<i>Styria, Scopinich v. Morgan</i> , 186 U.S. 1, 9 (1901)	86
4	<i>The Antelope</i> , 23 U.S. 66, 120 (1825)	34
5	<i>Thompson v. City of Louisville</i> , 362 U.S. 199, 206 (1960)	98
6	<i>Timbs v. Indiana</i> , 586 U.S. ____ 688 (2019)	26
7	<i>Town of Gilbert Prosecutor’s Office v. Downie</i> , 218 Ariz. 466 (2008)	48
8	<i>Twenty Nine Palms v. Bardos</i> , 210 Cal. App. 4 th 1435 (2014).....	53
9	<i>U.S. v. Beggerly</i> , 524 U.S. 38, 47 (1998)	91
10	<i>U.S. v. Philip Morris USA</i> , 310 F.Supp.2d 58, 62-63 (D.C. 2004) ..	49, 70
11	<i>United States v. \$132,245.00 In U.S. Currency</i> , 764 F.3d 1055, 1057-58	
12	(9 th Cir. 2014).....	29
13	<i>United States v. Bajakajian</i> , 524 U.S. 321, 328, 331 (1998)	28
14	<i>United States v. Deveaux</i> , 9 U.S. 61, 87 (1809)	86
15	<i>United States v. Munsey Trust Co.</i> , 332 U.S. 234, 239 (1947).....	47
16	<i>United States v. NEC Corp.</i> , 11 F.3d 136 (11 th Cir. 1993).....	75
17	<i>United States v. Shepard</i> , 269 F.3d at 884, 887-88 (7th Cir. 2001)	48
18	<i>United States v. Ursery</i> , 518 U.S. 267 (1996).....	28, 35
19	<i>Van Horne’s Lessee v. Dorrance</i> , 2 U.S. 304, 316 (1795).....	18
20	<i>Van Valkenburg v. Brown</i> , 43 Cal. 43, 47 (CA Sup. Ct. 1872)	14
21	<i>Vlandis v. Kline</i> , 412 U.S. 441, 446-8 (1973).....	73
22	<i>Ward v. Coleman</i> , 598 F.2d 1187 (10 th Circuit 1979)	36
23	<i>Whipley v. Mc Kune</i> , 12 Cal. 352, 356 (Sup. Ct. (1859)	78
24	<i>White v. Cridlebraugh</i> , 178 Cal. App. 4 th 506, 520 (2009).....	53
25	<i>Windsor v. McVeigh</i> , 93 U.S. 274 (1876).	75, 82, 97
26	<i>Yick Wo v. Hopkins</i> , 118 U.S. 356, 370 (1886)	35

STATUTES

27	16 Stat. 419	13
28	28 U.S.C. §1331	11
29	28 U.S.C. §1367	11
30	28 USC §1915(e)(1)	43
31	ARS 32-1164	29
32	ARS 32-1166	29
33	Business & Professions Code §21	13
34	Business & Professions Code §7031(b).....	21
35	Business & Professions Code §7096	74

1	Civil Code §3281	77
2	Civil Code §3517	44
3	Code of Civil Procedure §456	20
4	Code of Civil Procedure §632	105
5	Code of Civil Procedure §908	104
6	Code of Civil Procedure 410.10	15
7	Evidence Code §1401(a)	84
8	Evidence Code §550(b)	85
9	Evidence Code §600	73
10	Evidence Code 500.....	85
11	NRS 624.700	30
12	NRS 624.710	29

OTHER AUTHORITIES

13	A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907	10
14	Atny. Gen. Opinion 47-175.....	12, 34
15	Blackstone, Commentaries on the Laws of England, Volume 1	64
16	California Civil Jury Instructions CACI No. 4561	78
17	Congressional Globe April 5, 1866 pp. 1775-1776	15
18	Congressional Record Volume 113 Part 12 June 1967.....	15
19	Henry Campbell Black, A Dictionary of Law (St. Paul, Minn.: West Publishing Co., (1891), 794	12
20	Restatement (First) of Conflict Laws §429	99
21	Restatement (First) of Judgments §117	98
22	Restatement (First) of Restitution, § 160.....	51
23	Restatement (First) of Restitution, § 215.....	50
24	Restatement (Third) of Restitution and Unjust Enrichment §51... 44, 47	
25	Tulane Law Review Volume 28, 14 th Amendment.....	15

TREATISES

26	Crime and Forfeiture, Congressional Research Service by Charles Doyle	18
----	--	----

CONSTITUTIONAL PROVISIONS

27	14 th Amendment	15, 32, 90
----	----------------------------------	------------

1	5 th Amendment	32, 90
2	6 th Amendment	90
3	7 th Amendment	90
4	8 th Amendment	90
5	Article 1, Section 10.....	11
6	Article 4, Section 4.....	11
7	Article 6, Section 2.....	11, 71

FOREWORD

Plaintiff was arbitrarily ‘fined’ \$930,000 for allegedly performing construction work without a license. He was told by the Court of Appeal this was not punishment, and as a result, that Federal Constitutional protections regarding excessive fines or punishment did not apply.

If affirmed, this judgment will force Plaintiff into bankruptcy and divest him of his entire qualifying life estate. It represents a grave miscarriage of justice and cries out for this Court’s intervention.

NOTICE

Plaintiff is not an attorney and does not have any formal training in civil litigation. He has written this complaint as a brief on the facts and law with supporting authenticated evidence to substantiate his claim by the required standard of clear and convincing evidence¹. All Exhibits (with the exception of the Reporters Transcripts) annexed hereto have been bates numbered in the center of the page due to previous numbering

¹ See for e.g. (“Rule 60 (b)(3) allows the court to relieve a party from a final judgment for fraud, misrepresentation, or misconduct by an opposing party. Defendants must prove by clear and convincing evidence that the judgment was "obtained through fraud, misrepresentation, or other misconduct." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (internal citations and quotations omitted).

1 already existing on the Exhibit that does not pertain to this claim. The
2 Exhibits begin at page 200.

3
4 Plaintiff also requests that this Court take notice of the following:

5
6 “But the Constitution does not require that the case or controversy
7 should be presented by traditional forms of procedure, invoking
8 only traditional remedies. The judiciary clause of the Constitution
9 defined and limited judicial power, not the particular method by
10 which that power might be invoked.” *Nashville, C. & St. Louis Ry.
Co. v. Wallace*, 288 U.S. 249, 264 (1933).

11 Pro se litigants are held to less stringent pleading standards than
12 bar licensed attorneys. Regardless of the deficiencies in their
13 pleadings, pro se litigants are entitled to the opportunity to submit
14 evidence in support of their claims. *Haines v. Kerner*, 404 US 459
(1972).

15 Court errs if court dismisses the pro se litigant without instruction
16 of how pleadings are deficient and how to repair pleadings. *Platsky
v. Cia*, 953 F.2d 1251 (2d. Cir. 1993).

17
18 This action is governed by the Federal Rules of Evidence as enacted
19 December 1, 2018 and the Judiciary Act of 1789 conferring known
20 remedies of Equity jurisprudence. See A Treatise on Suits in Chancery,
21 Setting Forth the Principles, Pleadings, Practice, Proofs and Process of
22 The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907.
23
24
25
26
27
28

1 AMENDMENTS TO THE ORIGINAL COMPLAINT

2 Added section: STATUTES INVOLVED to include the text of §7031(a),
3 §7031(b).

4
5 Added “Kennedy Tests” for penal v. remedial analysis of a statute. See
6 Section REQUEST FOR ASSISTANCE OF COUNSEL.

7 Changed Declaration under penalty of perjury to comply with 28 USC
8 §1746.

9 Repaired misc. grammatical and formatting errors.

10 Replaced Exhibits [A] and [D] with documents authenticated by the
11 Superior Court Clerk.

12
13 Added Exhibit [F]: Motion For Judicial Notice on “appeal” concerning
14 the venue of trial, appeal and section §7031.

15 Added Exhibit [G]: Defendants original Cross-Complaint against
16 Plaintiff and Spartan.

17 Added Exhibit [H]: Defendants Motion For Summary Judgment and
18 Reporters Transcript Excerpts.

19 Added Exhibits [I] & [J]: Certified Reports Transcripts for both days of
20 “trial”.

21 Added section: FRAUD IN THE PROCUREMENT OF JURISDICTION.
22

23 Added section: STANDARDS OF REVIEW.

24 This list is not conclusive. Additional authorities were added throughout
25 the complaint/brief along with additional testimony by Plaintiff.
26
27
28

JURISDICTION & VENUE

This action is made pursuant to Article 1, Section 10, Article 4, Section 4, and Article 6, Section 2 of the Constitution for the United States, 28 U.S.C. §1331, and 28 U.S.C. §1367. It can also be seen as an Independent Action In Equity to relieve a party from a judgment, order or proceeding pursuant to FRCP Rule 60(d). However, see *McFaul v. Ramsey*, 61 U.S. 523, 525-6 (1858).

Plaintiff has submitted his claim to this Court under the presumption this is an Article III judicial, “Constitutional Court”, and that he is invoking the judicial power of the United States².

PARTIES

Plaintiff³ is a free white Citizen of the de jure State: California with inalienable Rights as recognized by the Declaration of Independence and the Constitution for the United States [1787-1791]. The claims he is making are pursuant to these Rights and under the common Law, not

² The US Supreme Court has held that Congress has no duty to create lower Courts and vest them with any or all of the judicial power of the United States. See *Cary v. Curtis*, 44 U.S. 236 (1845) (overruled on other grounds) and *Martin v. Hunter’s Lessee*, 14 U.S. 304 (1816). If this is not a judicial “Constitutional” Court (see e.g. *FRC v. General Electric Co.*, 281 U.S. 464 (1930)) with authority to exercise the judicial power of the United States in such a capacity as to resolve the issues raised herein under the Constitution, Plaintiff shall be notified in the first instance.

³ Plaintiff’s status and standing was never determined at trial.

1 statutory civil “~~rights~~” privileges⁴. (“His rights are such as existed by the
2 law of the land long antecedent to the organization of the State...”)⁵ and
3 antecedent to any statutory or other civil ~~rights~~ privilege enactments.
4

5 Plaintiff is not a citizen, “person subject to the jurisdiction thereof”
6 (accord: 14th Amendment) or statutory resident of the District of
7 Columbia, a municipal corporation ⁶⁷ chartered by Congress
8
9
10
11
12

13
14 ⁴ (“Since a license to conduct any of the regulated activities is a mere statutory
15 privilege [not a Right] – a creature of statute – it is at all times subject to legislative
16 control, including destruction or termination by the legislative process”). Cal. Op.
17 Atty. Gen. Opinion 47-175 citing *In re admission to practice law*, 1 Cal. 2d. 61, 63,
67 (1934); *Cohen v. Wright*, 22 Cal. 293, 319 (1863); [Citations].

18 ⁵ *Hale v. Henkel*, 201 U.S. 43, 74 (1906).

19 ⁶ MUNICIPAL CORPORATION. A public corporation, created by government for
20 political purposes, and having subordinate and local powers of legislation; e.g., a
21 county, town, city, etc. Henry Campbell Black, *A Dictionary of Law* (St. Paul, Minn.:
West Publishing Co., 1891), 794.

22 ⁷ “An Act to provide a Government for the District of Columbia,” ch. 62, 16 Stat. 419,
23 February 21, 1871; later legislated in “An Act Providing a Permanent Form of
24 Government for the District of Columbia,” ch. 180, sec. 1, 20 Stat. 102, June 11, 1878,
25 to remain and continue as a municipal corporation (brought forward from the Act of
26 1871, as provided in the Act of March 2, 1877, amended and approved March 9, 1878,
27 Revised Statutes of the United States Relating to the District of Columbia . . . 1873–
’74 (in force as of December 1, 1873), sec. 2, p. 2); as amended by the Act of June 28,
1935, 49 Stat. 430, ch. 332, sec. 1 (Title 1, Section 102, District of Columbia Code
28 (1940)).

1 masquerading as a “State”⁸ or as the “United States”⁹. (“The People of
2 California do not owe their Citizenship to the 14th Amendment. The
3 purpose of the 14th Amendment was to confer citizenship on the African
4 race”). *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (CA Sup. Ct. 1872).
5 (Plaintiff loves humanity in all its forms and believes we are all created
6 equally. While race is not an issue in this case, the treating of living
7 beings as if they are property or as fictions of law or artificial corporate
8 entities without inalienable Rights is an issue, and one that remains in
9 the “law” of this Country, unresolved).

11 Defendants status and standing is unknown and was also not
12 determined at trial.

16 ⁸ See for e.g. [The Act of June 30, 1864 \(13 Stat. 223, 306\), at section 182](#) SEC. 182.
17 (“And be it further enacted, That wherever the word state is used in this act it shall
18 be construed to include the territories and the District of Columbia, where such
construction is necessary to carry out the provisions of this act”).

19 See especially, Business & Professions Code §21 whereby (““State” means the State
20 of California, unless applied to the different parts of the United States. **In the latter
21 case, it includes the District of Columbia and the territories**”) noting carefully
22 use of the words “in this state” in the main statute involved in this case, §7031(b):
23 (“(b) Except as provided in subdivision (e), a person who utilizes the services of an
24 unlicensed contractor may bring an action in any court of competent jurisdiction **in
25 this state** to recover all compensation paid to the unlicensed contractor for
26 performance of any act or contract”). See Plaintiff’s Motion For Judicial Notice
27 concerning this issue, Exhibit [F].

28 ⁹ Code of Civil Procedure §17 (13): “State” includes the District of Columbia and the
territories when applied to the different parts of the United States, and the words
“United States” may include the district and territories.

Venue is proper in the Central District in that the events and conduct complained of herein all occurred in the Central District.

STATUTES

Business & Professions Code sections §7031(a) and (b):

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

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

INTRODUCTION

Plaintiff was effectively denied the Right to invoke the judicial power of the United States after being fined \$930,000 for allegedly doing remodel construction work without a contractor's license. As will be evidenced, there is no authority within the statutes involved or within common Law or Equity jurisprudence to render punishment in such fashion as to

1 financially destroy Plaintiff as has been done here. Even if there were
2 such State ‘authority’, it is flatly prohibited in this instance by the 5th,
3 6th, 7th, 8th, 13th, and 14th Amendments¹⁰, along with Article 1, §10 and
4 Article 4, §4 of Constitution for the United States. (“A Court of California
5 does not have jurisdiction to render judgment which violates ...the
6 Constitution for the United States”). *County of Ventura v. Tillet*, 133 Cal.
7 App. 3d 105, 110 (1982); Code of Civil Procedure 410.10.
8

9
10 This is a direct attack on the jurisdiction of the California trial and
11 appellate Courts in case numbers – 30-2015-00805897, and G055075,
12 respectively. It is a direct as opposed to a collateral attack because the
13 issues presented forthwith, were never actually litigated by a competent
14 Court with in personam and subject matter jurisdiction.
15

16 Even if this action were to be considered a “collateral attack”, under
17 California law (“[a] judgment void on its face because rendered when the
18 court lacked personal or subject matter jurisdiction or exceeded its
19 jurisdiction in granting relief which the court had no power to grant, is
20 subject to collateral attack at any time”). *Rochin v. Pat Johnson*
21 *Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). (“The doctrine of
22
23

24
25 ¹⁰ Plaintiff invokes the 14th Amendment only under duress as it was never lawfully
26 ratified. See *Dyett v. Turner*, 20 Utah 2d 403 (1968); Congressional Globe April 5,
27 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967; Tulane
28 Law Review Volume 28, 14th Amendment. The Amendments pertaining to the Bill
of Rights can reasonably all be guaranteed within the provisions of Article 4, §4.

1 res judicata is inapplicable to void judgments”). *Ibid.* See also *Grannis*
2 *v. Sup. Ct. of San Francisco*, 146 Cal. 245, 255 (Cal. Sup. Ct. 1905):
3

4 (“[W]here the question upon which the jurisdiction depends is one
5 of law purely the jurisdiction over the subject-matter is always
6 open to collateral inquiry. [Citations] Mr. Freeman says: "When a
7 tribunal has not jurisdiction over the subject-matter, no averment
8 can supply the defect; no amount of proof can alter the case...If a
9 court grants relief, which under no circumstances it has any
authority to grant, its judgment is to that extent void.”” (1 Freeman
on Judgments, sec. 120.)”).

10
11 Under California law, a judgment void on its face¹¹ disclosing a lack of
12 jurisdiction in the Court rendering the decision has been characterized
13 as “a dead limb on the judicial tree which should be lopped off.” *People*
14 *v. Greene*, 74 Cal. 400, 405 (Cal. Sup. Ct. 1887). The common Law allows
15 such a judgment to be collaterally attacked at any time even if the issue
16 of the Court’s jurisdiction has been litigated in the original action or a
17 subsequent proceeding, which, as evidenced herein, it hasn’t been.
18

19
20 Additionally, the doctrines of res judicata/collateral estoppel do not
21 overrule or supersede the Constitution for the United States. See Article
22 6, §2. Therefore, to deny this action on the grounds of these doctrines
23 would be to advocate the overthrow of the Constitution and allow a
24

25
26
27 ¹¹ Plaintiff requests he be allowed to file the “judgment roll” consisting of both the
28 clerk’s and reporter’s transcripts as well as all future pleadings electronically.

1 wholly unconstitutional judgment rendered without authority to stand
2 as stare decisis and therefore amend the Constitution.

3
4 *****

5
6 On appeal, the Court held the \$930,000 judgment against Plaintiff was
7 a “non-punitive” “equitable remedy”.
8

9
10 This is incorrect.

11
12 The United States Supreme Court’s binding precedents in *Kokesh v.*
13 *SEC*, 581 U.S. ____ (2017), *Great-West Life & Annuity Insurance Co. v.*
14 *Knudson*, 534 U.S. 204 (2002), *Grupo Mexicano de Desarrollo, S.A. v.*
15 *Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), *Barnet v. Nat’l Bank*, 98
16 U.S. 555, 559 (1879) and *Austin v. United States*, 509 U. S. 602 (1993)
17 along with Restatement (Third) §51 of Unjust Enrichment and
18 California’s own public policy all substantiate Plaintiff’s claim that the
19 judgment against him was purely punitive, not an “equitable remedy”.
20

21
22 The penalty imposed upon Plaintiff is an estimated 46 times his
23 qualifying net worth and 186 times the comparable criminal¹² monetary
24 penalty for the same offense, which is a fine *up to* \$5,000. If upheld it
25

26
27 ¹² See Plaintiff’s Petition For Writ of Certiorari, Case No. 18-1416 (denied Oct. 7 2019)
28 for an analysis of California’s unlicensed contractor statutory arsenal. pp.24-28.

1 will force him into bankruptcy resulting in a forfeiture of estate, a
2 punishment historically reserved only for felonies and treason¹³.

3
4 (“A statute shall never have an equitable construction in order to
5 overthrow or divest an estate”). *Van Horne’s Lessee v. Dorrance*, 2 U.S.
6 304, 316 (1795).

7
8
9 There’s an enlightening story called “Grandma’s Ham” that speaks to
10 exactly what’s going on here:

11
12 A husband and his wife were in their kitchen. The husband was
13 sitting at the kitchen table reading the newspaper while his wife
14 was preparing a ham for dinner. He noticed his wife cut off about
15 one inch from both ends of the ham before placing it in the pan. He
16 asked her why she had cut the ends off, proclaiming “that’s a waste
17 of good ham!”

18
19 His wife replied “that’s the way my mom prepared the ham.”

20
21
22 He then asked why her mom cut the ends off. The wife didn’t know.

23
24 ¹³ (“At common law, anyone convicted and attained for treason or a felony, forfeited
25 all his lands and personal property. Attainder, the judicial declaration of civil death,
26 occurred as a consequence of the pronouncement of final sentence for treason or
27 felony...After the Revolution, the Constitution restricted the use of common law
28 forfeiture in cases of treason, and Congress restricted its use, by statute, in the case
of other crimes.”) Source: <https://www.hsdl.org/?view&did=762005> Crime and
Forfeiture, Congressional Research Service by Charles Doyle.

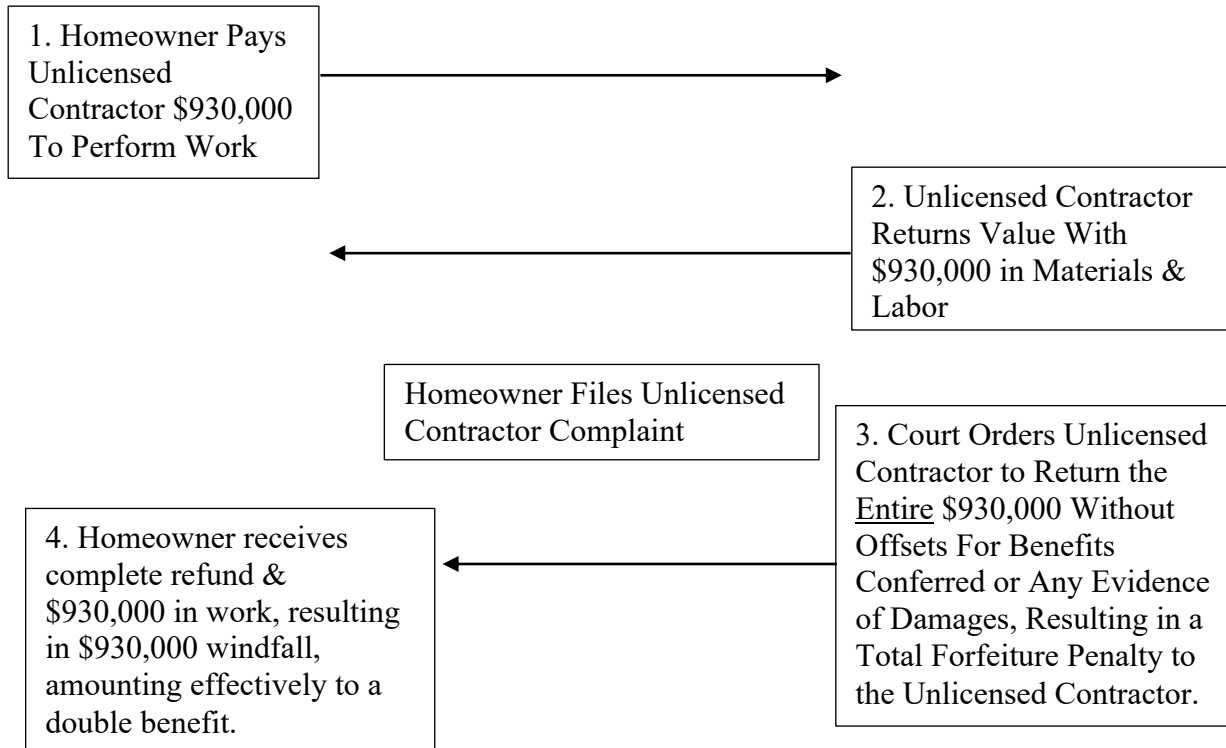
1
2 Later, the wife called her mom to find out why she cut the ends of
3 the ham off. Her mom said “because that was the way my mom
4 used to do it.”
5

6 The wife’s grandma had passed away several years earlier, but her
7 Grandpa was still living. She called him and asked why Grandma
8 cut the ends off of the ham. He was silent as he thought for a
9 moment. Then he replied, “so the ham could fit in the baking pan.”
10
11

12 California has been cutting both ends off the ham for decades and when
13 challenged is unable to provide any sound lawful reasoning to support
14 its position that defies more than a century of common Law and Equity
15 jurisprudence and falls in direct conflict with the binding precedent of
16 the United States Supreme Court. Defendants have also repeatedly
17 failed to “establish on the trial the facts conferring jurisdiction and
18 creating finality”). California Code of Civil Procedure §456.
19

20 California’s actions however don’t just result in a few wasted inches of
21 good ham, but in the total financial destruction of the People of
22 California who become victims of what can only be described as ‘judicial’
23 tyranny...the same tyranny Constitutions, Bills of Rights, and
24 Declarations of Independence were designed to protect against. These
25 protections are in effect useless if those entrusted with their care are
26 either unable to recognize or flatly refuse to acknowledge them.
27
28

1 The simplicity of how the judgments are punitive and not equitable is
2 illustrated by this diagram:



17 The formula for the penalty in every case is simple... It equates to the
18 exact amount of benefits conferred on the homeowner. In other words,
19 one million dollars-worth of work equals a one million dollar fine. \$22
20 million dollars-worth of work equals a \$22 million dollar fine.

23 This scheme clearly results in the unjust enrichment of the homeowner
24 by punishing the contractor, further subjecting him or her to a condition
25 of involuntary servitude.

1 Business & Professions Code §7031(b), requires the “return of all
2 compensation paid to an unlicensed contractor”. But because an
3 unlicensed contractor has already returned the money they were paid by
4 doing the work (supplying labor and building materials), anything
5 ordered by the Court in addition thereto without evidence of damages or
6 ill-gotten gains or profits is not equitable or remedial. It is strictly
7 punitive and in these cases entirely arbitrary. Curiously, the Court of
8 appeal admits §7031 judgments are not remedial, yet also claims they’re
9 an “equitable *remedy*”.

11
12 Further evidence these actions are not remedial is that they do not
13 require any proof the unlicensed contractor caused any harm
14 whatsoever, or, that under the laws of unjust enrichment, the unlicensed
15 contractor gains or profits anything whatsoever. In other words, no
16 evidence is required that an unlicensed contractor is enriched *at the*
17 *expense* of the homeowner, which is a key element to a claim of *unjust*
18 *enrichment*. An excellent dissertation of this subject can be found in
19 *Cross v. Berg Lumber Co.*, 7 P.3d 922 (2000) by the Supreme Court of
20 Wyoming.

22
23 §7031 actions are designed to impose excessive, cruel, and unusual
24 penalties capable of destroying a defendant under the guise of civil
25 proceedings and judgments labeled “equitable remedies”.

26
27 (“[T]he equitable powers conferred by the Judiciary Act of 1789 did
28 not include the power to create remedies previously unknown to

1 equity jurisprudence. Even when sitting as a court in equity, we
2 have no authority to craft a "nuclear weapon" of the law like the
3 one advocated here"). *Grupo Mexicano De Desarrollo v. Alliance*
4 *Bond Fund*, 527 U.S. 308, 333 (1999).

5 ("To accord a type of relief that has never been available before --
6 and especially a type of relief that has been specifically disclaimed
7 by longstanding judicial precedent -- is to invoke a "default rule,"
8 not of flexibility but of omnipotence"). *Id.* p. 322.

9 In *Barnet v. Nat'l Bank*, 98 U.S. 555, 559 (1879) the US Supreme Court
10 determined the National Currency Act of Congress of June 3, 1864 (13
11 Stat. 99, sect. 30) which required the total forfeiture of all illegally
12 obtained interest by a bank, along with a recovery of twice the interest
13 paid, to be a penal suit. There is no substantial difference in the instant
14 case. The Court further held, "[t]o that [a penal suit] the party aggrieved
15 or his legal representative must resort. He can have redress in no other
16 mode or form of procedure. The statute which gives the right prescribes
17 the redress, and both provisions are alike obligatory upon the parties."

18
19
20 Plaintiff was subjected to purely penal proceedings disguised as a
21 remedial "civil suit" in "Equity" while being denied all of the heightened
22 protections of criminal proceedings and the 8th Amendment's protections
23 against excessive fines, cruel, or unusual punishment. This behavior
24 deprived both the trial and appellate Courts of subject matter
25 jurisdiction to render or affirm judgment in Defendants favor resulting
26 in a void judgment.
27
28

1 As a result this Court has a mandatory, non-discretionary duty to vacate
2 the void judgment in this case.
3

4 5 **BRIEF IN SUPPORT**

6 7 **“TRIAL”**

8 In a “civil” action in the Superior Court of California, County of Orange,
9 Case No. 30-2015-00805807, Plaintiff was accused of performing
10 construction work without a contractor’s license pursuant to §7031(b) of
11 the Business and Professions Code. Plaintiff was the “qualifying
12 individual ¹⁴ ” and responsible managing officer of his company’s
13 contractor’s license whom he claimed was the contractor on the project.
14

15
16 The trial Court found Plaintiff was the contractor, not his company, and
17 ordered a general forfeiture in the amount of \$930,000 against him
18 pursuant to §7031(a) and (b) because he did not have a contractors
19 license in his own name. This forfeiture equated to the amount both he
20

21
22 ¹⁴ “The qualifying individual is the person who meets the experience and examination
23 requirements for the license and who is responsible for exercising that direct
24 supervision and control of their employer’s or principal’s construction operations to
25 secure compliance with CSLB’s laws, rules, and regulations”.

26 [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 and his company had been paid by Defendants, along with work his
2 company had done but wasn't paid for, amounting to about \$82,000.

3
4 The Court referred to this forfeiture as "disgorgement". See Exhibit [A]:
5 Trial Court Minute Order.

6
7 This forfeiture was imposed without any evidence Plaintiff had gained
8 or profited \$930,000 as commensurate with an action for "disgorgement"
9 under the laws of restitution and unjust enrichment. Furthermore, no
10 evidence was presented Plaintiff had ever possessed the entire \$930,000,
11 that he was in possession of these funds at the time of trial, or caused
12 any harm to Defendants.
13

14
15 Under California law, "any provision by which money or property is to be
16 forfeited without regard to the actual damage suffered calls for a
17 penalty..." *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, 232
18 Cal. App. 4th 1332, 1357 (2015).
19

20
21 In other words, the so-called "disgorgement" award isn't disgorgement
22 at all. It's really an arbitrary penalty in the form of an excessive fine
23 California is attempting to disguise by changing its label to conceal cruel
24 and unusual punishment under the guise of Equity jurisprudence.
25

26
27 The foundation of Equity proceedings is based upon fundamental
28 fairness. There is not a being on this planet that would consider the

1 punishment imposed in this case – and many others just like it –
2 fundamentally fair.

3
4 (“Both liberty and property are specifically protected by the
5 Fourteenth Amendment against any state deprivation which does
6 not meet the standards of due process, and this protection is not to
7 be avoided by the simple label a State chooses to fasten upon its
8 conduct or its statute”). *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S.
1, 47 (1991).

9 The judgment in this case bears repeating:

10 The penalty imposed upon Plaintiff is an estimated **46 times!!!** his
11 qualifying net worth!

12 The penalty is **186 times!!!** the comparable criminal monetary
13 penalty for the same offense, which is a fine *up to* \$5,000!

14 If upheld the penalty will force Plaintiff into bankruptcy resulting
15 in a forfeiture of estate, a punishment historically reserved only for
16 felonies and treason.

17 (“A statute shall never have an equitable construction in order to
18 overthrow or divest an estate”). *Van Horne’s Lessee*, supra.

19
20 (“As relevant here, Magna Carta required that economic sanctions “be
21 proportioned to the wrong” and “not be so large as to deprive [an
22 offender] of his livelihood”). *Timbs v. Indiana*, 586 U.S. ____ 688 (2019)
23 citing *BFI v. Kelco Disposal Inc.* , 492 U. S. 257, 271 (1989).

24
25 Because these forfeiture cases proceed in a civil setting and the awards
26 are made to a private party, one might suspect the judgments amount to
27
28

1 the perversion of a punitive damage award¹⁵ subject to the 14th
2 Amendment's due process protections¹⁶.

3
4 The problem is §7031 actions require no evidence of an actual injury or
5 damage resulting in no compensatory damages upon which to base a
6 punitive damage award. "Full disgorgement" (total forfeiture) is
7 required no matter how harsh the penalty. And under §7031, the
8 penalties are virtually limitless. The highest judgment Plaintiff is aware
9 of, has been \$22.7 million dollars. See *Jacobs*, *infra*.

10
11 No independent de novo review happens on appeal, and a defendant's
12 financial condition is also not taken into account. ("[E]vidence of
13 financial condition is critical to whether a punitive damages award
14 serves the purpose of punishment and deterrence without destroying the
15 defendant financially"). *Adams v Murakami*, 54 Cal. 3d 105, 117-118
16 (Sup. Ct. 1991). ("The purpose of punitive damages is not served by
17 financially destroying a defendant. The purpose is to deter, not destroy.")
18 *Rufo v. Simpson*, 86 Cal. App. 4th 573, 620 (2001)¹⁷.

23
24 ¹⁵ [http://kamineconstructionlaw.com/constitutionality-disgorgement-money-paid-
license-defect/](http://kamineconstructionlaw.com/constitutionality-disgorgement-money-paid-license-defect/) (A California attorney's analysis of §7031 actions).

25
26 ¹⁶ See *BMW of North America v. Gore*, 517 U.S. 559 (1996).

27 ¹⁷ See also Plaintiff's analysis under the 14th Amendment due process protections of
28 punitive damage awards, Petition For Writ of Certiorari pp.39-41.

1 The other alternative is that the penalties in these actions amount to a
2 fine.

3
4 Because §7031 judgments are not remedial in nature¹⁸, their purpose is
5 purely to deter and punish. (“A civil sanction that cannot fairly be said
6 *solely* to serve a remedial purpose, but rather can only be explained as
7 also serving either retributive or deterrent purposes, is punishment, as
8 we have come to understand the term”). *Austin v. United States*, 509 U.S.
9 602, 621 (1993).

10
11 (“Forfeitures serve a variety of purposes, but are designed primarily to
12 confiscate property used in violation of the law, and to require
13 *disgorgement of the fruits of illegal conduct*¹⁹). *United States v. Ursery*,
14 518 U.S. 267 (1996).

15
16 “[A] modern statutory forfeiture is a "fine" for Eighth Amendment
17 purposes *if it constitutes punishment even in part*, regardless of whether
18 the proceeding is styled *in rem* or *in personam*”. *Kokesh*, supra
19 reaffirming *United States v. Bajakajian*, 524 U.S. 321, 328, 331 (1998)
20 and *Austin* pp.621-622.

21
22 While *Kokesh*, *Bajakajian*, *Austin*, and *Timbs* were admittedly all cases
23 upon which the government prosecuted the forfeiture action in both the
24 civil (*Kokesh*, *Austin*, *Timbs*) and criminal (*Bajakajian*) arenas, this does
25

26
27 ¹⁸ *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469, “Opinion” p14.

28 ¹⁹ All emphasis throughout this brief has been added unless otherwise noted.

1 not magically transform the monetary forfeiture punishment imposed
2 upon Plaintiff – though ‘prosecuted’ by a private party – to something
3 other than a fine when there is no evidence whatsoever of an injury or
4 damages, or a proceeding in Equity to effect a remedial action. (“Forfeit”
5 is the word the 1st Congress used for fine”). *Austin*, p.614.²⁰
6

7
8 (“As to what is a penal action the rule is that where an action is founded
9 upon a statute and the only object is to recover a penalty or forfeiture, it
10 is clearly a penal action”). *Gawthrop v. Fairmont Coal Co.*, 74 W. Va. 39,
11 40 (Sup. Ct. of Appeals 1914).
12

13 Under the 8th Amendment’s protections, (“If the amount of the forfeiture
14 is grossly disproportional to the gravity of defendant’s offense, it is
15 unconstitutional”). *United States v. \$132,245.00 In U.S. Currency*, 764
16 F.3d 1055, 1057-58 (9th Cir. 2014).
17

18 In light of the proportionality requirement for excessive fines analysis,
19 it is prudent to compare §7031 judgments with similar penalties for
20 unlicensed contracting in neighboring jurisdictions.
21
22
23
24

25
26 ²⁰ §7031 cases have all the markings of a Qui Tam action without the complaint ever
27 being made on behalf of the People of California or any required statutory authority
28 resulting in a jurisdiction defect.

1 In Arizona, the civil process for unlicensed contracting begins with a
2 notice to cease and desist by the Registrar of Contractors. In conjunction,
3 the Registrar can issue a citation for at least \$250 for each violation but
4 no more than \$2500. ARS 32-1166. In criminal cases, the fines are
5 governed by ARS 32-1164. In a recent case, an unlicensed contractor who
6 was the subject of four investigations by the Registrar plead guilty and
7 was ordered to pay \$1,875 in fines and \$12,045 in restitution²¹.
8

9
10 In Nevada, the administrative fine is not less than \$1,000, nor more than
11 \$50,000 and must be based on criteria such as the gravity of the offense,
12 previous violations, and the amount of damage/restitution required, etc.
13 See NRS 624.710.
14

15 Nevada’s criminal statute, NRS 624.700, does not appear have a fixed
16 fine. Instead, it authorizes penalties *in addition to* the administrative
17 fines which, under section 3(c), includes restitution under the laws of
18 unjust enrichment. Section 3(c) specifically declares “damages the
19 person caused as a result of the violation ***up to the amount of the person’s***
20 ***pecuniary gain from the violation.***”
21
22

23 Neither Arizona nor Nevada appear to have a “civil” or criminal penalty
24 comparable to §7031 “disgorgement” resulting in a total forfeiture
25
26

27 ²¹ [https://roc.az.gov/newsarticle/unlicensed-contractor-found-guilty-and-ordered-pay-](https://roc.az.gov/newsarticle/unlicensed-contractor-found-guilty-and-ordered-pay-12k)
28 [12k](https://roc.az.gov/newsarticle/unlicensed-contractor-found-guilty-and-ordered-pay-12k)

1 without offsets for benefits conferred (or, conversely, an actual injury) or
2 without any evidence of a defendant's profits or gains. Arizona's
3 Supreme Court in *Gilbert*, *infra*, specifically denounced such a policy as
4 "absurd, and troubling".

6 It is diligent to put all of this in even further context with the first-time
7 penalty for other unlicensed activity, such as that of operating a motor
8 vehicle without a license. In California the fine is about \$250 for a first-
9 time offense.

11
12 Of equal significance, Plaintiff has not been able to obtain any evidence
13 to the contrary that if California can lawfully impose these heinous fines
14 in the context of unlicensed contracting, that it can't also do so for any
15 other activity required to be licensed. The atrocity of a motorist having
16 to surrender their entire estate for simply taking their kids to school
17 while driving without a license is unimaginable, yet under this legal
18 paradigm entirely "lawful".

20 But the truth is, the characterization of §7031 judgments as a "fine" isn't
21 entirely accurate either because the Court never acquires subject matter
22 jurisdiction based upon numerous due process violations. As such there
23 is no validity to these judgments that would have the authority of a
24 lawful fine imposed by a competent Court. There is no Constitutional,
25 statutory or other authority to effect these 'judgments'.
26
27
28

1 What *is* clear about these judgments is that they are totally arbitrary
2 and fall outside any established lawful means of punishment, by
3 whatever label they may be called. But this is just the beginning of the
4 legislative intent of total financial decimation...

5
6 In connection with §7031, Business & Professions Code §7071.17
7 requires that any existing contractor's licenses be suspended or any
8 attempt at obtaining a license for rehabilitation be denied until the fine
9 is paid or an equivalent compliance bond is tendered. Plaintiff does not
10 have the money to pay the fine, nor does he have the collateral to fully
11 collateralize the bond as required by the bonding company. He cannot
12 even afford to pay the bond's premium of (\$42,400 (5% of the Bond)). See
13 Exhibit [B]: Compliance Bond Quote.
14

15
16 This effectively renders him unable to obtain a living in his profession
17 as a contractor. Because he was the qualifying individual for his
18 company's license, that license is required to be suspended and he cannot
19 obtain one, "individually".
20

21 ("The portion of the act which authorizes the [Registrar of Contractors]
22 to forfeit the license of a [contractor] and take it away from him is highly
23 penal in its nature"). *Schomig v. Keiser*, 189 Cal. 596, 598 (1922). ("...
24 [B]y taking away his opportunity to earn a living, you can drain the blood
25 from his veins without even scratching his skin.") *Flemming v. Nestor*,
26 363 U.S. 603, 629 (1960) (Justice Black Dissenting).
27
28

1
2 (“[T]he recipient must be provided with timely and adequate notice
3 detailing the reasons for termination, and an effective opportunity to
4 defend by confronting adverse witnesses and by presenting his own
5 arguments and evidence orally before the decisionmaker”). *Goldberg v.*
6 *Kelly*, 397 US 254 (1970).
7

8
9 But according to §7071.17 there is no hearing at all, let alone a judicial
10 hearing, and no right to an appeal.
11

12 The totality of these excessive, cruel, unusual, and arbitrary
13 punishments has resulted in an affirmative disability and restraint upon
14 Plaintiffs liberty amounting to a form of constructive custody and
15 violations of the 5th Amendment’s takings²² clause (as incorporated by
16 the 14th Amendment) and the equal protection clause of the 14th
17 Amendment. He has been restrained from earning a living in his
18 profession for more than two years and been unable to obtain redress by
19 a competent Constitutional Court that will recognize his creator
20 endowed inalienable Rights, or even the basic, fundamental protections
21 guaranteed by the Constitution for the United States. This afortiori
22 makes each and every CALIFORNIA ‘law’ or regulation invoked in this
23 case at least a Bill of Attainder or Pains and Penalties in violation of
24 Article 1, §10.
25
26

27
28 ²² *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

1
2 The word inalienable means: not-lienable, not in commerce. (“Under the
3 mere guise of police regulations, personal rights and private property
4 cannot be arbitrarily invaded”). *Powell v. Pennsylvania*, 127 U.S. 678,
5 696 (1889). (“Among these [Constitutional safeguards], no proposition is
6 now more firmly settled than that it is one of the fundamental rights and
7 privileges of every American citizen to adopt and follow such lawful
8 industrial pursuit, not injurious to the community, as he may see fit.”
9 And, referring to various decisions as to the meaning of liberty, among
10 which was one that the right to liberty embraces the right of man “to
11 exercise his faculties and to follow a lawful vocation for the support
12 of life.”) *Id.* p.695.
13
14

15 There has been no evidence presented Plaintiff’s activities at the sole
16 direction of Defendants have harmed them or the community.
17

18 The operations of the Business and Professions Code in effect and as
19 applied upon Plaintiff effectively destroys his inalienable Right to earn
20 a living in his profession. (“Since a license to conduct any of the regulated
21 activities is a mere statutory privilege [not a Right] – a creature of
22 statute – it is at all times subject to legislative control, including
23 destruction or termination by the legislative process”). Cal. Op. Atny.
24 Gen. Opinion 47-175 citing *In re admission to practice law*, 1 Cal. 2d. 61,
25 63, 67 (1934); *Cohen v. Wright*, 22 Cal. 293, 319 (1863); [Citations].
26
27
28

1 As evidenced, under the Code and the arbitrary judgments in this case,
2 Plaintiff has no Right to his time and labor. (A State cannot convert a
3 Constitutional Right into a privilege and then require a license and
4 charge a fee for it). *Murdock v. Pennsylvania*, 319 U.S. 305 (1943).

5
6 (“That every man has a natural right to the fruits of his own labor
7 is generally admitted and that no other person can rightfully
8 deprive him of those fruits, and appropriate them against his will,
9 seems to be the necessary result of this admission”), *The Antelope*,
23 U.S. 66, 120 (1825).

10 (“For, the very idea that one man may be compelled to hold his life,
11 or the means of living, or any material right essential to the
12 enjoyment of life, at the mere will of another, seems to be
13 intolerable in any country where freedom prevails, as being the
14 essence of slavery itself”). *Yick Wo v. Hopkins*, 118 U.S. 356, 370
(1886).

15
16 Plaintiff has not made any knowing, voluntary or intelligent waiver of
17 any Rights²³ and to be clear, is not challenging a State’s police power to
18 regulate an industry. What is transpiring here is not whether certain
19 hazardous materials should not be permitted in construction for the
20 health and safety of the public. Nor is it whether Plaintiff was qualified
21 to perform the tasks. This is the total annihilation of an inalienable
22 Right to earn a living which is far beyond the police powers of regulation,
23 especially when there has been no evidence of harm. Hypothetical
24 injuries cannot be used to deny Federal Constitutional protections.

25
26
27 ²³ *Johnson v. Zerbst*, 304 U.S. 458 (1938).

REQUEST FOR APPOINTMENT OF COUNSEL

Before proceeding any further, Plaintiff contends (“the statutory scheme [imposed upon him is] so punitive either in purpose or effect as to negate [the] intention to establish a civil remedial mechanism.”) *United States v. Urserly*, 518 U.S. 267, 278 (1996). The Court of appeal has already admitted §7031 is not remedial.

“Judicial determinations as to the civil or penal nature of a particular provision generally center around the issue of ‘whether the legislative aim in providing the sanction was to punish the individual for engaging in the activity involved or to regulate the activity in question.’” [Citations] *Ward v. Coleman*, 598 F.2d 1187 (10th Circuit 1979).

In *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963) the U.S Supreme Court established a series of criteria in the form of a test to determine whether a statute is civil or penal. As applied in this case, the “Kennedy test” evidences there is nothing about the enforcement of §7031 actions that appears to indicate a reasonable civil regulatory intent other than the labels affixed thereto.

(I) Whether the sanction involves an affirmative disability or restraint:

1 The imposition of a monetary penalty of this excessive nature in
2 comparison to the comparable maximum civil and criminal penalties²⁴
3 unequivocally imposes an affirmative disability and restraint because it
4 will financially destroy Plaintiff resulting in a forfeiture of estate and
5 will restrain him indefinitely from e working in his profession (see
6 §7071.17). The result is cruel unusual punishment resulting in total
7 financial incapacitation.
8

9 **(II) Whether it has historically been regarded as a**
10 **punishment:**
11

12 While monetary penalties have traditionally been applied to both
13 criminal and civil statutes, in personam forfeitures have always been
14 regarded as criminal. §7031's nature is deterrent which is inherently
15 punitive. So is the fact that equitable remedies are denied and the fine
16 is neither compensatory, remedial, or restitutionary. Forfeiture of estate
17 was punishment for the commission of treason or a felony. (See Crime
18 and Forfeiture, supra).
19

20
21 §7031 is clearly an exercise of California's Police Power to impose a
22 statutory penalty and like all statutory penalties it is subject to the
23 excessive fines clause. *People v. Dillon*, 34 Cal. 3d 441, 450 (1983).
24
25

26
27 ²⁴ See Petition For Writ of Certiorari United States Supreme Court, 18-1416, (Cert.
28 Denied Oct. 7, 2019), p.24, describing the penalties for acting as an unlicensed contractor.

1 **(III) Whether it comes into play only on a finding of**
2 **scienter:**

3
4 Under the laws of unjust enrichment, disgorgement requires a
5 “conscious wrongdoer,” which is not evidenced in §7031 actions. See
6 Restatement §51, *supra*.

7
8 **(IV) Whether its operation will promote the traditional**
9 **aims of punishment – retribution and deterrence:**

10 The effect of §7031’s operation promotes the traditional aims of
11 punishment: retribution and deterrence, See e.g. *United States v Halper*,
12 490 U.S. 435, 448 (1989); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); and
13 *Austin v. United States*, 509 U. S. 602, 621 (1993):
14

15 (“A civil sanction that cannot fairly be said *solely* to serve a
16 remedial purpose, but rather can only be explained as also serving
17 either retributive or deterrent purposes, is punishment, as we have
18 come to understand the term”).

19 In *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*,
20 *Inc.*, 36 Cal. 4th 412, 423 (2005) the California Supreme Court held:

21 “Section 7031 represents a legislative determination that the
22 importance of detering unlicensed persons from engaging in the
23 contracting business outweighs any harshness between the
24 parties, and that such deterrence can best be realized by denying
25 violators the right to maintain any action for compensation in the
26 courts of this state. [Citation.] ...”
27
28

1 **(V) Whether the behavior to which it applies is already a**
2 **crime:**

3
4 Section §7028 makes contracting without a license a misdemeanor crime.
5 The penalty for the first offense is a fine *up to* \$5,000 plus restitution for
6 damages (if any). While the existence of legislative intent to enact a
7 separate criminal statute may in some cases lend direction as to the
8 nature of other statutes, it does not do so in this instance when the
9 enforcement of §7031 by Courts has been affirmed by the legislature and
10 falls squarely within the provisions of a penal action by more than a
11 century or jurisprudence of the United States Supreme Court and
12 California's Courts. *Morgan*, *infra*; *Kokesh*, *supra*; *Grand Prospect*,
13 *supra*.
14

15 **(VI) Whether an alternative purpose to which it may**
16 **rationally be connected is assignable for it:**

17
18 The licensing laws were enacted to deter unlicensed persons from
19 engaging in the contracting business. *MW Erectors*, *supra*. Absent an
20 actual injury which may lend remedial, compensatory, or restitutionary
21 characteristics, there are no alternative purposes beyond punishment
22 that can be rationally connected to §7031 as it was enacted and has been
23 applied for decades.
24

25 No reasonable rational connection can be made that causing Petitioner
26 to forfeit \$930,000 aids in protecting the public, especially when he met
27 the minimum requirements for licensure and was qualified. While the
28

1 traditional aims of regulation include public safety, no evidence has been
2 presented – or rationally could be – linking Petitioner’s specific behavior
3 to harm. Petitioner’s “crime” was essentially a clerical error in that he
4 could have made his intent clearer that Spartan was the contracting
5 party. It was however clear to him, and the Humphreys (see FRAUD IN
6 THE PROCUREMENT OF JURISDICTION, *infra.*) This “error” has no
7 substantial connection to the forfeiture. The money forfeited is not an
8 instrumentality of the “crime”. See e.g. *United States v. Bajakajian*, 524
9 U.S. 321 (1998). Nor can a nonexistent “injury” be redressed by the
10 forfeiture. Not paying a licensing fee is an issue with the State, not the
11 Humphreys. There was also no evidence that any of the alleged
12 “compensation” was in any way intended to be or was used to commit
13 any other crimes or offenses.
14

15
16 **(VII) Whether it appears excessive in relation to the**
17 **alternative purpose assigned:**

18 This factor lends considerable weight to finding §7031 is criminal and
19 not remedial in nature.
20

21 The purpose assigned to §7031 and enforced by California Courts is total
22 deterrence and punishment of unlicensed contractors for violating the
23 licensing law by imposing a monetary penalty in the form of a total
24 forfeiture.
25

26 The legislature has created statutes authorizing a *variable* fine *up to*
27 \$5,000 for first offense criminal penalties for contracting without a
28

1 license. Assuming the maximum award of \$5,000 were “reasonable” to
2 the purpose assigned, the judgment in this case is 186 times this amount.

3
4 “If the amount of the forfeiture is grossly disproportional to the gravity
5 of defendant’s offense, it is unconstitutional”. *United States v.*
6 *\$132,245.00 In U.S. Currency*, 764 F.3d 1055, 1057-58 (9th Cir. 2014).

7
8 Here, “the statutory scheme [is] so punitive either in purpose or effect as
9 to negate [the] intention to establish a civil remedial mechanism.”)
10 *United States v. Ursery*, 518 U.S. 267, 278 (1996).

11
12 Based upon the foregoing and the remaining evidence presented
13 throughout this brief, Plaintiff believes he has met the “heavy burden”
14 of providing “the clearest proof ... to negate [the legislature’s] intention
15 to deem [§7031] civil... *Kansas v. Hendricks*, 521 U.S. 346 (1997) citing
16 *United States v. Ward*, 448 U.S. 242, 248 (1980).

17
18 Based upon Plaintiff’s research, Courts in many cases focus heavily on
19 who is prosecuting the action along with who the fines are made payable
20 to in determination of whether an action is penal or not. See for e.g.
21 *Kokesh* which was prosecuted by the government and the fines were
22 made payable to the government. While this may certainly be one of the
23 criteria in making the determination, the overarching reason, which is
24 strangely absent in the Kennedy tests, is what effect the sanction will
25 have upon the being it is applied to. Whether a \$930,000 fine imposed
26 under the police powers of a State is paid to the government or a private
27
28

1 individual is irrelevant. It results in monetary punishment to the entity
2 fined.

3
4 This is obviously an issue in this case but it also is very relevant,
5 assuming arguendo, this were a “true” disgorgement action under the
6 laws of unjust enrichment. Suppose an unlicensed contractor receives
7 \$500,000 to build a new home. The contractor spends \$425,000 in
8 materials, labor, and other costs during construction, leaving the
9 remaining \$75,000 in profit or gains.

10
11 Here, California’s “disgorgement” of “all compensation paid” would
12 result in a \$500,000 penalty whereas “compensation” as defined under
13 Restatement §51 and *Kokesh* would result in a \$75,000 “disgorgement”.
14 Courts have repeatedly held disgorgement under the laws of unjust
15 enrichment is not punishment. But clearly a \$75,000 judgment against
16 the unlicensed contractor in this example would be highly irrational,
17 unreasonable and excessive too. Applying the one-sized ham fits every
18 pan rule doesn’t work.

19
20 *****
21
22
23

24 The punishment of this excessive, cruel, and unusual nature required
25 the trial and appellate Courts to have minimally provided Plaintiff the
26 assistance of counsel and to have applied the heightened protections
27 available in criminal proceedings – all of which were denied. The denial
28

1 of counsel (among the other deprivations of Rights evidenced herein)
2 resulted in a jurisdictional defect. (“[C]ompliance with this
3 constitutional mandate is an essential jurisdictional prerequisite to a
4 federal court's authority to deprive an accused of his life or liberty. If the
5 accused, however, is not represented by counsel and has not competently
6 and intelligently waived his constitutional right, U.S. Const. amend.
7 VI stands as a jurisdictional bar to a valid conviction and sentence
8 depriving him of his life or his liberty. *Johnson v. Zerbst*, 304 U.S. 458,
9 467.
10

11
12 (“[The 6th Amendment] embodies a realistic recognition of the obvious
13 truth that the average defendant does not have the professional legal
14 skill to protect himself when brought before a tribunal with power to
15 take his life or liberty, wherein the prosecution is presented by
16 experienced and learned counsel. That which is simple, orderly and
17 necessary to the lawyer, to the untrained layman may appear intricate,
18 complex and mysterious”). *Id.* 463-4 (1938).
19

20
21 (“The constitutional right of an accused to be represented by counsel
22 invokes, of itself, the protection of a trial court, in which the accused –
23 whose life or liberty is at stake – is without counsel. This protecting duty
24 imposes the serious and weighty responsibility upon the trial judge of
25 determining whether there is an intelligent and competent waiver by the
26 accused”). *Id.* p.465
27
28

1 The trial judge made no such determination.

2
3 The *Zerbst* Court also held (“the burden of proof rests upon him to
4 establish that he did not competently and intelligently waive his
5 constitutional right to assistance of counsel.”). *Id.* p.469. Plaintiff is not
6 now, nor has he in any of the prior proceedings made a knowing,
7 voluntary, or intelligent waiver of the Right to the assistance of counsel.
8

9
10 This Court should provide him with the assistance of competent and
11 learned counsel. See 28 USC §1915(e)(1).
12

13 ANALYSIS OF §7031(b) & NO SUBSTANTIAL EVIDENCE AT TRIAL 14

15 §7031(a) and (b) are allegedly based upon California’s public policy
16 declared by Civil Code §3517 that “no one can take advantage of his own
17 wrong”. This legal principle is known as “unjust enrichment”. See
18 *Meister v. Mensinger*, 230 Cal. App. 4th 381 (2014) explaining
19 California’s public policy on disgorgement and unjust enrichment
20 actions.
21

22 Under the laws of unjust enrichment, a claim for disgorgement (“does
23 not impose a general forfeiture: defendant's liability in restitution is not
24 the whole of the gain from a tainted transaction, but the amount of the
25 gain that is attributable to the underlying wrong.” Restatement (Third)
26 of Restitution and Unjust Enrichment §51 Comment (i). (“...[A]
27 claimant's case is not merely that the defendant has committed a wrong
28

1 to the claimant, but that the wrong has proximately resulted in an
2 unjust gain to the defendant”). *Ibid.*

3
4 At trial, no evidence was presented that Plaintiff gained or profited even
5 one dollar, let alone nearly a million dollars. Nor was any evidence
6 presented that he was in possession of the \$930,000 he was ordered to
7 forfeit. (Equitable relief is available only for the return of “money or
8 property identified as belonging in good conscience to the plaintiff [that]
9 could clearly be traced to particular funds or property in the defendant’s
10 possession” (citations omitted)). *Great-West Life & Annuity Insurance*
11 *Company v. Knudson*, 534 U.S. 204, 213 (2002). Both of these facts are
12 elements of a claim for *non-punitive* disgorgement required to have been
13 evidenced by Defendants, “the Humphreys”, but again, are entirely
14 absent from the record.
15

16 In fact, a spreadsheet²⁵ created by Defendants shows that at least
17 \$748,000 ²⁶ was paid directly to Plaintiff’s company, The Spartan
18 Associates, Inc., “Spartan”, (not Plaintiff) who was a licensed contractor
19 that performed work on the project.
20
21
22
23

24
25 ²⁵ See Exhibit [C]: Extract of Payments p. 208; Exhibit [I] Reporters Transcript pp.
26 138-147.

27 ²⁶ Payments made on lines 8, 9, 10 of the Exhibit [C] were deposited in Spartan’s
28 corporate checking account though made out to Adam Bereki. \$10,000 of the line 4
payment was transferred to Spartan’s account.

1 On behalf of Spartan, Plaintiff produced invoices in the amount of
2 \$930,000 reflecting materials and labor services provided to the
3 Humphreys. All but approx. \$82,000 of these invoices had been paid by
4 them. The \$82,000 balance owed was the amount Spartan claimed it was
5 due pursuant to its contract²⁷ with the Humphreys upon filing its initial
6 complaint that began this action.
7

8 Without the foregoing evidence to substantiate a claim for *non-punitive*
9 disgorgement, the trial Court awarded Respondents a general forfeiture
10 of the total amount they paid for the remodel construction work done on
11 their home in the amount of \$848,000.
12

13 The Court refused to take into account any offsets for benefits conferred
14 by Spartan (or allegedly Plaintiff) as also required under a claim for
15 disgorgement.
16

17 The Court further denied Spartan's claim for the \$82,000 pursuant to
18 §7031(a) because it allegedly did not have standing since Plaintiff was
19 determined to be the unlicensed contractor on the project. This resulted
20 in an arbitrary fine in the amount of \$930,000.
21

22
23
24 ²⁷ The Humphreys testified at trial they never believed they contracted with Spartan,
25 but instead with Plaintiff, who was not a licensed contractor. This was after they had
26 represented to the Court the "undisputed facts" were that they had contracted with
27 Spartan and Spartan had performed the work on their remodel. See FRAUD IN THE
28 PROCUREMENT OF JURISDICTION, *infra*.

1 It remains unknown how Plaintiff could be required to forfeit work
2 performed by a licensed contractor (Spartan) upon which that contractor
3 was directly paid. On behalf of Spartan, Plaintiff testified that it
4 performed the work on the project while under examination by Spartan's
5 counsel. See Exhibit [I]: Reporters Transcript, p125. This direct
6 testimony was uncontested by the Humphreys other than by their claim
7 that they had contracted with Plaintiff. Even if Defendant's testimony
8 were true, this does not amount to evidence that Plaintiff performed the
9 work and/or did or did not hire licensed subcontractors, such as Spartan
10 or others to perform the work. Work performed by licensed contractors
11 is not illegal. And who performed the work is an element of the offense.
12 See California Civil Jury Instructions CACI, §4560 (3).
13

14
15 In order for disgorgement or the "return of all compensation paid" under
16 §7031(b) to not be punitive, offsets²⁸ must be allowed for benefits that
17 were conferred or received by the Humphreys. The same applies to
18 forfeitures pursuant to §7031(a).
19

20
21 ²⁸ ("Set-off, both at law and in equity, must be understood as that right which exists
22 between two parties each of whom under an independent contract owes an
23 ascertained amount to the other to set-off his respective debts by way of mutual
24 deduction so that in any action brought for the larger debt, the residue only, after
such deduction, shall be recovered"). *John Wills v. Citizens Nat. Bank*, 125 N.J.L.
546, 548 (1940).

25
26 ("The government has the same right "which belongs to every creditor, to apply the
27 unappropriated moneys of his debtor, in his hands, in extinguishment of the debts
due to him"). And *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1947)
(Citations), *McKnight v. United States*, 98 U.S. 179, 186 (1879).
28

1 “As a general rule, the defendant is entitled to a deduction for all
2 marginal costs incurred in producing the revenues that are subject
3 to disgorgement. Denial of an otherwise appropriate deduction, by
4 making the defendant liable in excess of net gains, results in a
5 punitive sanction that the law of restitution normally attempts to
avoid.” §51, Comment (h). *Kokesh*, supra.

6 Although *Kokesh* was a federal civil case prosecuted by the government
7 for SEC disgorgement, the principles of disgorgement under the laws of
8 unjust enrichment applied therein are binding here. Neither
9 Restatement, nor the Supreme Court make any distinction that
10 disgorgement beyond profits is only punitive in civil cases prosecuted by
11 the government.
12

13 The Arizona Supreme Court had occasion to review this exact situation
14 in *Town of Gilbert Prosecutor’s Office v. Downie*, 218 Ariz. 466 (2008).
15 The Court stated:
16

17 “[A] rule of total disgorgement regardless of any benefit conferred on
18 the victim...may lead to **absurd or troubling results**.” *Id.* p.24

19 “[A] homeowner who received flawless work from an unlicensed
20 contractor would be refunded the full amount paid but would
21 nonetheless also retain the work performed. It is impossible for me to
22 view such a victim as having suffered any loss, economic or
23 otherwise...” Justice Hurwitz, concurring, *Id.* p.30.

24 The “absurd and troubling” results are precisely what is occurring here
25 – the entire amount paid by the Humphreys is not remotely equivalent
26 to the nonexistent profit or gains of Plaintiff.

27 With regard to the consideration of offsets, the *Gilbert* Court held:
28

1 “We find no significant difference between returning cash, one
2 form of value, and returning other forms of value, such as permits,
3 chattels, services, or other property. *See United States v. Shepard*,
4 269 F.3d at 884, 887-88 (7th Cir. 2001). "Loss" is a concept rooted
in value, not solely in the exchange of money.” *Id.* p.25.

5 “In *Shepard* for example, the defendant embezzled funds from a
6 hospital patient under the guise of making improvements to the
7 patient's home. [*Id.* p.885]. The Seventh Circuit concluded that the
8 starting point for determining restitution was the amount
9 embezzled from the victim. *Id.* at 887. From this amount, the court
10 subtracted expenditures made on improvements to the victim's
11 home. *Id.* at 887-88. The court concluded that such expenditures
did not differ "in principle from taking the money from one of [the
victim's] bank accounts and depositing it in another." *Id.* p.17.

12 Because the trial Court refused to acknowledge any offsets for benefits
13 conferred, the judgment rendered against Plaintiff became entirely
14 punitive. (“The remedial nature of disgorgement serves to limit its
15 application. Because disgorgement may not be used punitively, a court's
16 equitable power is restricted to property causally related to the
17 wrongdoing. For this reason, the Government was required to
18 distinguish between legally and illegally obtained profits”). *U.S. v.*
19 *Philip Morris USA*, 310 F.Supp.2d 58, 62-63 (D.C. 2004).
20

21
22 This was clearly not an action for *non-punitive* disgorgement as defined
23 under California or Federal law.
24

25 The phrase “equitable relief” (or more precisely “equitable remedy”) as
26 chosen by the appellate Court in the this case is one that has been
27 carefully and clearly interpreted by the US Supreme Court in multiple
28

1 cases, most notably *Great-West Life & Annuity Insurance Co. v.*
2 *Knudson*, 534 U.S. 204 (2002) and *Grupo Mexicano de Desarrollo, S.A.*
3 *v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). Those precedents are
4 binding and establish three things. First, that the term “equitable relief”
5 is a term with limitations. Second, that labelling some requested relief
6 “disgorgement” does not make it “equitable relief.” Third, that for an
7 order to turn over money or property to qualify as true “equitable relief,”
8 it must be an order to return “money or property identified as belonging
9 in good conscience to the plaintiff [that] could clearly be traced to
10 particular funds or property in the defendant’s possession.” *Great-West*,
11 534 U.S. at 213.
12

13
14 In other words, under the Supreme Court’s precedents, disgorgement of
15 specifically identified property or money traced to the wrongdoing is an
16 equitable remedy. Disgorgement of non-traceable assets is an order to
17 pay money damages.
18

19 In *Great-West* the Court explained, “[e]quitable’ relief must mean
20 *something* less than *all* relief.” *Id.* p209. (quoting *Mertens v. Hewitt*
21 *Assocs.*, 508 U.S. 248, 258 n.8 (1993)) (emphasis in *Mertens*).
22

23 The Court then indicated that the nature of the remedy, not its label,
24 controls the analysis as to whether the relief sought is equitable. *See id.*
25 at 213 (“[W]hether [the sought remedy] is legal or equitable depends on
26 the basis for the plaintiff’s claim and the nature of the underlying
27 remedies sought”).
28

1 The Court explained that a remedy is equitable, as opposed to legal,
2 when the nature of the underlying claim refers to “those categories of
3 relief that were *typically* available in equity.” *Id.* at 210 (quoting
4 *Mertens*, 508 U.S. at 256) (emphasis in *Mertens*).

5
6 In contrast, a remedy is at law “where the property sought to be
7 recovered or its proceeds have been dissipated so that no product
8 remains, the plaintiff’s claim is only that of a general creditor,’ and the
9 plaintiff ‘cannot enforce a constructive trust of or an equitable lien upon
10 other property of the defendant.’” *Id.* at 213-14 (brackets omitted)
11 (quoting Restatement (First) of Restitution, § 215, Comment (a) (1936)).
12

13 Using this analysis, the Court determined that Great-West’s claim for
14 “restitution,” at its core, was not equitable, but legal, because “the funds
15 to which Plaintiffs claim[ed] . . . an entitlement . . . [were] not in
16 respondents’ possession.” *Id.* at 225-26.
17

18 Great-West’s claim for restitution was determined to be “at law” because
19 it had the actual result of imposing “personal liability for the benefits
20 that [it] conferred upon respondents,” which does not sound in equity but
21 at law. *Id.* at 213-14 (explaining that an order imposing “a merely
22 personal liability upon the defendant to pay a sum of money . . . [is]
23 essentially [an] action] at law” (citing Restatement (First) of Restitution,
24 § 160, Comment (a) (1936)).
25

26 Accordingly, pursuant to *Great-West*, in order for courts to provide
27 equitable relief in the form of an order to turn over funds or property,
28

1 the funds or title to property sought must be specifically identified and
2 directly traced as the proceeds of wrongdoing. *Id.* at 213; *see also Sereboff*
3 *v. Mid Atlantic Med. Servs., Inc.*, 547 U.S. 356, 364-65 (2006) (finding
4 that “strict tracing rules” were applied to equitable restitution
5 historically, such that the right to recover restitution only existed where
6 the proceeds sought were in the defendant’s possession).
7

8
9 In short, the Supreme Court’s precedents demonstrate that calling
10 “disgorgement” an equitable remedy does not make it so. See
11 especially: Brief for Mark Cuban as Amicus Curae, *Kokesh*, *supra* as
12 adapted herein²⁹.
13

14 §7031 ACTIONS ARE INTENDED TO PRODUCE “HARSH AND
15 UNFAIR” RESULTS AND VIOLATE PRINCIPLES OF EQUITY
16 JURISPRUDENCE
17

18 The judgments rendered in California pursuant to §7031(a) and (b) are
19 not disgorgement or an equitable remedy. Rather, they resemble an
20 action at law for damages, yet wholly fail to do so because, as in the
21 instant case, no evidence of damages is presented. Without evidence of
22 damages, the judgments are a purely arbitrary penal forfeiture that
23

24
25 ²⁹ [https://www.scotusblog.com/wp-content/uploads/2017/03/16529_amicus_pet_mark](https://www.scotusblog.com/wp-content/uploads/2017/03/16529_amicus_pet_mark_cuban.pdf)
26 [_cuban.pdf](https://www.scotusblog.com/wp-content/uploads/2017/03/16529_amicus_pet_mark_cuban.pdf) ;Or, Google search “Scotusblog Mark Cuban Kokesh”
27
28

1 completely usurp substantive and procedural due process requirements
2 resulting in a deprivation of property Rights and ultimately liberty.
3

4 In a similar case, the penalty to the unlicensed contractor who was hired
5 to maintain California's Court buildings would have been \$22.7 million
6 dollars, but for the substantial compliance exception of §7031(e) that was
7 inapplicable to Plaintiff in this case. See *Judicial Council of California*
8 *v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015). This \$22.7 million
9 was not *Jacobs* profit but the entire amount of the contract for work it
10 competently performed without offsets.
11

12 To be clear, §7031(b) mentions nothing about "disgorgement". Despite
13 this, the statute *could* be read in conformance with *Kokesh*,
14 Restatement, and centuries of common Law and Equity jurisprudence
15 surrounding actions for unjust enrichment. But California's Courts have
16 chosen to interpret the word "compensation" in "return all compensation
17 paid" to mean ("...without reductions or offsets for the value of material
18 or services provided") *White v. Cridlebraugh*, 178 Cal. App. 4th 506, 520
19 (2009).
20

21 This one simple interpretation of a word has led to the threat of or total
22 financial destruction of countless People of California for decades under
23 this form of judicial tyranny. See for e.g. the bankruptcy of Paul Bardos
24 from a judgment in the amount of \$917,043.09 for violating §7031(b).
25 *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014);
26
27
28

Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit,
Bankr, No. 10-41455-DS.

This is not just a “harmless error.” California’s Courts and its
Legislature are acutely aware of the harsh and unfair results of these
atrocities and yet continue to impose them. In *Rambeau v. Barker*, 2010
Cal. App.4th (2010) Unpub. Lexis 5610, the same appellate Court in the
instant case stated:

“In [*Alatrisme v. Cesar’s Designs*, 183 Cal. App. 4th 656, 673] **the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment.** As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], **the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor** and could result in unjust enrichment to a homeowner, but nonetheless decided that the rule was essential to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

The *Rambeau* Court then went on to support this behavior in total dereliction of its duty by pretending itself to be powerless to do anything about it (“[a]s a judicial body, we are not permitted to second-guess these policy choices”). *Id.* p.16. The Court, instead of taking responsibility for the atrocity with which it had created, pointed its proverbial finger at the Legislature.

1 This is direct evidence of the appellate Court's intent to fail to perform
2 its constitutionally mandated duty. See Opinion, p.16 where the same
3 philosophies were applied in the instant case.
4

5 How could an appellate Court, whose almost exclusive purpose is to
6 serve as a check and balance through constitutionally prescribed
7 "review" processes avoid the duty to provide the core function of review?
8

9
10 ("We have no more right to decline the exercise of jurisdiction which is
11 given than to usurp that which is not given. The one or the other would
12 be treason to the Constitution"). *Cohens v. Virginia*, 19 U.S. 264, 404
13 (1821).
14

15 This issue is core to the republican and tripartite form of our government
16 and has been repeatedly addressed by the United States Supreme Court
17 since the inception of this Country:
18

19
20 ("Under the mere guise of police regulations, personal rights and
21 private property cannot be arbitrarily invaded, and the
22 determination of the legislature is not final and conclusive. If it
23 passes an act ostensibly for the public health and thereby destroys
24 or takes away the property of a citizen, and interferes with his
25 personal liberty, then it is for the courts to scrutinize the act and
26 see whether it really relates to and is convenient and appropriate
27 to promote the public health. It matters not that the legislature
28 may, in the title to the act, or in its body, declare that it is intended
for the improvement of the public health. Such a declaration does
not conclude the courts, and they must yet determine the fact
declared and enforce the supreme law." And the court concluded

1 an extended consideration of the subject by declaring that, when a
2 health law is challenged in the courts as unconstitutional, on the
3 ground that it arbitrarily interferes with personal liberty and
4 private property without due process of law, **the court must be**
5 **able to see that it has in fact some relation to the public**
6 **health, that the public health is the end aimed at, and that**
7 **it is appropriate and adapted to that end; ...If the courts**
8 **could not in such cases examine into the real character of**
9 **the act, but must accept the declaration of the legislature**
10 **as conclusive, the most valued rights of the citizen would**
11 **be subject to the arbitrary control of a temporary majority**
12 **of such bodies, instead of being protected by the guarantees**
13 **of the Constitution”**). *Powell v. Pennsylvania*, 127 U.S. 678, 696-
14 7 (1888).

15 It was also contemporaneously addressed in *Vanhorne’s Lesse*, infra. p.
16 309, by Chief Justice Marshall in *Cohens v. Virginia*, 19 U.S. 264, 384 &
17 404 (1821), and in *Marbury v. Madison*, 5 U.S. 137, 177-78 (1803) one of
18 the most infamous US Supreme Court cases of all time, declaring it “the
19 very essence of judicial duty”:

20 If an act of the legislature, repugnant to the constitution, is void,
21 does it, notwithstanding its invalidity, bind the courts, and oblige
22 them to give it effect? Or, in other words, though it be not law, does
23 it constitute a rule as operative as if it was a law? This would be to
24 overthrow in fact what was established in theory; and would seem,
25 at first view, an absurdity too gross to be insisted on.

26 There is no evidence, nor could there rationally be any evidence that
27 financially destroying Plaintiff and restraining him from earning a
28 living in his profession serves the public health, safety, morality, or
welfare. Plaintiff’s alleged “crime” here is simply not paying a licensing

1 fee and that has no connection whatsoever to the aforementioned lawful
2 exercise of California's police powers to destroy him financially under
3 the guise of "protecting the public".
4

5 See also *Bauers v. Heisel*, 361 F.2d 581, 588 (3d. Circuit 1966):

6
7 ("Article 4, § 4 of the United States Constitution provides: "The
8 United States shall guarantee to every State in this Union a
9 Republican Form of Government * * *." The framers of the
10 Constitution clearly evinced their belief that a separate and
11 independent judiciary is an indispensable element of a republican
form of government. See *The Federalist*, pp. 236, 303-305, 488 et
seq., 494 et seq").

12 ("[W]e know that the [Excessive Fine's] Clause imposes upon this Court
13 the duty, when the issue is properly presented, to determine the
14 constitutional validity of a challenged punishment, whatever that
15 punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).
16

17 ("[T]his Court ...adopted the Framers' view of the Clause as a
18 "constitutional check" to ensure that "when we come to punishments, no
19 latitude ought to be left, nor dependence put on the virtue of
20 representatives." That, indeed, is the only view consonant with our
21 constitutional form of government. If the judicial conclusion that a
22 punishment is "cruel and unusual" "depend[ed] upon virtually
23 unanimous condemnation of the penalty at issue," then, "like no other
24 constitutional provision, [the Clause's] only function would be to
25 legitimize advances already made by the other departments and
26 opinions already the conventional wisdom." We know that the Framers
27
28

1 did not envision "so narrow a role for this basic guaranty of human
2 rights." Goldberg & Dershowitz, Declaring the Death Penalty
3 Unconstitutional, 83 Harv. L. Rev. 1773, 1782 (1970)". *Id.* p. 268.
4

5 ("The very purpose of a Bill of Rights was to withdraw certain subjects
6 from the vicissitudes of political controversy, to place them beyond the
7 reach of majorities and officials and to establish them as legal principles
8 to be applied by the courts"). *Board of Education v. Barnette*, 319 U.S.
9 624, 638 (1943). *Furman*, *supra* 268-9.
10

11 As a result, Plaintiff and other like-situated victims of California's
12 Courts have been deprived of a Republican form of government in
13 violation of Article 4, §4. By repeatedly denying the claims of victims of
14 this harsh and unfair punishment, California has directly evidenced
15 that there is not a Court even capable comprehending these acts are
16 punitive, let alone that it is their duty to investigate the nature of the
17 policies upon which these actions are founded.
18

19
20 But there are yet two more facets to this argument which play a huge
21 role in this dysfunction. The Court's proverbial direction to the victims
22 of these actions to "take it up with the legislature" being the first.
23

24
25 The first question to ask is what legislature? It simply cannot be
26 reconciled with the original intent of the founders declaring that the
27 ratio of representation of a Republican form of government "shall be
28

1 apportioned” and not to exceed 30,000 to 1, that California’s ratio of
2 about 330,000 to 1 can even remotely be considered “representation”, let
3 alone a quorum to do any business. It is declared in the Declaration for
4 Independence “That to secure these rights, Governments are instituted
5 among Men, deriving their powers from consent of the governed...”
6 Under California’s current ratio of ‘representation’ where might we find
7 any ‘consent of the governed’ outside that of special interest groups and
8 powerful lobbyists, when more than 35 million People³⁰ are effectively
9 without representation.
10

11
12 Dare we even approach the situation in the United States Congress with
13 the unconstitutional “amendment” in violation of Article V, fixing the
14 number of representatives to 435? With a population of over 372 million
15 people, there should be more than 12,000 representatives! And there was
16 not even a quorum to make the “amendment”.
17

18
19 It is abundantly clear in this case that the Rights of the People of
20 California are not secure when California’s entire legislative, judicial,
21 and executive apparatus, comprised of thousands of legal luminaries
22 having presumably graduated from law school, cannot recognize the
23 fundamental essence of a penal action yet readily admit the judgments
24 in these cases are “harsh and unfair”.
25

26
27 ³⁰ Based on a population estimate of 39.56 million People (2018). See Google.com
28 “California”.

1
2 This cannot possibly be considered a political question when there is
3 effectively no political body with a quorum to do any business upon
4 which Plaintiff could petition for redress of grievance. See for e.g. the
5 First Amendment.
6

7
8 The second aspect pertaining to Article 4, §4 is that it declares the form
9 of government shall be Republican, not municipal³¹.
10

11 California was specifically admitted into “this union” in 1849 under
12 common Law and not Roman civil law³² (municipal law) or political law
13 such as in Louisiana, or a Federal Territory like the District of Columbia.

14 (“When the territory now comprised in the State of California was
15 under Mexican dominion, its judicial system was that of the Roman
16 law, modified by Spanish and Mexican legislation. Upon the
17 formation of the present State government, that system was
18 ordained by a constitutional provision to be continued, until it
should be changed by the Legislature. At the first session of the

19 ³¹ See the definition of Municipal, *supra*.
20

21 ³² CIVIL LAW. The “Roman Law” and the “Civil law” are convertible phrases,
22 meaning the same system of jurisprudence; it is not frequently denominated the
“Roman Civil Law.”

23 . . . 1. The system of jurisprudence held and administered in the Roman empire,
24 particularly as set forth in the compilation of Justinian and his successors . . . **as**
distinguished from the common law of England and the canon law.

25 2. That rule of action which every particular nation, commonwealth, or city has
26 established peculiarly for itself ; **more properly called “municipal” law, to**
27 **distinguish it from the “law of nature” and from international law.** Henry
28 Campbell Black, A Dictionary of Law (St. Paul, Minn.: West Publishing Co., 1891),
207.

1 Legislature_ an act was passed, adopting the common law of
2 England; and on the 22d of April, 1850, another act was passed,
3 repealing all the laws previously in force, but providing, "that no
4 right acquired, contracts made, or suits pending, shall be affected
5 thereby". *Fowler v. Smith*, 2 Cal. 568 (Sup. Ct. 1852).

6 The original California Constitution of 1849 declares, in relevant part,
7 "[t]he District Courts shall have original jurisdiction, in law and equity³³,
8 in all civil cases..." It does *not* declare the District Courts have original
9 jurisdiction in Roman civil law.

10
11 California's Constitution of 1879³⁴ at Article VI, Section 1, declares
12 "[t]he judicial power of this State is vested in the Supreme Court, courts
13 of appeal, and superior courts, all of which are courts of record."

14
15 A Court of Record is "a judicial tribunal having attributes and exercising
16 functions independently of the person of the magistrate designated
17 generally to hold it, and proceeding according to the course of common
18 law, its acts and proceedings being enrolled for a perpetual memorial."
19 Henry Campbell Black, Revised Fourth Edition (St. Paul, Minn.: West
20 Publishing Co., 1968), 426.
21
22
23
24

25
26 ³³ It should be carefully noted the words "law and equity" have been removed entirely
from the delegation of judicial power in the Constitution of 1879.

27
28 ³⁴ Allegedly currently in effect although the Constitution of 1849 has never been
repealed.

1 It is clear then that California’s judicial power is invested in its Courts
2 which proceed according to the course of the common Law, not the Roman
3 civil law.

4
5 The words “civil law” are in fact entirely absent from both the
6 Constitutions of 1849 and 1879.

7
8 In the same light, the judicial power of the United States is confined to
9 “cases or controversies” enumerated in the third Article of the
10 Constitution. Section §2 thereunder declares (“[t]he judicial Power shall
11 extend to all Cases in Law and Equity... and to all Cases of admiralty
12 and maritime jurisdiction...”).

13
14 The words “civil law” or “municipal law” are not mentioned anywhere in
15 the Constitution. This is because “[i]t is ...a self-evident proposition,
16 that the jurisprudence of the United States [and California for that
17 matter] is not founded in the civil law... [T]he civil law ...does not
18 distinguish cases at law from cases in equity; and as that code recognises
19 [sic] neither suits at common law, courts of common law, or trial by jury,
20 it is so utterly incompatible with the judiciary act, that their repugnance
21 is apparent at first blush.” *Bains v. Schooner James & Catherine*, 2 F.
22 Cas 410, 419 (Cir. Ct. 1832). The evidence of this total incompatibility
23
24
25
26
27
28

1 and repugnance is exactly what's being presented herein. See also
2 *McFaul v. Ramsey*, 61 U.S. 523, 525-6 (1858)³⁵.
3

4 There is nothing about an action under §7031(a) or (b) that conforms in
5 any way with an action at Law or Equity.
6

7 Furthermore, the Business and Professions Code is *purely statutory* in
8 origin and entirely unknown to the common Law. It appears to operate
9 under the jurisdiction of Roman civil law, and proceedings thereunder
10 are not according to the course of the common Law. See for e.g. *Cent. Ill.*
11 *Pub. Serv. Co. v. Indus. Comm'n*, 293 Ill. 62, 66 (1920 Sup. Ct.):
12

13 (“A court of general jurisdiction may have conferred upon it by
14 statute a special statutory jurisdiction not arising out of the
15 common law, from which such court draws its general jurisdiction,
16 nor exercised according to the course of the common law but which
17 is outside the general jurisdiction of such court. In such a case its
18 jurisdiction is special, and its proceedings and judgments are
19 treated as the judgments and proceedings of courts of special
20 jurisdiction. [citation omitted]. When a court is in the exercise of
21 special jurisdiction that jurisdiction is limited to the language of
22 the act conferring it. That court has no powers from any other
23 source”).
24

23 ³⁵ (“The Constitution of the United States has recognized [sic] the
24 distinction between law and equity, and it must be observed in the Federal courts.”
25 [I]n those States where the courts of the United States administer the common law
26 [and California is such a State], they cannot adopt these novel inventions, which
27 propose to amalgamate law and equity be [sic] enacting a hybrid system of pleadings
28 unsuited to the administration of either”).

1 A “Court” proceeding pursuant to a “special statutory jurisdiction”, is
2 **not** a Court of general jurisdiction proceeding according to the course of
3 the common Law and therefore, it cannot be presumed to have
4 jurisdiction.

5
6 The Business & Professions Code and the authority conferred therein on
7 the Courts to adjudicate certain claims is purely a legislative creation.
8 The Court’s jurisdiction is limited to the language of the act conferring
9 it. It has no powers from any other source. *Cent Ill.*, supra.

10
11
12 In order to more fully comprehend the distinction of Roman law and
13 English/American common Law, the report of the Committee on the
14 Judiciary in the Senate of California made in 1850, 1 Cal. Rpts. 588
15 shines some light on the subject:

16
17 “In other words, the Common Law allows parties to make their own
18 bargain, and when they are made, hold them to strict compliance,
19 whilst the Civil Law looks upon man as incapable of judging for
20 himself, assumes guardianship over him, and interpolates into a
21 contract that which the parties never agreed to. The one is protective
22 of trade, and a free and rapid interchange of commodities, the other
23 is restrictive of both”.

24
25 In other words, the essence of Roman civil law defines the relationship
26 between the People and their government to be one of guardian and
27 ward, if not master and servant, instead of that of principal and agent,
28

1 at least implicit in the original intent of the Framers of both the original
2 California Constitution and the Constitution for the united States:

3
4 (“The [Constitutions] are accompanied with Bills of Rights, which
5 are intended to declare and set forth the restrictions which the
6 people in their sovereign capacity have imposed upon their agents...”
7 Blackstone, Commentaries on the Laws of England, Volume 1.
8

9 Sovereignty itself is, of course, not subject to law, for it is the author
10 and source of law; but, in our system, while sovereign powers are
11 delegated to the agencies of government, sovereignty itself remains
12 with the people, by whom and for whom all government exists and
13 acts. . . *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).
14

15 Notwithstanding that each man’s labor is his most sacred and inviolable
16 personal property, under Roman civil law occupations of common right
17 are nonexistent, citizens / residents are political subjects of the legislative
18 power, and those who wish to pursue a particular profession or calling in
19 order to earn a living are required to pay a fee or tax for a *license* (Lat.
20 *licere* to be permitted) for the “privilege” of doing so.
21

22 Roman civil law equates to absolute, exclusive territorial, personal, and
23 subject-matter legislative power (and executive and judicial jurisdiction)
24 over residents of municipal territory. And this aligns precisely with the
25 appellate Court’s repeated holdings that it was powerless to question
26 legislative policy.
27
28

1 In examining the contract allegedly between Petitioner and the
2 Humphreys, there is no agreement whereby the parties consented to be
3 subject to the terms of the Business and Professions Code. In this way,
4 the Code “interpolates into a contract [a commercial agreement with the
5 municipal, corporate, STATE OF CALIFORNIA] that which the parties
6 never agreed to” while “denying the parties the right to make their own
7 bargain upon which they will be held in strict compliance.” In doing so,
8 the Code “looks upon [the parties] as incapable of judging for
9 [themselves], [and] assumes guardianship over them”. See also the
10 discussion, *infra* of CALIFORNIA’s presumption of “incompetence and
11 dishonesty³⁶” upon the People thereof as the intended purpose for the
12 contractor’s license laws.
13
14
15

16 The entire statutory scheme of the Business and Professions Code is
17 designed to convert what are natural, “creator endowed” inalienable
18 rights, into privileges which the government believes it creates as
19 guardian or master and then requires a license and charges a fee (tax)
20 for the beneficial use thereof. In other words, the People do not have an
21 inherent, inalienable (not lien-able, non-commercial) Right to their time
22
23
24

25
26 ³⁶ (“The purpose of the licensing law is to protect the public from incompetence and
27 dishonesty in those who provide building and construction services”). *Hydrotech*
28 *Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (Supreme Ct. 1991).

1 and labor in effect and as applied under the Code, founded in Roman
2 civil law.

3
4 Are we really to believe the People who purportedly “ordain[ed] and
5 establish[ed] this government for ourselves and our Posterity” were so
6 ignorant they declared their independence only to turn around and
7 surrender the most sacred and natural Rights to acquire sustenance to
8 support themselves and their families, back to the hands of a tyrant
9 from which they just escaped? I don’t think so! Yet this is precisley
10 what’s going on here— a total usurpation of the lawful government
11 established by the People.
12

13 “[T]he right of acquiring and possessing property, and having it
14 protected, is one of the natural, inherent, and unalienable rights of man.
15 Men have a sense of property: Property is necessary to their
16 subsistence, and correspondent to their natural wants and desires; its
17 security was one of the objects, that induced them to unite in society. No
18 man would become a member of a community, in which he could not
19 enjoy the fruits of his honest labour and industry. The preservation of
20 property then is a primary object of the social compact...” *Vanhorne’s*
21 *Lessee*, supra. p. 310.
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Since 1957 the California Supreme Court has held that (“Courts may not resort to equitable considerations, such as [set off or] unjust enrichment, in defiance of [§7031]”). *Lewis & Queen v. N. M. Ball Sons*, 48 Cal. 2d 141, 152 (CA Sup. Ct. 1957). This holding makes it crystal clear §7031 actions are not in equity if equitable remedies are denied and that California’s intent in ordering judgments thereunder is purely to deter and punish. This was further affirmed by the California Supreme Court in *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 423 (CA Sup. Ct. 2005):

With regard to the punitive nature of deterrence, the US Supreme Court has held:

(“A civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving

1 either retributive or deterrent purposes, is punishment, as we have
2 come to understand the term”). *Austin v. United States*, 509 U. S.
3 602, 621 (1993).

4 Because §7031’s penalties are ordered by Courts without evidence of any
5 injury, damage, or nexus to a defendant’s (mis)conduct, they do not
6 provide the “victim” equal value for a nonexistent loss and do not make
7 them whole for injuries they never evidenced. Judgments pursuant to
8 §7031 are therefore neither remedial, compensatory, or restitutionary.
9 They do not restore the status quo and are solely intended to deter and
10 punish. Therefore §7031 actions are purely penal forfeitures. See
11 *Kokesh*, supra.

12
13 Despite all of the foregoing:

14
15 **THE APPELLATE “COURT” CONCLUDED THERE WAS**
16 **SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT’S**
17 **JUDGMENT OF “NON-PUNITIVE” DISGORGEMENT WHEN NO**
18 **EVIDENCE EXISTS³⁷.**

19
20 **There is not one scintilla of evidence on the record of this case**
21 **that Plaintiff gained or profited even one dollar, let alone**
22 **\$930,000. Nor is there any evidence he ever possessed the entire**
23 **\$930,000, or was still in possession thereof at the time of trial.**
24

25
26 ³⁷ The Court fails to cite exactly which evidence it relies on for this conclusion. It is
27 not on the record.
28

1 Nor is there any evidence he was “unjustly” enriched at
2 Defendants expense. What is unjust about remodeling Defendants
3 home when they requested the work be performed?
4

5 This lack of evidence directly supports Plaintiff’s arguments on appeal
6 that he was subjected to arbitrary punishment which was denied by the
7 Court:
8

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

19 (“Bereki contends the disgorgement remedy is penal in nature and,
20 therefore, a contractor defending against such a claim must be
21 afforded all criminal rights and protections. Not so. Disgorgement
22 is a civil consequence — “an equitable remedy” — for performing
23 work without a required contractor’s license. (*S.E.C. v. Huffman*
(5th Cir. 1993) 996 F.2d 800, 802 (*S.E.C.*)).

24 (“As an equitable remedy, disgorgement is not punishment and,
25 therefore, it does not implicate the excessive fines clause of the
26 Eighth Amendment to the United States Constitution. (*S.E.C.*,
27 *supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004)
310 F.Supp.2d 58, 62-63.)”).
28

1 *Huffman* and *Morris*, cited by the appellate Court, provide no authority
2 whatsoever for the trial or appellate Court’s holdings. *Huffman*, an SEC
3 disgorgement case, stated that (“disgorgement wrests the ill-gotten
4 gains from the hands of a wrongdoer”)³⁸, not the entire amount of the
5 transaction resulting in a general forfeiture.
6

7 *Morris* held: (“[t]he remedial nature of disgorgement serves to limit its
8 application. Because disgorgement may not be used punitively, a court's
9 equitable power is restricted to property causally related to the
10 wrongdoing. For this reason, the Government [or in this case, the
11 Humphreys] were required to distinguish between legally and illegally
12 obtained profits”). pp.62-63.
13
14
15

16 THE APPELLATE COURT FAILED TO CITE ANY LAWFUL
17 AUTHORITY TO SUPPORT ITS AFFIRMATION THE JUDGMENT
18 AGAINST PLAINTIFF WAS *NOT* PUNITIVE.
19
20
21
22
23
24
25
26

27
28 ³⁸ Page 802.

1 NO JUSTICIABLE “CASE OR CONTROVERSY”

2 Plaintiff also challenged the jurisdiction of the trial Court because
3 Defendants had no standing having failed to state a justiciable case or
4 controversy:
5

6 (“The irreducible constitutional minimum of standing contains
7 three elements. First, the plaintiff must have suffered an "injury
8 in fact," an invasion of a legally protected interest which is (a)
9 concrete and particularized, and (b) actual or imminent, not
10 "conjectural" or "hypothetical." Second, there must be a causal
11 connection between the injury and the conduct complained of, the
12 injury has to be fairly traceable to the challenged action of the
13 defendant, and not the result of the independent action of some
14 third party not before the court. Third, it must be "likely," as
15 opposed to merely "speculative," that the injury will be "redressed
16 by a favorable decision.") *Lujan v. Defenders of Wildlife*, 504 U.S.
17 555, 560 (1992).

16 (“[E]ach element [of standing] must be supported in the same way
17 as any other matter on which the plaintiff bears the burden of
18 proof”). *Id.* p.561.

19 In *Miranda v. Arizona*, 384 U.S. 436, 491, (1966) the US Supreme Court
20 declared: (“Where rights secured by the Constitution are involved, there
21 can be no rulemaking or legislation which would abrogate them”). (“This
22 Constitution, ...shall be the supreme Law of the Land...any Thing in the
23 Constitution or Laws of any state to the Contrary notwithstanding”)³⁹.
24

25
26
27 ³⁹ Article 6, §2.
28

1 Federal Rights are protected by the Federal standing doctrine. Since
2 Plaintiff invoked the judicial power of the United States, Defendants
3 claim must be able to pass Federal Constitutional standing
4 requirements before he could be deprived of any Rights secured thereby.
5

6
7
8 THE HYPTOHEICAL PRESUMPTION OF PLAINTIFF'S *ALLEGED*
9 INCOMPETENCE

10 Rather than prove damages (if there ever were any) the Humphreys
11 relied entirely upon the *hypothetical* and irrebuttable legislative
12 presumption that unlicensed contractors are “incompetent or
13 dishonest”⁴⁰ as the basis of their claim for non-existent, *hypothetical*
14 damages. The standing doctrine requires that an injury cannot be
15 conjectural or hypothetical.
16

17
18 “The power to create presumptions is not a means of escape from
19 constitutional restrictions.” *Bailey v. Alabama*, 219 U.S. 219, 239 (1911).
20 Under California’s Evidence Code §600: (“A presumption is an
21 assumption of fact that the law requires to be made from another fact or
22 group of facts found or otherwise established in the action. A
23 **presumption is not evidence**”).
24

25
26
27

⁴⁰ *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (Supreme Ct.
28 1991)

1 In §7031 cases, no amount of evidence put on by a defendant short of a
2 contractor's license can rebut this *hypothetical* presumption of
3 'incompetence'. ("A statute creating a presumption which operates to
4 deny a fair opportunity to rebut it violates due process..."); ("When that
5 presumption is not necessarily or universally true in fact, and when the
6 state has reasonable alternative means of making the crucial
7 determination [and as in this case, already did make such a
8 determination].") *Vlandis v. Kline*, 412 U.S. 441, 446-8, 452 (1973).
9

10
11 It is unknown how Plaintiff, who was determined 'competent'⁴¹ and
12 'qualified' for Spartan's general contractors license could magically be
13 transformed to 'incompetent' simply because he didn't have a license in
14 his own name. Business & Professions Code §7096 declares a ("licensee"
15 shall include ...any named responsible managing officer, ...or personnel
16 of that licentiate whose appearance has qualified the licentiate under
17
18
19
20

21
22 ⁴¹ California had already determined Plaintiff was competent to act as a contractor
23 by issuing license #927244 in Spartan's name upon which he was the qualifying
24 individual. Therefore, the only qualification for Plaintiff to obtain a license in his
25 own name is not whether he possessed the ("requisite skill and character,
26 understand[ing] of applicable local laws and codes and know[ledge] [of] the
27 rudiments of administering a contracting business"), *Hydrotech*, supra citing *Lewis*,
28 supra at p. 995, but whether he paid the licensing fee or not and obtained a separate
bond. This is an abuse of a State's Police Powers as whether or not Plaintiff did, or
was able to pay a licensing tax is not a qualification of protecting the public health,
safety, or welfare.

1 the provisions of Section 7068”). Plaintiff was both Spartan’s qualifying
2 individual and responsible managing officer (“RMO”)⁴².

3
4 It is also unclear how, if Plaintiff was in fact ‘incompetent’, he was able
5 to form the requisite intent to commit the offense as a claim for
6 disgorgement requires a “conscious wrongdoer” which seems
7 undiscernible from a finding of scienter. Restatement, supra §51. No
8 evidence of Plaintiff’s conscious intent to violate the licensing laws or his
9 ‘incompetency’ in construction are on the record.

10
11
12 A blanket presumption of incompetence deprives the People of California
13 of their right to notice and a hearing on the issue of their “competency”.

14
15 (“A sentence of a court, pronounced against a party without
16 hearing him or giving him an opportunity to be heard, *is not a*
17 *judicial determination* of his rights and is not entitled to respect in
any other tribunal”). *Windsor v. McVeigh*, 93 U.S. 274 (1876).

18 In response to these claims made on appeal, the Court held:

19 “Equally meritless is Bereki’s contention that there was no
20 justiciable claim under the statute because there was no evidence
21 the Humphreys were injured by his lack of a contractor’s license.
22 Bereki cites no authority for that novel proposition. Injury is not
23 an element of a cause of action under the statute. The

24
25
26 ⁴²<https://www.cslb.ca.gov/OnlineServices/CheckLicenseII/PersonnelList.aspx?LicNum=927244&LicName=THE+SPARTAN+ASSOCIATES+INC>; Or, Google search:
27 “cslb check a license”. Enter 927244. Scroll down to the button labeled “other” and
28 click on “personnel list”.

1 disgorgement consequence is not remedial⁴³ in nature. Similar to
2 the licensing requirement, it is a proactive measure [aka
3 hypothetical injury] to decrease the likelihood of harm due to
4 “incompetent or dishonest providers of building and construction
5 services.”

6 Precisely! Now how can an hypothesis about something that’s never
7 happened, based upon an irrebuttable presumption that violates due
8 process and which is not grounded in fact be the basis of a claim for
9 damages that have never occurred? Facts form the basis of evidence
10 required by due process. No facts = no evidence = no due process.
11

12 The “novel propositions” cited in Plaintiff’s appellate briefs included the
13 aforementioned arguments, *Steel Co. v. Citizens For Better Environment*,
14 523 U.S. 83 (1998) and the fact that Plaintiff is not an enfranchised
15 person or artificial corporate entity, but a living man who has creator
16 endowed inalienable Rights to his property in the form of his time and
17 labor.
18

19
20
21
22 ⁴³ (“A remedial action is one that compensates an individual for specific harm, while
23 a penal action imposes damages upon the defendant for a general wrong to the
24 public”) *United States v. NEC Corp.*, 11 F.3d 136 (11th Cir. 1993).

25 (“A civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but
26 rather can only be explained as also serving either retributive or deterrent purposes,
27 is punishment, as we have come to understand the term”). *Austin v. United States*,
28 509 U. S. 602, 621 (1993).

1 In their reply brief on “appeal”, Defendants claimed §7031(b) “is an
2 appropriate and valid exercise of the State’s police powers.”
3

4 (“[P]olice power is simply the power of sovereignty or power to govern—
5 the inherent reserved power of the state to subject individual rights to
6 reasonable regulation for the general welfare” [Citations]”). *Sinclair*
7 *Paint Co. v. State Bd. Of Equalization*, 15 Cal. 4th 866, 878 (1997). There
8 is clearly nothing *reasonable* about the obvious abuse of power evidenced
9 here.
10

11 It remains unknown how a State’s police power can be invoked in a ‘civil’
12 proceeding without direct evidence of Plaintiff engaging in some action-
13 in-fact which harms the public health, safety, morality, or welfare.
14 Failing to pay a licensing fee/tax does not harm the public’s health,
15 safety, morality, or welfare.
16

17
18 HYPOTHETICAL DAMAGES
19 NO CLAIM FOR “COMPENSATION”
20
21

22 (“A statute should not be considered in derogation of the common law
23 unless it expressly so states or the result is imperatively required from
24 the nature of the enactment [citations omitted]”). *Bauers v. Heisel*, 361
25 F.2d 581, 587 (1966).
26
27
28

1 There is nothing within the statute that even hints of the Legislative
2 intent to abrogate the common Law. While the Business and Professions
3 Code was unknown to the common Law, an action for
4 compensation/damages, is not.

5
6 §7031 as strictly construed appears to supply nothing more than
7 statutory authority for an action for compensation/damages resulting
8 from hiring an unlicensed contractor. It does not confer jurisdiction to
9 grant arbitrary punitive forfeitures without Federal (or State)
10 Constitutional Protections.

11
12 Despite §7031(b) requiring “the return of all compensation paid” the
13 elements of a claim for “compensation” under California law are entirely
14 absent from the Humphreys pleadings and the record. See Civil Code
15 §3281, “Authorization for Compensation” which aligns with each of the
16 aforementioned elements of a justiciable case or controversy requiring
17 an injury in fact, not hypothetical or conjectural.

18
19
20 Under §3281 (“[e]very person who suffers detriment from the unlawful
21 act or omission of another, may recover from the person in fault a
22 compensation therefor in money, which is called damages”). However,:

23
24 (“An act, however erroneous, which does no injury to a party,
25 cannot be the subject of legal complaint on his part”). *Whipley v.*
26 *Mc Kune*, 12 Cal. 352, 356 (Sup. Ct. (1859).

27 (“Plaintiff has burden of proving, with reasonable certainty,
28 damages actually sustained by him as result of defendant’s

1 wrongful act, and extent of such damages must be proved as fact.
2 And burden of proving damages placed on plaintiff is not lessened
3 by his presentation of prima facie case of negligence against
4 defendant”). *Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960).

5 (“Damages cannot be recovered if the evidence leaves them
6 uncertain, speculative, or remote. (25 C.J.S., Damages, § 42b, p.
7 738; 14 Cal.Jur.2d, Damages, § 55, pp. 682-683.) *Page v.*
8 *Bakersfield Uniform & Towel Supply Co.*, 239 Cal App. 2d 762, 774
(1966).

9 See also *Birsdall v. U.S.*, 93 U.S. 64 (1876):

10 (“Damages are given as a compensation, recompense, or
11 satisfaction to the plaintiff, for an injury actually received by him
12 from the defendant. Compensatory damages and actual damages
13 mean the same thing; that is, that the damages shall be the result
14 of the injury alleged and proved, and that the amount awarded
15 shall be precisely commensurate with the injury suffered, neither
16 more nor less, whether the injury be to the person or estate of the
complaining party”).

17 Refer also to the trial Court’s judgment, Exhibit [D] that declares
18 “Damages \$848,000”. This was allegedly prepared and served by the
19 Humphreys counsel and signed by the trial Court Judge. See also
20 California Civil Jury Instructions CACI No. 4561⁴⁴ entitled “Damages—
21 All Payment Made to Unlicensed Contractors”.

22
23 (“In the present case [Defendants] offered no proper evidence at all that
24 [they] had suffered any legal damage as a result of the [Plaintiff’s alleged
25 lack of a license] and hence left the matter of such damages, if any, to
26

27
28 ⁴⁴ <https://www.justia.com/trials-litigation/docs/caci/4500/4561/>

1 speculation and conjecture. We thus have a case of "injuria absque
2 damno." A wrong without damage does not constitute a cause of action
3 for damages. [Citations] Accordingly, nominal damages to vindicate a
4 technical right cannot be recovered in a negligence action where no
5 actual loss has occurred. [Citations] Actions for the taking and damaging
6 of private property are, as we have pointed out, in the field of tortious
7 action, and hence are subject to the rule that proof of damage is an
8 essential part of the plaintiff's case"). *Frustuck v. Fairfax*, 212 Cal. App.
9 2d 345, 368 (1963).

11
12 Under the Maxims and Principles of Equity Adjudication (*Gibson*, supra
13 §43, p.37) "No one is presumed to give something for nothing. And no
14 one can in reason and conscience expect to receive something for nothing.
15 Whenever a person parts with a consideration he is presumed to intend
16 to acquire whatever that consideration pays for; and he who acquires the
17 legal title to property for which another's money has paid, is bound in
18 reason and conscience to hold it subject to the orders of the person whose
19 money went into it").

21
22 *"He who seeks equity must do equity⁴⁵."*

26
27 ⁴⁵ California Civil Code §3517 "no one can take advantage of his own wrong."
28

1 A Court of Equity has no power to unjustly enrich Defendants as was
2 done here by punishing Plaintiff. *Id.* §39, p. 32.

3
4 “*He who comes into Equity must come with clean hands*⁴⁶.”

5 (“Under the operation of this maxim, the [Defendants were and continue
6 to be required to] show that the transaction from which [their] claim
7 arises that there is nothing unconscientious in [their] conduct relative
8 thereto, and that the relief [they sought and continue to seek] is
9 equitable and not harsh or oppressive upon the [Plaintiff]”). *Id.* p.36.

10
11 Plaintiff has, by clear and convincing evidence shown that a §7031 action
12 is not a remedial action for damages or disgorgement under the law of
13 unjust enrichment, but rather a penalty imposed upon a person purely
14 for violation of its provisions. It is a purely penal action. *Gawthrop v.*
15 *Fairmont Coal Co.*, 74 W. Va. 39, 41 (Sup. Ct. of Appeals 1914).
16

17 18 19 **CONCLUSION**

20 21 **THE TRIAL AND APPELLATE COURT’S LACKED SUBJECT** 22 **MATTER JURISDICTION RESULTING IN A VOID JUDGMENT**

23 Pursuant to this collateral jurisdictional challenge, Defendants simply
24 need to evidence the Federal Constitutional authority and the
25 Constitutionally cognizable body of law for the trial and appellate Courts
26

27
28 ⁴⁶ See Civil Code §3517.

1 to have rendered and affirmed judgment in their favor. They have failed
2 to do so at trial, on appeal in the Fourth District Court of Appeal, in the
3 California Supreme Court, or in the United States Supreme Court on
4 reply to Plaintiffs Petitions for Writ of Certiorari.
5

6 (“[A] plaintiff in the District Court must plead the essential
7 jurisdictional facts and must carry throughout the litigation the
8 burden of showing that he is properly in court; if his allegations of
9 jurisdictional facts are challenged by his adversary in any
10 appropriate manner, he must support them by competent proof,
11 and, even where they are not so challenged, the court may insist
12 that the jurisdictional facts be established by a preponderance of
13 evidence, or the case be dismissed”). *McNutt v. General Motors*, 298
U.S. 178 (1936).

14 At this juncture, it is necessary to fully explore the nature of subject
15 matter jurisdiction, otherwise known as a Court’s power to hear and
16 determine a case, ultimately its authority to render judgment. It is
17 essential to evidence precisely how neither the trial Court nor the
18 appellate Court had subject matter jurisdiction to render or affirm
19 judgment against Plaintiff and that the issues raised herein are not only
20 unconstitutional, they have never been litigated and are entirely void,
21 negating any possibility of res judicata or collateral estoppel.
22

23 (“A judgment void on its face because rendered when the court
24 lacked personal or subject matter jurisdiction or exceeded its
25 jurisdiction in granting relief which the court had no power to
26 grant, is subject to collateral attack at any time”). *Rochin v. Pat
Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998).
27
28

1 When asked, many accomplished jurists refer to subject matter
2 jurisdiction as a Court's authority to adjudicate a certain type of case. A
3 common example might be that a juvenile Court does not have subject
4 matter jurisdiction over probate claims and vice versa. While this is true,
5 it represents a very limited understanding of the true nature of subject
6 matter jurisdiction which goes to the heart of a Court's power to exercise
7 the judicial power of a State or of the United States.
8

9 What most jurists don't know is that subject matter jurisdiction applies
10 not just to the case, but to each issue in a case, and that subject matter
11 jurisdiction once acquired can be lost through due process violations or
12 through fraud. ("Though the court may possess jurisdiction of a cause, of
13 the subject-matter, and of the parties, it is still limited in its modes of
14 procedure, and in the extent and character of its judgments. It must act
15 judicially in all things, and cannot then transcend the power conferred
16 by the law"). *Windsor*, supra. p. 282.
17

18
19 Therefore, if there are a hundred issues in a case and one of them results
20 in a violation of due process or fraud, the Court, in nearly every
21 circumstance, loses subject matter jurisdiction. A Court cannot violate
22 the Constitution and then claim it has authority to take away a being's
23 liberty or property. In the same way, a litigant cannot violate due process
24 or commit fraud on the Court to obtain subject matter jurisdiction:
25

26 ("A judgment, whether in a civil or criminal case, reached without
27 due process of law is without jurisdiction and void...because the
28 United States is forbidden by the fundamental law to take either

1 life, liberty or property without due process of law, and its courts
2 are included in this prohibition”). *Bass v. Hoagland*, 172 F.2d 205,
3 219 (1949).

4 (“The fundamental conception of a court of justice is condemnation
5 only after notice and hearing. No one may be deprived of anything
6 which is his to enjoy until he shall have been divested thereof by
7 and according to law. Under the constitutional guaranties no right
8 of an individual, valuable to him pecuniarily or otherwise can be
9 justly taken away without its being done conformably to the
10 principles of justice which afford due process of law, unless the law
11 constitutionally otherwise provides. Due process of law does not
12 mean according to the whim, caprice, or will of a judge [citations];
13 it means according to law. It excludes all arbitrary dealings with
14 persons or property. It shuts out all interference not according to
15 established principles of justice, one of them being the right and
16 opportunity for a hearing: to cross-examine, to meet opposing
17 evidence, and to oppose with evidence”). Citations). *Estate of*
18 *Buchman*, 123 Cal. App. 2d 546, 559 (1954).

19 (“Judicial absolutism is not a part of the American way of life. The
20 odious doctrine that the end justifies the means does not prevail in
21 our system for the administration of justice. The power vested in a
22 judge is to hear and determine, not to determine without hearing.
23 When the Constitution requires a hearing, it requires a fair one,
24 one before a tribunal which meets established standards of
25 procedure. It is not for nothing that most of the provisions of the
26 Bill of Rights have to do with matters of procedure. Procedure is
27 the fair, orderly, and deliberate method by which matters are
28 litigated. To judge in a contested proceeding implies the hearing of
evidence from both sides in open court, a comparison of the merits
of the evidence of each side, a conclusion from the evidence of
where the truth lies, application of the appropriate laws to the facts
found, and the rendition of a judgment accordingly”). *Ibid.*

1 In this way, jurisdiction operates as two-sided coin. That is, jurisdiction
2 is entirely dependent upon due process and proceedings without fraud⁴⁷
3 whether intrinsic or extrinsic. Like heads or tails, it cannot stand or
4 survive without its counterpart.

5
6 A primary element of due process requires a litigant to state a valid
7 claim. A claim generally has eight essential elements– 1)Who?; 2)Did
8 what?; 3)To whom?; 4)When did they do it; 5)How did they do it; 6)Who
9 is the victim?; and 7)What are the damages? Each of these elements of a
10 claim must be substantiated by competent sworn testimony and subject
11 to cross examination regarding authenticated⁴⁸ evidence. It is only then
12 that the doors to the exercise of judicial power are swung open for the
13 Judge to apply the applicable law, which is the eighth element of the
14 claim.
15

16 If any one of these elements are missing, there is no claim. Each element
17 of the claim⁴⁹ must be evidenced in conformance with the principles of
18

19
20 ⁴⁷ “Fraud destroys the validity of everything into which it enters. It affects fatally
21 even the most solemn judgments and decrees” *Ira Nudd v. George Burrows*, 91 US
22 426, 440 (1875).

23 ⁴⁸ (“Authentication of a writing is required before it may be received into evidence”). Evidence
24 Code §1401(a). To authenticate is to prove or show something is true or genuine.

25 ⁴⁹ (“Except as otherwise provided by law, a party has the burden of proof as to each
26 fact the existence or nonexistence of which is essential to the claim for relief or
27 defense that he is asserting”). Evidence Code 500.; (“The burden of producing
28 evidence as to a particular fact is initially on the party with the burden of proof as
to that fact”). Evidence Code §550(b).

1 due process. If the evidence is missing⁵⁰, the Court does not acquire
2 jurisdiction over the subject matter because there isn't a valid claim
3 before it upon which the judicial power is authorized to act.
4

5 It is only through the deliberate following of the procedures prescribed
6 by due process embodied within the Constitution that a Court is
7 "complete" and can exercise the judicial power. ("A court's
8 jurisdiction...***may be lost*** in the course of the proceedings due to failure
9 to complete the court"). *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).
10

11 ("A court is a creature of the Constitution and laws under which it
12 exists. To exercise any power not derived from such Constitution
13 and laws would necessarily be a usurpation.") *Ex Parte Knowles*, 5
14 Cal. 300 (Sup. Ct. 1855).

15 ("The duties of this Court to exercise jurisdiction where it is
16 conferred and not to usurp where it is not conferred are of equal
17 obligation." *United States v. Deveaux*, 9 U.S. 61, 87 (1809).

18 ("We have no more right to decline the exercise of jurisdiction
19 which is given than to usurp that which is not given. The one or
20

21 ⁵⁰ ("If, in an affidavit [or other sworn testimony], there is a total want of evidence on
22 any point necessary to be determined, upon which the law requires the mind of the
23 judge to be satisfied as a prerequisite for granting an order for publication [or any
24 judgment] then there is nothing upon which he is authorized to act; the evidence,
25 which is the very basis of his jurisdiction, and upon which it depends, is wanting,
and his action is without authority. His action is not merely erroneous. There is no
jurisdiction to act at all, and the proceeding is void"). *Forbes v. Hyde*, 31 Cal. 342
(1868) (overruled on other grounds);

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

1 the other would be treason to the Constitution"). *Cohens v.*
2 *Virginia*, 19 U.S. 264, 404 (1821).

3 When there is not a valid claim before a Court, it has a *non-*
4 *discretionary*⁵¹, ministerial duty to dismiss the case:

5
6 (“This is not a proceeding which may be varied... but is a precise
7 course accurately marked out by law, and is to be strictly pursued.
8 It is the duty of [a judge] to conform to the law, and in this he is an
9 officer of the United States, bound to obey the laws. It is a
10 ministerial act which the law enjoins on a particular officer for a
particular purpose.”) *Marbury v. Madison*, 5 U.S. 137, 158 (1803).

11 (“The act required by the law to be done...is a precise, definite act,
12 purely ministerial; ...about which... [there is] no discretion
13 whatever. There is no room for the exercise of any discretion,
14 official or otherwise: all that is shut out by the direct and positive
15 command of the law, and the act required to be done is, in every
just sense, a mere ministerial act.”) *Kendall v. United States*, 37
16 U.S. 524, 613 614 (1838).

17 (“Whether the act [is] judicial or not is to be determined by its
18 character, and not by the character of the agent. A test as to the
19 character of an act is found in the power of a writ of mandamus to
20 enforce its performance in a particular way... If the act be a judicial
one, the writ can only require the judge to proceed in the discharge

21
22
23 ⁵¹ (“The term *discretion* implies the absence of a hard-and-fast rule. The
24 establishment of a clearly defined rule of action would be the end of *discretion*, and
25 yet discretion should not be a word for arbitrary will or inconsiderate action.
26 "Discretion means a decision of what is just and proper in the circumstances."
27 Bouvier's Law Dict. "Discretion means the liberty or power of acting without other
28 control than one's own judgment." Webster's Dict"). *Styria, Scopinich v. Morgan*, 186
U.S. 1, 9 (1901).

1 of his duty with reference to it; the manner of performance cannot
2 be dictated”). *Ex Parte Va.*, 100 U.S. 339, 348 (1879).

3 Subject matter jurisdiction is also an inseparable part of the doctrine of
4 Separation of Powers. A Court no has no authority to hear and determine
5 just any allegation a party brings before it. This is obvious to most of us.
6 However, where it becomes less obvious is when all of the elements of a
7 crime or offense as specifically enacted by legislature have not been
8 evidenced, resulting in a failure to state a valid claim. For example, if an
9 offense requires that five elements must be evidenced to constitute a
10 violation, the Court cannot take away a being’s liberty or property
11 because two, three, or even four of the five elements have been met. This
12 would be a legislative act upon which the California Constitution confers
13 no authority whatsoever to the judicial branch. Each and every element
14 of the crime or offense must be evidenced by sworn testimony or the
15 Court is not empowered to deprive a litigant of their liberty, property, or
16 other Rights. This commandment is most commonly found in the rules
17 of evidence but is embodied as an essential element of due process:
18
19

20
21 (“Except as otherwise provided by law, a party has the burden of
22 proof as to each fact the existence or nonexistence of which is
23 essential to the claim for relief or defense that he is asserting”).
Evidence Code 500.

24 (“The burden of producing evidence as to a particular fact is
25 initially on the party with the burden of proof as to that fact”).
26 Evidence Code §550(b).
27
28

1 A Court’s jurisdiction is also limited by the standing doctrine involving
2 justiciable cases or controversies as described above. (“Standing is a
3 threshold issue necessary to maintain a cause of action, and the burden
4 to allege and establish standing lies with the plaintiff. [Citations.]”.
5 (Citations)”). *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th
6 486, 495 (2018). (“A lack of standing is a jurisdictional defect”) *Id.* p.496,
7 *Lujan*, supra.
8

9 10 APPLICATION TO THE INSTANT CASE 11

12 In the instant case, the appellate Court held the judgment against
13 Plaintiff pursuant to §7031 was a non-punitive, equity remedy. If we
14 take the Court’s holding to be true and correct, it does not confer any
15 authority on the Court to impose punishment. Rather it imposes several
16 strict elements of a claim. First, there must be evidence that Plaintiff
17 was unjustly enriched in accordance with the laws of restitution and
18 unjust enrichment. Second, he has a Right to set off for the reasonable
19 value of all benefits conferred. Third, the money subject to disgorgement
20 “must be clearly traced to particular funds or property in the defendant’s
21 possession.”
22

23
24 None of this evidence appears on the record of this case.

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

1 a measurable increase in the defendant's net assets will satisfy the
2 burden of proof as ordinarily understood”) Restatement §51, supra,
3 Comment (i).

4 Without a claim, the trial Court had a non-discretionary, ministerial
5 duty to dismiss the case. There is no authority within the statute for the
6 trial Court to order a general forfeiture against Plaintiff, thereby
7 converting the alleged civil, remedial proceedings into purely penal
8 proceedings.

9
10 California Penal Code section §949 reads in relevant part: (“The first
11 pleading on the part of the people in the superior court in a felony case
12 is the indictment, information, or the complaint in any case certified to
13 the superior court under Section 859a. The first pleading on the part of
14 the people in a misdemeanor or infraction case is the complaint except
15 as otherwise provided by law”).

16
17
18 There has been no indictment, information, or complaint on the part of
19 the People filed in this case.

20
21 The principles concerning a valid claim and conferring subject matter
22 jurisdiction upon a Court by pleadings sufficient to empower the Court
23 to act is most succinctly stated in the case of *Buis v. State*, 1990 OK CR
24 28:

25
26 “We recognize the district court, in our unified court system, is a
27 court of *general* jurisdiction and is constitutionally endowed with
28 "unlimited original jurisdiction of all justiciable matters, except as
otherwise provided in this Article,”... However, this "unlimited

original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of pleadings which are sufficient to invoke the power of the court to act. [p4]. The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record. [p8]. ...[V]erification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it. [p10].

As a result of violating substantive and procedural due process, the trial Court lost subject matter jurisdiction. By rendering 'judgment', the Court denied Plaintiff a judicial hearing inflicting punishment upon him without there being a valid claim before the Court empowering it to act.

This resulted in a judgment that violates the 8th Amendment's Excessive Fines, Cruel and Unusual Punishment clause; the 5th Amendments Due Process and Equal Protection clauses, the 6th Amendment's Right to the heightened protections of criminal proceedings and assistance of counsel; the 7th Amendment's Right to trial by jury, and the 14th Amendment's Privileges and Immunities, Due Process, and Equal Protection clauses.

1 The judgment also resulted in a Bill of Pains and Penalties⁵² and an Ex
2 Post Facto Law, inviolate of Article 1, Section 10. See *Calder v. Bull*, 3
3 U.S. 386 (1798):
4

5 (“Laws considered ex post facto laws, within the words and the
6 intent of the prohibition, include: (1) Every law that makes an
7 action done before the passing of the law, and which was innocent
8 when done, criminal; and punishes such action. (2) Every law that
9 aggravates a crime, or makes it greater than it was, when
10 committed. (3) Every law that changes the punishment, and
11 inflicts a greater punishment, than the law annexed to the crime,
12 when committed. (4) Every law that alters the legal rules of
13 evidence, and receives less, or different, testimony, than the law
14 required at the time of the commission of the offence, in order to
15 convict the offender. All these, and similar laws, are manifestly
16 unjust and oppressive”).

17 The judgment against Plaintiff, and other like situated victims is
18 nothing short of a grave miscarriage of justice. It is an even further
19 violation of due process to shift the burden of proof onto Plaintiff to prove
20 lack of jurisdiction that is not sustained by the record, as is being done
21 here.
22
23
24

25 ⁵² (“A bill of attainder is a legislative act which inflicts punishment without a judicial
26 trial. If the punishment be less than death, the act is termed a bill of pains and
27 penalties. Within the meaning of the Constitution, bills of attainder include bills of
28 pains and penalties”). *Cummings v. Missouri* 71 U.S. 277 (1867).

1
2 FRAUD IN THE PROCUREMENT OF JURISDICTION
3

4 *“He who makes assertions that are contrary to each other*
5 *will not be heard.”*
6

7 Under the Maxims of Practice and Pleadings⁵³ of Equity §63, p.54, (“this
8 maxim applies to both pleadings and proof. A bill or answer containing
9 contradictory statements becomes a nullity as to such statements; nor
10 will the Court allow a pleading to be amended, when the amendment is
11 contradictory or repugnant to the pleading”).
12

13 Before trial, Defendants represented to the Court, the “undisputed facts”
14 were that they had contracted with “Spartan” (Plaintiff’s company) who
15 was a licensed contractor and that Spartan had performed the work on
16 their project which was not illegal. See Exhibit [H]:
17

18
19 *“Those material facts which are undisputed are: In April of 2012*
20 *The Spartan Associates entered into an agreement with the*
21 *Humphreys for the performance of home improvement work on the*
22 *Humphreys condominium unit.”* Page 300,
23

24 *“At all times relevant to this action, Spartan was a licensed*
25 *contractor. As such, the services performed by it under agreement*
26

27 ⁵³ So fundamental are these maxims [of Equity] that he who disputes their authority
28 is regarded as beyond the reach of reason. *Gibson*, supra Maxims and Principles of
Jurisdiction fn. 2 citing Kent’s Com. 533.

1 *with Respondents for home improvement work were not illegal.”*
2 (Page 313 Lines25-28).

3 Defendants exercised the Court’s jurisdiction based upon these
4 “undisputed facts” in their Motion For Summary Judgment to have
5 Spartan’s claim against them dismissed. They were unsuccessful.
6

7
8 At trial Defendants then took the opposition position claiming they
9 never believed they contracted with Spartan, but instead with Plaintiff
10 and a man named “Glenn Overley”, whom they had never met, never
11 deposed, and did not make a party to the action.
12

13 Exhibit [I]: Reporters Transcript⁵⁴— Direct exam. Karen Humphreys:
14

15 Page 42 (line 26)–43

16 Q(William Bissell, Defendants Counsel): Did you ever enter into
17 any agreement with Spartan Associates, on this project?
18

19 A(Karen Humphreys): No.
20

21 Page 40 (lines 1-6)

22 Q: In April of 2012, did you believe you were contracting with
23 Spartan Associates?
24

25
26 ⁵⁴ The Certified Reporters Transcript digital files were “locked” from allowing any
27 editing. Plaintiff was therefore unable to apply bates numbers. The documents were
28 left numbered in their original format with the page number in the top right corner.
Plaintiff has included tabs to easily find the referenced pages.

1 A: No.

2
3 Q: Who did you believe you were contracting with?

4 A: I believed I was contracting with Adam Bereki and his partner
5 Glenn Overley.
6

7
8
9 Pages 86 (line 25)-87– Direct exam. Gary Humphreys:

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

13 A(Gary Humphreys): No.
14

15 Page 84 (lines 6-11):

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

18 A: Adam Bereki and his partner, Glenn Overley.
19
20

21 Despite Defendants claims of also contracting with Mr.Overley, the
22 entirety of the "judgment" in this case was rendered against Plaintiff.
23

24 This evidence demonstrates the entire commencement of Defendants
25 cross-complaint against Spartan and its bonding companies – at least as
26 far as their testimony and representations to the Court are concerned –
27 was a total fraud designed to manipulate and confuse Plaintiff, Spartan,
28

1 Spartan's bonding companies and the Court. Defendants used this fraud
2 to invoke the jurisdiction of the Court to gain a civil advantage in their
3 Motion for Summary Judgment.
4

5 Ultimately, Defendants reversed their testimony and previous
6 representations to gain the Court's jurisdiction in support of their
7 amended claim under §7031(b). Fraud cannot be used to procure the
8 jurisdiction⁵⁵ of the Court.
9

10
11 The fact of who Defendants contracted with⁵⁶ is jurisdictional because
12 §7031(a) and (b) *only* apply to unlicensed contractors and Spartan was a
13 licensed contractor. Defendants would therefore have no claim against
14 Plaintiff.
15

16 CHALLENGE TO JURISDICTION– TRIAL 17

18 After the Court had announced its ruling, but before it issued the
19 judgment order, Plaintiff challenged the jurisdiction of the Court in the
20 first instance by filing a motion to vacate void judgment in the form of a
21

22
23
24 ⁵⁵ See *Ira Nudd*, supra. Jurisdiction cannot be effectively acquired by concealing for
25 a time the facts which conclusively establish that it does not exist. *Lambert Run*
26 *Coal. Co. v. Baltimore & Ohio R. Co.*, 258 US 377, 382 (1922) (overruled on other
27 grounds).
28

⁵⁶ Plaintiff and Spartan have always contended Spartan was the contractor on the
project.

1 Writ of Error (order to vacate). Defendants were required at that time to
2 evidence the elements of their claim to substantiate the trial Court's
3 subject matter jurisdiction. They refused to answer⁵⁷ claiming in an
4 email reply to Plaintiff:

5
6 Mr. Bereki: Thank you for your clarification and the opportunity
7 to avoid the trouble that may befall me as a result of the trial
8 conducted in this matter. As I remain unpersuaded by your
9 position, I suppose I (and I guess Judge Chaffee as
10 well) will just have to take my chances that the
11 court will have the same view of your argument as I do.

12 The trial Court then continued to heinously violate due process by
13 dismissing Plaintiff's jurisdictional attack without a hearing, much less
14 an order or findings, none of which were filed by the Court. Instead,
15 Plaintiff received an email stating: "The Court deny the motion to vacate
16 judgment." See Exhibit [E], p.214.

17 ("A sentence of a court, pronounced against a party without
18 hearing him or giving him an opportunity to be heard, is not a
19 judicial determination of his rights and is not entitled to respect in
20 any other tribunal"). *Windsor v. McVeigh*, 93 U.S. 274 (1876).

21 ("A judgment is void if the court that rendered it lacked jurisdiction
22 of the subject matter, or of the parties, or acted in a manner
23 inconsistent with due process"). *Klugh v. United States*, 620 F.
24 Supp 892, 901 (1985).

25 ⁵⁷ ("No principle is better settled than the maxim that he who comes into equity must
26 come with clean hands and keep them clean through the course of litigation, and
27 that if he violates this rule, he must be denied all relief whatever may be the merits
28 of his claim"). *Root Ref. Co. v. Universal Oil Prods. Co.*, 169 F.2d 514, 534-5 (3rd
Cir.1948).

1
2 Plaintiff repeatedly attempted to notify Defendants and the Court of the
3 issues as set forth herein. He was later sanctioned at Defendants request
4 for challenging jurisdiction a second time.
5

6
7 By later filing a timely appeal and challenge to jurisdiction, Plaintiff
8 conferred jurisdiction on the Fourth District Court of Appeal who had a
9 duty to first confirm both its own jurisdiction and then that of the trial
10 Court.
11

12 The Court of appeal was initially vested with subject matter jurisdiction
13 but then lost it by committing the same due process violations as the
14 trial Court. It was not empowered to affirm the trial Court's judgment,
15 and, like the trial Court, had the same non-discretionary, ministerial
16 duty⁵⁸ to vacate the judgment because it was void for lack of subject
17 matter jurisdiction. The appellate Court also upheld the trial Court's
18 judgment based upon evidence that doesn't exist anywhere on the
19 record.
20

21 ("Just as "[c]onviction upon a charge not made would be sheer
22 denial of due process," so is it a violation of due process to convict
23 and punish a man without evidence of his guilt") *Thompson v. City*
24 *of Louisville*, 362 U.S. 199, 206 (1960).
25

26
27 ⁵⁸ ("Th[e] Court has a duty to vacate void judgments"). *Parker v. Murdock*, 959
28 N.E.2d 1219, 1222 (2011); Article 6, Section 2.

1 While there have in fact been the appearance of a “trial” and “appeal”,
2 the judgments rendered by the “Courts” in this case are entirely
3 arbitrary and void. Plaintiff has never actually received a fair and
4 impartial trial and appeal:
5

6 (“A void judgment is a judgment which results from proceedings
7 which did not satisfy the requirements essential to a valid
8 judgment⁵⁹”). Restatement (First) of Judgments §117– Equitable
9 Relief from Void Judgments.

10 (“A void judgment is, in legal effect, no judgment. By it no rights
11 are divested. From it no rights can be obtained. Being worthless in
12 itself, all proceedings founded upon it are equally worthless”).
Bennett v. Wilson, 122 Cal. 509, 513-14 (Sup. Ct. 1898).

13 (“A court may set aside a void order at any time. An appeal will not
14 prevent the court from at any time lopping off what has been
15 termed a dead limb on the judicial tree— a void order”). *MacMillan*
16 *Petroleum Corp. v Griffin*, 99 Cal. App. 523, 533 (1929).

17 There is no time limit on a motion under Fed. R. Civ. P. 60(b)(4) to
18 set aside a judgment as void. *Meadows v. Dominican Republic*, 817
19 F. 2d 517, 519 (1987).

20 Plaintiff has not been afforded a lawful hearing and judicial
21 determination of his rights. (“To say that courts have an inherent power
22 to ...render decrees without any hearing whatever is in the very nature
23 of things to convert the court exercising such authority into an
24 instrument of wrong and oppression, and hence to strip it of that
25

26
27 ⁵⁹ See Restatement §429, *infra* – What Constitutes a Valid Judgment.
28

1 attribute of justice upon which the exercise of judicial power necessarily
2 depends). *Bass v. Hoagland*, 172 F.2d 205, 210 (1949).

3
4 (“A State of the United States may not exercise jurisdiction
5 through its Courts when to do so constitutes a violation of any
6 clause of the Constitution of the United States”). Restatement
7 (First) of Conflict Laws §429– What Constitutes a Valid Judgment,
8 Comment e. (“To act judicially, a court... must be an impartial
9 tribunal and parties to be bound by the judgment or decree must
10 have had a reasonable notice and an opportunity to be heard (see
11 §§72 and 75”). *Id.* Comment c.

12 As a result, the judgment rendered against Plaintiff violates the
13 Constitution for the United States and is void. This Court has a
14 mandatory, non-discretionary duty to vacate this void judgment.

15 STANDARD(S) OF REVIEW

16
17 Plaintiff challenges both the facial constitutionality of §7031(a),(b) and
18 §7017.17 as interpreted by California Courts and as applied. See
19 Opinion, p.14 affirming that “return all compensation paid” in §7031(b)
20 means (“...without reductions or offsets for the value of material or
21 services provided”) citing *White v. Cridlebraugh*, 178 Cal. App. 4th 506,
22 520 (2009).

23
24
25 Questions of law are reviewed de novo. “[A] facial challenge to the
26 constitutionality of a statute presents a pure question of law.” *Ctr. for*
27 *Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006). *See*
28

1 *also Gable v. Patton*, 142 F.3d 940, 944 (6th Cir. 1998) (“Because the four
2 provisions are challenged with regard to facial constitutionality, thus
3 implicating only issues of law, neither Plaintiff nor Defendants contest
4 the appropriateness of summary judgment.”); *Gen. Offshore Corp. v.*
5 *Farrelly*, 743 F. Supp. 1177, 1188 (D.V.I. 1990) (“By definition, a facial
6 challenge is made in a factual vacuum; the court’s job is merely to
7 determine whether the statute, however applied, is constitutional”).
8 Furthermore, a facial constitutional challenge to Sections §7031(a) and
9 (b) are governed by rational basis review. *See, e.g., Heller v. Doe*, 509
10 U.S. 312, 319-20 (1993); *Energy Mgmt. Corp. v. City of Shreveport*, 467
11 F.3d 471, 481 (5th Cir. 2006).

12
13
14 The Supreme Court has made it abundantly clear that a legislative
15 choice subject to the rational basis test “is not subject to courtroom fact-
16 finding and may be based on rational speculation unsupported by
17 evidence or empirical data,” *FCC v. Beach Commc’ns*, 508 U.S. 307, 315
18 (1993), and that the Government, therefore, has “no obligation to
19 produce evidence to sustain the rationality of a statutory classification,”
20 *Heller*, 509 U.S. at 320. Accordingly, there are no issues of fact to be
21 decided, and no need for a trial, in order for the Court to determine
22 whether the California legislature had a rational basis for enacting
23 Sections §7031(a) and (b) or §7071.17.

24
25
26 (“Under both the strict scrutiny and rational review bases, only
27 legitimate compelling state interests are sufficient. Interest are
28

1 illegitimate if they are patently prohibited by the Constitution as with a
2 mere desire to deter the exercise of a fundamental right. See *Shapiro v.*
3 *Thompson*, 394 U.S. 618, 627-33 (1996) (discussing illegitimate
4 interests) and *Romer v. Evans*, 517 U.S. 620, 633-34 (1996) (holding that
5 certain interests are illegitimate, regardless of the level of scrutiny.)”).
6 See Scrutinizing Strict Scrutiny by Roy G. Speece, Jr. & David Yokum.
7 (“[T]he guaranty of due process ...demands ...that the law shall not be
8 unreasonable, arbitrary or capricious, and that the means selected shall
9 have a real and substantial relation to the object sought to be attained.
10 *Nebbia v. New York*, 291 U.S. 502 (1934).

12
13 In a civil landlord–tenant case, the Supreme Court of California
14 reviewed the state and federal constitutionality of a judgment whereby
15 a landlord was fined \$17,300 for disconnecting the water and power to a
16 tenant’s mobile home for several months. The Court found the statute
17 permitted the assessment of arbitrary, excessive, and unreasonable
18 penalties and that the penalty sustained by the defendant exceeded
19 constitutional limits. See *Hale v. Morgan*, 22 Cal. 3d 388, 398-9, (1978)⁶⁰.
20 The Court’s analysis therein is very relevant to judgments under §7031
21 according to California law, and especially considering the appellate
22 Court’s refusal to investigate the reasonableness of the public policy in
23 the instant case.
24

25
26
27
28 ⁶⁰ Superseded by statute.

1 The statute involved in *Morgan* was Civil Code §793. It imposed a
2 penalty of \$100 per day against a landlord who willfully deprived a
3 tenant of utility services. It's an important case because it evidences an
4 exercise of California's police power creating statutory penalties in a civil
5 case payable to an individual, not the government. It is no different than
6 the instant case or *Barnet*, supra. The Court compared the operation of
7 the statute with both State and Federal civil penalty schemes and
8 concluded ("[the] operation of the penalty provided is mandatory,
9 mechanical, potentially limitless in its effect regardless of circumstance,
10 and capable of serious abuse. Its severity appears to exceed that of
11 sanctions imposed for other more serious civil violations in California
12 and for similar prohibited acts in other jurisdictions. We hold that the
13 application of section 789.3 to the present case and the assessment of a
14 penalty of \$17,300 against defendant for his conduct was "clearly,
15 positively, and unmistakably" unconstitutional"). *Id.* p.584.

16
17
18 ("The Legislature may not "in defiance of due process requirements,
19 compel the exaction of penalties which, in a particular case,
20 demonstrably overbalance and outweigh reasonable goals of
21 punishment, regulation and deterrence"). *Id.* p. 402-3. ("Such a
22 confiscatory result is wholly disproportionate to any discernible and
23 legitimate legislative goal, and is so clearly unfair that it cannot be
24 sustained. We must therefore reverse the judgment"). *Ibid.*

25
26
27 In his concurring opinion, Justice Newman stated ("Article I, section 17
28

1 of the California Constitution commands that "excessive fines" not be
2 imposed. In my view those two words justify reversal of the judgment
3 here. There is ample reason for concluding that the constitutional
4 prohibition covers civil as well as criminal fines").

5
6 In almost every instance the principles applied by the *Morgan* Court to
7 §793, apply in this case and should be given great weight in this Court's
8 analysis.
9

10 11 **PRAYER FOR RELIEF** 12

13
14 Plaintiff requests this Court provide the following relief:
15

- 16 1- Appointment of Counsel for assistance in the remaining aspects
17 of this action;
- 18 2- Declaratory relief by vacating the void judgment with prejudice
19 as to all remaining causes of Defendants; see stipulations,
20 Exhibit [A]: Trial Court Minute Order; Declaring §7031(a),(b),
21 and §7071.17 unconstitutional;
- 22 3- Injunctive relief by ordering the Clerk-Recorder, County of
23 Orange (or Defendants) to remove the lien Defendants placed on
24 the real property located at 818 Spirit, Costa Mesa, California in
25 pursuance of the judgment order against Plaintiff.
26
27
28

1 4- Provide restitution pursuant to Code of Civil Procedure §908⁶¹ or
2 within the Court's inherent ⁶² authority under pendent
3 jurisdiction. (It should be noted, Plaintiff has been damaged
4 socially, emotionally, physically, and financially. Upon resolution
5 of the issues herein, he intends to seek leave of this Court to
6 amend the complaint to include claims for deprivation of rights
7 and damages, amongst others).

8
9 5- Any other relief the Court determines reasonable and just.

10
11 Plaintiff also requests the Court provide a Statement of Decision
12 pursuant to Code of Civil Procedure §632 or alternatively, a findings of
13 fact and conclusion of law⁶³ as to each of the following issues:
14
15

16 ⁶¹ (Person whose property has been taken under a judgment is entitled to restitution
17 if judgment is reversed or set aside, unless restitution would be inequitable.)
18 *Stockton Theatres, Inc. v. Palermo*, 121 Cal. App. 2d 616, 619 (1953). ("When the
19 judgment or order is reversed or modified, the reviewing court may direct that the
20 parties be returned so far as possible to the positions they occupied before the
21 enforcement of or execution on the judgment or order. In doing so, the reviewing
22 court may order restitution on reasonable terms and conditions lost by the erroneous
23 judgment or order, so far as such restitution is consistent with rights of third parties
24 and may direct the entry of a money judgment sufficient to compensate for property
25 or rights not restored. The reviewing court may take evidence and make findings
26 concerning such matters or may, by order, refer such matters to the trial court for
27 determination")

28 ⁶² (The trial court has inherent independently of any statute to order restitution).
Bank of America Nat'l Trust & Sav. Assoc. v. McLaughlin, 37 Cal. App. 2d 415, 417
(1940).

⁶³ ("The deliberations of the trial court are conclusively merged in the judgment; the
findings of fact and conclusions of law constitute the decision which is the final,
deliberate expression of the court. *Breedlove v. Breedlove*, 161 Cal. App. 2d 712

1 1. The *constitutionally authorized* **jurisdiction** under which this case
2 was brought against Adam Bereki is:

3 () Law (“in pursuance of” the Constitution)

4 () Equity

5 () Administrative (“statutory”)

6 () Admiralty

7 () Quasi or Colorable Admiralty

8 () Military/ Martial Law Rule

9 () Other:

10 (specify)_____

11 2. Identify the published rules governing the jurisdiction indicated in
12 question [1] that apply in this case specifically.

13 3. What is the constitutionally cognizable **body of law** that was applied
14 against Plaintiff under the aforesaid jurisdiction?

15 4. Identify the published rules governing the body of law that was
16 identified in question [3].

17 5. Under what article, section and clause do the organic Constitutions of
18 1849 and 1879 for the State of California authorize the particular
19 application of both the legislative and judicial power in this judgment
20 against Plaintiff?

21 6. Under what article, section, and clause does the organic Constitution
22 for the United States authorize the particular application of both the
23 legislative and judicial power in this judgment against Plaintiff?

24 7. Identify the evidence on the record of this case that purports to
25 support a valid claim for unjust enrichment:

26 _____
27

28 (1958). (“The written findings and conclusions constitute the decision which is the
final, deliberate expression of the court”). *Perry v. Perry*, 270 Cal. App. 2d 769 (1969).

- a. That Plaintiff profited \$930,000 as a result of the alleged transaction with the Humphreys;
- b. That Plaintiff was paid \$930,000 by the Humphreys and was in possession of these funds at the time of trial.
- c. That Plaintiff was “unjustly” enriched at Defendants expense. Define “unjustly” and state the evidence it was at Defendants expense.

8. Identify the following evidence on the record of this case to support a valid claim for damages:

- a. That the Humphreys were harmed by an injury in fact. Include the evidence establishing how the valuation of damages was calculated and the witnesses who testified to these injuries and calculations.

9. Identify the evidence on the record of this case to support the legislative and judicial presumption that Plaintiff is “incompetent or dishonest”.

10. Identify the on the record of this case to support Plaintiff was given a meaningful and substantive opportunity to meet the evidence in [7], [8], and [9].

11. What form of payment is accepted to pay the judgment, or more accurately, to discharge the obligation in this case?

12. In what constitutionally cognizable jurisdiction does this payment method circulate?

State the factual foundation and legal basis for this conclusion.

13. Identify the published rules governing the jurisdiction indicated in question [12].

1 14. In what constitutionally cognizable jurisdiction do the checks and
2 money orders paid to Plaintiff and Spartan from the Humphreys
3 circulate (See Exhibit [H] pp.323-339?

4 15. Was there a right to effective assistance of counsel in this case?

5 16. This action was in fact being brought against Adam Bereki in order
6 to: (check all that apply)

7 ☐ Redress actual injury to constitutionally secured private Rights.

8 ☐ Enforce political/administrative codes to collect revenue.

9 ☐ Circumvent one or more constitutional obligations and/or restraints.

10 ☐ Arbitrarily compel specific performance of purely political codes
regardless of individual status and standing in fact.

11 ☐ Silence political dissidence.

12 ☐ Protect the purely commercial interests of the corporate "STATE OF
CALIFORNIA".

13 ☐ Enforce political/administrative codes to obfuscate or prevent public
14 exposure of alter ego activities in connection with or in the name of The
State of California.

15 ☐ Diminish or abrogate the true character, status, standing and/or
16 reputation of Adam Bereki.

17 ☐ Covertly wage mixed war upon Adam Bereki.

18 ☐

Other: _____

19
20 17. The alleged agreement between the Humphreys and Adam Bereki
21 for Adam Bereki to perform remodel construction services for the
Humphreys was jurisdictionally in interstate commerce:

22 ☐ True

23 ☐ False

24 State the factual foundation and legal basis supporting how and why
this agreement was or was not in interstate commerce.

25 18. The trial that took place in this case was in interstate commerce:

26 ☐ True

27 ☐ False

28 State the factual foundation and legal basis supporting how and why
this case was or was not in interstate commerce.

1
2
3 **DECLARATION**
4

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct.
7

8 I further declare the Exhibits annexed hereto are true and correct copies
9 of the actual documents referred to:
10

11
12 Exhibit [A] Clerk's Transcript, Trial Court Minute Order. This document
13 was certified by the Clerk of the Superior Court for record on appeal. See
14 certification page 212, which applies to all Clerk's Transcript Exhibits
15 herein.
16

17 Exhibit [B]: Compliance Bond Quote. This document is the email
18 correspondence between Plaintiff and Timalee Van Keeken, Bond
19 Services of California, LLC.
20

21
22 Exhibit [C]: Extract of Checks/Wire Transfer Payments made to Bereki
23 and/or Spartan. This document is a true and correct copy of Exhibit 32-
24 2 admitted at trial.
25

26 Exhibit [D]: Trial Court Judgment Order. This document was certified
27 by the Clerk of the Superior Court for record on appeal.
28

1
2 Exhibit [E]: Trial Court rejection of Plaintiff's Challenge to Jurisdiction.
3 This document is the Notice emailed to Plaintiff by one-legal document
4 services.
5

6
7 Exhibit [F]: Motion For Judicial Notice. This document is a true and
8 correct copy of the Motion Plaintiff filed on appeal.
9

10 Exhibit [G]: Defendants original Cross-Complaint against Plaintiff and
11 Spartan.
12

13 Exhibit [H]: Defendants Motion for Summary Judgment. This is a true
14 and correct copy with the exception that the Exhibits attached to Mrs.
15 Humphreys declaration were removed for brevity as they are the same
16 Exhibits attached to Mr. Humphreys declaration.
17

18
19 Exhibits [I] & [J]: Reporters transcript of "trial" on March 27-28, 2017
20 in this case as certified on December 11, 2017 by Reporter Kelvin
21 Khuong Do- see the last page of each transcript.
22

23
24 
Adam Bereki

25
26
27
28
Date 11/6/19