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

7 Adam Bereki
8
9 Defendant, Cross-
Complainant, Plaintiff

Main Case No.: 30-2015-00805807

Related Case No.: 30-2025-01459684
(Unlawful Detainer)

10 vs.

**VERIFIED EX PARTE APPLICATION FOR
EMERGENCY STAY OF UNLAWFUL
DETAINER ACTION**

11 Karen Humphreys and Gary Humphreys,

12
13 Plaintiffs/ Cross-
Complainants, Cross-
14 Defendants

DATE: Mon. March 17, 2025
TIME: 8:30 AM
DEPT: Dept. C23
JUDGE: D. Hesseltine

15 vs.

WITH INCORPORATED:

16 Canjian Hou; MTC Financial, Inc., d/b/a
17 Prestige Default Services, LLC; Fourth
District Court of Appeal of California
18 (Interested Party); Superior Court of
California for the County of Orange
19 (Interested Party); David Chaffee; James Di
Cesare; Richard Aronson; Thomas Goethals;
20 Kathleen O’Leary; William Bissell; Henry D.
Paloci III, P.A., Henry D. Paloci; Office of the
21 Clerk-Recorder for the County of Orange
(Interested Party); Rob Bonta; David Fogt;

**ANSWER TO COMPLAINT (2025-
01459684)**

**VERIFIED MOTION TO VACATE VOID
JUDGMENT BASED ON NEW EVIDENCE
OF EXTRINSIC FRAUD;**

22 Does 1-100;

**1) REQUEST FOR RESTITUTION
AND DAMAGES;
2) EQUITABLE ACTION TO VACATE
FORECLOSURE SALE;
3) CONSTITUTIONAL CHALLENGE
TO:**

23
24
25 [New/Additional]
Defendants/ Interested
26 Parties

**a) CAL. BUSINESS AND
PROFESSIONS CODE SECTIONS:
§7028, §7031, §7071.17;
b) THE JUDICIALLY CREATED
DOCTRINES OF ABSOLUTE
JUDICIAL IMMUNITY; QUALIFIED
IMMUNITY; AND SUBJECT
MATTER JURISDICTION**

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VERIFIED COMPLAINT AND CROSS-COMPLAINT FOR: DECLARATORY RELIEF; DAMAGES; PUNITIVE DAMAGES; AND RESTITUTION FOR:

- 1) WRONGFUL FORECLOSURE**
- 2) GROSS NEGLIGENCE**
- 3) DEPRIVATION OF CONSTITUTIONALLY PROTECTED RIGHTS – 42 U.S.C. §1983**
- 4) INTENTIONAL INFLICTION OF EMOTIONAL & ECONOMIC DISTRESS**
- 5) CONSTITUTIONAL CHALLENGE TO CIVIL CODE 2924 (NON-JUDICIAL FORCLOSURE);**
- 6) CONSTITUTIONAL CHALLENGE TO THE STRUCTURAL INTEGRITY OF THE CSLB**

REQUEST FOR COMMON LAW TRIAL BY JURY

INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT OF APPLICATION, MOTION, COMPLAINT/CROSS-COMPLAINT

REQUEST FOR COURT APPOINTED OFFICIAL COURT REPORTER

REQUEST FOR JUDICIAL NOTICE

What if most of what you thought you knew about democracy was a lie?

What if the very people occupying official positions of honor, profit, and trust to uphold democracy were the very ones acting dishonorably, stealing from the public treasury for a salary, and breaching their duties of trust to dismantle it?

In times of universal deceit, telling the truth is revolutionary.
-George Orwell

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

2
3 **NOTICE OF CONFLICT OF INTEREST**

4 This action, filed under duress and coercion, involves claims against numerous
5 attorneys, two retired Judges of this Court (David Chaffee and James Di Cesare), and three
6 Justices of the Fourth District Court of Appeal (Richard Aronson, Kathleen O' Leary, and
7 Thomas Goethals) for damages arising from exercising and/or conspiring to exercise the
8 judicial and executive powers of California without lawful authority. (Two additional active
9 Judges of this Court – Erick Larsh and Maria Hernandez – will, in a forthcoming amended
10 complaint, be made parties. There are two open and ongoing criminal investigations into
11 these circumstances. As the Justices of the Supreme Court have affirmed, “[a] fair trial in a
12 fair tribunal is a basic requirement of due process. Fairness of course requires an absence
13 of actual bias in the trial of cases” and “justice must satisfy the appearance of justice.” *In re*
14 *Murchison*, 349 U.S. 133, 136-37 (1955) (citation omitted). The honorable Judge assigned
15 to this case – who initially appears to be Judge Hesseltine – has a duty to ensure these
16 proceedings appear and are in fact fair and impartial. Plaintiff reserves the right to seek
17 reassignment if conflicts impair the appearance of justice.

17 **OVERVIEW**

18 This lawsuit is at its preliminary stages but will soon include two Presidents, a
19 Governor, more than twenty-seven state and federal judges—including justices of the
20 California and U.S. Supreme Courts—more than thirty executive officers, and several
21 legislative representatives. It alleges egregious abuse of power by these officials, who,
22 through coordinated misconduct, have undermined private property rights and the structural
23 integrity of the Constitutional governments of California and the United States.

24 Plaintiff is a former police officer in southern California with more than twenty years
25 of experience in forensic civil and criminal investigations and a specialty in cases involving
26 highly sophisticated fraud and government corruption. He became aware of the conspiracy
27 alleged herein when it was perpetrated on him to criminally prosecute him in a civil case and
28 excessively fine him nearly one million dollars for allegedly not having a construction license

1 without any of the heightened protections in criminal proceedings or the excessive fine's
2 clause.

3 **PROCEDURAL OVERVIEW OF THIS ACTION**

4 This action begins with an *Ex parte* Application for the Emergency Stay of Unlawful
5 Detainer proceedings currently before this Court in case number 30-2015-01459684 to stay
6 Plaintiff's eviction pending determination of an incorporated Motion to Vacate a Void
7 Judgment in this case based on new evidence of extrinsic fraud and fraud on the Court. The
8 UD case is requested to dismissed based on lack of standing and subject matter jurisdiction.

9 This action also includes a Cross-Complaint against original parties in this case and
10 a Complaint against the Judges involved and additional Defendants. The allegations in the
11 *Ex parte* Application, Motion to Vacate, Complaint and Cross-Complaint are very complex
12 and dependent on one another, hence their fusion into this single action. Plaintiff is highly
13 aware of the nature of judicial immunity and provides competent evidence the Judge's
14 actions were beyond all jurisdiction as they were not cognizable before any Judge in
15 America.

16 Due in part to Defendants filing the UD action against Plaintiff, which requires a limited
17 ten-day period to answer, he was unable to finish this Cross-Complaint against all
18 Defendants, of which there are more than fifty to be included. An amended Cross-Complaint
19 will be filed as expeditiously as possible.

20 **NOTICE: EX PARTE APPLICATION FOR THE EMERGENCY STAY OF** 21 **UNLAWFUL DETAINER PROCEEDINGS**

22 Please take Notice that on Monday, March 17, 2025, at 8:30 a.m. in Department C23
23 of this Court located at 700 W. Civic Center Dr, Santa Ana, California, before Judge
24 Hesseltine, Plaintiff will move for an order to stay the Unlawful Detainer proceedings in case
25 number 30-2015-01459684 pending the resolution of the Motion to Vacate Void Judgement
26 in this case that is highly likely to render Plaintiff Hou's action without standing and the Court
27 without subject matter jurisdiction. This Court has inherent powers to stay its proceedings to
28 promote the efficiency of its docket and the interests of justice. *Freiberg v. City of Mission Viejo*, 33 Cal.App.4th 1484, 1489 (1995).

1 This application is made pursuant to California Rule of Court 3.1200 and relevant
2 precedent. This application is supported by the following Memorandum of Points and
3 Authorities, Declaration of Adam Bereki, Request for Judicial Notice, the pleadings already
4 filed in this action, and any further evidence and argument that the Court may receive at or
5 before the hearing.

6 Plaintiff has given notice of this Application to the parties as stated in the Declaration
7 of Notice below.

8 Dated: _____

9
10 By: _____

11 Adam Bereki

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13 **DECLARATION OF NOTICE**

14 On March 13, 2025 I gave Notice of this *Ex parte* proceeding and the required
15 information by phone to Henry Paloci, attorney for Canjian Hou (Plaintiff in the Unlawful
16 Detainer proceeding). He intends to oppose the stay. Paloci's contact information is:

17 Henry Paloci
18 PO Box 592
19 Los Alamitos, CA 90720
20 hpaloci@hotmail.com
21 805.279.1225

22 On March 13, 2025, I called the office of William Bissell, attorney of record for
23 Defendant's/Cross-Complainants Karen Humphreys and Gary Humphreys in the original
24 case made Cross-Defendants herein. I left a message with information regarding this *Ex*
25 *parte* proceeding and requested he return my call. He has not done so. I also sent an email
26 to Bissell and the Humphreys this same day with the information. I have not received a
27 response from any party. William Bissell's contact information is:

28 William Bissell
23 Corporate Plaza Dr. Ste. 150
Newport Beach, CA 92660



1 wbissell@wgb-law.com
2 949.287.4503

3
4 On March 13, 2025, I called David Chaffee's office at ADR Services to give him Notice
5 of this *Ex parte* proceeding. The woman who answered, Stephanie, refused to give him my
6 message. I emailed Chaffee to give him Notice with the required information. I requested he
7 reply or call me to confirm his receipt. I have not received a response. David Chaffee's
8 contact information is:

9 David Chaffee
10 ADR Services
11 19000 Mac Arthur Blvd., Suite 550
12 Irvine, CA 92612
13 judgechaffee@adrservices.com
14 949.863.9800

15 On March 13, 2025, I called Richard Aronson at his office at JAMS to give him Notice
16 of this *Ex parte* proceeding. His caseworker, Carlos Espinoza, answered, and told me
17 Aronson was out of the country on vacation in Europe. Espinoza requested I email Aronson
18 and cc him. I emailed Aronson and Espinoza with the required information. I requested he
19 reply or call me to confirm his receipt. Aronson previously told me in an email dated January
20 30, 2025: "Hello Mr. Bereki. I will accept service at this e-mail address
21 (RAronson@jamsadr.com) Please attach the appropriate documents to the e-mail. Rich
22 Aronson". Aronson's contact information is:

23 Richard Aronson
24 Case Manager: Carlos Espinoza
25 JAMS
26 5 Park Plaza
27 Suite 400
28 Irvine, CA 92614
714-941-0327 Phone
714-939-8710 Fax
Email: raronson@jamsadr.com
cespinoza@jamsadr.com

1 On March 13, 2025, I called the Fourth District Court of Appeal, Div. 3, to give Notice
2 of this *Ex parte* proceeding to Kathleen O’Leary and Thomas Goethals. I asked to speak
3 with Kim Rodriguez, who, from a prior conversation, I believe told me was an assistant to
4 either Justice Goethals or O’Leary. The official who answered the phone told me Kim was
5 unavailable. I asked her to leave a message for Kim and the Justices regarding the *Ex parte*
6 proceedings and requested they call back for further discussion and to determine if they
7 would appear to oppose it. The woman told me she would convey the message and
8 someone would call back if they felt like it. Previously, Rodriguez refused to provide me the
9 official email addresses for Goethals or O’Leary so that I could communicate with them. I
10 have not received a return phone call. The Court of Appeal phone number is 714.571.2600.

11 The emails involved in giving Notice of this action will be included with a future Court
12 filing. Additional service information, if any, will be provided to the Court at the hearing, if
13 necessary.

14 Dated: _____

15 By: _____

16 Adam Bereki

17
18 **SPECIAL REQUEST FOR OFFICIAL COURT REPORTER**

19 Plaintiff requests an Official Court Reporter for this hearing and all hearings involved
20 in this case. Due to financial hardship detailed herein, Plaintiff cannot afford reporter services
21 or transcripts and asserts that requiring payment would exacerbate damages from prior
22 proceedings. He requests that the Court order an Official Court Reporter to transcribe this
23 and all related proceedings pursuant to CCP § 269, with a certified copy provided to him
24 within 5 court days of each hearing at no cost, consistent with Government Code § 68634.5.
25 Alternatively, if denied, Plaintiff requests permission to make a digital audio recording under
26 California Rules of Court, Rule 1.150(d), to be included in the official record on appeal if
27 applicable. Upon approval, Plaintiff will provide an un-transcribed digital copy to other parties
28 at no cost upon request.

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REQUEST FOR FEE WAIVER

Due to financial hardship outlined herein, Plaintiff requests an unconditional waiver of all court fees pursuant to Government Code § 68630 et seq. and California Rules of Court, Rule 3.50 et seq., as payment would compound damages from prior judicial errors he seeks to remedy. Plaintiff has filed a Fee Waiver form FW-001 referring the details thereof to this action.

**DECLARATION OF ADAM BEREKI
VERIFICATION OF FACTS AND AUTHENTICATION OF EXHIBITS**

I, Adam Bereki, declare under penalty of perjury that: 1) I have personal knowledge of the following facts; 2) they are true and correct; and, 3) all Exhibits/Appendices annexed hereto are true copies of the documents they purport to be, except for organizational markings (e.g., bates numbering). Legal conclusions or statements on information and belief are not facts made under penalty of perjury.

Dated: _____

By: _____

Adam Bereki

REQUEST FOR JUDICIAL NOTICE

Plaintiff requests judicial notice under Evidence Code §§ 451-452 of: 1) court records in Case No. G055075 (Fourth District Court of Appeal) and all other official actions referenced herein; 2) Orange County Clerk-Recorder records for the subject property; 3) attached Exhibits. Notice is sought for their existence and statements therein, with evidentiary weight to be determined by the Court.

INCORPORATION OF DOCUMENTS AND EXHIBITS

The complete docket or record of every case or official adjudication referenced herein along with all Exhibits are incorporated as if fully set forth herein.

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1 All statements and Exhibits are incorporated in every paragraph of this entire action.

2 This Application/Motion/Complaint/Cross-Complaint and the Exhibits and Appendix
3 will be provided to all Defendants by mailing and/or emailing them a thumb drive containing
4 a digital copy thereof and providing them a link to a private Dropbox file. The documents are
5 also available at <http://www.thespiritoflaw.com>.

6 Exhibit E contains digital audio files which cannot be uploaded to the docket of this
7 case. In many instances, a written transcript of the audio file has been created. The
8 transcripts have been filed as Exhibit ET. They can also be found in the Dropbox and
9 thespiritoflaw.com/audible-exhibits.

10 Note: There are two groups of Exhibits: Exhibits that are numbered; and Exhibits that
11 are lettered. The Numbered Exhibits have been attached to this
12 Application/Motion/Complaint/Cross-Complaint and are more directly supportive to the
13 Application for Stay. Refer to the Table of Exhibits for a list of the Lettered and Numbered
14 Exhibits.

15 ADDITIONAL DEFENDANTS AND INTERESTED PARTIES

16 The following are named as Defendants, with personal jurisdiction asserted based on
17 proper service when carried out (see Proof of Service), and/or prior general appearance in
18 actions pertaining to this case, and/or that during this case the Defendants were employees
19 or agents of State of California entities:

- 20 • **David Chaffee:** Former judge of this Court, sued in his private capacity for rendering
21 judgment in Case No. 30-2015-00805807, allegedly without jurisdiction due to
22 extrinsic fraud.
- 23 • **James Di Cesare:** Former judge of this Court, sued in his private capacity for
24 affirming judgment on appeal in Case No. G055075, allegedly without jurisdiction due
25 to extrinsic fraud.
- 26 • **Richard Aronson, Thomas Goethals, Kathleen O'Leary:** Former or current Fourth
27 District Court of Appeal justices, sued in their private capacities for affirming judgment
28 in Case No. G055075, allegedly without jurisdiction.

- 1 • **William Bissell:** Attorney for Karen and Gary Humphreys, sued for actions in this
2 case, domiciled in this district.
- 3 • **Canjian Hou:** Winning bidder in the foreclosure sale, Plaintiff in UD action before this
4 Court.
- 5 • **Henry D. Paloci and Henry D. Paloci III, P.A.:** Attorney and firm representing Hou,
6 allegedly facilitating unlawful acts via this Court. A professional association, as an
7 unincorporated association, can be sued as a separate legal entity under California
8 law (*Vosburg v. County of Fresno*, 54 Cal. App. 5th 439 (2020); CCP § 369.5), with
9 judgments enforceable only against its assets (*Clean Air Transport Systems v. San*
10 *Mateo County Transit Dist.*, 198 Cal. App. 3d 576 (1988)).
- 11 • **Citizens Bank NA:** Citizens Bank NA is a national banking association with
12 headquarters in Rhode Island. Citizens Bank N.A. appears to be a subsidiary of
13 publicly traded Citizens Financial Group, Inc. and may also be a holding of other
14 company(ies) unknown to Plaintiff.
- 15 • **MTC Financial Inc. d/b/a Trustee Corps:** A California Corporation. Trustee in the
16 foreclosure sale of Plaintiff's property, allegedly fraudulent.
- 17 • **David Fogt:** Registrar of Contractors, Contractor State License Board, sued in his
18 official capacity pursuant to challenges to the Constitutionality of the structure of
19 CSLB.
- 20 • **Rob Bonta:** Attorney General of California, sued in his official capacity pursuant to
21 challenges to the Constitutionality of state statutes and the structure of the CSLB.
- 22 • **Doe Defendants 1-100:** Unknown parties responsible for Plaintiff's damages, to be
23 added when identified.

24 **Interested Parties:** The Fourth District Court of Appeal and Superior Court of Orange
25 County, due to their prior rulings. The Office of the Clerk-Recorder for the County of
26 Orange, due to its authority over the Trustee Deed Sale record sought to be
27 cancelled.

1 **COMPLAINT FOR CIVIL CONSPIRACY AGAINST AN ATTORNEY – NON-**
2 **COMPLIANCE WITH §1714.10(a)**

3 California Civil Code § 1714.10(a) requires court approval before filing a civil
4 conspiracy claim against an attorney involving their client. Plaintiff has not complied because
5 the exceptions under § 1714.10(c)(2) apply, where pre-filing approval is not required if: 1)
6 the attorney has an independent legal duty to the plaintiff, or 2) the attorney’s acts go beyond
7 professional duties and involve a conspiracy to violate a legal duty for financial gain.

8 Plaintiff alleges civil conspiracy against William Bissell and Henry Paloci, attorneys
9 licensed in California, for their roles in a coordinated scheme to deprive him of his
10 constitutional rights, property, and livelihood for personal financial gain. These claims are
11 exempt from Civil Code § 1714.10(a)’s pre-filing approval requirement under § 1714.10(c)(1)
12 and (c)(2), as both attorneys owed Plaintiff independent legal duties and acted beyond their
13 professional roles in furtherance of the conspiracy.

14 **A. Independent Legal Duties as Officers of the Court**

15 As attorneys admitted to the California Bar, Bissell and Paloci took an oath under
16 Business and Professions Code § 6067 to “faithfully discharge the duties of an attorney at
17 law” and uphold the Constitutions of the United States and California. This oath imposes an
18 independent duty to Plaintiff, as a member of the public, not to abuse their positions as
19 officers of the court to violate his rights, including due process (Cal. Const. Art. I, § 7; U.S.
20 Const. Amend. XIV), protection against excessive fines (Cal. Const. Art. I, § 17; U.S. Const.
21 Amend. VIII), and property rights (Cal. Const. Art. I, § 1). Additionally, Cal. Civil Code § 1708
22 binds them to “abstain from injuring the person or property of another or infringing upon any
23 of his rights.” Their actions, detailed below, breached these duties by orchestrating unlawful
24 proceedings under color of law, implicating 42 U.S.C. § 1983 (*Lugar v. Edmondson Oil Co.*,
25 457 U.S. 922 (1982)).

26 **B. William Bissell’s Role in the Conspiracy**

- 27 1. **Wrongful Acts:** Bissell, representing Karen and Gary Humphreys in Case No. 30-
28 2015-00805807, filed and prosecuted a 2017 lawsuit against Plaintiff under Business
 and Professions Code § 7031(b), securing a \$930,000 judgment for alleged

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unlicensed contracting. Plaintiff alleges this action was a fraudulent civil proceeding masquerading as equity (“disgorgement”), when it was a covert criminal prosecution lacking due process safeguards (e.g., jury trial, counsel), rendering the judgment void *ab initio* (Motion to Vacate—Extrinsic Fraud).

2. **Agreement:** Bissell’s persistent prosecution, despite Plaintiff’s defenses and the Humphreys’ lack of executive authority to prosecute under Cal. Const. Art. V, § 1, reasonably infers an agreement with his clients and court officials (e.g., Judge David Chaffee) to mischaracterize the case and suppress Plaintiff’s rights. His filings and arguments, upheld by the Court, suggest coordination to achieve an unlawful outcome.
3. **Intent:** As an experienced attorney, Bissell knew or should have known that § 7031(b) imposed a “stiff all-or-nothing penalty,” not equitable relief (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (2005); and cases cited forthwith), and that private parties cannot prosecute penal statutes (*Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). His pursuit of the \$930,000 judgment—40 times Plaintiff’s qualifying net worth—reflects intent to enrich the Humphreys and secure substantial legal fees, exceeding his duty to merely represent his clients.
4. **Beyond Professional Duties:** Bissell’s actions went beyond advising or representing the Humphreys. By knowingly advancing a fraudulent claim to punish Plaintiff under a civil guise, he actively participated in a conspiracy with state actors (judges named herein) to deprive Plaintiff of his Constitutional rights for financial gain, violating his oath and § 1708
5. **Causation and Damages:** Bissell’s filings directly resulted in the \$930,000 judgment, which Plaintiff could not pay, triggering a non-judicial foreclosure of his home (818 Spirit, Costa Mesa) on November 18, 2024, by MTC Financial and Citizens Bank. This caused Plaintiff to lose \$1.18 million in equity (property valued at \$1.5 million, sold for \$371,688), forced bankruptcy, and inflicted severe emotional and economic distress (Motion to Vacate—Harms Suffered).

C. Henry Paloci’s Role in the Conspiracy

1. **Wrongful Acts:** Paloci, representing Canjian Hou in Case No. 30-2025-01459684, filed and is prosecuting an unlawful detainer (UD) action against Plaintiff to evict him

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from 818 Spirit, based on a Trustee’s Deed from the November 18, 2024, foreclosure sale. Plaintiff alleges this foreclosure is void due to the fraudulent 2017 judgment, and Paloci’s UD knowingly exploits this defect to seize Plaintiff’s property (Ex Parte Application–Introduction).

- 2. **Agreement:** Paloci’s filing of the UD action despite actual notice of the foreclosure’s invalidity, fraud, and other unlawful acts being perpetrated against Plaintiff reasonably infers an agreement with Hou and possibly MTC Financial or Court officials to enforce a defective title. His firm, Henry D. Paloci III, P.A., operates as his alter ego, facilitating these acts.
- 3. **Intent:** As an attorney, Paloci knew or should have known the foreclosure stemmed from a void judgment (new evidence in *Liu v. SEC*, 591 U.S. 71 (2020), and *MW Erectors*, supra) that Plaintiff directly advised him of. His pursuit of the UD, risking Plaintiff’s eviction, reflects intent to secure the property and Plaintiff’s equity for Hou and earn fees, beyond mere client advocacy.
- 4. **Beyond Professional Duties:** Paloci exceeded his role by pressing the UD despite Plaintiff’s title challenge and the underlying unlawful acts he was given Notice of, leveraging a void foreclosure for personal gain. This breaches his oath and § 1708, aligning with a conspiracy involving state actors (e.g., court officials processing the UD) to violate Plaintiff’s rights under color of law.
- 5. **Causation and Damages:** Paloci’s UD filing, directly threatens Plaintiff’s imminent eviction, endangering his \$1.18 million equity and causing ongoing emotional and economic distress. His actions perpetuate the harm from the 2017 judgment, amplifying the conspiracy’s impact (Ex Parte Application–Irreparable Harm).

D. Concerted Action and Financial Motive

Bissell and Paloci’s actions, while sequential, form a continuous scheme to strip Plaintiff of his property and rights. Bissell laid the groundwork with the fraudulent judgment, enabling the foreclosure, which Paloci now exploits through the UD. Their financial motives—Bissell’s fees from the \$930,000 award and Paloci’s from the UD victory—are evident from the scale of their clients’ gains and their persistence despite obvious legal defects. As officers of the Court, their breaches of Constitutional duties under their oaths

1 elevate this from mere representation to criminal conspiracy, actionable under California law
2 and 42 U.S.C. § 1983.

3
4 **PROPERTY**

5 The real property at issue in this case is located at 818 Spirit, Costa Mesa, California,
6 in Orange County (“the property” or “Spirit property”), within this judicial district. The legal
7 description is:

8 LOT 55 of TRACT NO 15211, AS SHOWN ON A MAP RECORDED IN BOOK 733,
9 PAGES 33 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF
10 ORANGE COUNTY, CALIFORNIA.

11 EXCLUDING THEREFROM ONE-HALF OF ALL OIL AND MINERALS, BUT
12 WITHOUT THE RIGHT OF ENTRY, AS RESERVED BY ETTA C. DAVIES, A
13 WIDOW, IN DEED RECORDED JUNE 1, 1959 IN BOOK 4737, PAGE 511 OF
14 OFFICIAL RECORDS.

15 **Ownership**

16 On May 21, 2003, Trinity Christian Church Center of California granted a 50% interest
17 in the property to Defendant and 50% to Brian Dugger, recorded September 26, 2003 (Ex.
18 L, pp. 14-17).

19 On June 9, 2004, Dugger granted his 50% to Plaintiff, recorded September 22, 2004
20 (Ex. 6, pp. 18-20). On June 5, 2012, Defendant quitclaimed 100% interest to Plaintiff as
21 Trustee of the Adam Bereki Living Trust, recorded July 16, 2012 (Ex. L, p. 23).

22 Following Plaintiff’s sole ownership, an allegedly fraudulent foreclosure occurred as
23 detailed below. On January 30, 2025, on information and belief, Hou filed a Trustee’s Deed
24 Upon Sale in the Orange County Clerk-Recorder’s Office, granting the property to Canjian
25 Hou (Ex. 3, pp.16-23). Plaintiff contends it was not made by the authority of the Deed of
26 Trust or in accordance with law, is void, and that he and/or the Adam Bereki Living Trust
27 remain the sole owner, with the Trustee’s Deed slandering the title.

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1 **EX PARTE APPLICATION FOR EMERGENCY STAY**

2 **Introduction**

3 Plaintiff seeks an emergency stay of the unlawful detainer (UD) proceeding (Case
4 No. 30-2015-01459684) initiated by Canjian Hou following a non-judicial foreclosure sale of
5 Plaintiff's property at 818 Spirit, Costa Mesa, CA, on November 18, 2024. Plaintiff alleges
6 the foreclosure was wrongful, stemming from a void judgment in Case No. 30-2015-
7 00805807, tainted by extrinsic fraud and jurisdictional defects, rendering Hou's title and
8 standing defective. This Court has the inherent and statutory authority to stay the UD action
9 to prevent irreparable harm—eviction from Plaintiff's home—while these foundational issues
10 are resolved.

11 **Legal Standard for Emergency Stay**

12 California courts may stay proceedings under CCP § 918(a) when enforcement of a
13 judgment would cause undue hardship or irreparable injury, and under CCP § 1176(a) in UD
14 actions to avoid eviction where equitable grounds exist. *Freiberg v. City of Mission Viejo*, 33
15 Cal.App.4th 1484, 1489 (1995), affirms courts' inherent power to stay actions for judicial
16 efficiency and justice. Where a UD action rests on a disputed foreclosure, a stay is warranted
17 if the foreclosure's validity is credibly challenged, risking irreparable harm. *Asuncion v.*
18 *Superior Court*, 108 Cal.App.3d 141, 146 (1980).

19 **Argument**

20 ***I. The Unlawful Detainer Action Rests on a Wrongful Foreclosure Tied to a Void***
21 ***Judgment***

22 Plaintiff alleges the foreclosure sale by MTC Financial, Inc. (Trustee Corps) and
23 Citizens Bank, transferring title to Hou, was wrongful due to its basis in a void \$930,000
24 judgment from Case No. 30-2015-00805807. This judgment, imposed in 2017 for alleged
25 unlicensed contracting under Bus. & Prof. Code § 7031(b), is void *ab initio* due to extrinsic
26 fraud and lack of subject matter jurisdiction:

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- 1 • **Extrinsic Fraud:** Karen and Gary Humphreys, private citizens, lacked authority to
2 prosecute Plaintiff under § 7031(b), a penal statute, masquerading as a civil action
3 without due process safeguards (e.g., jury trial, counsel). *Linda R.S. v. Richard*
4 *D.* (1973) 410 U.S. 614, 619; Motion to Vacate— Overview, Extrinsic Fraud. New
5 evidence—*Liu v. SEC* 591 U.S. 71 (2020) (disgorgement not punitive) and *Eisenberg*
6 *Village v. Suffolk Constr.* 53 Cal.App.5th 1201 (2020) (penalty under § 7031(b))—
7 confirms this fraud, preventing a fair hearing. *Vella v. Hudgins*, 20 Cal.3d 251, 256
8 (1977) (equitable defenses to UD valid if tied to title).
- 9 • **Jurisdictional Defect:** The trial court lacked jurisdiction to impose a criminal penalty
10 via private action, violating Cal. Const. Art. V, § 1 (executive power *exclusive* to
11 Governor). *Asuncion*, 108 Cal.App.3d at 146 (stay warranted where a title dispute,
12 supported by lis pendens, affects UD proceedings); Motion to Vacate— Structural
13 Jurisdictional Errors.

14 The foreclosure, triggered by Plaintiff’s inability to pay this void judgment, is thus
15 invalid. *Barroso v. Ocwen Loan Servicing, LLC*, 208 Cal.App.4th 1001, 1012-13 (2012)
16 supports staying UD if a wrongful foreclosure claim shows prejudice to title.

17 ***II. Hou Lacks Standing Absent Valid Title***

18 Hou’s UD action hinges on a Trustee’s Deed from the November 18, 2024, sale,
19 which Plaintiff alleges is void due to the foreclosure’s illegality. *Dr. Leevil, LLC v. Westlake*
20 *Health Care Center*, 6 Cal.5th 474, 483 (2018) holds that UD requires a duly perfected title
21 via a valid trustee’s deed before pursuing UD, and premature actions fail for lack of standing.
22 If the foreclosure is void—as Plaintiff asserts due to underlying fraud and jurisdictional nullity
23 that proximately caused the sale—Hou has no lawful possession right, justifying a stay.
24 *Asuncion*, 108 Cal.App.3d at 146 (stay UD where title seriously disputed).

25 ***III. Irreparable Harm Necessitates a Stay***

26 Absent a stay, Plaintiff faces imminent eviction from his home of nearly 20 years,
27 losing \$1.18 million in equity (property valued at \$1.5 million, sold for \$371,688 (Motion to
28 Vacate— Harms Suffered). This constitutes irreparable harm, as loss of real property is
uniquely devastating. *Barroso*, 208 Cal.App.4th at 1017 (eviction risk supports stay).

1 Conversely, Hou suffers minimal prejudice—a delay in possession—mitigated by his
2 awareness of title disputes (Motion to Vacate– Emails, Ex. 4). Equity favors preserving the
3 status quo. CCP § 1176(a).

4 **IV. Judicial Efficiency Supports Consolidation and Stay**

5 The UD action, foreclosure validity, and void judgment motion are inextricably linked,
6 as resolution of Case No. 30-2015-00805807’s defects may nullify Hou’s title. *Freiberg*, 33
7 Cal.App.4th at 1489 (stay promotes docket efficiency). Staying the UD pending Plaintiff’s
8 Motion to Vacate avoids inconsistent rulings and wasted judicial resources, aligning with
9 *Vella*’s recognition of equitable defenses in UD contexts tied to title disputes.

10
11 **Conclusion**

12 This Court should grant an emergency stay of the UD action (Case No. 30-2015-
13 01459684) under CCP §§ 918(a) and 1176(a), supported by *Asuncion*, *Vella*, *Barroso*, and
14 *Dr. Leevil*. The foreclosure’s alleged wrongfulness, rooted in a void judgment, undermines
15 Hou’s standing, and eviction would irreparably harm Plaintiff while resolution of these issues
16 is pending. Plaintiff respectfully requests the stay effective immediately, without bond, given
17 his financial hardship as evidenced herein.

18 **ANSWER TO UNLAWFUL DETAINER COMPLAINT**
19 **(Case No.: 30-2025-01459684)**

20 Adam Bereki, Defendant in the Unlawful Detainer proceedings in the above case,
21 appears specially to inform the Court of the proceedings in case 30-2015-00805807: (1)
22 requesting an emergency stay of the Unlawful Detainer proceedings, (2) that the Unlawful
23 Detainer case be enjoined with 30-2015-00805807, and (3) the Court’s subject matter
24 jurisdiction is challenged based on Plaintiff Hou’s alleged lack of standing.

25 Dated: _____

26
27 By: _____

28 Adam Bereki



1
2 **NOTICE OF MOTION AND MOTION TO VACATE VOID JUDGMENT BASED ON**
3 **NEW EVIDENCE OF EXTRINSIC FRAUD AND FRAUD ON THE COURT**

4 Please take notice that Plaintiff moves this Court for orders:

- 5 1. Vacating the void judgments in Fourth District Court of Appeal Case No. G055075
6 and Superior Court Case No. 30-2015-00805807, based on new evidence of extrinsic
7 fraud revealing structural jurisdictional errors in the trial and appeal processes that
8 deprived him of a fair and impartial hearing.
9 2. Enjoining the Unlawful Detainer Proceedings with this case and dismiss the claims
10 for lack of standing and subject matter jurisdiction.
11 3. Granting judgment of restitution for rights and property lost due to the judgment,
12 including:
13 a. Declaring void the non-judicial foreclosure of a second Deed of Trust for which
14 Plaintiff's home was security.
15 b. Canceling the Deed of Trustee's Sale recorded in the Orange County Clerk-
16 Recorder's Office.
17 4. Providing all other relief the Court deems reasonable, necessary, and just to restore
18 Plaintiff's rights and property lost due to unlawful actions taken against him.

19 The time, date, and location of the hearing shall be set by the Court at the hearing for
20 *Ex parte* Application for Emergency Stay. Parties will be given updated Notice. This Motion
21 is made on the same grounds as the Stay Application.

22 Dated: _____

23 By: _____

24 Adam Bereki

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ADAM A. BEREKI
YOU WERE BORN TO BE FREE



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MOTION TO VACATE VOID JUDGMENT

This part of this action seeks equity to unwind a void judgment and foreclosure stemming from a 2017 lawsuit, based on new evidence of fraud and structural jurisdictional errors.

I. Factual Background

In 2017, private parties initiated an action against Plaintiff in this Court, alleging he performed construction work without a contractor’s license. They pursued this under Business and Professions Code § 7031(b), presenting it as a civil equity suit for “disgorgement.” Plaintiff asserts this was a covert criminal prosecution, improperly brought by private parties rather than officials vested with California’s executive power, as required by the California Constitution. This disguised action denied Plaintiff the heightened protections required in criminal proceedings. He was then fined approximately \$930,000— an excessive penalty far beyond the \$5,000 maximum for a first-time misdemeanor offense under the contractor licensing laws. This fine lacked the constitutional safeguards of the excessive fines clause, causing severe harm, including the loss of his home through a non-judicial foreclosure sale on November 18, 2024, for about \$1.18 million below fair market value (excluding a first mortgage Plaintiff believes is fraudulent and discharged in bankruptcy). This Court’s judgement was affirmed on appeal.

II. Extrinsic Fraud and Structural Jurisdictional Errors

New evidence reveals extrinsic fraud and structural jurisdictional errors that undermined the trial and appeal, including:

1. **Disgorgement Mischaracterization:** A recent U.S. Supreme Court decision clarifies that equitable disgorgement excludes punishment, showing the judgment was punitive, not equitable.
2. **Penalty Confirmation:** A California Court of Appeal opinion holds that an action under § 7031(b) is a “penalty or forfeiture,” confirming the judgment lacked criminal safeguards.
3. **Jurisdictional Defect:** As a consequence of the foregoing, this Court and the Court of Appeal lacked subject matter jurisdiction to render or affirm the judgment,

1 per *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982) (“[a] Court of
2 [California] does not have jurisdiction to render judgment that violates the California
3 Constitution or the Constitution for the United States”).

4 4. **Conspiracy Claim:** Plaintiff alleges the plaintiffs, their attorney, and a judge of this
5 Court conspired to exercise California’s executive power—reserved for state
6 officials—to prosecute him under a civil guise, per *Linda R.S. v. Richard D.*, 410 U.S.
7 614, 619 (1973) (“a private citizen lacks a judicially cognizable interest in the [criminal]
8 prosecution [...] of another”). He further alleges that Fourth District Court of Appeal
9 Justices conspired to aid and abet this conspiracy by affirming the Judgment and
denying Plaintiff a full, fair, impartial, and independent appeal.

10 These findings demonstrate extrinsic fraud and fraud on the Court that prevented a
11 fair trial and appeal as fully alleged forthwith.

12 **III. Structural Jurisdictional Errors Necessitating Automatic Reversal**

13
14 The structural jurisdictional errors in this case, rooted in the Court’s lack of subject
15 matter jurisdiction and compounded by extrinsic fraud, render the judgment void *ab initio*
16 and mandate automatic reversal under California and federal precedent. The California
17 Supreme Court, Courts of Appeal, and the U.S. Supreme Court have recognized that certain
18 errors are so fundamental—termed “structural”—that they undermine the entire framework
19 of the trial, distinguishing them from mere trial errors subject to harmless error analysis.
20 These structural errors align with the defects alleged herein: the Plaintiff’s lack of standing
21 to exercise California’s executive prosecutorial power under Cal. Const. Art. V, § 1, the
22 court’s imposition of a punitive sanction in a civil proceeding without due process
23 safeguards, and the extrinsic fraud that prevented a fair hearing. California and federal law
24 compel vacatur of the judgment due to these pervasive errors.

25 In *Aulisio v. Bancroft*, 230 Cal. App. 4th 1516 (2014), the Fourth District Court of
26 Appeal held that denying a party’s right to present testimony (evidence) in a civil proceeding
27 constitutes a structural error, requiring reversal without regard to the evidence’s strength
28 (*Aulisio*, 230 Cal. App. 4th at 1527). The court defined structural errors as those affecting
“the framework within which the trial proceeds,” citing *Arizona v. Fulminante*, 499 U.S. 279,
310 (1991), and noted that in civil contexts, such errors include due process violations



1 denying a fair hearing, such as denying a jury trial or evidence presentation (*id.*, citing
2 *Conservatorship of Maria B.*, 218 Cal. App. 4th 514, 534 (2013)). Here, the extrinsic fraud
3 and jurisdictional defect denied Plaintiff a fair hearing by mischaracterizing a penal action as
4 civil, precluding criminal safeguards like a jury trial and evidence presentation under proper
5 standards. This structural failure tainted the entire proceeding and appeal, mandating
6 reversal.

7 Similarly, *In re Enrique G.*, 140 Cal. App. 4th 676 (2006), held that failing to advise a
8 juvenile of his right to a jury trial in a probation revocation required automatic reversal
9 (*Enrique G.*, 140 Cal. App. 4th at 685). The court emphasized that such errors “require
10 reversal without regard to the strength of the evidence or other circumstances,” affecting the
11 trial’s framework (*id.*). Plaintiff’s case mirrors this: the Court’s failure to treat the \$930,000
12 fine as a criminal penalty denied him a jury trial, a foundational right, due to fraudulent
13 concealment of the action’s nature. This structural defect undermines the proceeding’s
14 legitimacy, necessitating vacatur.

15 The U.S. Supreme Court in *Weaver v. Massachusetts*, 582 U.S. 286, 295-296 (2017),
16 identified three rationales for classifying errors as structural, each applicable here. First,
17 structural errors safeguard interests beyond mere trial accuracy, such as fundamental
18 constitutional rights. The jurisdictional defect here—private prosecution by the Humphreys
19 under Business and Professions Code § 7031(b)—violates Plaintiff’s due process rights
20 (Cal. Const. Art. I, § 7; U.S. Const. Amend. XIV) and liberty to pursue his livelihood (Cal.
21 Const. Art. I, § 1), striking at ordered liberty’s core. Second, structural errors are those whose
22 effects defy measurement, like denial of counsel of choice. The lack of jurisdiction,
23 compounded by extrinsic fraud, taints the entire 2017 proceeding, rendering its impact
24 unquantifiable. Third, structural errors inherently cause fundamental unfairness, such as
25 denying counsel to an indigent defendant. Imposing a \$930,000 punitive sanction via a civil
26 court without due process safeguards was fundamentally unfair, as confirmed by *MW*
27 *Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426
28 (2005) (describing § 7031 as a ‘stiff all-or-nothing penalty’). These principles, applied in *In*
re Christopher L., 12 Cal. 5th 1063, 1077-1078 (2022) to ICWA errors, underscore the
structural nature of the defects here.

1 The U.S. Supreme Court’s decision in *Johnson v. Zerbst*, 304 U.S. 458 (1938),
2 reinforces this, holding that denial of the Sixth Amendment right to counsel is a structural
3 error depriving a court of jurisdiction (*Johnson*, 304 U.S. at 467-68). The Court stated,
4 “compliance with this constitutional mandate is an essential jurisdictional prerequisite,” and
5 its absence “goes to the jurisdiction of the trial court” (*id.*). Plaintiff’s denial of criminal
6 safeguards, including counsel, in a mischaracterized penal proceeding parallels this, voiding
7 the court’s authority.

8 Further, *People v. Bush*, 7 Cal. App. 5th 457 (2017), and *People v. Dominguez*, 166
9 Cal. App. 4th 858 (2008), distinguish structural errors as affecting “the framework within
10 which the trial proceeds” (*Bush*, 7 Cal. App. 5th at 467; *Dominguez*, 166 Cal. App. 4th at
11 866). The lack of jurisdiction here is a foundational defect, not a quantifiable trial error under
12 *Chapman v. California*, 386 U.S. 18 (1967).

13 These precedents collectively affirm that the structural jurisdictional errors—lack of
14 lawful prosecutorial authority, fraudulent concealment of the proceeding’s nature, and
15 imposition of an unconstitutional penalty—require automatic reversal. The court’s actions
16 violated the California Constitution and U.S. Constitution, rendering the judgment a legal
17 nullity under Cal. Code Civ. Proc. §§ 473(d) and 1916, consistent with *MacMillan Petroleum*
18 *Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950) (“a court may set aside a void order at any
19 time”).

20 **III. Harms Suffered**

21 Due to these unlawful actions, Plaintiff has endured irreparable harm, including the
22 following:

- 23 1. Loss of his vested right to work as a general contractor for nearly six years, resulting
24 in an estimated \$1 million in lost earnings, as he could not afford the unconscionable
25 judgment.
- 26 2. Impairment of private contracts and obligations due to the judgment, leading to the
27 non-judicial foreclosure of his home.

3. Forced bankruptcy stemming from the judgment, fraudulent foreclosure proceedings, and repeated denials of relief from judicial, executive, or legislative branches of California or the United States.
4. Loss of earnings for his time and labor for his professional services in investigating the fraud and other unlawful misconduct alleged herein, estimated to be over \$5 million dollars.

IV. Procedural Basis and Authorities

This Motion relies on:

- The inherent powers of this Court to vacate void judgments.
- California Code of Civil Procedure (CCP) § 473(d), allowing correction of void judgments.
- CCP § 1916, stating that “any judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.”

As this motion targets a void judgment, it is timely under CCP § 473(d). *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660 (2004) (“[w]hen a court lacks jurisdiction in a fundamental sense, such as jurisdiction over the subject matter or the parties, its judgment is void, and a void judgment can be set aside at any time”).

HISTORICAL LEGAL FRAMEWORK AT AMERICA’S FOUNDING: THE CIVIL-CRIMINAL DICHOTOMY AND ABSENCE OF PUBLIC WELFARE OFFENSES

To fully grasp the jurisdictional defects and constitutional violations in this case, we must examine the legal framework at America’s founding. This historical context reveals that California Business and Professions Code § 7031(b), as applied, deviates from the Constitution’s original intent, which recognized only civil and criminal actions, not modern public welfare offenses.

1 **I. Civil and Criminal Actions at the Founding**

2 At America’s founding, influenced by English common law, the legal system
3 recognized two primary actions: civil and criminal. Civil actions addressed “private wrongs”—
4 disputes between individuals over rights like contracts or property—seeking remedies such
5 as restitution. Criminal actions, or “public wrongs,” were state-prosecuted offenses against
6 the community, like murder or theft, aimed at punishment and deterrence. This binary
7 system is embedded in Article III of the U.S. Constitution, which establishes federal courts
8 to handle “cases” (civil disputes) and “controversies” (including criminal prosecutions).
9 Sir William Blackstone’s Commentaries on the Laws of England (1765–1769), a key
10 influence on the framers, defines civil actions as addressing “an infringement or privation of
11 the private or civil rights belonging to individuals” (Book III, Chapter 2), with restitution as the
12 goal: “The satisfaction awarded to the party injured is the principal end of a civil action” (Book
13 III, Chapter 8). Criminal actions, however, are “a breach and violation of the public rights and
14 duties, due to the whole community” (Book IV, Chapter 1), with punishment to “prevent the
15 commission of crimes” (Book IV, Chapter 1). Blackstone states, “All wrongs are either public
16 or private” (Book III, Chapter 2), leaving no third category. Early cases like *Chisholm v.*
Georgia 2 U.S. 419 (1793) (civil debt dispute) and *United States v. Hudson and Goodwin*,
11 U.S. 32 (1793) (criminal intent requirement) reflect this dichotomy.

17 **II. Absence of Public Welfare Offenses**

18 Modern public welfare offenses—strict-liability violations like building code
19 breaches—did not exist at the founding. These emerged post-1787 with the regulatory state,
20 particularly during the New Deal era, dubbed by some the “New Steal” for its perceived
21 erosion of constitutional rights. Founding-era criminal actions required intent, as seen in
22 *Calder v. Bull*, 3 U.S. 386 (1798) distinguishing civil property rights from intent-based
23 criminal laws. Caleb Nelson’s *Adjudication in the Political Branches* notes, “Early
24 Congresses did not understand themselves to be authorizing... determinations wholly
25 divorced from judicial process” (p. 592), indicating no regulatory offenses existed then.
26 Justice Clarence Thomas’s opinions, such as in *Timbs v. Indiana* 586 U.S. ____ (2019),
27 reinforce this intent-based framework, rejecting modern strict liability as a founding-era
28 concept.





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III. Judicial Protection of Private Rights and Franchises

The founding era also recognized that franchises, like corporate charters, could vest as private rights requiring judicial protection. Nelson’s Vested Rights, ‘Franchises,’ and the Separation of Powers explains that once granted, these became private rights needing Article III adjudication (*Dartmouth College v. Woodward*, 1819), fitting within civil actions and reinforcing the absence of a regulatory category.

IV. Relevance to This Case

Section 7031(b)’s \$930,000 fine, imposed without intent or criminal safeguards, mimics a public welfare offense—a concept foreign to the founding era. This departure from the civil-criminal dichotomy allowed private parties to criminally prosecute Plaintiff, exceeding their constitutional authority and rendering the judgment void due to jurisdictional defects.

CONVERSION OF PRIVATE RIGHTS INTO PUBLIC PRIVILEGES: A CONSTITUTIONAL HIJACKING

The modern transformation of private rights into public privileges, exemplified by the Contractors State License Board (CSLB), contractor licensing laws (Cal. Bus. & Prof. Code §§ 7000 et seq.) and § 7031, represents a profound departure from the Constitution’s original intent, undermining inalienable rights and fueling an unconstitutional administrative state, through an constitutional fourth branch of government.

I. Private Rights at the Founding

At America’s founding, private contracts—such as those for construction work—were sacrosanct private rights, not public privileges. The Northwest Ordinance of 1787 declared: “No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary... full compensation shall be made for the same.” This protected private agreements from impairment, a principle echoed in the Contract Clause (U.S. Const. Art. I, § 10). Construction contracts between individuals, like Plaintiff’s and/or his company’s with the Plaintiffs in this action, Karen and Gary Humphreys, (“the Humphreys”), were private matters, adjudicated as civil actions if disputed, not subject to state control.

1 **II. The Regulatory Shift: From Rights to Privileges**

2 Post-founding, particularly with the New Deal’s regulatory expansion, government
3 officials began converting these private rights into public privileges. The licensing laws
4 exemplify this by requiring licenses for private contractual work and imposing penalties like
5 § 7031(b)’s fine, transforming a private right into a state-regulated privilege. This shift allows
6 administrative agencies to dictate terms once governed by mutual consent, denying
7 inalienable rights in ordinary vocations of life, and stripping individuals of autonomy over
8 their labor and contracts.

9 **III. The Administrative State: An Unlawful Fourth Branch of Government**

10 The CSLB’s structure reveals a constitutional hijacking. The California Constitution
11 mandates separation of powers (Cal. Const. Art. III, § 3), vesting legislative (Art. IV),
12 executive (Art. V), and judicial (Art. VI) powers in distinct branches. Yet, the CSLB combines
13 all three:

- 14 • **Legislative Power:** It promulgates licensing regulations (Cal. Bus. & Prof. Code
15 § 7008), acting as a quasi-legislature.
- 16 • **Executive Power:** It enforces these rules, investigating and prosecuting
17 violations (§ 7011).
- 18 • **Judicial Power:** It adjudicates disputes, holding hearings and issuing decisions
19 (§ 7099.5), bypassing judicial courts.
20

21 This consolidation creates a “fourth branch”—the administrative state—
22 unaccountable to constitutional checks, as Nelson notes: “Governmental officials needed
23 ‘judicial’ power to dispose conclusively of an individual’s legal claim to private rights”
24 (Adjudication, p. 563). The enforcement of the Contractor License Laws in Plaintiff’s case,
25 underpinning § 7031(b)’s enforcement, violate this separation, rendering the judgment
26 jurisdictionally defective.

ADAM A. BEREKI
YOU WERE BORN TO BE FREE



1 **IV. Constitutional Implications and Relevance**

2 This conversion undermines inalienable rights—life, liberty, property, and privacy—
3 by subjecting them to administrative whim. Plaintiff’s private right to contract became a
4 privilege revocable by the Legislature, Courts, and CSLB, leading to a \$930,000 fine and
5 loss of livelihood without due/judicial process. This “New Steal” enriches the state and
6 private parties like the Humphreys, who retained \$930,000 in work value, at Plaintiff’s
7 expense, violating the founding-era framework where private rights required judicial
8 protection, not regulatory forfeiture.

9 **CONSTITUTIONAL CRISIS MANDATING RELIEF**

10 This case transcends a statutory misapplication—it presents a Constitutional crisis
11 demanding judicial correction at the highest level. Cal. Bus. & Prof. Codes § 7031(a) and
12 (b), as applied, imposed a \$930,000 fine—186 times § 7028’s misdemeanor cap—without
13 the due/judicial process safeguards guaranteed by Cal. Const. Art. I, §§ 7, 9 and U.S. Const.
14 Art. I, § 10, Amend. XIV, and in violation of the excessive fines prohibitions under Cal. Const.
15 Art. I, § 17 and the Eighth Amendment. Plaintiff, self-represented and misled about the
16 action’s penal nature as “disgorgement” (Dkt. 193), was denied notice of criminal
17 consequences, right to counsel, and jury trial—protections mandated in penal proceedings
18 (*Ex parte Clark*, 24 Cal. App. 389, 395 (1914); *United States v. Shapleigh*, 54 F. 126, 134
19 (8th Cir. 1893)). This procedural ambush, executed by private parties lacking executive
20 authority (Cal. Const. Art. V, § 1), rendered the judgment void *ab initio* (*World-Wide*
21 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). The fine’s excessiveness
22 compounds this crisis. Valued at more than 40 times Plaintiff’s qualifying net worth, it forced
23 bankruptcy, stripping life and liberty without proportionality to the alleged unlicensed work—
24 work the Humphreys retained, valued at \$930,000. Compared to § 7028’s \$5,000 maximum,
25 this penalty is a “stiff all-or-nothing” punishment (*MW Erectors v. Niederhauser Ornamental*
26 *& Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (2005)), not a civil remedy, violating
27 constitutional limits (*United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (fines must be
28 proportional); *County of San Diego v. Milotz*, 46 Cal. 2d 761, 766 (1956)). California courts
recognize that “a penalty that is grossly disproportionate to the gravity of the offense is
unconstitutional” (*People v. Urbano*, 128 Cal. App. 4th 396, 406 (2005)), yet the trial and
appellate Judges ignored these safeguards, breaching their judicial duties. This is not an



1 isolated injustice but a systemic flaw in § 7031(a) and (b)'s application occurring for nearly
2 100 years in California (in the case of § 7031 (a)), permitting private parties to wield
3 executive power and impose ruinous fines without due and judicial process.

4 This systemic issue is further illustrated by other cases involving § 7031. A significant
5 example is *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882
6 (2015), where the Judicial Council sought a \$22.7 million forfeiture against Jacobs, a
7 company it contracted to maintain California Court buildings. Despite Jacobs reportedly
8 performing well, the forfeiture—labeled as “disgorgement”—stemmed from an apparently
9 unintentional licensing issue during a corporate reorganization. Public records show the
10 Judicial Council spent \$3,307,408.78 in taxpayer funds to pursue this case (Exhibit C, p.
11 1815), that had no lawful basis to begin with. This case highlights concerns about the
12 application of § 7031 and its potential or serious abuse through the imposition of substantial
13 penalties for technical infractions and its egregious abuse by members of the California
14 Judiciary.

15 The full extent of similar cases remains unclear, as California's court records system
16 lacks a searchable database for § 7031 judgments, a statute in effect since 1929. However,
17 a preliminary review of appellate cases reveals additional examples of significant forfeitures
18 without lawful authority under § 7031, subject to further verification of the amount forfeited:

- 19 1. *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012): A forfeiture of
20 \$917,043.09 against Paul Bardos, resulting in bankruptcy and loss of his home (*In re*
21 *Bardos*, Bankr. No. 10-41455-DS).
- 22 2. *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th
23 412 (2005): A forfeiture of \$1,322,247, plus interest and court costs, against MW
24 Erectors under § 7031(a).
- 25 3. *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005): A forfeiture
26 of \$212,821.80, plus interest and costs, against Banis under § 7031(a).
- 27 4. *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (1991): A forfeiture of
28 \$110,000, plus interest and costs, against Hydrotech under § 7031(a).
5. *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009): A forfeiture of \$84,621.45, plus
interest and costs, against JC Master Builders under § 7031(b).

1 Federal Courts have also upheld similar forfeitures. In *Davis Moreno Constr., Inc. v.*
2 *Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566, a forfeiture of \$168,025.90 was
3 awarded against Frontier under § 7031(b), with an additional unspecified amount under §
4 7031(a). The Ninth Circuit bankruptcy case of Paul Bardos, *supra* further reflects this trend.

5 In these cases, Courts consistently declined to treat the forfeitures as penal, thus
6 bypassing constitutional protections like the Excessive Fines Clause (Cal. Const. Art. I, §
7 17; U.S. Const. Amend. VIII) and due/ judicial process guarantees. This pattern suggests a
8 broader issue with § 7031's application, mandating judicial review to ensure alignment with
9 constitutional standards.

10 MOTION TO VACATE VOID JUDGMENT

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 Overview

13
14 “A private citizen lacks a judicially cognizable interest in the [criminal] prosecution [...] of
15 another.”

16 – *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)

17 Cal. Const. Art. V, § 1 declares: “The supreme executive power of this State is vested
18 in the Governor. The Governor shall see that the law is faithfully executed.” Because the
19 executive power is vested *exclusively* in the Governor, private parties cannot criminally
20 prosecute other private parties, as occurred in this case. In 2017, Plaintiff was maliciously
21 and fraudulently prosecuted for allegedly performing construction work by the Humphreys
22 in a purported civil action, fraudulently disguised as an equitable remedial action for
23 “disgorgement.” Despite the purported equitable proceedings, Plaintiff was denied equity
24 and all mandatory heightened protections required in criminal proceedings. He was
25 excessively, cruelly, and unusually fined more than \$930,000. This resulted in a structural
26 jurisdiction failure of the trial mechanism and a bill of pains (punishment without a judicial
27 determination of rights/ the taking of life, liberty, or property without judicial process) in
28 violation of Cal. Const. Art. I, § 9 and U.S. Const. Art. I, § 10, because he was punished and
the proceedings were *coram non judice* (before a non-judge, lacking jurisdiction).

1 When Plaintiff was unable to pay the unconscionable fine—approximately forty times
2 his qualifying net worth at the time—he was further egregiously punished when his vested
3 right to be the Qualifying Individual of a general contractor license (a right vested since at
4 least 2007, see Lic. #927244) was revoked without a judicial hearing, resulting in more than
5 three million dollars in lost earnings and a bill of pains and penalties. The Court of Appeal
6 affirmed the decision, finding the Judgment was not a fine or penal, but the equitable remedy
7 of “disgorgement.” (Appendix C – Opinion, Fourth District Court of Appeal).

8 In 2020 (after trial and appeal in this case), the U.S. Supreme Court filed its decision
9 in *Liu v. SEC*, 591 U.S. 71 (2020), defining the nature of “disgorgement” as a “profit-based
10 measure of unjust enrichment” (p. 79) intended to deprive a wrongdoer of his illegal profits.
11 No profits were evidenced in Plaintiff’s case, evidencing that the Judgment was not for
12 “disgorgement.” Plaintiff was also denied equitable deductions for the reasonable value of
13 all benefits previously returned to the Humphreys in the form of custom remodel construction
14 work, evidencing the Judgment cannot possibly be “equitable,” and no authority to impose
15 a constructive trust was allowed. As Plaintiff will evidence, the case against him was really
16 a covert penal action intended to punish him for allegedly performing construction work
17 without a contractor license, despite its “civil” label. As enacted and applied to Plaintiff, §
18 7031 is just a differently worded version of the criminal statute to punish unlicensed
19 contractors under § 7028 (the criminal unlicensed contractor statute).

20 In 2020 (after trial and appeal in this case), the Second District Court of Appeal of
21 California filed its opinion in *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*, 53 Cal.
22 App. 5th 1201 (2020). In *Eisenberg*, the Court found that Business and Professions Code §
23 7031(b) imposed a “penalty” (not equitable disgorgement) and was subject to the one-year
24 statute of limitations imposed by Cal. Code Civ. Proc. § 340.

25 Because the Judgment against Plaintiff: 1) was not equitable; 2) was not supported
26 by any evidence he had caused the Humphreys any harm; and 3) was intended to punish
27 him for allegedly committing the crime or public offense of performing construction work
28 without a license, the Humphreys lacked both the capacity *and* standing to exercise the
executive power of California to criminally prosecute him. As “a private citizen lacks a
judicially cognizable interest in the [criminal] prosecution [...] of another” (*Linda R.S. v.*

1 *Richard D.*, 410 U.S. 614, 619 (1973)), this Court lacked subject matter jurisdiction to subject
2 Plaintiff to criminal proceedings and to punish him. The Fourth District Court of Appeal
3 lacked subject matter jurisdiction to affirm the Judgment.

4 Plaintiff has sought relief in every Court of California and the United States and
5 continues to be denied due/ judicial process and a full, fair, and impartial judicial
6 determination of his rights. As a direct and proximate result of all the foregoing, Plaintiff
7 continues to suffer irreparable harm and damages as alleged herein, including most recently,
8 the foreclosure sale of his home. Upon vacatur of the void Judgment in this case, Plaintiff
9 seeks an Order for damages and restitution restoring all rights and property lost as a result
10 of the Judgment, including the reversal of the foreclosure proceedings.

11 **I. This Court Has a Duty to Vacate the Void Judgment in This Case Even After**
12 **Appeal**

13 “A court may set aside a void order at any time. An appeal will not prevent the court from
14 at any time lopping off what has been termed a dead limb on the judicial tree—
15 a void order.”

16 – *MacMillan Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950)

17 This Court is vested with both the inherent authority and a non-discretionary duty to
18 vacate the judgment in this case, which Plaintiff contends is void due to fundamental
19 jurisdictional defects, due/ judicial process violations, and extrinsic fraud. Established
20 California precedent and statutory authority compel this result, even after an appeal has
21 concluded, as a void judgment is a legal nullity subject to attack at any time.

22 **a. The Judgment Is Void Due to Lack of Jurisdiction and Extrinsic Fraud**

23 A judgment is void when the rendering court lacks personal or subject matter
24 jurisdiction, or exceeds its authority by granting relief it has no power to award (*Becker v.*
25 *S.P.V. Constr. Co.*, 27 Cal. 3d 489, 493 (1980); *Jones v. World Life Research Inst.*, 60 Cal.
26 App. 3d 836, 840–848 (1976)). Here, Plaintiff asserts that the judgment is void on its face
27 because: (1) the Humphreys, as private citizens, lacked constitutional standing and capacity
28 to exercise California’s executive power to prosecute him, rendering their actions *ultra vires*,
and (2) the presiding judges/justices lacked subject matter jurisdiction to render and affirm
the judgment.

1 The United States Supreme Court has long held that “a private citizen lacks a
2 judicially cognizable interest in the [criminal] prosecution ... of another” (*Linda R.S. v.*
3 *Richard D.*, 410 U.S. 614, 619 (1973)). California courts echo this principle, recognizing that
4 a lack of standing constitutes a jurisdictional defect (*People ex rel. Becerra v. Superior Ct.*,
5 29 Cal. App. 5th 486, 496 (2018)). If the Humphreys had no lawful authority to initiate or
6 pursue this prosecution, the court lacked subject matter jurisdiction over the proceedings
7 from the outset. Furthermore, Plaintiff alleges newly discovered evidence revealing extrinsic
8 fraud—specifically, structural jurisdictional errors in the trial and appellate processes that
9 deprived him of a full, fair, and impartial judicial determination of his rights.

10 Extrinsic fraud occurs when a party is fraudulently prevented from presenting their
11 claim or defense, thereby undermining the integrity of the judicial process (*City & Cnty. of*
12 *San Francisco v. Cartagena*, 35 Cal. App. 4th 1061, 1067 (1995); *Estate of Sanders*, 40 Cal.
13 3d 607, 614 (1985)). Examples include failure to provide notice or fraudulent inducement to
14 forgo legal representation—actions that deny a party their day in court (*Kulchar v. Kulchar*,
15 1 Cal. 3d 467, 471 (1969)). Plaintiff’s contention that the prosecution and judicial process
16 were tainted by such fraud, evidenced by the Humphreys’ lack of authority and the Court’s
17 failure to exercise lawful judicial power, renders the judgment void.

18 ***b. A Void Judgment May Be Set Aside at Any Time, Even After Appeal***

19 California law unequivocally permits a Court to vacate a void judgment at any time,
20 irrespective of prior appeals. As articulated in *MacMillan Petroleum Corp. v. Griffin*, 99 Cal.
21 App. 2d 523, 533 (1950), “a court may set aside a void order at any time,” a principle
22 reinforced by *Craft v. Craft*, 49 Cal. 2d 189, 192 (1957), and *Rochin v. Pat Johnson Mfg.*, 67
23 Cal. App. 4th 1228, 1239 (1998). A void judgment is subject to direct or collateral attack,
24 including via a motion to vacate under Code of Civil Procedure § 473(d), which imposes no
25 time limit for such relief.

26 ***c. Statutory and Constitutional Authority Mandates Relief***

27 Statutory provisions further compel the vacation of the judgment. Code of Civil
28 Procedure § 473(d) explicitly authorizes a Court, on motion and notice, to “set aside any
void judgment or order.” Similarly, § 1916 permits impeachment of a judicial record for “want

1 of jurisdiction in the court or judicial officer, collusion between the parties, or fraud in the
2 party offering the record.” Here, the alleged lack of jurisdiction and extrinsic fraud fall
3 squarely within these provisions. The United States Supreme Court’s decision in *Liu v. SEC*,
4 591 U.S. 71 (2020), and California’s recognition of superior court precedent in *Auto Equity*
5 *Sales Corp. v. Superior Ct.*, 57 Cal. 2d 450, 455 (1962), bind this Court to rectify jurisdictional
6 errors. Plaintiff has never received a lawful judicial determination of his rights by a Court
7 exercising constitutional authority, a deprivation that this Court must now remedy.

8 ***d. The Motion to Vacate Is a Direct Attack Supported by Equity***

9 A motion to vacate is a direct (not collateral) attack on a judgment, as recognized in
10 *In re Dahnke’s Estate*, 64 Cal. App. 555 (1923). When the record reveals a want of
11 jurisdiction, the presumption favoring a Court’s judgment is overcome (*Gray v. Hawes*, 8
12 Cal. 562 (1857)). Furthermore, where extrinsic fraud is at issue, no statutory time limit
13 governs; the Court’s inherent equity power prevails (*Dep’t of Indus. Rels. v. Davis Moreno*
14 *Constr., Inc.*, 193 Cal. App. 4th 560, 570–71 (2011)). This equitable authority ensures that
15 fraudulently procured judgments do not stand.

16 **Conclusion**

17 This Court has a mandatory duty to vacate the judgment in this case, which Plaintiff
18 has demonstrated is void due to jurisdictional defects and extrinsic fraud. The lack of
19 standing by the Humphreys, the absence of lawful judicial power, and newly discovered
20 evidence of fraud undermine the judgment’s validity. California law—both statutory and
21 inherent—empowers and obligates this Court to act, even after appeal, to excise this “dead
22 limb on the judicial tree.” Plaintiff respectfully requests that the Court grant the motion to
23 vacate, restoring his right to a fair and lawful adjudication.

24 **II. Factual Background**

25 ***a. Plaintiff Qualifies for a General Contractor License***

26 On or about October 15, 2008, Plaintiff was determined by the Contractors State
27 License Board (CSLB) to be a Qualifying Individual for a general contractor license held in
28 both his name (as the Qualifying Individual) and that of his solely owned and operated
company, The Spartan Associates, Inc. (“Spartan”). See Lic. #927244. Spartan was a

1 corporation organized under the laws of California but was forced out of business and
2 dissolved as a direct and proximate result of the conspiracies alleged herein.



[Home](#) | [Online Services](#) | [Personnel Search Results](#) | Personnel License List

Personnel License List for BEREKI, ADAM ALAN

Click on the license number to see a more detailed page of information on that person.

HIS registration numbers will be noted with an "SP" suffix.

Licenses Currently Associated With

HIS Registration # or License # [927244](#)
HIS Personnel or Business Name SPARTAN ASSOCIATES INC THE
City COSTA MESA
Association Date 01/10/2009
Status CANCELLED

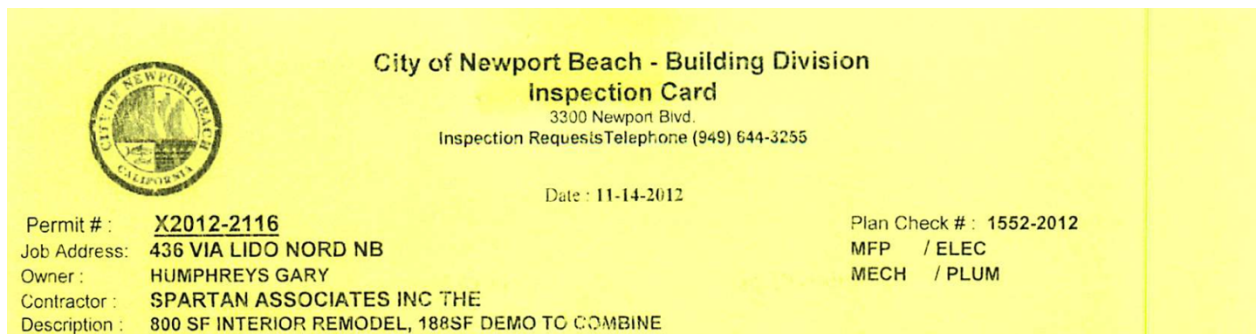
23 A Qualifying Individual is defined in the Application for Original Contractor License as
24 "the person who meets the experience and examination requirements for the license and
25 who is responsible for exercising supervision and control of their employer's or principal's
26 construction operations to secure compliance with CSLB's laws, rules, and regulations.
27 (BPC section 7068.1(a)) 'Supervision and control' means 'direct supervision or control' or
28 monitoring and being available to assist others to whom 'direct supervision and control' has

1 been delegated. 'Direct supervision or control' means supervising construction, managing
2 construction activities by making technical and administrative decisions, checking jobs for
3 proper workmanship, and/or supervision on construction sites. A qualifying individual is
4 required for every classification on every license issued by CSLB." Cal. Bus. & Prof. Code §
5 7096 states: "the term 'licensee' shall include [...] personnel of that licentiate whose
6 appearance has qualified the licentiate under the provisions of Section 7068." Based on the
7 foregoing, a Qualifying Individual is an inseparable part of every contractor license, to the
8 degree that the license cannot exist without the qualifier.

9
10 ***b. Spartan is Hired for The Humphreys' Remodel Project***

11 In April 2012, Plaintiff, on behalf of Spartan, entered into an agreement with the
12 Humphreys to perform custom remodel construction work on a single upstairs condominium
13 unit located at 436 Via Lido Nord in Newport Beach, CA. The condominium unit is located
14 on Lido Isle and is waterfront to the bay waters that surround the Isle. The Humphreys'
15 condominium unit was part of a building that included two other condominium units—another
16 upstairs unit, adjacent to the Humphreys' unit, and a downstairs unit. All units shared an
17 attached garage.

18 The project initially involved performing a facelift to the Humphreys' unit but quickly
19 changed when the Humphreys decided to purchase the second upstairs unit with the intent
20 of converting their two units into one while expanding a bay-facing deck. This resulted in a
21 major structural and mechanical remodel to the entire building that required building permits.
22 Spartan obtained a building permit for the project through the City of Newport Beach after
23 submitting plans created by a licensed architect and engineer. Spartan was listed as the
24 contractor on the permit The following is an excerpted portion of the permit card:



1 In furtherance of Plaintiff's intent that Spartan was performing the work, he hung
2 Spartan's business sign from the roof of the project:



15
16 Spartan and its employees also prepared numerous design presentations that were
17 presented to the Humphreys, which the Humphreys either approved or disapproved. In
18 addition to licensed subcontractors and its employees, Spartan performed all the work on
19 the Humphreys' project. At all times during the performance of this work, Plaintiff maintained
20 "direct supervision and control" of Spartan's construction activities by supervising
21 construction, managing construction activities by making technical and administrative
22 decisions, checking jobs for proper workmanship, and supervising the construction site as
purportedly required under § 7068.

23 Over the course of the near 1.5-year project, the Humphreys and, on information and
24 belief, Gary Humphreys' company, Humphreys and Associates, Inc., discharged the
25 obligation to Plaintiff or Spartan in the amount of \$848,000.

26 In or about August 2013, a dispute arose between Spartan and the Humphreys. The
27 Humphreys refused to discharge Spartan's most recent bill for approximately \$82,000 in
28 materials and labor services provided. On or about August 28, 2013, Spartan received a

1 “Notice of Cessation of Labor” from the Humphreys (and/or William Bissell, their attorney,
2 on their behalf) after the dispute emerged. The Notice was addressed to Spartan, Attn: Adam
3 Bereki, President (not Plaintiff individually as an entity separate from Spartan). Plaintiff never
4 individually received a similar Notice. Spartan complied with the Notice by ceasing all work,
5 removing its tools and equipment from the property, and delivering all property in its
6 possession belonging to the Humphreys to them and/or their assigns.

7
8 ***c. Procedural History in This Court and Trial***

9 On August 21, 2015, Spartan filed suit against the Humphreys for quantum meruit
10 and open book account, alleging it had been hired to perform custom remodel services on
11 their Newport Beach vacation home and had not been paid approximately \$82,000 in labor
12 and materials pursuant to their agreement (Dkt. 2). On October 13, 2015, the Humphreys,
13 represented by their attorney, William Bissell of the Law Office of William Bissell, filed a
14 Cross-Complaint against Spartan, Plaintiff, and two bonding companies (Dkt. 17). (All future
15 references to the Humphreys taking action in the case are, on information and belief, taken
16 by Bissell at their direction or approval as their agent. On January 13, 2016, Defendant David
17 Chaffee was assigned as Superior Court Judge presiding over the case (Dkt. 42).

18 On February 17, 2016, the Humphreys filed a Motion for Summary Judgment (“MSJ”)
19 (Dkt. 90). Their “undisputed facts” alleged they contracted with Spartan (not Plaintiff) and
20 that Spartan (not Plaintiff) had performed the work on their project (MSJ p. ii, items 1, 6, and
21 7). They sought summary judgment on the grounds that Spartan allegedly failed to comply
22 with certain requirements of the contractor licensing laws (Cal. Bus. & Prof. Code § 7000 et
23 seq.), thus lacking standing to seek relief. Judge Chaffee denied the motion, finding the
24 Humphreys failed to prove their right to summary judgment as a matter of law.

25 On January 6, 2017, approximately one month before trial, the Humphreys filed their
26 First Amended Cross-Complaint (“FACC”), reversing their previously alleged “undisputed
27 facts” (Dkt. 144). They now claimed they contracted with Plaintiff (not his licensed company,
28 Spartan) and, since Plaintiff was allegedly unlicensed, they were entitled to a full refund
without deductions for the value received over the near 1.5-year project. Their First-
Amended First Cause of Action sought “disgorgement of funds paid” under Cal. Bus. & Prof.
Code § 7031(b) against Plaintiff, demanding return of “all sums paid,” totaling \$848,000,



1 without offsets for custom remodel services valued at approximately \$930,000 (\$848,000
2 paid plus Spartan’s \$82,000 claim for unpaid work).

3 On January 27, 2017, the Humphreys filed a Motion for Severance to isolate their
4 First-Amended First Cause of Action for “disgorgement” from other claims (Dkt. 160). Their
5 remaining claims included negligence and fraud, estimating damages at \$537,038.55 (Dkt.
6 168, p. 1). Bissell’s Declaration in Support of the Motion for Severance admitted the
7 Humphreys believed a § 7031(b) claim negated the need to evidence other claims, as it
8 nearly doubled their alleged damages, yielding a windfall (assuming validity of their claims)
9 (Dkt. 160, Decl. p. 3, 4b). As will be further explained and evidenced, the rationale of
10 obtaining a windfall without evidence of damages rests on an unlawful presumption in §
11 7028 and § 7031—that unlicensed contractors’ work is valueless due to presumed
12 incompetence or dishonesty (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009)). Yet,
13 presumptions are not evidence (Cal. Evid. Code § 600), and constitutional restrictions limit
14 such legislative overreach (*Bailey v. Alabama*, 219 U.S. 219, 239 (1911); *Vlandis v. Kline*,
15 412 U.S. 441, 446-48, 452 (1973)). The CSLB had deemed Plaintiff competent as Spartan’s
16 Qualifying Individual, undermining any such presumption to be imposed at trial.

16 At this point in the proceedings, Judge Chaffee had a mandatory, non-discretionary
17 duty under Cal. Const. Art. I, §§ 7, 9 (due/judicial process) to assess the Humphreys’
18 capacity and standing to pursue a § 7028/§ 7031 claim and a \$930,000 fine (\$848,000 plus
19 denial of Spartan’s claim for \$82,000 pursuant to §7031(a)) (*United States v. Shapleigh*, 54
20 F. 126, 130 (8th Cir. 1893); *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009)). Instead,
21 he proceeded to trial, triggering a cascade of due/judicial process violations—denying
22 Plaintiff criminal safeguards and violating Cal. Const. Art. I, § 17’s excessive fines clause.

23 Trial occurred on March 26-27, 2017 (Dkt. 190, 193 – Minute Orders). Spartan was
24 represented by counsel; Plaintiff, self-represented due to financial constraints, was never
25 informed of the proceedings’ criminal nature or his right to counsel. He waived a jury trial,
26 misled about the action’s true character by the Humphreys, Bissell, and Chaffee. Plaintiff
27 believed he was in a lawful Superior Court *judicial* trial (as opposed to a summary
28 administrative tribunal) that would acknowledge and respect his rights and would not have
consented had the truth been disclosed.



1 The Humphreys testified they contracted with Plaintiff (not Spartan) and that he
2 and/or Spartan were paid \$848,000– a fact (payment) Plaintiff does not dispute. On March
3 28, 2017, Judge Chaffee issued a Minute Order (Dkt. 193, Appendix A, pp. 4-6), stating:
4 “Having fully considered the arguments of all parties, both written and oral, as well as the
5 evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor
6 and he does not possess [a] contractor’s license. The Court finds judgment for Cross-
7 Complainants, Gary and Karen Humphreys (First Cause of Action for Disgorgement of
8 Funds paid).” Chaffee also ruled against Spartan’s \$82,000 claim under § 7031(a), asserting
9 Spartan lacked standing since Plaintiff was deemed the contractor. Plaintiff contends this
10 \$82,000 denial was an additional penalty, totaling the \$930,000 fine, since all of Spartan’s
11 profits flowed through to him.

12 On March 29, 2017, the Humphreys filed a Proposed Judgment Order for “damages”
13 of \$848,000 (Dkt. 199), which Plaintiff alleges is fraudulent because: 1) they had not claimed
14 “damages”; 2) no damages evidence was presented at trial; 3) they severed damages claims
15 (Dkt. 160) prior to trial; 4) their cause was for “disgorgement”; and 5) Chaffee’s Minute Order
16 awarded “disgorgement,” not “damages” (Dkt. 197). The proposal omitted the \$82,000 under
17 § 7031(a). On April 20, 2017, on information and belief, Chaffee signed this order unchanged
18 (Dkt. 204, Appendix C). On April 24, 2017, the Humphreys filed a “Notice of Entry of
19 Judgment or Order” with Bissell’s proof of service. On April 26, 2017, the Clerk filed an
20 “Abstract of Judgment – Civil and Small Claims”, recorded by the Humphreys with the
21 Orange County Clerk-Recorder on April 27, 2017 (Ex. L, pp. 52-56), creating a lien on
22 Plaintiff’s trust property under Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). Bissell also
23 filed a Notice of Judgment Lien with the California Secretary of State on April 24, 2017, for
24 \$848,929.32, which lapsed on April 28, 2022 (File No. 177582830223).

25 **III. Arguments at Law: The Nature of Actions Under Cal. Business & Professions**
26 **Codes § 7028 and § 7031(a) and (b)**

27 California Business and Professions Code § 7031(b), as enacted and applied, is a
28 thinly veiled criminal penalty under § 7028, not a civil remedy, stripping courts of jurisdiction
and trampling due process. This case exemplifies that travesty, demanding judicial
correction.

1 **a. History and Overview of § 7031(b) Actions**

2 In 2001, the California Legislature and Governor enacted Cal. Bus. & Prof. Code §
3 7031(b), stating: “[...] a person who utilizes the services of an unlicensed contractor may
4 bring an action [...] to recover all compensation paid to the unlicensed contractor for
5 performance of any act or contract.” Where an unlicensed contractor receives compensation
6 but performs no work, returning no value, a § 7031(b) judgment ordering full repayment
7 could be remedial, akin to restitution in a bank robbery. However, when unlicensed
8 contractors return value—as in Plaintiff’s case, delivering \$930,000 in remodel work—Courts
9 refuse to deduct this value, ordering double repayment (e.g., \$930,000 in work plus
10 \$930,000 cash). This exceeds § 7031(b)’s literal scope, transforming it into a penal sanction
11 mirroring § 7028’s criminal intent to punish unlicensed contracting (Cal. Penal Code § 15).
12 This unauthorized transfer of executive power to private parties divests courts of jurisdiction
and subjects judges to liability.

13 In such penal § 7031(b) cases, defendants are denied criminal safeguards—like
14 counsel—and fined without offset, violating the excessive fines clause (Cal. Const. Art. I, §
15 17). This cascade of due process failures results in a structural jurisdictional collapse,
16 rendering judgments void (*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291
17 (1980); *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982); *Frank v. Mangum*,
18 237 U.S. 309, 327 (1915)).

19 **b. 7031 as Enacted and Applied by Courts is Really a 7028 Criminal Prosecution in**
20 **Disguise, Not a Civil Remedy**

21 Cal. Bus. & Prof. Code § 7028(a) declares: “it is a misdemeanor for a person to
22 engage in the business of, or act in the capacity of, a contractor within this state [if...] [t]he
23 person is not licensed in accordance with this chapter.” § 7028(b) states: “[a] first conviction
24 [...] is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment
25 in a county jail not exceeding six months, or by both that fine and imprisonment.” Though
26 not in the Penal Code, § 7028 fits Cal. Penal Code § 15’s definition of a “crime or public
27 offense” by imposing imprisonment or fines upon conviction (*Jahns v. Nolting*, 29 Cal. 507,
512 (1866)).



1 California Courts enforce § 7028 criminally, evidencing § 7031(b)'s disguised penal
2 nature. In *People v. Zepeda*, 188 Cal. App. 4th 1085 (2010), a misdemeanor conviction
3 under § 7028 was upheld, prosecuted by the district attorney via CSLB referral, emphasizing
4 its “public offense” status (p. 1090-91). Similarly, *People v. Garcia*, 188 Cal. App. 4th 116
5 (2010), affirmed a § 7028 conviction initiated by the Attorney General, reinforcing executive
6 prosecution under Cal. Const. Art. V, § 1 (p. 121). These cases highlight § 7028’s criminal
7 essence, mirrored by § 7031(b)'s \$930,000 penalty against Plaintiff—186 times § 7028’s
8 \$5,000 cap—without criminal safeguards or executive initiation, divesting jurisdiction (*Linda*
9 *R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). The lack of notice, counsel, and jury trial
10 violated Cal. Const. Art. I, §§ 7, 9 and U.S. Const. Art. I, §10, Amend. VI and XIV, rendering
11 the judgment void *ab initio*.

12 § 7028 prosecutions require executive action and criminal protections, yet § 7031(b)
13 mimics this by targeting the same act—unlicensed contracting—via private suits. To
14 determine if § 7031(b) cloaks a § 7028 prosecution, “recover all compensation paid” (as
15 stated in §7031(b)) must be scrutinized. If “recover all compensation paid” means a fine, §
16 7031(b) actions are public offenses under Penal Code § 15, requiring executive prosecution
17 (Cal. Const. Art. V, § 1). In *White v. Cridlebaugh*, 178 Cal. App. 4th 506, 520-21 (2009), the
18 Court held that unlicensed contractors must return all compensation without offsets, even if
19 value is conferred (*Lewis & Queen v. N.M. Ball Sons*, 48 Cal. 2d 141, 152 (1957); *Ebbert v.*
20 *Mercantile Trust Co.*, 213 Cal. 496, 499-500 (1931)). Plaintiff contends this double
21 repayment—\$930,000 in work plus \$930,000 cash—is a fine, as legislative history shows
22 intent to punish even when contractors perform fully, unjustly enriching homeowners (Ex.
23 B– Certified Legislative History of § 7031 (b). *MW Erectors v. Niederhauser Ornamental &*
24 *Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (2005), and *Eisenberg Village v. Suffolk Constr.*
25 *Co., Inc.*, 53 Cal. App. 5th 1201, 1213 (2020), label § 7031(b) a “stiff all-or-nothing penalty”
26 to punish, not compensate (*County of San Diego v. Milotz*, 46 Cal. 2d 761, 766 (1956)).

27 Judgments under § 7031 threaten life and liberty through excessive monetary
28 punishment, as in Plaintiff’s case—forty times his qualifying net worth, forcing bankruptcy
and loss of livelihood—raising serious questions about legal professionals’ failure to
distinguish fines from remedies. § 7031(a) punitively shields unlicensed contractors from

1 recovering compensation, while § 7031(b) wields a punitive sword, both disguised as § 7028
2 actions unless no value is returned (*Ex parte Clark*, 24 Cal. App. 389, 395 (1914)).

3 While no California case has voided a § 7031(b) judgment for lack of executive
4 prosecution, *Clark's* substance-over-form test applies to state statutes (*People v. Superior*
5 *Court (Lafferty)*, 25 Cal. 3d 285, 290 (1979); *People v. Superior Court (Marks)*, 1 Cal. 3d
6 834, 840 (1969)). Federal cases like *United States v. Shapleigh*, 54 F. 126, 129, 134 (8th
7 Cir. 1893), *Austin v. United States*, 509 U.S. 602, 622 (1993), and *United States v.*
8 *Bajakajian*, 524 U.S. 321, 334 (1998)—all civil yet government-prosecuted—reinforce this,
9 aligning with Cal. Const. Art. V, § 13 and Cal. Penal Code § 684. § 7031(b)'s \$930,000 fine
10 required state action, not the Humphreys' private pursuit, voiding jurisdiction.

11 Furthermore, the punitive nature of § 7031 actions is underscored by their interplay
12 with the CSLB's disciplinary process. A judgment under § 7031(b) can lead to administrative
13 sanctions, such as license suspension or revocation, as occurred in this case. The CSLB's
14 disciplinary framework has been criticized for its harshness and lack of fairness. In a 2001
15 article published in the Los Angeles Lawyer Magazine, authors Bruce D. Rudman and Sam
16 K. Abdulaziz highlight how appellate decisions like *Tellis v. Contractors' State License Board*
17 (79 Cal. App. 4th 153, 2000) have expanded the CSLB's ability to discipline contractors for
18 minor violations. In *Tellis*, the court upheld a citation for damages amounting to just 2% of
19 the contract price, despite the contractor's efforts to remedy the situation, illustrating the
20 disproportionate penalties imposed by the CSLB. Similarly, in this case, Plaintiff's license
21 was revoked without a judicial hearing, based on a civil judgment that itself was punitive and
22 lacked due/ judicial process. The article also notes that contractors often lack the
23 sophistication of their clients, making them vulnerable to complaints and the CSLB's one-
24 sided process—a dynamic evident here, where Plaintiff was misled about the proceedings
25 and denied criminal safeguards. Additionally, the limited and costly appeal options described
26 in the article mirror the barriers the Plaintiff has faced in seeking relief, further demonstrating
27 the constitutional deficiencies of the system.

28 ***c. Countering Claims That § 7031 Actions Are Civil***

Opponents may argue § 7031(b) actions are civil due to their filing in civil Courts and
lack of incarceration, unlike § 7028's misdemeanor penalties. This fails under California law

1 and constitutional principles. *Ex parte Clark*, 24 Cal. App. 389, 395 (1914), rejected form-
2 over-substance claims, stating: “[a] criminal case is an action, suit, or cause instituted to
3 punish an infraction of the criminal laws, and [...] it matters not in what form a statute may
4 clothe it.” § 7031(b) targets unlicensed contracting—a § 7028 misdemeanor—imposing
5 penalties without offsets (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 520-21 (2009)).
6 Plaintiff’s \$930,000 fine, exceeding harm while the Humphreys retained \$930,000 in value,
7 reveals its punitive essence (*Eisenberg Village v. Suffolk Constr. Co., Inc.*, 53 Cal. App. 5th
8 1201, 1213 (2020)). No damages evidence (Dkt. 193) and severed compensatory claims
9 (Dkt. 160) confirm its forfeiture-like nature, requiring executive initiation (Cal. Const. Art. V,
10 § 1). Monetary penalties alone can be criminal if excessive (*County of San Diego v. Milotz*,
11 46 Cal. 2d 761, 766 (1956)), violating Cal. Const. Art. I, § 17, and voiding the judgment for
12 lacking due process safeguards.

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**d. §7031(b) Does Not Authorize a Cause of Action for, or the Equitable Remedy of,
“Disgorgement”**

There is no cause of action for “disgorgement.” It is a remedy tied to unjust enrichment and constructive trusts, enforcing substantive rights (*Sarsenstone Corp. v. Jewelinski*, 2012 WL 2513469, at *12 (Cal. Ct. App. June 28, 2012) (unpublished)). § 7031(b) does not authorize “disgorgement” as claimed by the Humphreys, awarded by Chaffee, or affirmed by the Fourth District Justices. Neither the statute nor its legislative history (Ex. B) mentions “disgorgement.” Judges, including in Plaintiff’s case, mislabel § 7031 penalties as “disgorgement” to conceal their penal nature, despite admitting their punitive intent (*MW Erectors*, 36 Cal. 4th 412, 426 (2005)). Examples include: *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012) (\$917,043.09 fine, bankruptcy); *MW Erectors* (\$1,322,247); *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005) (\$212,821.80); *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (1991) (\$110,000); and *White v. Cridlebaugh* (\$84,621.45). Federal courts follow suit (*Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566 (E.D. Cal. Nov. 9, 2009)).

§ 7031(b) actions seem to be misinterpreted as stemming from Cal. Civ. Code § 3517’s “no one can take advantage of his own wrong,” codifying unjust enrichment. Yet, if work is competently performed, no enrichment occurs beyond profits, and none was proven here. *Liu v. SEC*, 591 U.S. 71, 79-83 (2020), limits disgorgement to net gains, deducting

1 legitimate expenses—denied in § 7031 cases like Plaintiff’s, where no profit evidence exists
2 (Dkt. 193, 204). Setoff, a defense Plaintiff raised (Dkt. 166), was ignored, turning
3 “disgorgement” into a punitive sanction (*Town of Gilbert Prosecutor’s Office v. Downie*, 218
4 Ariz. 466, 24-25 (2008)).

5 ***e. The Humphreys Were Unlawfully Awarded Monies Paid to Licensed Contractors***

6 The Humphreys’ claim and judicial decisions rested on the assertion that they
7 contracted with Plaintiff individually, implying he performed all work (Dkt. 173, Dkt. 193,
8 Appendix C). Yet, Plaintiff testified Spartan and its licensed subcontractors performed all
9 work (Ex. A4-RT p. 103, L14 – p. 105, p. 141, L8), raising a novel issue assuming § 7031(b)’s
10 validity: does § 7031 apply to an unlicensed individual hiring his licensed company, where
11 he is the Qualifying Individual? The CSLB had deemed Plaintiff competent for Spartan’s
12 license (Lic. #927244), yet § 7031 penalized him despite this, contradicting its protective
13 purpose (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009)).

14 Key issues arose that were never addressed at trial or on appeal: (1) Is Plaintiff
15 subject to § 7031(a)/(b) if he hired Spartan? (2) Can he return Spartan’s payments? (3) Is
16 he liable for subcontractor payments? Spartan’s contracts with licensed subcontractors
17 show neither Spartan nor Plaintiff performed this work. How can Plaintiff disgorge funds he
18 never held? *Liu v. SEC*, 591 U.S. 71, 82-83 (2020), and cases like *Belknap v. Schild*, 161
19 U.S. 10, 25-26 (1896), limit liability to personal gains. California law (*People v. Erickson*, 30
20 Cal. App. 5th 243, 248-249 (2018); *People v. Valle*, 93 Cal. App. 5th 1329, 1335-1336
21 (2023); *People v. Chappelone*, 183 Cal. App. 4th 1159, 1182-1183 (2010)) prohibits
22 windfalls beyond loss. The Humphreys’ \$930,000 award, atop retained work value, defies
23 equity (*Lewis & Queen*, 48 Cal. 2d 141, 152 (1957)).

23 **Requested Declaratory Relief**

24 Plaintiff requests findings that: (1) § 7031(a) and (b) relief here is not equitable or
25 “disgorgement” per *Liu*; (2) no evidence supports a disgorgement claim; (3) no profit
26 evidence exists; (4) no offsets were considered; and (5) Chaffee lacked subject matter
27 jurisdiction to award “disgorgement” because the Humphreys never stated a claim for
28 “disgorgement.”

1 **f. §7031(a) and (b) Do Not Authorize the Remedy of Damages**

2 Chaffee’s Judgment Order awarded “damages” of \$848,000 (Appendix B), yet §
3 7031(a) and (b) do not authorize damages. *Eisenberg Village*, 53 Cal. App. 5th 1201, 1213
4 (2020), confirms § 7031(b) punishes, not compensates. California law requires proven harm
5 (*Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960); *Page v. Bakersfield Uniform &*
6 *Towel Supply Co.*, 239 Cal. App. 2d 762, 774 (1966); Cal. Civ. Code § 3301; *Browning-*
7 *Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 271 (1989)). No evidence shows the
8 Humphreys’ claim or trial proved damages, making the award a misapplied penalty.

9 **Requested Declaratory Relief**

10 Plaintiff requests findings that: (1) § 7031(a) and (b) relief is not “damages”; (2) no
11 damages claim was stated; (3) no damages evidence exists; (4) the Humphreys lacked
12 standing for damages; (5) Chaffee lacked jurisdiction to award damages.

13 **g. Judgments Under §7031(a) and (b) That Don’t Allow Set Off Qualifying as Fines**
14 **Under the Excessive Fines Clause of Cal. Const. Art. I, §17**

15 § 7028(b) caps first-offense penalties at \$5,000, yet Chaffee’s \$930,000 fine (Dkt.
16 204, Appendix C)—186 times higher, without setoff for \$930,000 in work—violates Cal.
17 Const. Art. I, § 17 (*People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020)). This punitive award,
18 sans offsets (*Liu v. SEC*, 591 U.S. 71, 82-83 (2020)), required executive action and
19 safeguards, absent here, voiding jurisdiction (*County of Ventura v. Tillett*, 133 Cal. App. 3d
20 105, 110 (1982); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)).

21 **Requested Declaratory Relief**

22 Plaintiff requests findings that: (1) § 7031(a) and (b) relief without setoff is a fine; (2)
23 the judgment qualifies under Cal. Const. Art. I, § 17 and the Eighth Amendment; (3) the
24 Humphreys lacked standing; (4) Chaffee lacked subject matter jurisdiction; and (5) Chaffee
25 ignored Art. I, § 17 and Eighth Amendment protections.

26 **h. Actions Pursuant to §7031(a) and (b) Are Penal/Criminal (Continued)**

27 The Humphreys lacked executive authority (capacity) to prosecute under § 7031(a)
28 and (b), as neither they nor Bissell, on information and belief, were vested with such power



1 under Cal. Const. Art. V, § 1 (*Powers v. Ashton*, 45 Cal. App. 3d 783, 787 (1975)). Plaintiff
2 is unaware of any sworn information or indictment filed by the People of the State of
3 California (Cal. Gov't Code §100), resulting in a due/judicial process violation under Cal.
4 Const. Art. I, §§ 7, 9 and U.S. Const. Art I., §10 divesting Chaffee of subject matter
5 jurisdiction.. “Jurisdiction of all justiciable matters can only be exercised [...] through the filing
6 of pleadings which are sufficient to invoke the power of the court to act.” *Buis v. State*, 1990
7 OK CR 28, ¶ 4 (Okla. Crim. App. 1990) (internal quotations omitted). “A person may not be
8 punished for a crime without a formal and sufficient accusation even if he voluntarily submits
9 to the jurisdiction of the court.” *Albrecht v. United States*, 273 U.S. 1, 8 (1927). See also Cal.
10 Penal Code §§ 949, 959; *Thompson v. City of Louisville*, 362 U.S. 199, 206 (1960)
11 (“conviction upon a charge not made would be sheer denial of due process”) (citations
12 omitted). The absence of proper state prosecution renders the judgment void.

12 Conclusion

13 The judgment against Plaintiff is a legal nullity—void *ab initio*—due to extrinsic fraud,
14 lack of subject matter jurisdiction, and a plethora of Constitutional violations. The
15 Humphreys’ unauthorized penal prosecution under § 7031(b), masked as a civil action,
16 denied Plaintiff due/judicial process and imposed an excessive fine, divesting this Court (and
17 later the Fourth District Court of Appeal) of authority (*Linda R.S. v. Richard D.*, 410 U.S. 614,
18 619 (1973); *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982); *World-Wide*
19 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). This Court’s inherent and
20 statutory powers under Cal. Code Civ. Proc. §§ 473(d) and 1916 mandate vacatur, even
21 post-appeal (*MacMillan Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950)). Plaintiff
22 respectfully requests the Court grant this motion, excise this void judgment, and restore his
23 rights through the relief sought below.

23 ***i. Additional Issues at “Trial” Depriving this Court of Subject Matter Jurisdiction- 24 Failure to Address Defendant’s Affirmative Defenses***

25 On February 10, 2017, Spartan and Plaintiff filed their Answer to the Humphreys’ First
26 Amended First Cause of Action, asserting twenty affirmative defenses (Dkt. 166). The Fifth
27 Affirmative Defense claimed the Humphreys’ § 7031(b) action was barred by the applicable
28 statute of limitations. Plaintiff is unaware of any evidence in the record showing Judge

1 Chaffee considered this defense. In 2020, the Second District Court of Appeal in *Eisenberg*
2 *Village etc. v. Suffolk Construction Co., Inc.*, 53 Cal. App. 5th 1201 (2020), held that §
3 7031(b) imposes a “penalty,” not a compensatory remedy, and is subject to the one-year
4 statute of limitations under Cal. Code Civ. Proc. § 340 (p. 1212). This post-trial ruling
5 confirms the Humphreys’ claim was time-barred, further evidencing jurisdictional defects.

6 The Humphreys terminated Spartan on or about August 28, 2013, via a letter
7 addressed to Spartan, Attn: Adam Bereki, President—not Plaintiff individually. Plaintiff never
8 believed he personally agreed to perform work on the Humphreys’ project, nor did he begin
9 or cease working there individually. Regardless, the Humphreys filed their First Amended
10 First Cause of Action under § 7031(b) on January 6, 2017 (Dkt. 144), nearly three years
11 after termination—well beyond the one-year limit established by *Eisenberg Village*,
12 assuming they had capacity and standing to pursue such relief.

13 The right to present affirmative defenses is secured by due process under Cal. Const.
14 Art. I, §§ 7 and judicial process protections against bills of pains and penalties under Cal.
15 Const. Art. I, §9 and U.S. Const. Art. I, § 10. This right imposed a mandatory, non-
16 discretionary duty on Chaffee to make findings of fact and conclusions of law on all material
17 issues, including the statute of limitations defense, before rendering judgment. It further
18 obligated him to consider this defense prior to trial. Plaintiff is unaware of any record
19 evidence that Chaffee fulfilled this duty. Even if the Humphreys had standing, their claim
20 was time-barred and should have been dismissed. Chaffee’s failure to address this defense
21 violated Plaintiff’s Constitutional rights, depriving the Humphreys of standing and the Court
22 of subject matter jurisdiction. “A Court of [California] does not have jurisdiction to render
23 judgment that violates the California Constitution or the Constitution for the United States.”
24 *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982). Moreover, “the failure to make
25 a finding on the affirmative defense, when supported by the evidence, may well vitiate the
26 judgment.” *Duff v. Duff*, 256 Cal. App. 2d 781, 786 (1967) (citation omitted). This
27 unaddressed defense, compounded by the penal nature of § 7031(b), renders the judgment
28 void ab initio.

***j. Bills of Attainder and Pains and Penalties: A Constitutional Citadel Against
Arbitrary Punishment***

1 Plaintiff contends that because he was deprived of life, liberty, and property without
2 judicial process that he was subject to a bill of pains and penalties.

3 The bill of attainder clauses in the U.S. Constitution (Article I, §§ 9 and 10) and the
4 California Constitution (Article I, § 9) stand as ironclad ramparts against tyranny. A bill of
5 attainder is the ruthless stripping of life, liberty, or property without the shield of judicial
6 process. When the punishment spares life but inflicts lesser wounds, it becomes a “bill of
7 pains and penalties,” yet remains ensnared by the Constitution’s sweeping ban. As the Court
8 declared in *Cummings v. Missouri*, “[w]ithin the meaning of the Constitution, bills of attainder
9 include bills of pains and penalties” (71 U.S. 277, 323 (1867)). See also *Fletcher v. Peck*,
10 U.S. 87, 138 (1810) (“[A] bill of attainder may affect the life of an individual, or may
11 confiscate his property, or may do both.”). These clauses aren’t dusty artifacts—they are
12 living sentinels against the arbitrary lash of power.

13 ***Historical Roots: From Royal Decrees to Constitutional Defiance***

14 Bills of attainder sprang from English monarchy, where kings wielded them as tools
15 of vengeance, bypassing courts to punish at will. Early examples include the 1321 attainder
16 of Hugh le Despenser and his son, stripped of lands for supporting Edward II (*Statutes of
17 the Realm*, 1 Edw. III, Stat. 2 (1327)), and the 1478 execution of George Plantagenet, Duke
18 of Clarence, by Edward IV’s decree (*Rotuli Parliamentorum*, Vol. VI, p. 193 (1478)). Sir
19 Thomas More’s 1535 attainder under Henry VIII for defying royal supremacy sealed its
20 notoriety (26 Hen. VIII, c. 2). These royal edicts, often rubber-stamped by Parliament,
21 sparked resistance—most notably the Magna Carta’s 1215 demand for lawful judgment (Art.
22 29). America’s Framers, scarred by this history and colonial echoes like Roger Williams’
23 1635 attainder (*Records of the Governor and Company of the Massachusetts Bay*, Vol. I, p.
24 160), forged constitutional bans to curb all governmental overreach.

25 ***The Constitutional Bastion: A Ban on All State Punishment Without Process***

26 The U.S. Constitution’s commands—“No Bill of Attainder... shall be passed” (Art. I, §
27 9) and “No State shall pass any Bill of Attainder” (Art. I, § 10)—and California’s echo—“A bill
28 of attainder... may not be passed” (Art. I, § 9)—aren’t mere legislative handcuffs. They are
sweeping prohibitions against any state-inflicted punishment without judicial process,

1 heeding Magna Carta’s cry to spare freemen from losing their “Court.” The text is blunt: it
2 binds the “State” at large, not just its lawmakers. Had the Framers aimed solely at
3 legislatures, Article I, § 10 would’ve read “No State Legislature shall pass...”—but its broader
4 sweep ensnares all branches—legislative, executive, and judicial—because all can wield
5 tyrannical might.

6 The Supreme Court has chiseled this into law. *Nixon v. Administrator of General*
7 *Services*, 433 U.S. 425 (1977), marks a bill of attainder by two traits: (1) punishment
8 imposed, and (2) imposed without judicial trial (*Id.*, at 468-469). No branch escapes—
9 punishment’s origin matters less than its lack of process. *Neelley v. Walker*, 322 F. Supp.
10 3d 1238 (M.D. Ala. 2018), nails this: Alabama’s Act 2003-300, targeting a specific parolee,
11 bore “the three hallmarks of a bill of attainder”—punishment, specific designation, and
12 arbitrary deprivation without trial (*Id.*, at 1247, citing *Nixon*, 433 U.S. at 538-539 (Burger,
13 C.J., dissenting)). The ban isn’t branch-specific—it’s a firewall against all state caprice.

14 Historical voices amplify this. Madison, in *Federalist No. 44*, railed, “Bills of
15 attainder... are contrary to the first principles of the social compact and to every principle of
16 sound legislation... The sober people of America are weary of... legislative interferences...
17 [which] become jobs in the hands of enterprising and influential speculators, and snares to
18 the more-industrious and less informed.” He saw these clauses as “constitutional bulwarks
19 in favor of personal security and private rights,” guarding against legislative vendettas—but
20 the danger isn’t unique to lawmakers. *Malloy v. South Carolina*, 237 U.S. 180, 183 (1915),
21 and *Kring v. Missouri*, 107 U.S. 221, 229 (1883), tie the ban to restraining “arbitrary and
22 potentially vindictive” state action, a purpose echoing *Fletcher* and *Calder v. Bull*, 3 U.S.
23 386, 395-396 (1798) (Paterson, J.). The ex post facto cousin, requiring retrospectivity and
24 disadvantage (*Lindsey v. Washington*, 301 U.S. 397, 401 (1937)), shares this aim: keeping
25 penal power prospective and judicial (*Ogden v. Blackledge*, 6 U.S. 272, 277 (1804)).

Beyond Legislatures: The Broader Threat

26 Pretending the Framers feared only legislative attainders is absurd—all branches can
27 ape the king’s tyranny. Executives can decree punishment—think Lincoln’s habeas
28 suspensions, rebuked in *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861) (No. 9487),
for lacking judicial sanction. Judges can rubber-stamp injustice—see *Korematsu v. United*

1 *States*, 323 U.S. 214 (1944), where deference to internment flirted with attainder-like ruin.
2 *United States v. O'Brien*, 391 F.2d 965 (5th Cir. 1968), struck an executive penalty under
3 selective service as a bill of pains and penalties for lacking trial (*Id.*, at 969). *People v. Du*
4 *Bois*, 31 Ill. 2d 515, 202 N.E.2d 468 (1964), voided a state law barring Communists from
5 office, its punitive sweep transcending legislative intent (*Id.*, at 520). Madison's *Federalist*
6 *No. 47* warned, "The accumulation of all powers... in the same hands... may justly be
7 pronounced the very definition of tyranny"—a peril blind to branch labels. *Ex parte Virginia*,
8 100 U.S. 339, 346-7 (1880) directly addresses this "We have said the prohibitions of the
9 Fourteenth Amendment are addressed to the States. They are, 'No *State* shall make
10 or enforce a law which shall abridge the privileges or immunities of citizens of the
11 United States, . . . nor deny to any person within its jurisdiction the equal protection
12 of the laws.' They have reference to actions of the political body denominated a State,
13 by whatever instruments or in whatever modes that action may be taken. A State acts
14 by its legislative, its executive, or its judicial authorities. It can act in no other way.
15 The constitutional provision, therefore, must mean that no agency of the State, or of
16 the officers or agents by whom its powers are exerted, shall deny to any person within
17 its jurisdiction the equal protection of the laws. Whoever, by virtue of public position
18 under a State government, deprives another of property, life, or liberty, without due
19 process of law, or denies or takes away the equal protection of the laws, violates the
20 constitutional inhibition; and as he acts in the name and for the State, and is clothed
21 with the State's power, his act is that of the State. This must be so, or the constitutional
22 prohibition has no meaning. Then the State has clothed one of its agents with power to annul
23 or to evade it. But the constitutional amendment was ordained for a purpose. It was to secure
24 equal rights to all persons, and, to insure to all persons the enjoyment of such rights [...].
25 Such legislation must act upon persons, not upon the abstract thing denominated a State,
26 but upon the persons who are the agents of the State in the denial of the rights which were
27 intended to be secured."

26 ***The Core Truth: Punishment Without Judicial Process is the Foe***

27 A bill of attainder—or its kin, a bill of pains and penalties—is any state official's
28 infliction of punishment without judicial process. Period. The U.S. and California

1 Constitutions don't fuss over whether it's a lawmaker, governor, or judge wielding the whip—
2 if it punishes without a judicial determination of rights, it's banned. The clauses, an ironclad
3 ban on arbitrary power, demand a courtroom before punishment (the taking of life, liberty,
4 or property) can be imposed by any government official, not a branch-specific cage. To claim
5 otherwise defies text, history, and reason, unleashing the tyranny the Framers bled to bury.

6 **Requested Declaratory Relief**

7 Plaintiff requests findings that he was punished without a judicial determination of his
8 rights, resulting in a bill of pains and penalties in violation of Cal. Const. Art. I, § 9 and U.S.
9 Const. Art. I, § 10. He further requests the punishment – including and in conjunction with
10 the denial of a judicial determination of his rights – be deemed excessive, cruel, *and* unusual
11 under the California and U.S. Constitutions. In the alternative, he challenges the
12 Constitutionality of the Court's interpretation of a Bill of Pains and Penalties.

14 ***k. Plaintiff's Vested Right to Act as a Qualifying Individual on a General Contractor 15 License is Suspended Without Hearing, Resulting in Additional Punishment***

17 *"A power over a man's subsistence amounts to a power over his will."*

18 –The Federalist No.79, A. Hamilton cited by *Oil States Energy Servs. LLC. V. Greene's
19 Energy Grp., LLC.*, 138 S. Ct. 1365, 1380 (2018). (Gorsuch, J dissenting).

20 **Introduction**

21 The automatic suspension of Plaintiff's contractor license under California Business
22 and Professions Code § 7071.17 when he was unable to pay the Judgment exemplifies a
23 punitive regime that starkly contrasts with the robust due/judicial process protections
24 afforded to members of the California State Bar facing discipline. While attorneys benefit
25 from a specialized judicial system, evidentiary hearings, and mandatory oversight by the
26 California Supreme Court, contractors are subjected to immediate license suspension
27 without notice, hearing, or judicial review. This disparity transforms § 7071.17 into a bill of

1 pains and penalties, violating Cal. Const. Art. I, § 9 and U.S. Const. Art. I, § 10, and
2 underscores the unconstitutional deprivation of Defendant’s vested property right.

3 **I. Constructive Custody and the Creation of a Special Relationship**

4
5 Plaintiff further contends that the suspension of his ability to earn a living as a general
6 contractor constitutes “constructive custody,” establishing a special relationship with the
7 State of California. The U.S. Supreme Court has held that the Due Process Clause does not
8 generally impose an affirmative duty on the State to protect individuals from private harm.
9 *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 195-96 (1989).
10 However, a duty arises when the State affirmatively restrains an individual’s liberty,
11 rendering them unable to care for themselves. *Id.* at 200. In the Ninth Circuit, this “special
12 relationship” exception applies when the State places an individual in a custodial or quasi-
13 custodial position. *See Patel v. Kent Sch. Dist.*, 648 F.3d 965, 972 (9th Cir. 2011)
14 (recognizing duty when State restricts liberty, such as in prisons or schools). Plaintiff argues
15 that the suspension (along with the continued denial of relief in any branch of California or
16 United States government, *infra*) effectively imprisoned him economically by barring his
17 livelihood as a general contractor. Under California law, the State’s regulatory authority over
18 professions (e.g., contractor licensing under Cal. Bus. & Prof. Code § 7000 et seq.) further
19 supports the claim that this suspension created a dependency relationship, obligating the
20 State to mitigate resulting harm.

21 **II. State-Created Danger Doctrine**

22 Plaintiff also invokes the “state-created danger” exception, well-established in the
23 Ninth Circuit and rooted in *DeShaney*. This doctrine imposes liability when the State
24 affirmatively acts to place an individual in a worse position than they would have been absent
25 state intervention. *See Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006).
26 To succeed, Plaintiff must show: (1) an affirmative state action created or increased a
27 foreseeable danger; (2) the action caused harm; and (3) the State acted with deliberate
28 indifference to a known or obvious risk. *Id.*; *see also L.W. v. Grubbs*, 974 F.2d 119, 121 (9th
Cir. 1992) (state-created danger where State exposed plaintiff to harm it otherwise would
not have faced). Here, the suspension—an affirmative act under California’s regulatory



1 framework—allegedly foreseeably stripped Plaintiff of his economic viability as a general,
2 exposing him to ruin. The Ninth Circuit has emphasized that deliberate indifference requires
3 a showing that state actors disregarded a substantial risk of harm. *See Johnson v. City of*
4 *Seattle*, 474 F.3d 634, 641 (9th Cir. 2007). Plaintiff asserts that the State’s suspension,
5 without regard for his resulting vulnerability and repeated denial of relief in any branch of
6 State or Federal government, meets this threshold.

7 **III. Application to Plaintiff’s Claim**

8 Under Ninth Circuit precedent, the suspension’s restriction on Plaintiff’s livelihood
9 arguably constitutes constructive custody, triggering a special relationship akin to *Henry A.*
10 *v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012) (duty where State affirmatively limits individual
11 autonomy). Simultaneously, the state-created danger doctrine applies, as the suspension
12 foreseeably endangered Plaintiff’s economic survival—an outcome California courts
13 recognize as actionable when tied to state action. *See Lugtu v. California Highway Patrol*,
14 26 Cal. 4th 703, 717 (2001) (state liability for affirmative acts increasing risk). Even absent
15 a prior duty, the State’s intervention via suspension altered Plaintiff’s circumstances,
16 imposing a constitutional obligation under *DeShaney’s* exceptions. *See also Murguia v.*
17 *Langdon*, 61 F.4th 1096, 1110 (9th Cir. 2023) (reaffirming state-created danger in the Ninth
18 Circuit).

19 **IV. Attorney Discipline: A Framework of Procedural Safeguards**

20 California’s attorney discipline system is a model of due process, designed to protect
21 a lawyer’s license—a recognized property interest—from arbitrary deprivation. Governed by
22 California Business and Professions Code §§ 6078, 6097.1, and 6086.65, the process
23 includes:

- 24 • **State Bar Court Structure:** The State Bar Court, a specialized tribunal within the
25 State Bar of California, handles all attorney discipline matters. It comprises hearing
26 judges at the trial level and a Review Department with three-judge panels for appeals.
27 This full-time court ensures that disciplinary proceedings are adjudicated by
28 professionals trained in legal ethics and procedure, offering a level of expertise
absent in contractor discipline.

- 1 • **Procedural Protections:** Attorneys facing discipline are entitled to a full evidentiary
2 hearing where the State Bar must prove misconduct by clear and convincing
3 evidence—a heightened standard reflecting the gravity of license revocation
4 (*Conservatorship of Wendland*, 26 Cal. 4th 519, 552 (2001)). Attorneys can present
5 evidence, call and cross-examine witnesses, and are often represented by counsel.
6 Adverse decisions are appealable to the Review Department and, ultimately, to the
7 California Supreme Court, which serves as the final arbiter (*In re Rose*, 22 Cal. 4th
8 430, 438 (2000)).
- 9 • **Mandatory Supreme Court Oversight:** Unlike most administrative actions, attorney
10 discipline recommendations must be reviewed by the California Supreme Court if
11 requested (*Cal. Rules of Court, Rule 9.13*). This mandatory judicial oversight ensures
12 that any suspension or disbarment withstands the highest level of scrutiny,
13 safeguarding the attorney’s vested right to practice law—a right affirmed as
14 constitutionally protected (*Trutanich v. State Bar*, 68 Cal. 2d 474, 479 (1968)).

15 This multi-tiered system reflects California’s recognition that an attorney’s license is
16 a fundamental property interest, deserving of rigorous procedural protections before
17 deprivation.

18 **V. Contractor Discipline: Punishment Without Process**

19 In contrast, contractors like Plaintiff face a disciplinary process under § 7071.17 that
20 lacks equivalent safeguards, imposing immediate and severe punishment without judicial or
21 administrative review:

- 22 • **Automatic Suspension Mechanism:** Section 7071.17 mandates the automatic
23 suspension of a contractor’s license if a judgment remains unpaid after 90 days,
24 absent a bond equal to the judgment amount (§ 7071.17(a), (b)(1)). On July 19, 2017,
25 90 days after the unlawful \$848,000 judgment, Plaintiff’s license (#927244) was
26 suspended without a hearing, despite the judgment’s invalidity due to lack of
27 jurisdiction and extrinsic fraud. This automatic trigger bypasses any opportunity to
28 contest the judgment’s legitimacy or present defenses. (No known document exists
for this suspension despite its legislative mandate).

- 1 • **Absence of a Specialized Tribunal:** Unlike attorneys, contractors have no access
2 to a dedicated court like the State Bar Court. The Contractors State License Board
3 (CSLB) oversees discipline administratively, and while contractors may request a
4 hearing before an administrative law judge in some cases, in this one, § 7071.17
5 suspensions occur without such an option. The lack of a specialized adjudicative body
6 deprives contractors of the impartial, expert review afforded to attorneys.
- 7 • **No Mandatory Judicial Review:** Contractors have no right to mandatory review by
8 the California Supreme Court. Their only recourse is a writ of administrative mandate
9 under Code of Civil Procedure § 1094.5, a limited remedy that reviews agency actions
10 under a deferential standard (*Bixby v. Pierno*, 4 Cal. 3d 130, 144 (1971)). This
11 contrasts sharply with the attorney discipline process, leaving contractors vulnerable
12 to erroneous or unjust suspensions, as occurred here.
- 13 • **Immediate and Devastating Impact:** The suspension obliterated Plaintiff's
14 livelihood, costing an estimated harm \$1 million in lost earnings, without notice or an
15 opportunity to be heard—core elements of due/judicial process (*Mullane v. Central*
16 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); Cal. Const. Art I. §§ 7, 9; U.S.
17 Const. Art. I, §10). This punitive outcome, triggered by a void judgment, underscores
18 the statute's lack of procedural fairness.

19 **VI. Bill of Pains and Penalties: Contractors Targeted, Attorneys Spared**

20 The automatic nature of § 7071.17 constitutes a bill of pains and penalties, inflicting
21 legislative punishment without judicial trial, in violation of Constitutional prohibitions
22 (*Cummings v. Missouri*, 71 U.S. 277, 323 (1867)). Unlike attorneys, whose discipline follows
23 a judicially supervised process, contractors face a predetermined penalty—license
24 suspension—based solely on nonpayment, regardless of the judgment's validity. This
25 legislative fiat mirrors the forfeiture condemned in *Cummings* and stands in stark contrast to
26 the attorney discipline system, where punishment requires proof of misconduct and multiple
27 layers of review. For Defendant, the suspension was not a regulatory measure for public
28 safety (*Hough v. McCarthy*, 54 Cal. 2d 273, 283 (1960)), but a punitive act amplifying the
excessiveness of a void judgment (*Schomig v. Keiser*, 189 Cal. 596, 598 (1922)).

1 **VII. Constitutional Implications of the Disparity**

2 The disparity between these systems is not merely inequitable—it is unconstitutional.
3 Plaintiff’s vested right to act as a Qualifying Individual, secured since 2008, was a
4 fundamental property interest entitled to due process (*Ettinger v. Board of Medical Quality*
5 *Assurance*, 135 Cal. App. 3d 853, 856 (1982)). Yet, § 7071.17 denied him notice, a hearing,
6 or any chance to challenge the suspension, violating Cal. Const. Art. I, §§ 7, 9 and U.S.
7 Const. Art. I, §10, and the Fourteenth Amendment. The CSLB’s enforcement of a void
8 judgment lacked lawful authority (*County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110
9 (1982)), rendering the suspension a nullity. Moreover, the excessive punishment—
10 destroying Plaintiff’s livelihood over an unpayable \$930,000 judgment—constitutes cruel
11 and unusual punishment under Cal. Const. Art. I, § 17 and the Eighth Amendment.
12 Attorneys, cloaked in procedural protections, are spared such arbitrary and disproportionate
13 sanctions.

13 **Conclusion**

14
15 As recognized by a former Justice of the U.S. Supreme Court, “by taking away his
16 opportunity to earn a living, you can drain the blood from his veins without even scratching
17 his skin.” *Flemming v. Nestor*, 363 U.S. 603, 629 (1960) (Douglas, J. dissenting) (citation
18 omitted.)

19 California’s treatment of contractors under § 7071.17 exposes a two-tiered system
20 where attorneys enjoy substantive due/judicial process while contractors are punished
21 without recourse. The State Bar Court, with its trial and appellate structure and Supreme
22 Court oversight, ensures attorneys face discipline only after a fair hearing—protections
23 wholly absent for contractors. For Plaintiff, the automatic suspension of his license was a
24 legislative penalty devoid of process, amplifying the injustice of a void judgment. This Court
25 must recognize this disparity as a Constitutional violation, declare it unconstitutional, and
26 restore Plaintiff’s rights and property lost as result, affirming that no licensee—contractor or
27 attorney—should suffer punishment without due process.

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1 restricting trade were “against the common law, and the benefit and liberty of the subject”
2 (*Sandefur, “The Right to Earn a Living,”* 6 Chap. L. Rev. 207, 211 (2003)). Similarly, the
3 Northwest Ordinance of 1787 protected this right: “No man shall be deprived of his liberty or
4 property, but by the judgment of his peers or the law of the land” (Art. II).

5 In natural and constitutional law, these rights were inherent in the people, antecedent
6 to government formation, and explicitly enshrined in California’s Bill of Rights as
7 “inalienable”—meaning they cannot be legally or justly alienated or transferred (*Webster’s*
8 *Dictionary 1828, “inalienable”).* As the U.S. Supreme Court held in *Board of Education v.*
9 *Barnette*, 319 U.S. 624, 638 (1943), “[t]he very purpose of a Bill of Rights was to withdraw
10 certain subjects from the vicissitudes of political controversy, to place them beyond the reach
11 of majorities and officials and to establish them as legal principles to be applied by the
12 courts.” Plaintiff’s right to labor, recognized in *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923),
13 as the “liberty... to engage in any of the common occupations of life,” was among these
14 inviolable freedoms, not subject to legislative whim or majority vote.

14 II. The 1929 Usurpation: A Legislative Coup

15 In 1929, the California Legislature, acting without a lawful representative quorum (to
16 be addressed in Amended Complaint) or the consent of the governed, arbitrarily declared
17 that the people no longer possessed an inalienable right to their time and labor when acting
18 as contractors. Henceforth, they were required to obtain a license and pay recurring fees to
19 earn a living, a mandate enforced under § 7028. This act purported to sweep away the
20 fundamental rights to life, liberty, property, privacy, and the pursuit of happiness for millions
21 of Californians, including Plaintiff’s predecessors, through the fiat of fewer than 120
22 politicians wielding legislative and executive power under color of law. *Billings v. Hall*, 7 Cal.
23 1, 10 (1857), rebuked such overreach: “It [legislative power] cannot be converted into such
24 an unlimited power, as to defeat the end which mankind had in view, when they entered into
25 the social compact.”

26 The Legislature justified the contractor licensing laws under the guise of “protecting
27 the public,” asserting a fiction that anyone engaged in contracting was “incompetent and
28 dishonest” unless licensed (*Hydrotech Sys., Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995
(1991)). Yet, the state lacks authority to presume incompetence or deprive individuals of

1 rights without a prior judicial determination (*Randone v. Appellate Dep’t*, 5 Cal. 3d 536, 550
2 (1971): “Due process forbids the state from depriving a person of property without a prior
3 judicial determination...”). This legislative coup, decades later, transformed Plaintiff’s
4 inherent liberty into a privilege, a move Sandefur critiques as contrary to “ancient and
5 fundamental laws” (*Sandefur* at 216), echoing Coke’s warning that “a monopolist that taketh
6 away a man’s trade, taketh away his life.”

7 **III. Licenses: Feudal Chains, Not Rights**

8 A license, as defined by Blackstone, is “a royal prerogative, or branch of the king’s
9 prerogative, subsisting in the hands of a subject” (*State v. Scougal*, 3 S.D. 55, 62 (1892),
10 citing 2 Bl. Comm. 37). Plaintiff, as a free citizen in whom California’s sovereignty resides
11 (Cal. Gov. Code § 100), is not a subject beholden to such feudal constraints. Licensing fees
12 hark back to a time when people “were obliged to live on their lord’s land and give him
13 homage, labor, and a share of the produce” (*Webster’s Dictionary 1828, “Feudal”*), a system
14 antithetical to America’s founding. The U.S. Supreme Court in *Hale v. Henkel*, 201 U.S. 43,
15 74 (1906), affirmed: “[t]he individual... is entitled to carry on his private business in his own
16 way. His power to contract is unlimited. He owes no duty to the State...” *Allgeyer v.*
17 *Louisiana*, 165 U.S. 578, 589 (1897), struck down a licensing law as an “interference with
18 the liberty of the individual,” reinforcing Plaintiff’s claim that § 7028 imposes an
19 unconstitutional burden.

20 The Supreme Court further clarified in *License Tax Cases*, 72 U.S. 462, 471 (1866),
21 that a license is “nothing more than a mere form of imposing a tax,” implying no rights beyond
22 compliance. Plaintiff asserts that Article I, § 1 admits no exceptions to inalienable rights, and
23 no “police power” exists in any Constitution to summarily convert such rights into privileges
24 through legislative vote, even under the pretext of public safety (*Barnette*, 319 U.S. at 638).

25 **IV. Chaffee’s Enforcement: Judicial Overreach**

26 Judge Chaffee compounded this usurpation by enforcing §§ 7031(b) and ultimately
27 7071.17 against Plaintiff, upholding a \$930,000 penalty and license suspension without
28 due/judicial process. Lacking executive authority under Cal. Const. Art. V, § 1, Chaffee
permitted private citizens—the Humphreys—to wield penal power reserved for the state

1 (*Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)), rendering his judgment void (*County*
2 *of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982)). Judge James Ho, in *Golden Glow*
3 *Tanning Salon, Inc. v. City of Columbus*, 52 F.4th 974, 980-81 (5th Cir. 2022) (concurring),
4 questioned why the right to earn a living, “deeply rooted in our Nation’s history,” isn’t
5 recognized as fundamental, suggesting Plaintiff’s labor right merits protection beyond
6 rational basis scrutiny.

7 **V. Constitutional Violations and Plaintiff’s Harm**

8 This legislative and judicial overreach violated Plaintiff’s rights under Cal. Const. Art.
9 I, § 1 (all rights listed), U.S. Const. Art. I, § 10 (contract impairment, *Dartmouth College v.*
10 *Woodward*, 17 U.S. 518, 643 (1819)), and due/ judicial process (*Mullane v. Central Hanover*
11 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). It constitutes a bill of pains and penalties,
12 punishing Plaintiff without trial (*Cummings v. Missouri*, 71 U.S. 277, 323 (1867)). Clint
13 Bolick’s *Right to Earn a Living Act* proposes that such restrictions be “demonstrably
14 necessary and carefully tailored” (*Bolick* at 4), a standard § 7031’s excessive penalty fails.
15 Plaintiff suffered a \$930,000 fine, \$1 million in lost earnings (est.), and home foreclosure—
16 harms Sandefur likens to a deprivation of life itself (*Sandefur* at 216).

17 ***m. Unconstitutional Presumption of Incompetence and Harm Despite CSLB*** 18 ***Determination***

19 **A. Introduction**

20 Plaintiff asserts that the Judgment against him rests on a fundamental contradiction:
21 the Contractors State License Board (CSLB), the state agency tasked with evaluating
22 contractor competence, determined on or about October 15, 2008, that he met the
23 requirements to serve as the Qualifying Individual for general contractor license #927244,
24 held by him and his company, The Spartan Associates, Inc. Yet, the Court, at the urging of
25 the Humphreys and Bissell, presumed him incompetent and harmful solely because he did
26 not hold a license in his own name—despite his work being performed through a licensed
27 entity (Spartan) and no evidence of actual harm. This presumption of incompetence and
28 harm, imposed under California Business and Professions Code § 7031(a) and (b), conflicts
with the CSLB’s affirmative finding, violates common law principles requiring proof of harm,
and denies Plaintiff due/ judicial process and his inalienable rights under the California

1 Constitution. The resulting \$930,000 penalty exemplifies this injustice, rendering the
2 judgment void for lack of jurisdiction and extrinsic fraud. (These arguments, while focused
3 on the Judgment at trial after the CSLB had determined Plaintiff ‘competent’ are also
4 intended to apply to challenge the Legislature’s authority to require Plaintiff to submit to a
5 competency examination/ obtain a license to begin with).

6 **B. CSLB Determination of Competence**

7 The CSLB, vested with authority under California Business and Professions Code §
8 7000 et seq. to regulate contractors and protect public welfare, determined that Plaintiff
9 satisfied the stringent experience, knowledge, and skill requirements to act as the Qualifying
10 Individual for license #927244 (see Motion to Vacate, “Factual Background and Arguments
11 at Law: Plaintiff Qualifies for a General Contractor License). As defined by § 7068.1(a), a
12 Qualifying Individual is responsible for “exercising supervision and control” over construction
13 operations to ensure compliance with CSLB standards—a role Plaintiff fulfilled for The
14 Spartan Associates, Inc. This determination was not provisional; it was a formal recognition
15 of Plaintiff’s competence, affirmed by the state agency charged with safeguarding the public
16 from unqualified contractors (*Hydrotech Sys., Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995
17 (1991)). The CSLB’s finding carries significant weight, as it reflects a rigorous evaluation
18 process designed to distinguish competent practitioners from those unfit to serve (Cal. Bus.
19 & Prof. Code § 7068).

20 **C. Judgment’s Presumption of Incompetence**

21 Despite this, the Judgment (Dkt. 204) branded Plaintiff as an unlicensed contractor
22 under § 7031(b), presuming him incompetent and liable for disgorgement of \$848,000—plus
23 an additional \$82,000 penalty via § 7031(a)—simply because he did not hold a license in
24 his own name. The Minute Order (Dkt. 193) states: “the Court finds and determines that Mr.
25 Adam Bereki is the contractor and he does not possess [a] contractor’s license,” ignoring
26 that Plaintiff’s work was performed through Spartan, a licensed entity he qualified and
27 controlled. This ruling disregarded the CSLB’s determination, implying that the absence of
28 a personal license negated Plaintiff’s proven competence. The contradiction is stark: the
state affirmed Plaintiff’s ability to perform as a general contractor, yet the court deemed him

1 incompetent based solely on a technicality—the name on the license—without evidence of
2 substandard work or harm to the Humphreys.

3 **D. Presumption of Harm Violates Common Law Principles**

4 This presumption extends beyond incompetence to assume harm, a leap
5 unsupported by evidence and antithetical to common law. Common law requires proof of
6 actual harm to justify legal remedies, not mere speculation or statutory fiat (*Chaparkas v.*
7 *Webb*, 178 Cal. App. 2d 257, 259 (1960) (“There can be no recovery for tort where no
8 damage is shown”); *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal. App. 2d 762,
9 774 (1966)). In *People v. Rocha*, 3 Cal. 3d 893, 899 (1971), the California Supreme Court
10 held that even in criminal battery, “the prosecution must prove that the defendant caused
11 some harm to the victim.” Here, the Humphreys presented no evidence of deficient work or
12 loss from Plaintiff’s services—indeed, they retained a remodeled condominium valued
13 allegedly at \$930,000. The judgment’s \$930,000 award thus rests on a presumption that
14 Plaintiff’s unlicensed status inherently harmed them, even if his work was flawless. This
15 inverts common law’s burden, punishing perfection absent proof of injury, a doctrine alien to
16 justice and truth.

17 **E. Due/ Judicial Process Violation**

18 The presumption of incompetence and harm also breaches due/ judicial process
19 under Cal. Const. Art. I, §§ 7, 9 and U.S. Const. Art. I, §10, and the Fifth and Fourteenth
20 Amendments. By deeming Plaintiff unfit despite the CSLB’s contrary finding, the court shifted
21 the burden to him to disprove harm—a task made impossible by the irrebuttable nature of §
22 7031(b)’s penalty, which allows no offset for value conferred (*White v. Criddlebaugh*, 178 Cal.
23 App. 4th 506, 520-21 (2009)). Due/judicial process demands a fair hearing where the
24 accuser proves their case (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
25 (1950)), not a summary penalty based on status. The U.S. Supreme Court in *Vlandis v.*
26 *Kline*, 412 U.S. 441, 446-48 (1973), struck down irrebuttable presumptions that deny
27 individuals a chance to contest underlying facts, as occurred here. Plaintiff was barred from
28 introducing evidence of his competence or the quality of his work, rendering the proceeding
fundamentally unfair and jurisdictionally defective (*World-Wide Volkswagen Corp. v.*
Woodson, 444 U.S. 286, 291 (1980)).

1 **F. Infringement of Inalienable Rights**

2 This presumption further violates Plaintiff’s inalienable rights under Cal. Const. Art. I,
3 § 1, including the right to “pursuing and obtaining safety, happiness, and privacy” through
4 his livelihood. The CSLB’s recognition of his competence affirmed his capacity to exercise
5 this right, yet the Judgment nullified it by presuming incompetence without a license in his
6 own name—effectively converting a fundamental right into a revocable privilege. The U.S.
7 Supreme Court in *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), enshrined the “liberty... to
8 engage in any of the common occupations of life” as constitutionally protected. By punishing
9 Plaintiff despite his proven ability and absent harm, the Court and § 7031(b) trample this
10 liberty, echoing the feudal licenses Plaintiff decries as antithetical to a free society (Motion
to Vacate, “Licenses: Feudal Chains, Not Rights”).

11 **Conclusion**

12 The Court's judgment relies on a legislative presumption that individuals are
13 incompetent and cause harm, which conflicts with Article I, Section 1 of the California
14 Constitution. This section states that "All people are by nature free and independent and
15 have inalienable rights," including the rights to enjoy and defend life and liberty, acquire and
16 protect property, and pursue safety, happiness, and privacy. Similarly, the Contractors State
17 License Board (CSLB) determined that the Plaintiff met the requirements to be a general
18 contractor, contradicting the judgment's assumptions. These inconsistencies, combined with
19 the lack of evidence showing harm, reveal that the entire licensing system infringes on
20 inalienable rights and the right to a judicial determination of rights. Furthermore, the
21 application of Section 7031(b) acts as an excessive punishment disguised as fairness,
22 contradicting common law's requirement of proven injury and due process’s demand for
justice.

23 This ruling undermines Plaintiff’s fundamental rights to life, liberty, property, privacy,
24 safety, and the pursuit of happiness by imposing a \$930,000 penalty and suspending his
25 license—punishing him for exercising a freedom the Magna Carta of 1215, Declaration of
26 Independence, natural law and the California Constitution recognize. The Court must
27 overturn this judgment, acknowledging that such assumptions—unsupported by evidence

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1 and contradicting the rights secured by the California Constitution—cannot be upheld under
2 the law or principles of justice.

3 ***n. Appellate Procedural History Arguments at Law***

4 **A. Background**

5
6 On June 13, 2017, Plaintiff filed a timely Notice of Appeal (Dkt. 234), challenging the
7 trial court’s judgment before Defendant Justices Richard Aronson, Thomas Goethals, and
8 Kathleen O’Leary of the California Fourth District Court of Appeal, Division 3 (Case No.
9 G055075). Plaintiff contested the trial court’s subject-matter jurisdiction and argued that the
10 \$848,000 disgorgement under Business & Professions Code §7031(b) constituted a penal
11 sanction, not an equitable remedy. Citing *Town of Gilbert Prosecutor’s Office v. Downie*, 218
12 Ariz. 466 (2008), he asserted that equity requires crediting the near-million-dollar value of
13 the custom remodel delivered to the Humphreys (G055075, Appellant’s Opening Brief on
14 Appeal, pp. 41-47). In a unanimous opinion authored by Justice Aronson, with Goethals and
15 O’Leary concurring, the appellate Court dismissed all his contentions as “without merit”
16 (Appendix C, p. 2). See also Opinion page 6, stating “Bereki contends the disgorgement
17 remedy is penal in nature and, therefore, a contractor defending against such a claim must
18 be afforded all criminal rights and protections. Not so”. The Court affirmed this Court’s ruling,
19 declaring, “Full disgorgement is required; offsets and reductions for labor and materials
20 received are not permitted”. Plaintiff’s subsequent Petition for Rehearing, filed November
21 13, 2018, argued, “[t]his Court erroneously ruled disgorgement is not a ‘punishment’ contrary
22 to U.S. Supreme Court jurisprudence” (citing *Kokesh v. SEC*), was summarily denied by
23 Aronson and Goethals on November 20, 2018 (G055075).

24 **B. Plaintiff is Denied a Full, Fair, Impartial, and Independent Appeal**

25 The appellate decision falters in three critical respects, undermining its legal
26 foundation, contradicting equitable principles, and exposing a failure to engage meaningfully
27 with Plaintiff’s arguments:

28 ***i. Mischaracterization of Section 7031(b) as Equitable***



1 The court labeled §7031(b)'s remedy "an equitable remedy" (Appendix C, p. 6),
2 relying on a superficial cut-and-paste from Justice O'Leary's earlier opinion in *Rambeau v*
3 *Baker*, 2010 WL 2796873, at *6, which cited *S.E.C. v. Huffman*, 996 F.2d 800, 802 (5th Cir.
4 1993), and *U.S. v. Philip Morris USA*, 310 F.Supp.2d 62-63. These cases, both in *Rambeau*
5 and Plaintiffs' are inapposite: *Huffman* addressed disgorgement as a "debt" under federal
6 tax law, not a state contractor statute, while *Philip Morris* limited disgorgement to "property
7 causally related to the wrongdoing" with profit apportionment—steps the Humphreys and
8 the Court ignored. Section 7031(b) itself authorizes recovery of "all compensation paid"
9 without mentioning "disgorgement," and its punitive intent—to deter unlicensed
10 contracting—is evident in its legislative history and judicial gloss (*Humphreys v. Bereki*, 2018
11 WL 5639287, at *6 ("decrease the likelihood of harm"); *White v. Cridlebaugh*, 178
12 Cal.App.4th 506, 519 (2009) ("stiff all-or-nothing penalty")). The Justices' cursory citation to
13 irrelevant cases sidestepped the required analysis, denying Plaintiff a substantive hearing
14 on the remedy's punitive nature that he directly raised.

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ii. Failure to Credit Value Delivered

The Court's refusal to offset the \$848,000 by the remodel's value—delivered by
Plaintiff and/or Spartan Associates—defies equitable logic and grants the Humphreys a
windfall (*Humphreys v. Bereki*, 2018 WL 5639287, at *5 ("courts have uniformly rejected"
offset arguments)). The Humphreys retained remodel work worth nearly \$1 million, yet the
Court demanded full repayment, contradicting *Downie* and the laws of unjust enrichment's
principles of crediting value returned (218 Ariz. at 466), This outcome aligns with *Lewis &*
Queen v. N.M. Ball Sons, 48 Cal.2d 141, 152 (1957), and *MW Erectors, Inc. v. Niederhauser*
Ornamental & Metal Works Co., Inc., 36 Cal.4th 412 (2005), which label §7031(b) a penalty,
not a restorative measure. By admitting the statute's "harsh and unfair results" (*Rambeau*,
2010 WL 2796873, at *6; echoed in *Humphreys*, at *6) yet washing their hands of it—blaming
the Legislature rather than exercising judicial oversight—the panel evaded their duty to
ensure equity, leaving Plaintiff unheard on this core inequity that he directly raised.

iii. Inconsistency with Justices' Prior Rulings

1 The Justices’ own precedents demand precision in equitable remedies, yet they
2 abandoned these standards here, producing a ruling that reads more like a rubber stamp
3 than a reasoned decision:

- 4 ○ **Justice Aronson:** In *County of San Bernardino v. Cohen*, 242 Cal. App.4th
5 803 (2015), he required a detailed unjust enrichment analysis for
6 disgorgement, focusing on net gain (*Liu’s* hallmark). In *Prakashpalan v.*
7 *Engstrom, Lipscomb & Lack*, 212 Cal. App.4th 1105 (2014), he limited relief to
8 excess fees, not total payments. In *Peterson v. Cellco Partnership*, 166
9 Cal.App.4th 1583, 1593 (2008), he held restitution inapplicable where the
10 plaintiff received expected value—here, the Humphreys’ remodel. No
11 evidence was presented Plaintiff retained an unjust gain, yet Aronson ignored
12 this precedent.
- 13 ○ **Justice O’Leary:** In *Meister v. Mensinger*, 230 Cal.App.4th 381 (2014), she
14 rejected disgorgement absent unjust enrichment or harm—neither present
15 here. In *Hartford Casualty Ins. Co. v. J.R. Marketing, L.L.C.*, 158 Cal.Rptr.3d
16 41 (2010) (affirmed in part), she tailored relief to specific unjust gains, not
17 blanket recovery, yet joined *Humphreys’s* all-or-nothing approach.
- 18 ○ **Justice Goethals:** In *Mojave Pistachios, LLC v. Superior Court*, 99
19 Cal.App.5th 1011 (2024), he denied disgorgement without direct benefit, and
20 in *American Building Innovations v. Balfour Beatty Construction*, 104
21 Cal.App.5th 256 (2024), he barred it where a contract delivered value—both
22 applicable here, yet disregarded.

23 The inconsistencies with their prior rulings and well-established principles of law by
24 all three Justices, paired with their reliance on misapplied citations, reflects an egregious
25 lack of engagement with Plaintiff’s arguments that were right on point and consistent with
26 principals of law and equity. Equity abhors forfeiture (*Tufeld Corp. v. Beverly Hills Gateway,*
27 *L.P.*, 86 Cal.App.5th 12, 32-33 (2022)), yet the panel inflicted one, admitting §7031(b)’s
28 harshness while shirking their constitutional role as a check on such outcomes. The Justices
offered no full, fair, or impartial hearing—just a perfunctory affirmance. Plaintiff’s Petition for
Rehearing, invoking *Kokesh v. SEC* to argue disgorgement’s punitive character, went
unanswered beyond a summary denial, cementing the denial of due process.

1 **iv. Lack of Subject Matter Jurisdiction to Affirm**

2 The appellate Court lacked subject matter jurisdiction to affirm the Judgment due to
3 the pervasive Constitutional violations that stripped both the trial and appellate Courts of
4 legitimate authority. By mischaracterizing §7031(b) as equitable, refusing to credit value
5 delivered, and contradicting their own precedents—all while failing to afford Plaintiff a
6 meaningful hearing—the panel ratified Judge Chaffee’s egregious due/judicial process
7 breaches, including the imposition of a punitive sanction without evidentiary support or
8 procedural safeguards. Under *County of Ventura v. Tillett*, 133 Cal.App.3d 105, 110-11
9 (1982), a Court loses jurisdiction when it acts in violation of the California or United States
10 Constitutions, as occurred here with the forfeiture masquerading as disgorgement and the
11 denial of a fair hearing. Similarly, *Steel Co. v. Citizens for a Better Environment*, 523 U.S.
12 83, 94 (1998), mandates that Courts lack authority to rule on the merits absent jurisdiction
13 grounded in a justiciable case—here, undermined by the Humphreys’ unproven claim and
14 the Court’s acquiescence to statutory overreach. By affirming, the Justices did not merely
15 err; they endorsed and perpetuated the structural jurisdictional errors by Chaffee, rendering
16 their decision another bill of pains and penalties and void *ab initio*.

17 **o. The Fraud of Judicial Process at “Trial” and “Appeal”**

18 Plaintiff’s trial and appeal were not genuine judicial proceedings but a fraudulent
19 process enforcing a legislative rule. At trial, Judge David Chaffee did not adjudicate the
20 dispute’s merits, instead imposing a \$930,000 penalty under California Business &
21 Professions Code §7031(b) based solely on Plaintiff’s unlicensed status. When challenged,
22 Chaffee stated, “The Supreme Court ... found that the contractor’s license law is draconian
23 in its effect, but that’s the intent of the Legislature” (Ex. A4- Reporter’s Transcript, p. 29),
24 deferring to the statute without review. On appeal, the Fourth District Court of Appeal
25 Justices affirmed, refusing to assess constitutional limits, echoing *Rambeau v. Barker*: “As
26 a judicial body, we are not permitted to second-guess [the Legislature’s] policy choices”
27 (2010 WL 2796873, at *6). Both courts acted as administrative enforcers (Cal. Const. Art. 3,
28 § 3.5), not Judges, denying Plaintiff a true judicial process.

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p. Extrinsic Fraud & Fraud on the Court

Plaintiff asserts that the Judgment entered against him must be vacated due to extrinsic fraud and fraud on the court committed by Defendants Karen Humphreys, Gary Humphreys, their attorney William Bissell, Judge David Chaffee, and Appellate Justices Richard Aronson, Thomas Goethals, and Kathleen O’Leary. These actions deprived Plaintiff of a fair adversary hearing, corrupted the judicial process, and resulted in structural jurisdictional errors rendering the judgment void *ab initio*. Plaintiff has plead all facts with particularity, demonstrating both the fraudulent conduct and a meritorious defense, as required under California law (*Huron Coll. v. Yetter*, 78 Cal. App. 2d 145, 150 (1947)).

A. Legal Standards

1. Extrinsic Fraud. Under California law, extrinsic fraud is a broad concept encompassing “almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing” (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). It occurs when a party is kept ignorant of the true nature of the proceedings or fraudulently prevented from fully participating, other than by their own negligence (*Estate of McGuigan*, 83 Cal. App. 4th 639, 649-50 (2000)). Examples include concealment of material facts, failure to provide proper notice, or misrepresenting the nature of the action (*City and County of San Francisco v. Cartagena*, 35 Cal. App. 4th 1061, 1067 (1995)). Relief from a judgment procured by extrinsic fraud is an equitable remedy, requiring the judgment to be set aside (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)).

2. Fraud on the Court. Fraud on the court involves conduct that undermines the integrity of the judicial process, such as presenting a false claim or deceiving the court about the nature of the proceedings (*Clark v. Clark*, 64 Cal. App. 2d 323, 329 (1944)). When established, it renders the judgment void and mandates vacatur (*Caldwell v. Taylor*, 218 Cal. 471, 476 (1933)). This includes willful misrepresentations by parties, their counsel, or judicial officers that mislead the court into acting without lawful authority.



1 **B. Extrinsic Fraud by the Humphreys, Bissell, Judge Chaffee, and the**
2 **Appellate Justices**

3 The Humphreys and Bissell, along with Judge David Chaffee and Appellate Justices
4 Richard Aronson, Thomas Goethals, and Kathleen O’Leary, perpetrated extrinsic fraud by
5 willfully and recklessly initiating, prosecuting, adjudicating, and/or affirming a claim they
6 knew or reasonably should have known lacked lawful authority. The specific acts are as
7 follows:

8 **1. Misrepresentation and Concealment by the Humphreys and Bissell.** The
9 Humphreys, with Bissell’s connivance, filed a claim under California Business and
10 Professions Code § 7031(b) for disgorgement (unauthorized by §7031(b)), presenting it as
11 a civil action. In reality, this was a covert criminal prosecution for alleged unlicensed
12 contracting, requiring executive authority they did not possess under California Constitution
13 Article V, § 1. They concealed the true nature and cause of the accusation, preventing
14 Plaintiff from challenging jurisdiction and/or invoking criminal procedural safeguards—such
15 as the right to counsel, a jury trial, and protection against excessive fines. This
16 mirrors *Dorsch v. Dorsch*, where misrepresentations about the nature of proceedings
17 constituted extrinsic fraud (168 Cal. App. 2d 336 (1959)). Plaintiff relied on the
18 representations and proceeded to trial believing the proceedings were lawful, included by
19 waiving his right to a jury trial.

20 **2. Intentional Deception by the Humphreys and Bissell.** This conduct satisfies the
21 elements of actual fraud under California Civil Code § 1572: (1) a false representation (a
22 civil claim when it was criminal); (2) known to be false by the Humphreys and Bissell; (3)
23 intent to deceive Plaintiff; (4) Plaintiff’s reliance; and (5) resulting damage (*Warren v. Merrill*,
24 143 Cal. App. 4th 96 (2006)). Their actions were a deliberate usurpation of executive power.

25 **3. Extrinsic Fraud by Judge David Chaffee.** Judge Chaffee committed extrinsic
26 fraud by mischaracterizing the proceedings as civil and failing to address Plaintiff’s
27 affirmative defenses, including the statute of limitations (*Eisenberg Village v. Suffolk*
28 *Construction*, 53 Cal. App. 5th 1201 (2020)). This denied Plaintiff a fair hearing and violated
his due/ judicial process rights (*Kulchar v. Kulchar*, 1 Cal. 3d at 471).



1 **D. Structural Jurisdictional Errors Resulting from Fraud**

2 The extrinsic fraud and fraud on the court caused structural jurisdictional errors,
3 rendering the judgment void:

4 1. **Lack of Subject Matter Jurisdiction.** The Humphreys lacked the capacity and
5 standing to prosecute a criminal action, and the Court never acquired jurisdiction (*County of*
6 *Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982)).

7 2. **Due/Judicial Process Violation.** The concealment and mischaracterization
8 denied Plaintiff a fair hearing, a structural error requiring reversal (*Johnson v. Zerbst*, 304
9 U.S. 458, 467-68 (1938)).

10 3. **Excessive Fine.** The \$930,000 penalty violates Constitutional limits, further
11 evidencing the Court’s lack of jurisdiction (*People v. Cowan*, 47 Cal. App. 5th 32 (2020);
12 *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)).

13 **E. Meritorious Defense**

14 Plaintiff alleges a meritorious defense: proper identification of the action as criminal
15 would have allowed challenges to standing, invocation of criminal protections, contestation
16 of the penalty, and required *sua sponte* dismissal. (*Huron Coll. v. Yetter*, 78 Cal. App. 2d at
17 150).

18 ***q. Post “Appeal”, Plaintiff Sought and Continues to Be Denied Judicial, Legislative,
19 or Executive Relief in Any Branch of The California or United States Governments
20 Resulting in A Structural Failure of The Entire Republican System Of Government
21 Secured By The California And United States Constitutions***

22 Additional allegations for more than forty public official Defendants regarding these
23 issues will be added on Amendment.

24 **I. SUPERIOR COURT OF CALIFORNIA– COUNTY OF ORANGE**

25 **Judge’s Breach of Duty to Vacate, Misapplication of *People V. Dutra*, And
26 Participation in Extrinsic Fraud and Fraud On The Court**

1 When the Appellate Justices awarded costs against Plaintiff (further depriving him of
2 money and property without lawful authority) and remitted the case to the Superior Court,
3 Plaintiff challenged jurisdiction by filing a Motion to Vacate on February 19, 2019. The motion
4 was heard by Defendant Judge James J. Di Cesare. Di Cesare refused to vacate the void
5 judgment, ruling that the appellate Court’s arbitrary edict was final. (Appendix D– Minute
6 Order p. 23, dated March 15, 2019; Reporter’s Transcript, pp.24-37).

7 ***a. Di Cesare Breached His Ministerial Duty to Vacate a Void Judgment***

8 California Courts bear a non-discretionary duty to vacate void judgments at any time,
9 even after appeal, when they lack jurisdiction or violate Constitutional mandates. *MacMillan*
10 *Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950); Cal. Code Civ. Proc. § 473(d).
11 Plaintiff’s Motion asserted that the \$930,000 judgment—\$848,000 in “disgorgement” under
12 Cal. Bus. & Prof. Code § 7031(b) and \$82,000 denied to Spartan under § 7031(a)—
13 constituted a penal sanction imposed without due process, rendering it void. (Dkt. 294–
14 Motion, pp. 4-5, 9-13). Citing *Kokesh v. SEC*, 581 U.S. 455 (2017), Plaintiff showed that §
15 7031 “disgorgement” exceeds compensation and serves to punish, necessitating criminal
16 safeguards absent in this case—e.g., notice of penal consequences, right to counsel, and
17 jury trial. (Motion, pp. 5-8). This violated the 14th Amendment, U.S. Const. Art. I, § 10
18 (prohibiting bills of pains and penalties), and Art. VI, § 2, divesting the Court of jurisdiction.
19 *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982); *Windsor v. McVeigh*, 93 U.S.
20 274, 284 (1876).

21 Di Cesare’s determination that the appellate decision was “final” disregarded this
22 duty. (Dkt. 304). At the time, still confused by the fraud and believing the Judgment may also
23 have been a punitive damages award, Plaintiff’s Motion demonstrated the judgment’s failed
24 under the State Farm test (*State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)):
25 no evidence of harm was presented, the \$930,000 award dwarfed comparable \$5,000
26 misdemeanor penalties under § 7028, and Plaintiff’s conduct lacked reprehensibility. Motion,
27 pp. 9-11. Judge Chaffee imposed this sanction without a judicial hearing, and the Justices
28 affirmed it, acting *coram non iudice* (before a non-judge, lacking jurisdiction). (Motion, pp.
13-1)5. Di Cesare’s refusal to vacate, despite these Constitutional defects, breached his

1 ministerial obligation to uphold the law and protect against void orders. *Cohens v. Virginia*,
2 19 U.S. 264, 404 (1821).

3
4 ***b. Misapplication of People v. Dutra***

5 Di Cesare’s reliance on *People v. Dutra*, 145 Cal.App.4th 1359 (2006)—which limits
6 trial court jurisdiction post-remittitur to executing the appellate judgment (at 1365-66)—was
7 a misapplication of law. *Dutra* governs valid judgments, not those void for lack of jurisdiction
8 or tainted by fraud. (Motion, p. 14). In *Dutra*, a criminal sentence was remanded for
9 execution, unchallenged as unconstitutional or fraudulent. Here, Plaintiff argued the
10 judgment was a “bill of pains and penalties”, imposed without due/ judicial process or
11 evidence of harm, exceeding Chaffee’s authority due to the Humphreys’ unauthorized
12 prosecution and the Court’s lack of subject matter jurisdiction. (Motion, pp. 12-13). *Tillett*
13 confirms that courts cannot render unconstitutional judgments, and *MacMillan* permits
14 vacatur at any time. Di Cesare’s rote application of *Dutra* overlooked *Kokesh*’s classification
15 of “disgorgement” as penal (as well as other well-established case law at that time), shielding
16 a jurisdictional nullity and misconstruing his inherent power to correct void orders. *In re*
17 *Dahnke’s Estate*, 64 Cal. App. 555, 560-561 (1923).

18 ***c. Di Cesare’s Participation in Extrinsic Fraud and Fraud on the Court***

19 Judge Di Cesare’s actions constitute participation in both extrinsic fraud and fraud on
20 the Court, aligning him with Defendants Chaffee, the Humphreys, Bissell, and Justices
21 Aronson, O’Leary, and Goethals in a coordinated scheme to deprive Plaintiff of a fair hearing
22 and uphold an unlawful judgment. Extrinsic fraud occurs when a party is prevented from
23 presenting their claim or defense due to fraudulent conduct, undermining the judicial process
24 (*City & Cnty. of San Francisco v. Cartagena*, 35 Cal. App. 4th 1061, 1067 (1995)). Fraud on
25 the Court involves deception that impairs the court’s integrity, affecting justice itself (*Hazel-*
26 *Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).

27 **i. Extrinsic Fraud**

28 Di Cesare’s refusal to vacate the judgment on March 15, 2019, despite Plaintiff’s
Motion to Vacate evidencing Constitutional violations, perpetuated the extrinsic fraud
initiated by the Humphreys’ unauthorized prosecution, Bissell’s complicity, and Chaffee’s

1 imposition of a penal sanction under a civil guise. By deeming the appellate ruling “final”
2 under an inapplicable precedent, *Dutra*, Di Cesare blocked Plaintiff from challenging the
3 judgment’s validity post-remittitur, denying him a fair opportunity to expose the fraud and the
4 lack of due process safeguards. (Motion, pp. 5-8, 12-14). This act, in concert with the prior
5 Defendants’ misconduct, kept Plaintiff out of Court on the merits, a hallmark of extrinsic fraud
6 (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). His failure to address new evidence
7 (*Kokesh*) or the jurisdictional defect (Humphreys’ lack of prosecutorial authority, *Linda R.S.*
8 *v. Richard D.*, 410 U.S. 614, 619 (1973)) suggests either reckless disregard or knowing
9 participation in the scheme, entrenching the harm (e.g., loss of license and income,
foreclosure, equity loss) that followed.

10
11 ii. Fraud on the Court

12 Di Cesare’s ruling also amounts to fraud on the Court by upholding a void judgment
13 through a misapplication of law, thereby corrupting the judicial process. His reliance on
14 *Dutra*—knowing or recklessly ignoring its irrelevance to void judgments (*MacMillan, Tillet*—
15 shielded the fraudulent \$930,000 penalty from scrutiny, deceiving the court system into
16 enforcing an unconstitutional nullity. This transcends mere error; it “involves far more than
17 an injury to a single litigant” but a “wrong against the institutions set up to protect and
18 safeguard the public” (*Hazel-Atlas*, 322 U.S. at 246). By refusing to vacate despite clear
19 evidence of fraud and jurisdictional failure (Motion, pp. 4-15; Appendix [D], p. 23), Di Cesare
20 aided the Humphreys, Bissell, Chaffee, and the appellate Justices in perpetuating a
21 deception that undermined the Court’s integrity—e.g., allowing a penal sanction to stand
22 without due/judicial process, contrary to Constitutional mandates (U.S. Const. Amend. XIV;
Cal. Const. Art. I, § 7). His actions, render him liable as a co-conspirator in this judicial
miscarriage.

23 **II. SUPREME COURT OF CALIFORNIA**

24
25 On Petition for Review to the Supreme Court of California, Defendant Justices (to be
26 included as Defendants in forthcoming Amended filing) Tani Cantil-Sakouye (CJ), Carol A.
27 Corrigan, Goodwin H. Liu, Mariano-Florentino Cuellar, Leondra R. Kruger, Joshua P.
28 Groban, and Ming W. Chin, sitting *en banc*, denied Plaintiff’s Petition for Review. Case No.

1 S252954. (Appendix E p.38(. Ordinarily review by the Supreme Court is discretionary. In this
2 case however, it was *mandatory* because Plaintiff never received a full, fair, or impartial trial
3 or appeal and there was no other Court of California to obtain a remedy. The Court has no
4 record of which Justices voted to arbitrarily deny the Petition. (Exhibit C, pp.2595-2608).

5 **III. UNITED STATES SUPREME COURT**

6 Petition for Writ of Certiorari, Case No. 18-1416 (Cert. Denied)

7 **IV. UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

8 Independent Action in Equity to Vacate Void Judgment, Case No. 8:19–CV–02050; Order,
9 Denial of Assistance of Counsel, Appendix F, pp. 39–40 Order, Dismissal of Case with
10 Prejudice, Appendix G, pp. 41–50 Order, Denial of In Forma Pauperis and Frivolous
11 Appeal, Appendix H, pp. 51-52

12 **A. Destruction of Federal Court Checks and Balances And The Unlawful Dismissal 13 of Plaintiff’s Independent Action In Equity**

14 **i. Introduction:**

15 **Hamilton and the Federal Policy Undermining Checks and Balances**

16 Alexander Hamilton, in *Federalist No. 28*, enshrined a cornerstone of the United
17 States Constitution: “The general government will at all times stand ready to check the
18 usurpations of the state governments... If [the People’s] rights are invaded by either, they
19 can make use of the other as the instrument of redress” (Avalon Project, Yale Law School).

20 This federal court oversight, rooted in Article I, Section 10’s ban on state bills of attainder
21 and laws impairing contracts, guarantees a check against state overreach. Plaintiff asserts
22 that the California Court of Appeal’s judgment (Case No. G055075) violated these
23 protections through executive usurpation and lack of subject matter jurisdiction, imposing
24 unlawful penalties without authority. After the United States Supreme Court denied certiorari
25 in 2019 (Case No. 18-1416), Plaintiff filed an independent action in equity under Federal
26 Rule of Civil Procedure 60(d) to void this judgment. On February 6, 2020, Judge Consuelo

27 B. Marshall dismissed Plaintiff’s First Amended Complaint with prejudice (Doc. 31), invoking
28 the Rooker-Feldman doctrine and collateral estoppel. This dismissal reflects not merely an
individual judicial error but a pervasive federal policy—driven by the misapplication of
Rooker-Feldman and the “deciding not to decide” reconfiguration of Supreme Court
jurisdiction under the Judiciary Act of 1925—that in this case destroyed the constitutional
check on state action. This policy, condemned as “treason to the Constitution” in *Cohens v.*

1 *Virginia* (19 U.S. 264, 404 (1821)), undermines Article III, Section 2’s mandate and Article I,
2 Section 10’s safeguards. This brief dismantles Marshall’s ruling ~~and challenges Rooker-~~
3 ~~Feldman’s constitutionality in this context.~~ (Note: this challenge will be made in the Amended
4 Complaint/Cross-Complaint).

5 **ii. Legal Argument: Marshall’s Ruling and the Federal Policy**
6 **Violate Constitutional Mandates**

7 *Article I, Section 10 and Article III, Section 2:*
8 *The Constitutional Imperative of Federal Jurisdiction*

9 Article I, Section 10 prohibits states from enacting “any Bill of Attainder” or “Law
10 impairing the Obligation of Contracts,” establishing an original Constitutional check against
11 state-imposed punishments without judicial process and breaches of contractual rights.
12 Plaintiff contends that the California Court of Appeal’s judgment constitutes multiple bills of
13 pains and penalties: a private party, without executive authority, prosecuted Plaintiff under
14 Business & Professions Code § 7031(b), and the state Courts, lacking subject matter
15 jurisdiction, affirmed an \$848,000 penalty—punishment absent lawful process and in
16 violation of Plaintiff’s contractual obligations. This triggers federal jurisdiction under Article
17 III, Section 2, which mandates that “in all Cases... in which a State shall be Party, the
18 Supreme Court shall have original Jurisdiction,” and extends judicial power to “all Cases...
19 arising under this Constitution.” The Supreme Court’s certiorari denial, enabled by the
20 Judiciary Act of 1925’s discretionary shift (Sternberg, “Deciding Not to Decide,” at 9-11),
21 flouts this duty where California is a party defendant, as in Plaintiff’s challenge to its courts’
22 judgment. Even if Congress had authority to control the original jurisdiction vested in the
23 U.S. Supreme Court by Article III, §2, it had a duty to require either the U.S. Supreme Court
24 on appeal, a U.S. District Court, or some other Court vested with Article III power to hear
25 and determine Plaintiff’s claims.

26 Hamilton’s *Federalist No. 28* underscores federal courts as a bulwark against state
27 usurpation, a principle affirmed in *Cohens v. Virginia*: “We have no more right to decline the
28 exercise of jurisdiction which is given, than to usurp that which is not given” (19 U.S. at 404).
Sternberg exposes how Chief Justice Taft’s 1925 Act turned this obligation into discretion,
allowing the Court to “decide not to decide” (Sternberg, at 14)—a structural change lacking
Article V amendment authority (Sternberg, at 11-12). Marshall’s dismissal perpetuates this

1 federal policy, denying Plaintiff any forum—appellate or independent—to contest a state
2 judgment alleged to violate Article I, Section 10, alongside due process and excessive fines
3 under the Fourteenth Amendment. This policy dismantles the Framers’ check on state
4 action.

5 **iii. The Unconstitutionality of Rooker-Feldman in This Context**

6 The Rooker-Feldman doctrine, as applied by Marshall, exceeds Constitutional
7 bounds when it shields a void state judgment like the Fourth District Court of Appeal’s. Its
8 use here violates core constitutional principles, rendering it unlawful.

9 Rooker-Feldman conflicts with the Supremacy Clause (Article VI, § 2), which
10 establishes federal law’s primacy over state actions breaching the Constitution. Article I,
11 Section 10 forbids bills of attainder, yet the Court of Appeal’s judgment—upholding a private
12 prosecution and penalty without jurisdiction—falls within this prohibition. Federal courts must
13 intervene, as *Miranda v. Arizona* holds: “Where rights secured by the Constitution are
14 involved, there can be no rule making or legislation which would abrogate them” (384 U.S.
15 436, 491 (1966)). Rooker-Feldman, by barring review of such violations, usurps this
16 supremacy without Article V sanction, a fraud akin to Taft’s discretionary overhaul
(Sternberg, at 11-12).

17 Article III, Section 2 further undermines Rooker-Feldman’s application. It mandates
18 Supreme Court original jurisdiction “in all Cases... in which a State shall be Party” and
19 extends judicial power to “all Cases” under the Constitution. Plaintiff’s action implicates
20 California as a party defendant, yet the Supreme Court’s discretionary denial and Marshall’s
21 deference to Rooker-Feldman nullify this mandate. Feldman permits federal courts to
22 address constitutional challenges beyond state rulings (460 U.S. 462, 486-87 (1983)), but
23 Rooker-Feldman here denies that power, contradicting Article III’s text and Hamilton’s
24 Federalist No. 28 promise of federal redress.

25 The doctrine also destroys the check-and-balance framework. Federalist No. 28
26 envisions federal courts as a shield against state overreach—Marshall’s “deciding not to
27 decide,” atop the Supreme Court’s cert denial, eliminates this protection. *In re Murchison*
28 illustrates judicial limits, voiding a judgment for due process violations (349 U.S. 133, 136

1 (1955)); Rooker-Feldman’s blanket shield defies this precedent. By preserving a void
2 judgment, it amends the Constitution’s structure without Article V authority, an
3 unconstitutional overreach, depriving the Court of subject matter jurisdiction.

4 **iv. Marshall’s Void Ruling**

5 Marshall’s Judgment rests on four erroneous grounds—application of Rooker-
6 Feldman, collateral estoppel, failure to examine jurisdiction, and dismissal of Plaintiff’s
7 constitutional challenge—each perpetuating the federal policy’s unconstitutional denial of
8 jurisdiction and each depriving the Court of subject matter jurisdiction.

9 Marshall’s reliance on Rooker-Feldman to bar Plaintiff’s action (Doc. 31, p.5)
10 misapplies a doctrine inapplicable to void judgments. Article I, Section 10 prohibits state
11 penalties without process, yet the Court of Appeal affirmed a private prosecution and penalty
12 lacking jurisdiction—executive usurpation unchecked by law. *Simmons v. Saul* holds that full
13 faith and credit does not protect judgments without jurisdiction (138 U.S. 439, 467 (1891)),
14 and *World-Wide Volkswagen Corp. v. Woodson* denies recognition to rulings violating rights
15 (444 U.S. 286, 291 (1980)). Federal courts have long voided such state acts—*Atchison, T*
16 *& S.F. Ry. Co. v. Wells* (265 U.S. 101, 103 (1924)) and *Simon v. Southern Railway Co.* (236
17 U.S. 115, 122 (1915)) confirm this authority. *Harris v. Hardeman* permits collateral
18 challenges to jurisdictionally defective judgments (55 U.S. 334, 341 (1853)). Marshall’s
19 refusal to assess this, mandated by *Cohens v. Virginia* (19 U.S. at 404), aligns with the
20 federal policy’s unconstitutional shield.

21 Marshall’s invocation of collateral estoppel, claiming Plaintiff’s issues were litigated
22 and decided (Doc. 31, p.9), fails scrutiny. A void judgment lacks finality—*United Student Aid*
23 *Funds, Inc. v. Espinosa* establishes that only valid proceedings preclude (559 U.S. 260, 270
24 (2010)), and *Harris v. Hardeman* concurs (55 U.S. at 341). The Court of Appeal’s ruling, built
25 on a lawless process, holds no weight. *Blonder-Tongue Labs v. Univ. of Ill. Found.* (402 U.S.
26 313, 329 (1971)) and *Allen v. McCurry* (449 U.S. 90, 95 (1980)) require a full and fair
27 hearing—Plaintiff received none, facing an unaccountable state system. California law, via
28 *Parsons Steel Inc. v. First Alabama Bank* (474 U.S. 518, 523 (1986)) and California Code of
Civil Procedure § 1916, allows attacks on void judgments, a right Marshall’s estoppel ruling
negates, furthering the federal policy’s erosion of checks.

1 Marshall's failure to investigate the Court of Appeal's jurisdiction (Doc. 31, p.6-7)
2 breaches federal duty. *In re James* mandates scrutiny of "jurisdictional underpinnings" (940
3 F.2d 46, 52 (3d Cir. 1991)), and *Gonzalez v. Parks* voids overreaching state rulings (830
4 F.2d 1033 (9th Cir. 1987)). Plaintiff's claims—executive usurpation and no lawful authority—
5 render the judgment void under *Ex parte Siebold* (100 U.S. 371, 376-77 (1879)). Marshall's
6 deference to the federal policy's "deciding not to decide" abandons this obligation
7 (Sternberg, at 14).

8 Finally, Marshall's rejection of Plaintiff's § 7031 challenge as an appeal (Doc. 31, p.7)
9 is baseless. *Feldman* allows federal review of constitutional claims (460 U.S. at 486-87)—
10 Plaintiff asserts § 7031 imposes penal sanctions, violating Article I, Section 10 and
11 Fourteenth Amendment limits. *Ex parte Siebold* voids judgments under unconstitutional laws
12 (100 U.S. at 376-77), and *English v. Foxall* permits broader relief (27 U.S. 595, 612 (1829)).
13 Marshall's dismissal entrenches the federal policy's denial of Plaintiff's rights.

14 Conclusion

15 The federal policy—misapplying Rooker-Feldman and embracing Taft's "deciding not
16 to decide"—destroys Article I, Section 10 and Article III, Section 2's checks on state action,
17 as evidenced by Marshall's ruling and the Supreme Court's certiorari denial. Rooker-
18 Feldman's unconstitutional application here shields a void judgment, defying supremacy,
19 jurisdiction, and balance. Marshall's errors amplify this travesty and deprived the Court of
20 subject matter jurisdiction.

21 V. U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

22 Appeal, Case No. 20–55181; Order dismissing case as "frivolous", Appendix I, p. 5.

23 Plaintiff asserts that the Ninth Circuit—former Chief Judge Sidney Thomas and
24 Judges A. Wallace Tashima and William Fletcher—breached their mandatory duty to
25 exercise jurisdiction over his appeal and grant him relief mandated by law. After Judge
26 Consuelo B. Marshall dismissed Plaintiff's independent action in equity (Case 8:19-cv-
27 02050-CBM-ADS) and the U.S. Supreme Court denied certiorari (Case No. 18-1416),
28 Plaintiff appealed on March 20, 2020. While his appeal pended, the Supreme Court issued
Liu v. SEC (140 S. Ct. 1936 (2020)), vacating the Ninth Circuit's own ruling (754 Fed. Appx.
505 (9th Cir. 2018)) that had wrongly upheld a disgorgement penalty as "equitable." *Liu*

1 clarified that such penalties, untied to net profits and lacking lawful authority, are penal—a
2 direct parallel to Plaintiff’s \$848,000 forfeiture under Business & Professions Code §
3 7031(b). Plaintiff filed a Notice/Request for Consideration of Additional Authorities,
4 spotlighting this illegality. Yet, the Ninth Circuit dismissed his appeal as “frivolous” with no
5 explanation (Appendix I, p.53), despite *Liu* exposing their prior error and its relevance to his
6 case.

7 This dismissal wasn’t just a mistake—it was a deliberate breach. The Ninth Circuit
8 had a duty to hear Plaintiff’s appeal, a right guaranteed by Article III, Section 2’s mandate
9 over constitutional cases and state-party disputes, especially after Marshall’s gatekeeping
10 and the Supreme Court’s dodge. *Cohens v. Virginia* demands jurisdiction be exercised, not
11 declined—“treason to the Constitution” otherwise (19 U.S. 264, 404 (1821)). Ignoring *Liu*—
12 a case they got wrong, corrected by the Supreme Court while Plaintiff’s appeal sat before
13 them—wasn’t oversight; it was refusal to face evidence that the California Court of Appeal’s
14 judgment was a void, penal act. Marshall’s ruling, the cert denial, and this dismissal form a
15 federal wall, destroying Plaintiff’s remedy against state overreach. The Ninth Circuit didn’t
16 just fail—they joined the betrayal.

17 **VI. COMMISSION ON JUDICIAL PERFORMANCE**

Judicial Complaint (Refused to Investigate and/or Intervene) Appendix J, pp. 54-55
18 Exhibit D, including pp.4168-4201.

19 **VII. SANTA ANA POLICE DEPARTMENT**

20 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
21 to Investigate and/or Intervene, Appendix K, p. 56
22 Exhibits E4, E5, E6, E7, E21; Exhibit C, pp.1818-1836, 1856-1894, 1894-2106,
23 2120-2153, 2660-2673; Exhibit D, pp.4205-4263, 4507-4509.

24 **VIII. ORANGE COUNTY SHERIFF-CORONER DEPARTMENT**

25 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
26 to Investigate and/or Intervene, Appendix L, pp. 57-67
27 Appendix L pp.57-67, Exhibits E9, E11, E12, E13, E17, E18; Exhibit D, including pp.4348-
28 4352, 4356-4363,4469-4506, 4531-4533, 4537, 4540; Exhibit C, including pp.1899-1972,
2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691.

ADAM A. BEREKI
YOU WERE BORN TO BE FREE



1 **IX. NEWPORT BEACH POLICE DEPARTMENT**

2 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
3 to Investigate and/or Intervene, Appendix M, pp. 68-71.
4 Exhibits: E24-E27; Exhibit D, including pp. 4571-4904,4796-4821, 5060-5068.

5 **X. UNITED STATES SUPREME COURT**

6 Emergency Petition for Writs of Error and Non-Statutory *Habeas Corpus*,
7 Refused to File by Clerk, Appendix N, p. 72.

8 **XI. CONTRACTORS STATE LICENSE BOARD**

9 Appendix O, pp. 73-79
10 See Exhibit F.

11 **XII. CALIFORNIA ATTORNEY GENERAL**

12 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
13 to Investigate and/or Intervene, Appendix P, pp. 80-81
14 Exhibit C, Exhibit D, including pp. 4403-4411, 5378-5399 and all Exhibits under Orange
15 County Sheriff-Coroner Dept.

16 **XIII. SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE**

17 Petition for Writ of *Habeas Corpus* (writ filed and denied twice),
18 Case No. 30-2022-01271693 Appendix R, pp. 89-90

19 **XIV. UNITED STATES SUPREME COURT**

20 Application for Emergency Stay, Case No. 22A426, Denied, Appendix S, p. 91

21 **XV. UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 Chapter 7 Bankruptcy Case No. 8-22-BK-12076SC

23 On December 8, 2022, Plaintiff filed a Petition for Chapter 7 bankruptcy in the United
24 States District Court for the Central District of California (Case No. 8:22-BK-12076-SC). His
25 Petition included a Declaration of Adam Bereki that the Petition was filed under duress and
26 coercion based on all unlawful actions that had occurred prior thereto (BK Dkt. 15). The
27 complaint in U.S. Supreme Court case# 22A426 was incorporated in the Bankruptcy Petition
28 and included as an Exhibit in support of the Declaration.

Plaintiff listed all claims pertaining to injuries of any kind relating to the Judgments
and property in this case. No party objected and the Trustee did not prosecute them. Plaintiff

1 filed a Motion to Compel the Trustee to Abandon the claims. The bankruptcy Judge ordered
2 the claims abandoned on December 31, 2024 revesting standing in Plaintiff to proceed with
3 all claims in this action (BK Dkt.112). Additionally, the case was closed on January 29, 2025.
4 (BK Dkt. 114). See 11 U.S.C. §554(c) “any property scheduled under section 521(a)(1) of
5 this title not otherwise administered at the time of the closing of a case is abandoned to the
6 debtor and deemed administered for the purposes of this section.”

7 **XVI. ORANGE COUNTY DISTRICT ATTORNEY**

8 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
9 to Investigate and/or Intervene; Complaint for Official Misconduct, Refused to Investigate,
10 Appendix T, pp. 92-93. Exhibits: E9, E11, E12, E13, E17, E18, E24-E27; Exhibit C,
11 including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691;
12 Exhibit D, including pp. 4348-4352, 4356-4363,4469-4506, 4531-4533,4537, 45404571-
13 4904, 5060-5068, 5204-5208.

14 **XVII. CALIFORNIA HIGHWAY PATROL**

15 Executive Complaint Concerning Judicial Misconduct Resulting in Criminal Acts, Refused
16 to Investigate and/or Intervene, Case No. :202200807; Complaint for Official Misconduct
17 Denied; Complaint for Official Misconduct Resubmitted Requesting Division Level Review,
18 Ongoing, Case No. 60125001; Appendix U, pp.94-104
19 Exhibit D, including pp.4905-5010, 5069-5095; Exhibit E28.

20 **XVIII. FBI**

21 Exhibits: C, D, E3, E14, E19.

22 **XXIX. SECOND DISTRICT COURT OF APPEAL**

23 Amicus Curae/ Third Party Intervenor Challenge to Constitutionality of 7031 in *Zale v.*
24 *Leevan* Case No. B324871, Denied Application/Intervention, Appendix V, pp.106
25 Constitutional Issues Ignored on Appeal, Unpublished Opinion 2024 WL 3963810

26 **XXX. COMPLAINTS TO GOVERNOR GAVIN NEWSOM**

27 Exhibits: E24-E27; Exhibit D, including pp. 4089–4101; 4309-4334; 4348-
28 4350;4356-4363; 4469-4506, 4510-4522; 4531-2; 4537; 4540; 4547-4551; 4556-4563;
Exhibit C, including pp. 2559-2594.

XXXI. IRVINE POLICE DEPARTMENT

Exhibits D, including pp.5159-5202; Exhibit E31.

XXXII. COSTA MESA POLICE DEPARTMENT

Exhibits E29, E30, Exhibit D, including pp.5110-5158.

XXXIII. CALIFORNIA ASSEMBLY AND SENATE

Exhibits E2, E10, E15; Exhibit C, including pp.2369-2381; Exhibit D, including

1 pp.4164-S4166, 4335-4347, 4412-4467, 4552.

2 **XXXIV. UNITED STATES DEPARTMENT OF JUSTICE**

3 Exhibits C, D, including pp.4106-4166.

4 **XXXIV. PRESIDENT OF THE UNITED STATES**

5 **XXXV. DOCUMENTARY SERIES VIDEO- TREASON BY JUDGE**

6 Part 1– Published on YouTube, April 8, 2024.

7 See <https://www.youtube.com/watch?v=kqN3tt9-Hiw&t=21s> or search @thespiritoflaw

8 ***r. Plaintiff's Private Contracts Are Impaired***

9 As a direct and proximate result of some or all of the foregoing, Plaintiff's private
10 contracts and obligations became severely impaired. Specifically, he became unable to
11 discharge the obligations of the first mortgage and a second purportedly secured by his real
12 property along with paying unsecured creditors (credit cards).

13
14 ***s. Equity's Role in Restoring All Rights and Property Lost Due to a Void Judgment***

15 In cases of extrinsic fraud and fraud on the Court, such as that perpetrated in this
16 case, equity intervenes to ensure that the victim of a void judgment is fully restored to their
17 pre-judgment position. This Court possesses both inherent equitable authority and statutory
18 power to order restitution and, where appropriate, damages for all rights and property lost
19 as a result of the fraudulent judgment. This subsection outlines the legal foundation for such
20 relief, emphasizing the court's ability to remedy the profound injustices inflicted upon
21 Plaintiff.

22 **A. Void Judgments and the Primacy of Restitution**

23 A void judgment is one that lacks legal effect from its inception, typically due to
24 fundamental defects such as lack of jurisdiction over the subject matter or parties. Unlike
25 voidable judgments, which remain valid until set aside, void judgments are legal nullities,
26 never possessing lawful force (*MacMillan Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523,
27 533 (1950)). The primary equitable remedy for such a judgment is restitution, designed to
28 return the parties to their pre-judgment positions by restoring property, money, or benefits
transferred under the void order. California courts have consistently applied this principle,

1 as evidenced in *Stockton Theatres, Inc. v. Palermo*, 121 Cal. App. 2d 616 (1953) and
2 *Erickson v. Boothe*, 127 Cal. App. 2d 644 (1954), where restitution included an accounting
3 for profits or benefits derived during wrongful possession. In the present case, the
4 judgment’s nullity due to fraud triggers this equitable obligation to unwind its effects
5 comprehensively.

6 **B. Statutory Authority Under California Law**

7 California Code of Civil Procedure § 908 provides the statutory framework for
8 equitable relief following the reversal or modification of a judgment, stating:

9 “When the judgment or order is reversed or modified, the reviewing court may
10 direct that the parties be returned so far as possible to the positions they occupied
11 before the enforcement of or execution on the judgment or order. In doing so, the
12 reviewing court may order restitution on reasonable terms and conditions of all
13 property and rights lost by the erroneous judgment or order...”

14 While § 908 emphasizes restitution as the cornerstone remedy, the phrase “rights
15 lost” invites a broader interpretation, encompassing not only the return of tangible property
16 but also compensation for losses directly attributable to the void judgment. This statutory
17 language aligns with equity’s core mission to prevent unjust enrichment and ensure full
18 restoration of the injured party, potentially including damages for financial harm beyond mere
19 restitution.

20 **C. Judicial Precedents Expanding Remedies Beyond Restitution**

21 California case law demonstrates that courts may award damages in addition to
22 restitution when financial losses stem directly from a void judgment, reinforcing the equitable
23 principle of complete restoration. Key precedents illustrate this authority:

- 24 • ***Civic West, Inc. v. Superior Court***, 22 Cal. App. 4th 575 (1994): In this case, a
25 wrongful eviction under a void judgment led to the award of damages beyond
26 restitution. The court granted compensation for the rental value of the property during
27 the period of dispossession and additional expenses incurred due to the wrongful act,

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recognizing that mere return of the property was insufficient to remedy the economic harm suffered.

- **Bank of America v. Superior Court**, 102 Cal. App. 3d 435 (1980): Here, a wrongful attachment under an invalid judgment prompted the court to allow recovery of damages for losses such as lost business opportunities and financial burdens caused by the void order, in addition to the return of attached property.

These cases affirm that equity empowers courts to address financial harms—like lost use of property, additional costs, or lost income—when directly tied to the enforcement of a void judgment. By contrast, cases like *Stockton Theatres, Inc. v. Palermo* and *Erickson v. Boothe* focused on restitution alone (e.g., accounting for profits), but their principles support broader remedies where additional losses are proven.

D. Scope and Limitations of Equitable Relief

The scope of equitable relief under § 908 and judicial precedent typically encompasses financial losses directly linked to the void judgment, such as lost property value, profits, or expenses incurred in challenging the judgment’s enforcement. However, courts exercise caution in expanding remedies beyond these bounds. Non-economic damages, such as emotional distress or reputational harm, are less commonly awarded in restitution proceedings, as the equitable focus remains on economic restoration rather than tort-like compensation. Such claims may require separate legal actions, underscoring the need for a clear causal connection between the void judgment and the losses sought.

E. Application to Plaintiff’s Case

In this matter, the judgment—rendered void by extrinsic fraud and fraud on the court—has inflicted profound harm on Plaintiff, stripping him of rights and property through its fraudulent enforcement. Equity demands that this Court exercise its authority to order:

- **Restitution:** The return of all property and rights lost, such as Plaintiff’s home lost to foreclosure along with any benefits or profits unjustly gained by Defendants. See Citizens section below and additional claims for equitable relief below.
- **Damages:** Compensation for financial losses directly attributable to the void judgment, including lost earnings from his contracting business, compensation for his

1 time and labor in his professional skills as a forensic investigator and expenses
2 incurred in resisting the judgment's effects and exposing this fraud perpetrated on the
3 People of California for nearly 100 years. See Citizens section below and additional
4 claims for damages below.

5 This dual remedy ensures that Plaintiff is not merely returned to a semblance of his
6 prior position but is fully compensated for the economic toll exacted by the fraud.

7 **Conclusion and Requested Relief**

8
9 The extrinsic fraud committed by the Humphreys, Bissell, Judge Chaffee, and
10 Appellate Justices Aronson, Goethals, and O'Leary, and Judge Di Cesare, along with the
11 fraud on the Court they collectively perpetrated, deprived Plaintiff of his Constitutional rights
12 and resulted in a void judgment.

13 This Court has a duty to stop this unconscionable miscarriage of justice and the
14 irreparable harm and damage that continues to be perpetrated on Plaintiff under color of law
15 but without lawful authority. Plaintiffs' history of complaints to all branches of State and
16 Federal government further evidence that he continues to be denied lawful remedy to stop
17 this treasonous behavior. To put it bluntly, this Court created this mess and it is its duty to
18 clean up the mess, not Plaintiff, lest he be subjected to further due/judicial process violations
19 and continued involuntary servitude.

20 This Court has a non-discretionary ministerial duty to vacate the void judgment in this
21 case based on new evidence demonstrating extrinsic fraud and to order an accounting and
22 subsequent hearing for the restitution of all rights and property Plaintiff has lost as a result.
23 Alternatively, this Court may treat this Application as a writ of *habeas corpus*.

24 Plaintiff contends: (1) it is an additional violation of due/judicial process to reverse the
25 burden of proof and require him to prove his innocence; and, (2) that he has been subjected
26 to involuntary servitude in violation of Cal. Const. Art. I, § 6 and the Thirteenth Amendment
27 to the U.S. Const. to stop the crimes, treason, and other unlawful acts involved herein to
28 steal his money, property, and liberty under color of law but without lawful authority.



1 Plaintiff has spent an average of eight hours per day, five days per week, beginning
2 the day after the Humphreys filed their First-Amended Cross-Complaint against him on
3 January 6, 2017 (Dkt. 179) through October 31, 2024 (2,095 days), preparing a meaningful
4 defense, including researching law and conducting this forensic investigation to reveal the
5 fraud perpetrated on him, and seeking remedial justice as evidenced herein. See Appendix,
6 Exhibits: A (Annotated Procedural History), C– Public Records Requests, D, H- Official
7 Complaints. Plaintiff has not been paid for his time and labor. The rate Plaintiff believes he
8 should reasonably be compensated to perform this work is the same rate for legal services
9 provided by a lawyer, such as Mr. Bissell, whose customary rate (stated in 2015) was \$300
10 per hour (Dkt.31, p.6). The amount due Plaintiff for this time period is: $\$300/\text{hr.} * 8\text{hrs}/\text{day} * 2,095 \text{ days} = \$5,028,000$.

11 From February 3, 2025, through March 11, 2025, (36 calendar days) Plaintiff spent,
12 on average, two hours per day, every day of the week, researching law and preparing his
13 defense, including the creation of this pleading. The amount due Plaintiff for this time period
14 is: $\$300/\text{hr.} * 2\text{hrs}/\text{day} * 36 \text{ days} = \$21,600$.

15 Plaintiff has also incurred a *rough preliminary estimate* of an additional \$1 million
16 dollars in costs and other damages that include: Court and attorney’s fees; office expenses
17 (paper, toner, postage, envelopes, printers, scanner, filing cabinets, 3-ringed binders,
18 computers, software, paper cutter, website and domain hosting, cloud storage, part time
19 assistant, etc...); research (law and history books, legal research tool subscriptions,
20 repeated consultations with expert legal historians); medical (mental health
21 counseling/coaching, acupuncture, physical therapy and other specialists for ongoing
22 anxiety, depression and other emotional distress related conditions attributable to these
23 circumstances). Plaintiff will submit an accounting of these expenses and damages as soon
24 as possible. See Complaint/Cross-Complaint for additional claims.

25 Plaintiff requests the Court equitably apportion the amounts of all costs and damages
26 between Defendants as it determines reasonable and just.

27 **CHALLENGE TO JUDICIALLY IMMUNITY: AN UNCONSTITUTIONAL FRAUD**

I. Judicial Immunity’s Feudal Roots and Constitutional Collapse

The doctrine of absolute judicial immunity, likely to be invoked by Defendant Judges David Chaffee and James Di Cesare along with Fourth District Justices Aronson, Goethals, and O’Leary (collectively “Judges”) is a feudal artifact at odds with the California and U.S. Constitutions. California Constitution Article I, § 26 mandates, “The provisions of this Constitution are mandatory and prohibitory,” and “everything done in violation thereof is void.” *Katzberg v. Regents of the Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002). When judges breach these mandates—as they did by allowing an unauthorized prosecution, denying due process, imposing an excessive fine, and affirming a void judgment—immunity falls apart. Their acts defied the People’s supreme law, rendering them void ab initio, per *Katzberg’s* unequivocal rule.

Rooted in feudal England, judicial immunity shielded the King’s Courts under the divine right myth, deeming royal records sacrosanct. J. Randolph Block, *Stump v. Sparkman and the History of Judicial Immunity*, 1980 Duke L.J. 879, 882–83; Feinman & Cohen, *Suing Judges: History and Theory*, 31 S.C. L. Rev. 201, 206–07. The American Revolution rejected this. *Chisholm v. Georgia* recognized sovereignty vested in the People, not officials, who hold only delegated powers. 2 U.S. 419, 471–72 (1793). Yet *Stump v. Sparkman* revived this relic, shielding a judge’s *ex parte* sterilization order despite “grave procedural errors,” if within general jurisdiction. 435 U.S. 349, 359 (1978). This conflicts with our Constitutions as also recognized in *Vanhome’s Lessee v. Dorrance*: judges are “creatures of the Constitution,” and acts against it are “absolutely void.” 2 U.S. 304, 308 (1795). See also Cal. Code Civ. Proc. § 410.10 declaring that “[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” § 410.10 ties jurisdiction to constitutional fidelity—immunity for violations is a fraud on the People.

Plaintiff contends that all public officials were granted absolute immunity from civil and criminal claims by the California and United States Constitutions with a single exception: every action must be within Constitutional bounds. “It is a rule of construction acknowledged by all that the exceptions from a power mark its extent, for it would be absurd, as well as useless, to except from a granted power that which was not granted.” *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824).

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3 Plaintiff hereby the challenges the judicially created doctrines of absolute and
4 qualified immunity and the underlying doctrine of subject matter jurisdiction tied to immunity
5 as recognized under California and United States law.

6 **II. Subject Matter Jurisdiction: Issue-Specific, Not Blanket**

7 Immunity depends on jurisdiction, which is issue-specific, not a case-wide pass. A
8 Judge must have issue authority from the Constitution (subject matter jurisdiction) for every
9 act he or she takes. Whether a class of case is one within the Court’s power is only one
10 issue in a case. Jurisdiction lapses when constitutional limits are crossed, per *Katzberg*, 29
11 Cal. 4th at 306–07. *Windsor v. McVeigh* ruled a judgment without a hearing “is not a judicial
12 determination” and earns no respect. 93 U.S. 274, 277 (1876). Chaffee lacked this authority
13 at every step and the Justices and Di Cesare lacked it to affirm Chaffee’s Judgment:

- 14 • **Unauthorized Prosecution Not Cognizable Before Any Judge in America:**
15 Chaffee allowed private citizens Karen and Gary Humphreys to prosecute under
16 §7031(b)—a penal remedy—without executive authority. *Linda R.S. v. Richard D.*,
17 410 U.S. 614, 619 (1973) (“a private citizen lacks a judicially cognizable interest in
18 the [criminal] prosecution [...] of another”). No record shows such power; *County of*
19 *Ventura v. Tillett*, 152 Cal. App. 3d 178, 185 (1984) voids jurisdiction absent lawful
20 basis.
- 21 • **Excessive Fine:** Chaffee’s \$930,000 penalty—40 times Plaintiff’s qualifying net
22 worth—skipped due/ judicial process (counsel, jury, hearing) required by *Aulisio v.*
23 *Bancroft*, 230 Cal. App. 4th 1516, 1523 (2014), and breached the Eighth Amendment
24 and Cal. Const. Art. I, § 17. *Volkswagen v. Superior Ct.*, 139 Cal. App. 4th 1481, 1490
25 (2006): jurisdiction fails when unconstitutional.
- 26 • **Retaliatory Fines:** Chaffee fined Plaintiff for jurisdictional challenges (bill of
27 particulars, writ of error), violating First Amendment petition rights (Cal. Const. Art. I,
28 § 3). *Elliott v. Lessee Peirsol*, 26 U.S. 328, 340 (1828): acts without authority are
“nullities.”

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These weren't missteps—they were lawless acts, void under *Katzberg*.

III. Ministerial Acts: No Immunity for Constitutional Duties

Judicial immunity covers judicial acts, not ministerial ones—mandatory duties with no discretion. *Miss v. Johnson*, 71 U.S. 475, 498 (1867): ministerial acts are “simple, definite” legal obligations. The Constitution—U.S. Const. Art. VI, § 2; Cal. Const. Art. I, § 26—imposes these: no excessive fines (U.S. Const. Amend. VIII; Cal. Const. Art. I, § 17), no deprivation without due process (U.S. Const. Amend. V, XIV; Cal. Const. Art. I, § 7), no private prosecution without sanction (*Linda R.S.*, 410 U.S. at 619). *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824): exceptions define power—judges *must* comply. *Forrester v. White*, 484 U.S. 219, 229 (1988): no immunity for ministerial acts. *D’Aoust v. Diamond*, 424 Md. 549, 586–87, 36 A.3d 941, 962–63 (2012): “Officials enjoy no immunity at all for ministerial acts.”

Chaffee, Di Cesare and the Justices flouted these duties:

- **Chaffee:** No discretion to allow Humphreys’ prosecution—separation of powers forbids it. No discretion to deny due process or impose an excessive fine—Eighth and Fourteenth Amendments mandate protections.
- **Justices and Di Cesare:** No discretion to affirm a penalty defying equitable principles and Supreme Court precedent like *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 585–86 (1996) (dicta noting stiff, all-or-nothing penalties raise due process flags).

These breaches—void per *Katzberg*—strip immunity, exposing them as private actors.

IV. Private Capacity Liability: Trespassers, Not Judges

Without jurisdiction or breaching ministerial duties, judges become liable trespassers. *Forrester*, 484 U.S. at 229: non-judicial acts aren’t shielded. *Ex parte Young*, 209 U.S. 123, 159-60 (1908) “The answer to all this is the same as made in every case where an official claims to be acting under the authority of the state. The act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of,

1 and one which does not affect, the state in its sovereign or governmental capacity. It is
2 simply an illegal act upon the part of a state official in attempting, by the use of the name of
3 the state, to enforce a [judgment] which is void because unconstitutional. If the act which the
4 state [official] seeks to enforce be a violation of the Federal Constitution, the officer, in
5 proceeding under such enactment, comes into conflict with the superior authority of that
6 Constitution, and he is in that case stripped of his official or representative character and is
7 subjected in his person to the consequences of his individual conduct. The state has no
8 power to impart to him any immunity from responsibility to the supreme authority of the
9 United States.” *Ex parte Virginia*, 100 U.S. 339, 347 (1879): liability hinges on the act’s
10 nature. Chaffee’s proxy prosecution and void penalty were lawless, aiding Humphreys’
11 misuse of power. The Justices’ (and later Di Cesare’s) affirmance—ignoring equitable and
12 Constitutional principles—ratified this fraud. *Elliott*, 26 U.S. at 340: All persons executing
13 void judgments are trespassers. Plaintiff’s damages directly stem from these acts—Chaffee,
14 Di Cesare, and the Justices face liability.

V. Administrative Capacity Exception: No Immunity for Tribunal Acts

15 Even if Defendants’ actions were within Constitutional bounds, they were
16 administrative, not judicial, negating absolute immunity. *Butz v. Economou*, 438 U.S. 478,
17 513–14 (1978): ALJs get immunity only for quasi-judicial acts with full process;
18 administrative roles get qualified or none. *Cleavinger v. Saxner*, 474 U.S. 193, 203–04
19 (1985): acts lacking judicial independence aren’t shielded. Chaffee enforced §7031(b) as
20 CSLB’s agent—checking licensure, not adjudicating—making it an administrative task. The
21 Justices, affirming without applying equitable principles or *BMW’s* penalty caution, acted as
22 policy enforcers, not Judges. *Forrester*, 484 U.S. at 229: administrative functions aren’t
23 immune. Plaintiff’s prior section proves this was an administrative tribunal—absolute
24 immunity fails; qualified immunity collapses due to Constitutional bad faith (*D’Aoust*, 424 Md.
25 at 586–87).

Conclusion

26 Judicial immunity—a feudal fraud—shields nothing here. Chaffee, Di Cesare, and the
27 Justices lacked issue-specific jurisdiction (*Windsor*), breached ministerial duties (*Gibbons*,
28 *Forrester*), and acted administratively (*Butz*), making them trespassers (*Persol*). Their void

1 acts—unauthorized prosecution, no due/ judicial process, excessive fine—has caused
2 Plaintiff irreparable harm and damages. *Katzberg* and Cal. Const. Art. I, § 26 demand
3 accountability, not immunity’s overreach.

4 **CITIZENS BANK EXPLOITED FRAUD AND STATE MISCONDUCT TO PLUNDER**
5 **DEFENDANT’S HOME**

6 Citizens Bank, relying on the fraud and unlawful actions perpetrated against
7 Plaintiff—state actions that deliberately wrecked his income stream—declared a default,
8 triggering a non-judicial foreclosure sale that dumped his home for approximately \$1 million
9 below comparable fair market value. This predatory act resulted in an estimated \$1.18
10 million in home equity theft and inflicted additional punishment.

11 It was unconscionable for Citizens to declare a default when: (1) it had knowledge of
12 the extrinsic fraud, denial of due/judicial process (as evidenced in 22A426); (2) it was
13 informed of an active criminal investigation by law enforcement into that fraud and other
14 crimes; and (3) the foregoing unlawful activity was a direct and proximate cause of the
15 purported default. After the sale, the purported buyer, Canjian Hou, was notified of the fraud,
16 refused to do equity by accepting a refund, and commenced unlawful detainer proceedings
17 with the assistance of his attorney, Henry D. Paloci to evict Plaintiff from his own property.

18 **Overview**

19 Civil Code § 1708 declares that “[e]very person is bound, without contract, to abstain
20 from injuring the person or property of another, or infringing upon any of his or her rights.”
21 Plaintiff contends this, alongside the doctrine of good faith and fair dealing, imposed clear
22 duties on Citizens to refrain from using unlawful state actions—continuously perpetrated
23 against Plaintiff, including the persistent denial of judicial process to reverse the Judgment—
24 as a means to gain a civil advantage and force the sale of his home. Despite being duly
25 notified of the alleged fraud, due and judicial process violations, the structural failure of trial
26 and appellate mechanisms, Plaintiff’s constructive imprisonment, and the resulting
27 impairment of his income stream—all direct results of the unlawful state action—Citizens
28 arbitrarily branded his inability to pay a “default” and ordered Trustee Corps to conduct a
non-judicial foreclosure sale. Plaintiff never agreed to any definition of default where a
conspiracy between private parties and state officials to steal his money, property, and



1 liberty, under color of law but without lawful authority, would result in his home being sold
2 for more than \$1 million below fair market value.

3 Under Civil Code § 1708 and the doctrine of good faith and fair dealing, Citizens
4 cannot ignore or pretend these extraordinary, lawless state actions do not exist—despite
5 repeated notice—then rely on them to declare a “default” and seize a civil advantage through
6 non-judicial foreclosure proceedings, all without becoming a conspirator or aider and abettor
7 to the underlying crimes and rights deprivations. If a default had occurred, Citizens was
8 minimally required to commence judicial proceedings to ensure Plaintiff was heard and the
9 entirety of the situation’s facts were before a Court to decide how to proceed in this
10 extraordinary mess. Plaintiff views the non-judicial foreclosure sale as a continuation of the
11 conspiracy to punish him by taking his money and property while denying him a judicial
12 determination of his rights. If deemed valid, the sale will result in more than an estimated
13 \$1.18 million in home equity theft.

14 Post-sale, Plaintiff was served eviction papers by Defendant Henry D. Paloci, III, P.A.,
15 and Henry D. Paloci (collectively “Paloci”), attorneys for Defendant ‘buyer’ Canjian Hou.
16 Paloci told Plaintiff that neither he nor Hou had knowledge of the litigation involving the
17 property even though a simple Google search of Plaintiff’s name or the property address
18 would have revealed the situation. Paloci repeatedly argued his client owned the property
19 as a “bona fide purchaser” (BFP). Even if true, the BFP doctrine only pertains to procedural
20 requirements of a valid sale (e.g., notice, 90-day redemption period) and has nothing to do
21 with whether the lender or trustee had authority to commence the sale to begin with. A sale
22 where the lender or trustee lacked authority—as here—voids any title transfer, as no
23 contractual or legal basis existed for the sale, and thus voids BFP status.

24 Plaintiff offered to do equity with Hou by returning the surplus funds of the bogus sale
25 once received. In an email response, Paloci flatly stated, “that’s never going to happen”
26 (apparently referring to doing equity with Plaintiff and ceasing and desisting from all efforts
27 to gain possession of the property.) Hou has continued to refuse those funds and do equity,
28 instead filing an unlawful detainer action in this Court on February 11, 2025, invoking the
jurisdiction of this very Court (the same one implicated in the fraud, treason, and other crimes
and unlawful acts alleged herein) to further steal Plaintiff’s money and property, advance the

1 unlawful acts, and charge Plaintiff \$166 per day in damages. Even after being duly notified,
2 Paloci and Hou refuse to cease and desist their roles in the harm being inflicted. Plaintiff
3 contends they are breaching duties under at least Civil Code § 1708 and are conspiring to
4 aid and abet the crimes alleged herein.

5 In pursuit of restitution and relief to restore all rights and property lost due to the
6 fraudulent Judgments against him, Plaintiff requests this Court:

- 7 1. Declare the Trustee’s sale void based on extrinsic fraud and other claims alleged
8 herein;
- 9 2. Cancel the Deed of Trustee Sale issued to Hou;
- 10 3. Declare that Citizens and Trustee Corps conspired to, and did, aid and abet the fraud,
11 crimes, and deprivation of Plaintiff’s rights perpetrated by Defendants Humphreys,
12 Bissell, and Judicial Defendants (collectively “Primary Defendants”);
- 13 4. Declare that Paloci and Hou conspired to, and did, aid and abet the fraud, crimes,
14 and deprivation of Plaintiff’s rights by refusing to do equity once duly notified, then
15 seeking to rely on that fraud and other crimes to invoke this Court’s jurisdiction and
16 forcibly evict Plaintiff via unlawful detainer proceedings;
- 17 5. Declare that Plaintiff was harmed by Citizens, Trustee Corps, Hou, and Paloci through
18 their lawless attempts to steal his home using the fraud and crimes against him as a
19 means to their ends;
- 20 6. Award damages against Citizens, Trustee Corps, Hou, and Paloci for Plaintiff’s time
21 preparing a meaningful and substantive defense against their lawless actions

22 ***a. Claim for Relief: Equitable Action to Set Aside Foreclosure Sale***

23 “[T]he elements of an equitable cause of action to set aside a foreclosure sale are:
24 (1) the trustee ... caused an illegal, fraudulent, or willfully oppressive sale of real property
25 pursuant to a power of sale in a ... deed of trust; (2) the party attacking the sale ... was
26 prejudiced or harmed; and (3) in cases where the trustor ... challenges the sale, the trustor
27 ... tendered the amount of the secured indebtedness or was excused from tendering.” *Orcilla*
28 *v. Big Sur, Inc.*, 244 Cal. App. 4th 982, 996 (2016) (citation omitted).

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1. The First Element: Unlawfulness of the Trustee’s Sale

Plaintiff alleges the Trustee’s sale was unlawful, fraudulent, and willfully oppressive for two reasons: (1) Plaintiff’s income stream and ability to pay or discharge the agreement’s obligations were crippled by extrinsic fraud and other crimes through the lawless actions of state officials—behavior Citizens could not rely upon under Civil Code § 1708 and the doctrine of good faith and fair dealing to declare a default; and (2) based on that, and the fact Plaintiff never agreed to these arbitrary terms, the contract was unconscionable.

Background

a. The Mortgage Agreement with Citizens Bank

On October 30, 2006, Plaintiff entered into an agreement for a home equity line of credit with Charter One Bank (Ex. 3, pp.1-12 Agreement and Deed of Trust). Based on information and belief, Charter One Bank appears to have become Citizens Bank NA (“Citizens”) by merger.

b. Citizens Declares a Default and Orders Trustee Corps to Commence a Non-Judicial Foreclosure Sale

On or about July 10, 2024, Citizens declared a default under the agreement and, on information and belief, ordered its agent, Trustee Corps, to sell the property via non-judicial foreclosure. On July 10, 2024, MTF Financial Inc., d/b/a Trustee Corps (“Trustee Corps”), as duly appointed Successor Trustee, filed a Notice of Default and Election to Sell Under Deed of Trust (NOD). According to public records, the NOD was recorded in the Office of the Clerk-Recorder for Orange County as document number 2024000173067, claiming \$31,901.33 due as of July 9, 2024.

On information and belief, Trustee Corps and/or its unknown agents commenced a foreclosure sale on November 18, 2024, at the Superior Court for Orange County. Plaintiff attended and gave notice of the pending litigation alleged herein to the auctioneer (a third-party company he cannot recall) and all parties present. The sale purportedly took place at an unknown time after he left, and he does not know if any attendees he notified were the highest bidder of that sale or Hou, as Trustee Corps refused to provide that information.

1 On or about November 18, 2024, Plaintiff called Trustee Corps to inquire about the
2 sale and was told the property had been sold. He learned that Senate Bill 1079 (“SB 1079”)
3 amended California Civil Code sections (notably §§ 2924m and 2924f) to create a framework
4 where, after a non-judicial foreclosure sale, eligible bidders—tenants, prospective owner-
5 occupants, or nonprofits—can submit bids to purchase, extending the process beyond the
6 initial auction. For residential properties with 1 to 4 units (like here), the sale isn’t final unless
7 the winning bidder is a prospective owner-occupant who intends to live there and submits
8 an affidavit confirming this within 48 hours. If not, a 45-day window opens where Eligible
9 Tenant Buyers (tenants residing there under a valid lease) can match the highest bid, or
10 Eligible Bidders (nonprofits or owner-occupants not at the sale) can submit a bid exceeding
11 the auction’s highest by at least \$1. These bidders must submit a written intent to bid within
12 15 days, followed by a bid within 45 days, paid in certified funds. The trustee then determines
13 the winner.

13 A Trustee Corps employee told Plaintiff that numerous intents to bid were received
14 within 15 days of the sale. Plaintiff asked for the bidders’ names to provide them notice of
15 the litigation, but the employee refused. He then asked if Trustee Corps would notify bidders
16 of the issues; the employee said no, as the property was sold “as-is.” (Plaintiff has multiple
17 lawfully obtained audio recordings of these allegations.) See also a February 7, 2025, email
18 from Trustee Corps: “[o]ur office is not required to provide any information related to the
19 property to potential buyers, they must do their own due diligence” (Ex. 4, p.25).

20 Plaintiff contends Citizens and Trustee Corps minimally had a duty under the implied
21 covenant of good faith and fair dealing, Civil Code § 1708, and § 1710 to notify every
22 potential bidder, ensuring they could decide whether to participate in the crimes and unlawful
23 acts with Citizens and Trustee Corps and cause further irreparable harm by stealing or
24 attempting to steal Plaintiff’s home and/or clouding title. “It is now settled in California that
25 where the seller knows of facts materially affecting the value or desirability of the property
26 which are known or accessible only to him and also knows that such facts are not known to,
27 or within the reach of the diligent attention and observation of the buyer, the seller is under
28 a duty to disclose them to the buyer. ... Failure of the seller to fulfill such duty of disclosure
constitutes actual fraud.” *Lingsch v. Savage*, 213 Cal. App. 2d 729, 735–36 (1963). Civil

1 Code § 1572 defines “[a]ctual fraud” as including “3. The suppression of that which is true,
2 by one having knowledge or belief of the fact[.]”

3
4 As to Trustee Corps’ claim it had no duty to disclose because the property was sold
5 “as-is,” *Lingsch* at 740-43 states: “[a] provision in a contract of sale that the buyer takes the
6 property in the condition in which it is, or ‘as is,’ does not necessarily confer on the seller a
7 general immunity from liability for fraud. ... It is well settled that where a principal is under a
8 positive duty to make a disclosure, he cannot escape liability for his failure to do so by relying
9 on a provision in the agreement of sale that there are no other representations except those
10 therein expressed.”

11 Citizens and Trustee Corps might argue this duty only applies to facts “known or
12 accessible only to [them] and that such facts are not known to, or within the reach of the
13 diligent attention and observation of the buyer[.]” *Lingsch* at 735. But the only way to
14 ascertain buyers’ knowledge would be to ask them, and Plaintiff has no information that they
15 did—circumstantial evidence suggests they didn’t, likely to suppress the truth. A Google
16 search of Plaintiff’s name or address would have revealed his U.S. Supreme Court case tied
17 to these unlawful acts. Of the over ten bidders Plaintiff was told submitted intents, two
18 contacted him: one, a seasoned foreclosure buyer, researched Plaintiff’s bankruptcy and
19 Supreme Court cases, aiming for a \$400k discount below market, and lost interest when
20 Plaintiff demanded fair value; the other didn’t know the situation until Plaintiff informed him.
21 Neither party, based on Plaintiff’s recollection, identified themselves as Hou. Defendant
22 doesn’t know if either bid.

23 Based on Plaintiff’s professional investigative opinion and personal experience,
24 foreclosure bidder diligence and investigative competency appears to vary widely. Even
25 assuming Citizens had authority to declare a default and sell, it and Trustee Corps’ minimal
26 duty under these circumstances was to disclose facts from Plaintiff’s bankruptcy case and
27 communications – where they obtained direct knowledge of the unlawful state actions – or
28 at least provide bidder info so he could. Trustee Corps refused to give him any information
to notify the bidders. Plaintiff took every reasonable step to prevent harm to Hou. Citizens
and Trustee Corps breached these duties with intent to harm, knowing the situation and: (1)
refusing remedial steps to distance themselves from the Primary Defendants’ crimes/

1 unlawful acts; (2) refusing steps to avoid further irreparable harm by selling his home under
2 color of law without authority; and (3) knowing disclosure to buyers would likely deter
3 participation, rendering their civil advantage worthless.

4 On or about December 2, 2024 (or whenever the SB1079 bidding concluded), Plaintiff
5 called Trustee Corps again about the SB 1079 'sale' and was told the highest bid was
6 \$371,688. Initially, they withheld the buyer's name, but a later call revealed it was Canjian
7 Hou, though they refused contact info. Defendant's Google search for "Canjian Hou" yielded
8 nothing.

9 **c. Plaintiff Receives Notice of Eviction by Hou**

10 On February 3, 2025, Plaintiff answered his door and was handed papers: a Notice
11 to Any Renters, a Three-Day Notice to Quit, and a Ninety-Day Notice to Quit (Ex. 4, pp. 1-
12 3). Several bore a signed note: "Canjian Hou c/o Henry D. Paloci III, Esq., Agent for the
13 Owner, Henry D. Paloci PA, PO Box 592, Los Alamitos, CA 90720, hpaloci@hotmail.com,
14 805.279.1225." Within minutes, Plaintiff called Paloci, who identified himself, and gave
15 notice of the litigation. Paloci claimed neither he nor Hou knew of it pre-sale and insisted
16 Hou's ownership was protected by the "bona fide purchaser" doctrine, regardless of the
17 litigation.

18 **d. Recording of the Trustee Deed Upon Sale**

19 On February 24, 2025, Plaintiff personally obtained a certified copy of the purported
20 Trustee's Deed Upon Sale from the Clerk-Recorder's Office for the County of Orange (Ex.3,
21 pp.16-23). According to the Deed, it was recorded on January 30, 2025.

22 **e. The Unlawfulness of the Sale: Citizens Twisted the Contract for an Unlawful Heist**

23 The agreement with Citizens declares that "Trustor will be in default if any of the
24 following occur: [...] b. Any Consumer Borrower [...] fails to make a payment when due."
25 (Ex. 3, pp.1-12). Default is a technical term not completely defined by the agreement. Plaintiff
26 does not know the full nature and extent of the definition of a "default" as it was not defined
27 in the agreement and has never been disclosed to him. Additionally, the conditions leading
28 to the failure to make a payment that could constitute a default (such as the conditions



1 present in this case) are also undefined. Plaintiff disputes that a default occurred and that,
2 as a result, Citizens lacked authority to declare a default and order non-judicial foreclosure
3 proceedings.

4 At the time of signing the mortgage contract and all times material hereto, Plaintiff
5 never agreed that a default included a definition whereby the perpetration of fraud, treason,
6 other crimes and unlawful acts, and deprivations of rights upon him (collectively “crimes”
7 alleged herein), that would directly and proximately impair his ability to discharge the
8 obligation, would constitute a default and thereby empower Citizens and/or Trustee Corps
9 to sell his home through non-judicial foreclosure proceedings.

10 Citizens and Trustee Corps knew Plaintiff had been repeatedly denied a full, fair, and
11 impartial judicial determination of his rights and used this knowledge to gain a civil advantage
12 by electing to use summary non-judicial proceedings to adjudicate the rights of the parties
13 under the agreement. The following notice was given to Citizens during bankruptcy
14 proceedings and after:

15 1. Plaintiff's Schedules Including a Declaration and the Incorporation of U.S. Supreme
16 Court Case 22A426: “FILING OF BANKRUPTCY UNDER EXTREME DURESS AND
17 COERCION

18 a. In 2017, I was maliciously criminally prosecuted in the Superior Court
19 of California-County of Orange by private parties, Karen and Gary
20 Humphreys, and their attorney, William Bissell, for allegedly performing
21 construction work without a contractor license even though I was the
22 licensee of a general contractor license in the name of my former solely
23 owned and operated company, The Spartan Associates, Inc. See
24 license #927244 and case 30-2015-00805807, and U.S. Supreme
25 Court Case 22A426.

26 b. During the ‘trial’ I was denied assistant counsel, trial by jury, and all of
27 the heightened protections of criminal proceedings and then
28 excessively, cruelly, and unusually fined about \$930,000. See Exhibit
[A] - Minute Order and ‘Judgment’. I was denied ALL Constitutional

1 protections and all Constitutional protections continue to be denied to
2 me.”

3 2. In his Verified Response to Citizens’ Motion for Relief From Emergency Stay, he
4 stated:

5 Adam Bereki (“Debtor”), in the above-captioned matter responds and objects to
6 Citizens Bank N.A.’s, (“Citizens”), Motion seeking an Order lifting the automatic
7 stay.

8 There are extraordinary circumstances in this case requiring this Court’s
9 mandatory non-discretionary duty to intervene and deny Citizens’ Motion sua
10 sponte. Debtor’s right to fundamental due process continues to be actively
11 denied resulting in irreparable harm and damages.

12 ¶1: On 12/8/22 Debtor was involuntarily forced to file bankruptcy as a direct
13 result of fraud and other State and Federal crimes being perpetrated upon him
14 by purported “Creditors” Karen and Gary Humphreys, (“the Humphreys”), and
15 their attorney, William Bissell, in conspiracy with State and Federal Officials to
16 steal his money, property, and liberty under color of law but without lawful
17 authority.

18 ¶4: The “Judgment” is fraudulent and void because it was rendered in direct
19 violation of the California and United States Constitutions by a State Court acting
20 without subject matter jurisdiction. The “Judgment” is at the heart of the
21 conspiracy of why Debtor has been forced into bankruptcy to begin with and
22 cannot be used as a means to allow any purported Creditors, including Citizens,
23 to take Debtor’s property without lawful authority.

24 ¶11: As a direct consequence of these egregious and unconscionable
25 circumstances, Debtor’s private contracts and obligations became impaired
26 (another violation of Art. 1, §10) that has resulted in his inability to discharge
27 Claims 1 and 2 and nearly all the unsecured claims in his Schedules.

ADAM A. BEREKI
YOU WERE BORN TO BE FREE



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¶12: In good faith, Debtor has pursued a remedy in every known State and Federal Court in the Nation with subject matter jurisdiction to vacate the void judgments. All have refused to exercise jurisdiction when they had a mandatory non-discretionary ministerial duty to do so. Debtor also filed Petitions for Redress of Grievance with officials of State and Federal law enforcement and the California Assembly. All have refused to fully, fairly, and impartially investigate and/or intervene to stop the criminal behavior and protect his liberty, money, and property. Debtor must be afforded judicial process before any more of his property is taken, including granting Citizens relief from the stay to ultimately allow it to foreclose on his home.

¶13: Citizens cannot rely upon this egregiously unlawful conduct to commence foreclosure proceedings of Debtor’s home after having received due notice without becoming part of the conspiracy to commit and/or aid and abet these crimes. While Citizens may have a valid claim, it is not facing the irreparable harms of total financial destruction and the denial of all rights, privileges, and immunities secured by the California and U.S. Constitutions like Debtor continues to be. Debtor must be afforded due process which imposes upon this Court (and the United States Trustee) the mandatory duty to investigate these claims and to intervene to stop the irreparable harm, damages, and fraud that continue to be perpetrated upon him and his estate before taking any adverse action in this case.

¶14: The automatic stay is in place for the very purpose it was intended: to “[stop] all collection efforts, all harassment, and all foreclosure actions, [and to be] relieved of the financial pressures that drove him into bankruptcy. H.R.Rep. No. 595, 95th Cong., 1st Sess., at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97.” *Dean v. TWA*, 72 F.3d 754, 755 (9th Cir.1995).

¶15: The stay is necessary to protect Debtor’s rights, liberty, and property as well as his Creditors while he commences Adversary Proceedings to, amongst

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other reorganization issues, determine the validity of the lien surrounding “Claim 3”, which continues to cause him and his estate irreparable harm and damages as ‘they’ continue to be denied the right to judicial relief. The right to liberty includes “the right to be free from, and to obtain judicial relief for, unjustified intrusions of personal security.” *Ingram v. Wright*, 430 U.S. 651, 673 (1977). Lifting the stay and allowing Citizens to commence foreclosure proceedings would only perpetrate the irreparable harm against Debtor and his estate and further deprive ‘them’ of due process.

¶16: Additionally, Debtor’s estate has genuine claims for damages, punitive damages, and restitution for deprivation of constitutionally protected rights, intentional infliction of emotional distress, wrongful foreclosure, fraud, malicious prosecution, and false imprisonment (constructive), amongst other claims pertaining to “Claim 3”. The claim for false imprisonment alone involves damages amounting to over three million dollars. Upon lawful adjudication, this claim could be used to pay all the valid Creditors of Debtor’s estate.

- 3. After Citizens was Granted Relief from the Stay, Plaintiff emailed Christina Khil of Malcolm Cisneros, Attorney of Record for Citizens During the Bankruptcy on April 16, 2023 (Ex. 3, p.43):

Hi Christina,

I will be appealing the Court’s April 12, 2023 order to grant Citizens relief from the stay. It is abundantly clear to me that Judge Clarkson deliberately disobeyed fundamental due process, California law, and bankruptcy procedure because he did not want to address the issues pertaining to the fraud, treason, and other crimes that have been (and continue to be) perpetrated upon me, and that he wants this case out of his Court ASAP.

I respect the law, not the ultra vires determinations of a rogue Judge. For these reasons, I am informing you and your client that I will hold you both legally

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accountable if foreclosure proceedings are commenced as a result of Judge Clarkson’s “order”. I am confident you know and understand exactly what I’m saying here and that using a Judge’s ultra vires order as an excuse to commit crimes (the unlawful taking/seizure of my and my mother’s property) will not work as a “Nuremberg defense” to civil liability and/or criminal punishment.

As I’ve repeatedly shared, I have every intent of ensuring your client is compensated to the extent they are owed any money. I am also confident—that to the extent an obligation is owed to your client—that it will rapidly be eclipsed by liability for damages claims for participating in the conspiracy you both have repeatedly been given notice of but failed to heed.

I feel it would be a much more prudent (and lawful) choice to use your resources to support the truth and the law rather than warring against them by proceeding with foreclosure unlawfully. To this end, I ask that you not proceed with the foreclosure proceedings and continue to allow me to work with the system to achieve an equitable resolution for all parties. I also ask that you participate in the appeal and join every aspect of the arguments presented you believe to be the law, including if they go against Clarkson’s “order” in your favor. This is about truth, the integrity of our judicial system, and ensuring that your Client receives what may lawfully be owed through lawful not criminal process.

Please let me know what you and your client’s intentions are in writing as soon as practically possible.

Sincerely,
Adam Bereki

- 4. Plaintiff Submitted Multiple Declarations of His Intent During Bankruptcy Proceedings: See, e.g., Declared Statement of Intent of Adam Bereki (Ex.3, pp.37-42); Notice of Intent–Request to Keep Case Open (BK Dkt. 102, filed 11/27/23), requesting to keep case open to pursue adversary proceedings; Amended Notice of

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Intent-Request to Keep Case Open (BK Dkt. 103, filed 1/31/24), giving notice of continued intent to pursue adversary proceedings and that two active criminal investigations were being conducted pursuant to the issues in case #22A426. On information and belief, all of these notices were served upon Citizens and Citibank pursuant to NEF (Notice of Electronic Filing within the Bankruptcy Court for the Central District of California).

- 5. On February 2, 2024, Plaintiff received a certified letter from Malcolm Cisneros, a Notice of Intent to Foreclose by Citizens. He Immediately responded by email to Khil and officers of the California Highway Patrol and Orange County District Attorney's Office (then allegedly conducting an investigation but actually failing to), requesting that Citizens, Malcolm Cisneros, and Khil be included in their Investigation "as part of the Civil Conspiracy Alleged in 22A426" (Ex. 3, pp.49-50):

Good day,

In my previous complaint(s) to your office, I shared that as a result of a criminal conspiracy by State and Federal officials and private parties to steal my money, property, and liberty under Color of State law but without lawful authority, I was unlawfully restrained from earning a living in my profession as a general contractor for at least five years. This resulted in millions of dollars of lost earnings and the unlawful impairment of my private contracts and obligations. Several of these purported contracts and obligations may involve Deeds of Trust allegedly secured by my real property and my inability to pay them (to the extent they are valid) as a direct result of the criminal conspiracy.

In December 2022, I was forced to file bankruptcy as a direct result of the criminal conspiracy. See case #8:22-bk-12076, In re Adam Alan Bereki, and especially Docket 15. See also U.S. Supreme Court case 22A426.

During the bankruptcy case (which remains open), the Judge refused to acknowledge the existence of the criminal conspiracy to force me into bankruptcy and unlawfully allowed one purported creditor, Citizens Bank, relief

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from the emergency stay to commence foreclosure proceedings. I notified Citizens Bank of the situation and until now, Citizens has not taken any steps toward foreclosure action.

Please see the attached Notice of Intent to Foreclose I received by certified mail today.

While I understand this is a Notice of Intent to Foreclose and NOT yet a foreclosure action, Citizens has been duly notified of the criminal conspiracy (BK Case Dkt. 15 et al), and, according to this Notice, is intent on proceeding with foreclosure anyway—or at the very least threatening to—in apparent attempt to join the conspiracy and take my property without lawful authority and intentionally inflict further emotional distress by forcing me to defend property in foreclosure proceedings. There would be no foreclosure proceedings if there was no criminal conspiracy.

I am informing you of this Notice because of your ongoing investigation and the fact that it is your sworn mandatory non-discretionary duty to protect my rights and property by stopping this criminal conspiracy and ensuring that the law is faithfully executed. This includes ensuring there is a judicial Constitutional Court as recognized by the California and U.S. Constitutions upon which I can submit my grievances to and receive the full, fair, and impartial administration of justice. Based on my investigation—U.S. Supreme Court case #22A426/<http://www.thespiritoflaw.com>—no such Court with subject matter jurisdiction over my claims exists.

While I cannot be sure who sent this unsigned letter from the law office of Malcolm Cisneros (see envelope), the attorney assigned to my bankruptcy case from that office is Christina Khil. Please include her, Malcolm Cisneros, and Citizens Bank as part of the civil conspiracy evidenced in 22A426 and your investigation. Additionally, Citizens Bank has refused to comply with the provisions of the Cal. Commercial Code (§3501(b)(2) and (3)) which afford me

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the right to refuse to pay without being subjected to foreclosure. I have included Ms. Khil in this email. Notice to Agent (Christina Khil) is Notice to Principal (Malcolm Cisneros and Citizens Bank).

Sincerely,
/s/Adam Bereki

6. On October 28, 2024, Plaintiff sent the following email to Steven Autieri, who on information and belief is Citizens' in-house counsel that oversees non-judicial foreclosure sales, and Trustee Corps, care of an email address published on their website:

To: Trustee Corps.

Good day. I spoke with someone from your office last week regarding the imminent foreclosure sale of my home at 818 Spirit, Costa Mesa, California. During the conversation, I shared about the ongoing legal issues I am facing that are out of my control and that I have given you/Citizens Bank due notice of through bankruptcy proceedings.

I'm aware that you can schedule the foreclosure sale at any time. However, I'd like to ask you not to schedule the sale and allow me more time to prepare additional judicial process in further effort to remedy the situation. I am diligently working on a complaint to be presented to the District Court of the U.S. as soon as practically possible. It is taking me much longer than expected given the number of Defendants (more than 100) and the fact that many public officials are involved.

I'm sure your research has revealed there is plenty of equity in my home to ensure payment should a foreclosure sale become necessary and that you are not in jeopardy of losing any compensation to the extent you are lawfully owed payment. Effecting a foreclosure sale at this time given the circumstances would



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only force more undue hardship upon me including additional financial and emotional distress as well as having to find a home.

I am completely open to maintaining communication on my progress in filing the complaint. At this point, I expect that to be within 30-45 days. (I would rather spend my time working on the complaint that will resolve the situation rather than being diverted to obtain an injunction to stop the sale).

Thank you for your time and continued understanding. I'd appreciate communication of your intent regarding the foreclosure sale.

Sincerely,
AdamBereki
949.241.6693

Citizens and Trustee Corps knew, based on Plaintiff's bankruptcy and the communication with them, that unless he received judicial or other government intervention to stop the harm and damage being perpetrated on him, there was nothing else he could do. He repeatedly told Citizens he had no intent to shirk his duties under the contract. He recognizes Citizens' general right to payment if a debt is due, but contends that in this extraordinary situation, Citizens and Trustee Corps, as its agent, had a duty—rooted in good faith and fair dealing (*Comunale v. Traders & General Ins. Co.*, 50 Cal. 2d 654, 658 (1958)) and Civil Code § 1708—to abstain from injuring him, his property, or his rights, including by conspiring together or aiding the Primary Defendants and/or others to steal his money and property and violating his rights. “Th[e] implied promise means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another. Generally speaking, it means being faithful to one’s duty or obligation.” CACI § 325.

To honor these duties, Citizens and Trustee Corps were required to either: (1) allow Plaintiff to pursue remedial justice through the executive and judicial branches of California

1 and the U.S. government, receiving updates if needed; (2) seek judicial relief themselves—
2 declaratory relief under the agreement or a tortious interference suit against the Primary
3 Defendants; or (3) notify the police of the situation, who were actively investigating it as a
4 crime, and request inclusion as a victim of the criminal acts. Based on information and belief,
5 they chose none of these options. They could not, in good faith or fair dealing, rely on the
6 crimes that directly caused Plaintiff's injuries and income loss as grounds for a default—
7 especially given his denied judicial recourse and the unconscionable nature of such terms
8 he never agreed to—then use summary non-judicial foreclosure to dodge a rights
9 determination. Plaintiff isn't claiming his rights trump Citizens'; the point is to avoid complicity
10 in the crimes and further irreparable harm from losing his home and the inevitable equity
11 theft—which ultimately happened.

12 At minimum, judicial proceedings would have given Plaintiff a fair shot at another
13 hearing, and the chain of causation would have forced the Court to address the default's
14 root causes before any sale (see, e.g., *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339
15 (1928)). Plaintiff asserts that a full, fair adjudication of his claims would yield funds to pay
16 Citizens in full. Notably, Citizens' lien was always protected by equity roughly eighteen times
17 the obligation owed.

18 Instead, Citizens and Trustee Corps arbitrarily declared a default and sold the home
19 non-judicially, deliberately relying on the crimes to gain a civil advantage, breaching their
20 duties under good faith, fair dealing, and § 1708. On information the home sold at the SB
21 1079 final bid for \$371,688—about \$1.18 million below an estimated \$1.5 million fair market
22 value (based on recent neighborhood sales). Assuming Citibank has no claim to the first
23 mortgage, after deducting Citizens' approx. \$60,000 (which includes fines and penalties
24 Plaintiff disputes) and \$321,000 surplus due to Plaintiff, the sale resulted in roughly \$1.18
25 million in equity theft.

26 Plaintiff contends that because Citizens and Trustee Corps had knowledge of the
27 crimes against him, then deliberately and with reckless disregard for his rights, arbitrarily
28 and in bad faith defined "default" in a way he never agreed to and sold his property non-
judicially to profit, they: (1) conspired with and aided the Primary Defendants in furthering

1 their crimes, causing his home equity to be stolen and transferred under color of law without
2 authority or just compensation and (2) knew, from bankruptcy notices, he couldn't pay.

3 **e. The Mortgage Contract Was Unconscionable**

4 **i. Unconscionability Analysis**

5
6 Plaintiff asserts that Citizens' arbitrary expansion of the "default" definition to
7 encompass crimes perpetrated against him—coupled with the allegations below—rendered
8 the contract's default provision unconscionable because a contract cannot be used for an
9 unlawful purpose. This stripped Citizens and its agent, Trustee Corps, of authority to initiate
10 the foreclosure sale, voiding the sale outright. (See *Yvanova v. New Century Mortg. Corp.*,
11 62 Cal. 4th 919, 935, 365 P.3d 845, 855–56 (2016): "[If a] foreclosing entity has acted without
12 legal authority by pursuing a trustee's sale ... such an unauthorized sale constitutes a
13 wrongful foreclosure.") The remedies provision of the contract with Citizens states:
14 "REMEDIES: if an event or condition described in the termination and acceleration provision
15 occurs, subject to any notice or other limitation of applicable law, we may do any combination
16 of the following things: [...] (3) We may declare all sums owing under this agreement and
17 any other agreements you have made with us to be immediately due and payable; (4) We
18 may foreclose the security instrument; [...] (6) We may take any other action permitted by
19 this agreement by law or in equity." The unconscionability stems from both the oppressive
20 process of contract formation and the exploitative terms Citizens imposed post-formation,
21 leveraging extrinsic fraud to justify the sale, in violation of public policy (Civ. Code § 1667).

22 "Unconscionability analysis begins with an inquiry into whether the contract is one of
23 adherence." *Abramson v. Juniper Networks, Inc.*, 115 Cal. App. 4th 638, 655 (2004). Plaintiff
24 contends this contract is a unilateral contract of adherence: Citizens drafted it entirely, denied
25 Plaintiff any chance to negotiate its terms, presented it on a rigid "take-it-or-leave-it" basis,
26 and then unilaterally defined ambiguous terms—like "default"—without Plaintiff's input or
27 consent. Worse, Citizens twisted this definition to abet crimes, enabling the theft of Plaintiff's
28 money and property under color of law but without lawful authority, breaching the
fundamental principle that contracts must align with public policy (Civ. Code § 1667). As in
OTO, L.L.C. v. Kho, where an arbitration agreement's oppressiveness was tied to its



1 adhesion nature, this contract’s formation reflects a similar lack of meaningful choice (8
2 Cal.5th 111, 126, 251 Cal.Rptr.3d 714, 729 (2019)).

3 “Unconscionability has procedural and substantive aspects, both of which must be
4 present for a court to refuse to enforce a contract based on unconscionability.” *Orcilla v. Big*
5 *Sur, Inc.*, 244 Cal. App. 4th 982, 996–97 (2016).

6
7 *a. The Contract Was Procedurally Unconscionable*

8 “Procedural unconscionability concerns the manner in which the contract was
9 negotiated and the circumstances of the parties at that time.” *Abramson* at 656. It refers to
10 unfairness or oppression in the process of forming a contract, often focusing on the
11 circumstances surrounding the agreement rather than its substantive terms. “Because the
12 degree of procedural unconscionability influences enforceability, the Court must assess
13 relevant factors to gauge its severity.” *Orcilla* at 997. Plaintiff identifies two unconscionability
14 factors here: oppression and surprise.

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The Oppressive Component

“The oppression component arises from an inequality of bargaining power of the
parties to the contract and an absence of real negotiation or a meaningful choice on the part
of the weaker party.” *Abramson* at 656.

The contract was oppressive because:

1. *Pre-Printed, Non-Negotiable Terms*: It was delivered on pre-printed forms, with Plaintiff neither informed of any right nor given any opportunity to negotiate its terms—purely a “take-it-or-leave-it” dictate. This mirrors *Stirlen v. Supercuts, Inc.*, 51 Cal.App.4th 1519, 1534 (1997), where a standardized employment contract was deemed adhesive due to precluded negotiation, and *OTO, L.L.C. v. Kho*, where an arbitration agreement was oppressive as “Kho was required to sign the agreement to keep the job he had held for three years” with no negotiation opportunity (8 Cal.5th at 126, 251 Cal.Rptr.3d at 729). *Animus moninis est anima scripti*. The intention of the party is the soul

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of the instrument. Citizens’ intent—to impose inflexible terms without room for Plaintiff’s input—defines the oppressive soul of this contract.

2. *Disparity in Bargaining Power*: Citizens wielded overwhelming bargaining power, unilaterally setting terms and conditions without involving Plaintiff in their formulation. As a major financial institution, Citizens controlled the lending process, leaving Plaintiff—a homeowner reliant on the loan—with no leverage to alter terms (*Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 115 (2000)). Similarly, in *OTO*, the Supreme Court found oppression where “One Toyota’s representative presented the Agreement at Kho’s workstation” with “an impression that no negotiation efforts would be tolerated,” amplifying the power disparity (8 Cal.5th at 126, 251 Cal.Rptr.3d at 729).

3. *Unilateral Definition of ‘Default’*: The term “default” was not defined to include the conditions present (crimes) when Citizens declared it—nor did Defendant agree, or ever intend to agree, to a definition encompassing crimes as a trigger for default. Evidence (e.g., bankruptcy notices, Ex. [insert number]; Exhibit L, Deed of Trust) shows Citizens knew of the extrinsic fraud and state actions impairing Defendant’s income yet imposed this interpretation post-formation, amplifying the oppression. California law deems such unilateral control over ambiguous terms oppressive (*A & M Produce Co. v. FMC Corp.*, 135 Cal.App.3d 473, 486 (1982)). This aligns with *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, where the court noted oppression arises from “an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice” (232 Cal.App.4th 1332, 1347, (2015)).

The oppression is heightened by Citizens’ refusal to disclose the full definition of “default” (noted as “never been disclosed”), violating transparency required for fair bargaining (*Perdue v. Crocker National Bank*, 38 Cal.3d 913, 925 (1985)). Evidence of repeated notices (e.g., April 16, 2023 email to Khil, Ex. 3, p.43) shows Citizens ignored pleas for equitable consideration, exploiting its superior position. *OTO* reinforces this, noting “time

1 spent reviewing the agreement would have reduced [Kho’s] pay,” further evidencing
2 coercion (8 Cal.5th at 126).

3
4 The Surprise Component

5 “The component of surprise arises when the challenged terms are ‘hidden in a prolix
6 printed form drafted by the party seeking to enforce them.’” *Abramson* at 656. Here, the real
7 terms of the contract weren’t hidden in fine print—they were completely hidden altogether.
8 The term “default” was not defined to include the conditions present (crimes) when Citizens
9 declared it—nor did Plaintiff agree, or ever intend to agree, to a definition encompassing
10 crimes as a trigger for default. *Animus moninis est anima scripti*. The intention of the party
11 is the soul of the instrument. Citizens exploited its lopsided power to arbitrarily redefine
12 “default” to include the crimes alleged herein, using it as a pretext to declare a default and
13 authorize a foreclosure sale.

14 The surprise isn’t just in the omission of a specific crime-based default definition but
15 in Citizens’ post-formation reinterpretation of “failure to make a payment when due” to
16 encompass an inability caused by extrinsic fraud and state misconduct—circumstances
17 beyond Plaintiff’s control and unforeseeable at signing in 2006. This aligns with *Stirlen’s*
18 finding of surprise where terms were unexpectedly harsh despite apparent clarity (51
19 Cal.App.4th at 1538).

20 The timeline (e.g., bankruptcy filings; Feb. 2, 2024 email) shows Citizens received
21 detailed notice of the fraud and income impairment, yet sprang this expanded “default”
22 definition without warning, amplifying the surprise (*Scissor-Tail, Inc.*, 28 Cal.3d 807, 820
23 (1981)). California law holds that ambiguities in adhesion contracts must be construed
24 against the drafter (Civ. Code § 1654; *Sandquist v. Lebo Automotive, Inc.*, 1 Cal.5th 233,
25 247 (2016)). Citizens’ failure to define “default” comprehensively in the Deed of Trust (Exhibit
26 L, pp. 42-49), then exploiting that ambiguity to include criminal interference, constitutes a
27 deceptive surprise (*A & M Produce*, 135 Cal.App.3d at 487).

28 *b. The Contract Was Substantively Unconscionable*



1 “Substantive unconscionability focuses on the terms of the agreement and whether
2 those terms are so one-sided as to ‘shock the conscience.’ [T]he paramount consideration
3 in assessing conscionability is mutuality.’ ... ‘[T]he determinative question is whether the
4 contract terms are so harsh or one-sided that they lack basic fairness.” *Abramson v. Juniper*
5 *Networks, Inc.*, 115 Cal. App. 4th 638, 656–58 (2004).

6 Plaintiff contends the undefined and arbitrary determination of the circumstances that
7 would cause a default given the facts in this situation were so one-sided as to shock the
8 conscience. Citizens and Trustee Corps knew, based on Plaintiff’s bankruptcy and other
9 disclosures, that unless he received judicial or other government intervention to stop the
10 harm and damage being perpetrated on him, there was nothing else he could reasonably
11 do. Rather than seek remedial intervention that wouldn’t cause harm to Plaintiff, Citizens
12 and Trustee Corps exploited the harm. Citizens’ exploitative intent—to leverage fraud for
13 profit—perverts the contract’s soul, rendering it a tool of inequity rather than a fair
14 agreement.

15 The substantive unfairness lies in Citizens’ use of the “default” provision to capitalize
16 on Plaintiff’s victimization by state misconduct, imposing a forfeiture of his home (sold for
17 \$371,688 vs. \$1.5 million fair market value) without mutuality or justification. This lacks the
18 “modicum of bilaterality” required for fairness (*Armendariz*, 24 Cal.4th at 117-18). Under
19 California law, contracts must be interpreted to ensure lawful execution: “A contract must
20 receive such an interpretation as will make it lawful, operative, definite, reasonable, and
21 capable of being carried into effect, if it can be done without violating the intention of the
22 parties” (Civ. Code § 1643). Citizens’ interpretation of default to include fraud-induced
23 inability to pay contravenes this duty, rendering the enforcement unlawful and inequitable.

- 24 1. *Exploitation of Extraordinary Circumstances*: Citizens’ interpretation—that default
25 includes payment failure due to crimes Plaintiff didn’t cause—shifts the entire risk of
26 state misconduct onto him, a result so harsh it shocks the conscience (*California*
27 *Grocers Assn. v. Bank of America*, 22 Cal.App.4th 205, 214 (1994)). Citizens knew
28 this wasn’t a typical default, yet proceeded without equitable relief.

- 1 2. *Lack of Mutuality*: Unlike *Stirlen* (51 Cal.App.4th at 1541), where the employer
2 retained court access while restricting employees, here Citizens retained foreclosure
3 rights while Plaintiff had no reciprocal remedy against their reliance on fraud. This
4 one-sidedness is egregious given the \$1.18 million equity loss, a windfall for
5 Citizens/Hou absent commercial justification (*Armendariz*, 24 Cal.4th at 120).
- 6 3. *Illegal Purpose Renders Provision Void*: The use of “default” to abet crimes (e.g.,
7 aiding Primary Defendants’ fraud) violates public policy (Civ. Code § 1668; *Wong v.*
8 *Tenneco, Inc.*, 39 Cal.3d 126, 135 (1985)). This illegality nullifies Citizens’ authority
9 (*Lewis & Queen v. N.M. Ball Sons*, 48 Cal.2d 141, 150 (1957)).
- 10 4. *Equity Theft as Evidence of Harshness*: The sale’s outcome—\$371,688 versus \$1.5
11 million—demonstrates a grossly disproportionate penalty, akin to *Saika v. Gold’s*
12 “heads I win, tails you lose” scenario (49 Cal.App.4th 1074, 1079 (1996)).

13
14 **f. Citizens’ and Trustee Corps’ Interpretation Resulted in Using the Contract for an**
15 **Unlawful Act**

16 Citizens’ and Trustee Corps’ interpretation of “default” to include Plaintiff’s inability to
17 pay due to extrinsic fraud and state misconduct transformed the contract into a vehicle for
18 an unlawful act, rendering it unenforceable under California law. Citizens relied on crimes—
19 fraud, treason, and rights deprivations by state actors (e.g., Primary Defendants)—to
20 declare a default and order a non-judicial foreclosure sale, despite knowing these acts
21 caused Plaintiff’s income impairment (e.g., bankruptcy filings, including Response to
22 Citizens Motion for Relief from Stay, Declared Statement of Intent (Ex.3, pp.37-42), emails
23 to Khil, Citizens, Trustee Corps). This misuse aligns with *Kashani v. Tsann Kuen China*
24 *Enterprise Co., Ltd.*, where a contract was deemed illegal for violating federal trade
sanctions (118 Cal.App.4th 531, 13 Cal.Rptr.3d 174 (2004)).

25 *Kashani* holds that “an illegal contract may not serve as the foundation of any action,
26 either in law or in equity” (118 Cal.App.4th at 541, 13 Cal.Rptr.3d at 180), and when its object
27 violates law, it is void (Civ. Code §§ 1550, 1598). Here, Citizens’ use of “default” to exploit
28 fraud-induced payment failure made the contract’s object—foreclosure and equity theft—

1 unlawful, violating Plaintiff’s rights to due process and property (Cal. Const., Art. I, § 7;
2 *Yvanova*, 62 Cal.4th at 935), and exceeding the contract’s explicit legal limits requiring
3 actions to be “subject to any notice or other limitation of applicable law.”

4 Moreover, Citizens’ contract is void because it involves the commission of a crime,
5 which is considered *malum in se* (inherently immoral). As stated in *Tufeld Corp. v. Beverly*
6 *Hills Gateway, L.P.*, 86 Cal. App. 5th 12, 28, (2022), Courts consider whether a contract is
7 *malum in se* or merely *malum prohibitum* (illegal by statute) when deciding if it is void or
8 voidable. A contract that is *malum in se* is absolutely void. The Court in *Vitek, Inc. v. Alvarado*
9 *Ice Palace, Inc.*, 34 Cal. App. 3d 586, 593 (1973), further clarified that “[a]greements *malum*
10 *in se* include all those of an immoral character, those which are inequities in themselves,
11 and those opposed to sound public policy or designed to further a crime or obstruct justice.”
12 Here, Citizens’ reliance on crimes to declare a default and foreclose renders the contract
13 void as it was designed to further criminal acts (e.g., fraud, theft, conspiracy) and obstruct
14 justice by denying Plaintiff a judicial remedy. This *malum in se* character—rooted in its
15 immoral exploitation of state-perpetrated fraud—nullifies the contract entirely, stripping
16 Citizens of any authority to proceed with the sale.

16 **g. Plaintiff Denied Redemption**

17 Under California Civil Code § 2924c, a debtor has the right to cure a default and
18 reinstate the loan by paying the delinquent amounts within three months of the notice of
19 default. However, in this case, the crimes perpetrated against Plaintiff rendered the three-
20 month redemption period a farce. Plaintiff was denied any meaningful opportunity to redeem
21 his property because the crimes directly impaired his ability to make payments or secure the
22 necessary funds. Citizens, fully aware of Plaintiff’s situation through its involvement in his
23 bankruptcy case and repeated notices evidence above, knew that Plaintiff had no means or
24 ability to exercise his right to redemption. This denial of redemption, caused by the very
25 crimes Citizens exploited, further demonstrates the unconscionability and illegality of the
26 foreclosure sale.

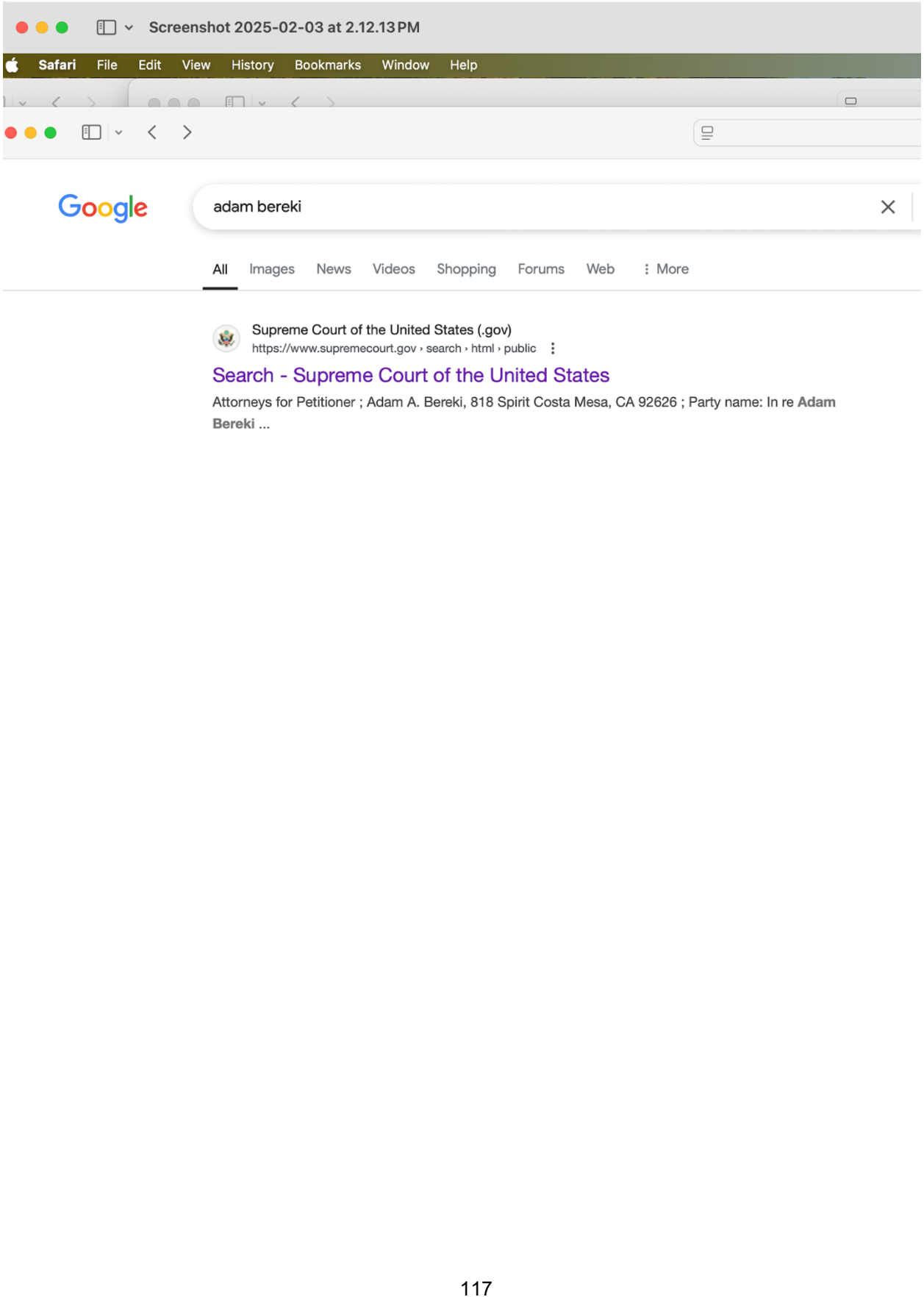
26 **h. Post-Sale Actions and Hou’s Status as a BFP**

1 Recall that Paloci told Plaintiff Hou had no notice of the crimes herein before bidding
2 on the property. On February 4, 2025, Plaintiff sent Paloci an email with two screenshots
3 from Google searches he had made on February 3, 2025. The first was a search of “818
4 Spirit Costa Mesa” (the foreclosure property address). The second, from a search of “Adam
5 Bereki” (Plaintiff’s name). In both searches, Google returned a link to U.S. Supreme Court
6 case #22A426 on the first page. The case involved a challenge to Citibank’s non-judicial
7 foreclosure sale and the other crimes alleged herein. See images below or (Ex. 4, pp.9-10,
8 16-18).

ADAM A. BEREKI
YOU WERE BORN TO BE FREE



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Screenshot 2025-02-04 at 6.19.19 AM

Edit View History Bookmarks Window Help

818 spirit costa mesa

Google 818 spirit costa mesa

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818 Spirit
Costa Mesa, CA 92626

Directions Share

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818 Spirit, Costa Mesa, CA 92626

4 bd|3 ba|2.5k sqft. 821 Spirit, Costa Mesa, CA 92626. Off Market. 821 Spirit, Costa Mesa, CA 92626 · \$1,578,900. 4 bd|3 ba|2.2k sqft. 809 Megan Ct, Costa Mesa, ...

Redfin
<https://www.redfin.com> · 818-Spirit-92626 · home

818 Spirit, Costa Mesa, CA 92626

818 Spirit is a 2,301 square foot house on a 4,297 square foot lot with 4 bedrooms and 2.5 bathrooms. - it last sold on September 26, 2003 for \$425,000.
\$1,532,255.00

Realtor.com
<https://www.realtor.com> · realestateandhomes-detail · 81...

818 Spirit, Costa Mesa, CA 92626

View 5 photos for 818 Spirit, Costa Mesa, CA 92626, a 4 bed, 2.5 bath, 2300 Sq. Ft. single family home built in 1997 that was last sold on 09/26/2003.

Supreme Court of the United States (.gov)
<https://www.supremecourt.gov> · search · html · public

Search - Supreme Court of the United States

Search documents in this case ; Attorneys for Petitioner ; Adam A. Bereki, 818 Spirit Costa Mesa, CA 92626 ; Party name: In re Adam Bereki ...

ADAM A. BEREKI
YOU WERE BORN TO BE FREE



1 Paloci responded to the February 4th email on February 5th (Ex. 4, pp.10-11). Among
2 other responses, he stated, “In fact, I would go so far as to say that even if I had read every
3 page of every lawsuit you have open – employing maximum due diligence – it would not
4 dissuade me from buying your house at auction. I might bid less because of the litigation
5 risk, but legally I would believe to be on solid ground. Your position that the foreclosure is
6 connected to your construction litigation lawsuit is simply without merit. You might have a
7 right to sue your former customer for money damages as a consequence of the foreclosure
8 (though probably you do not), but that isn’t going to stop a lender unrelated to that lawsuit
9 from foreclosing. I’m going to file an unlawful detainer action on Friday and would have you
begin to consider your options.”

10 On February 4, 2025, Plaintiff also emailed Trustee Corps, stating: “I’m writing to
11 obtain copies of documents pertaining to the recent foreclosure sale of my home at 818
12 Spirit, Costa Mesa, California. Could you please provide: 1) a copy of the Deed of Trustee
13 sale (either the unrecorded one that was sent to the new buyer or the recorded one if you
14 have it) 2) any documents or other information that you provided notice of the pending
15 litigation involving the property and/or my rights that affect the property to the potential
16 buyers, including Mr. Hou.” He forwarded Paloci the email (Ex. 4, pp.24-26). Paloci
17 responded on February 5th, stating, “Trustee Corps isn’t required to provide notice of
18 pending litigation on the property. Your suggestion that Trustee Corps owes a duty to provide
19 this information is without merit. Merely having filed a lawsuit means nothing. Anyone can
20 sue anyone for anything. If you had a lis pendens or a stay (either in state court or BK court),
21 then they would have to stop (not have a sale) and inform the public. You admitted to me on
22 the phone yesterday that you had neither of these at the time of the sale.” Trustee Corps
23 responded on February 7, 2025, stating, “[...] Our office is not required to provide any
information related to the property to potential buyers, they must do their own due diligence”
(Ex.4, p.24).

24
25 i. Plaintiff Offers to Do Equity with Hou by Returning Surplus Funds. Hou Refuses and
Commences Unlawful Detainer Suit

26 On February 9, 2025, Plaintiff sent Hou and Paloci the following email, offering to do
27 equity with Hou: “I just received notice of approx. \$320k in surplus funds. Would you like to
28 make arrangements to have those returned to your client based on the fraud that was

1 perpetrated to orchestrate the foreclosure sale? Please let me know. I'm happy to help
2 mitigate any damages that may have been caused to him that I can help with.”

3 On February 17, 2025, Paloci responded on behalf of Hou, refusing to do equity: “No.
4 There is no way that is going to happen. The foreclosure sale is final and that isn’t going to
5 change. If there are surplus funds, they are yours – after fees and costs are paid. [...] You
6 misstate and misrepresent the facts to say that my client was a party to the fraud you allege
7 against your business clients who sued you, and you misstate and misinterpret the law to
8 declare that the foreclosure sale to my client can be vacated because of fraud that you allege
9 was committed by persons who have nothing to do with the underlying loan. I submit that
10 you are making a bad situation for yourself worse by stubbornly clinging to concepts of law
that are flatly incorrect” (Ex. 4, p.19).

11 On February 20, 2025, Plaintiff responded to Paloci and Hou by email: “I never stated
12 that I felt Canjian was a party to the fraud perpetrated on me by my company's former clients
13 and the Courts and other public officials. That is your invention entirely! I believed you when
14 you said you and Canjian had no knowledge of the pending litigation and fraud at the time
15 of purchase. This being said, I also feel that Canjian was required to do his own due diligence
16 prior to engaging in the risky business of buying foreclosure sales. Even elementary
17 research on Google would have revealed the fraud and continuing deprivation of my rights
18 associated with the property. Despite Canjian's apparent lack of diligence, I offered (and
19 continue to offer) to do equity with Canjian and return the surplus money to him when I obtain
20 it. I have no interest in harming him or anyone else. I'm interested in fundamental fairness
21 and following the law/equity. All the foregoing being said, you and Canjian have been duly
22 notified of the situation and can choose which avenue you want to take. Either you want to
23 take advantage of the fraud and other crimes that have been perpetrated on me to gain a
24 civil advantage and declare the property yours, or we can work together to obtain justice,
25 with you being compensated for any harm that may have been caused. If you refuse to do
26 adequate research into the fraud and legitimate deprivation of rights claims that I have and
27 decide it's all just bullshit I'm trying to convince myself of, that's your prerogative. As I've
28 shared before, that decision may have consequences as it interferes with my rights and
property. In my opinion, if you follow that course, you may become aiders and abettors in
the original fraud and other crimes (because you now have notice of the situation and are

1 refusing to do the right thing). I interpreted your last email to mean that you did not wish to
2 do equity with me when you said ‘there is no way that [doing equity with me by accepting
3 the surplus funds and arranging to reverse the sale] is going to happen’. If I misinterpreted,
4 please inform me immediately so that I don't pursue claims against Henry D. Paloci III, P.A.,
5 Henry D. Paloci, and Canjian Hou. Please be clear on your intentions so that I can determine
6 how to proceed. I remain open and available to any reasonable settlement discussions.” (Ex.
7 4, p.23).

8 On March 1, 2025, Plaintiff heard a knock on his front door. When he answered, a
9 man handed him papers consisting of a summons and a copy of an unlawful detainer
10 complaint post-foreclosure in the Superior Court of California for the County of Orange, case
11 #30-2015-01459684, filed on February 11, 2025; Ex. 4, pp.27-47). The verified complaint
12 alleged that Hou owned the property (¶8) and was entitled to it (¶4, ¶11). The demand for
13 relief consisted of judgment in Hou’s favor for possession of the property, daily damages at
14 the rate of \$166 per day against Plaintiff, statutory damages in the amount of \$600, costs of
15 suit, and all other relief the Court deemed reasonable and just.

16 ii. Hou Lacks Standing to Seek Relief Under His Unlawful Detainer Suit Due to the Illegal
17 Foreclosure Sale

18 Plaintiff contends that Hou lacks standing to invoke this Court’s jurisdiction for relief
19 under his unlawful detainer suit, filed February 11, 2025, because his claim to the property
20 arises from an illegal transaction—the fraudulent and unauthorized foreclosure sale. This is
21 a direct challenge to the Court’s jurisdiction over Hou’s UD action. In *Asher v. Johnson*, 26
22 Cal. App. 2d 403, 410-11 (1938), the California Court of Appeal held that a party to an illegal
23 transaction cannot come into court to enforce rights derived from it, stating: “No principle of
24 law is better settled than that a party to an illegal contract cannot come into a court of law
25 and ask to have his illegal objects carried out; nor can he set up a case in which he must
26 necessarily disclose an illegal purpose as the groundwork of his claim.” The court
27 emphasized that when a plaintiff’s case requires revealing an illegal act as its foundation,
28 “the court will not assist him, whatever his claim in justice may be upon the defendant” (*Id.*
at 416, quoting *Berka v. Woodward*, 125 Cal. 119, 127 (1899)).

1 Here, Hou’s UD suit hinges on the validity of the foreclosure sale, which Plaintiff
2 alleges was void due to fraud, crimes, and Citizens’ lack of authority (see supra, “The
3 Unlawfulness of the Sale”). Hou’s title—recorded January 30, 2025 (Ex. 3, pp.16-23) stems
4 directly from this illegal sale, inseparable from the underlying misconduct (*Asher*, 26 Cal.
5 App. 2d at 415 (“If a connection between the original illegal transaction and a new promise
6 can be traced ... it cannot form the basis of a recovery”)). To establish his right to
7 possession, Hou must rely on the Trustee’s Deed, which Plaintiff contends is a product of
8 an unlawful contract exploited by Citizens to abet crimes (e.g., fraud, theft, conspiracy).
9 *Asher* bars such reliance, as “the test ... is whether the plaintiff requires the aid of the illegal
10 transaction to establish his case” (*Id.* at 416-17). Hou cannot prove ownership without
invoking the tainted sale, stripping him of standing to seek judicial relief.

11 This jurisdictional defect is fatal to Hou’s UD action. Courts lack authority to enforce
12 rights rooted in illegality (*Asher*, 26 Cal. App. 2d at 410; *Yvanova v. New Century Mortg.*
13 *Corp.*, 62 Cal. 4th 919, 935 (2016) (unauthorized sale is void)). Hou’s refusal to do equity
14 post-notice and pursuit of eviction despite knowledge of the fraud further align him with the
15 unlawful scheme, rendering his claim *malum in se*—void as inherently immoral (*Vitek, Inc.*
16 *v. Alvarado Ice Palace, Inc.*, 34 Cal. App. 3d 586, 593 (1973)). Thus, this Court must dismiss
17 Hou’s UD suit for lack of jurisdiction, as equity and law refuse to aid a claimant profiting from
an illegal foreclosure.

18 Moreover, despite the fact that Hou and Paloci have been repeatedly informed of
19 Plaintiff’s intent to protect his rights and property, they decided to pursue summary unlawful
20 detainer proceedings, just as Citizens did. The point is obvious: to continue to ensure that
21 Plaintiff isn’t heard and that his money and property are taken without a judicial proceeding
22 where his underlying issues will be addressed. See, e.g., *Cheney v. Trauzettel*, 9 Cal. 2d
23 158, 159 (1937), where the California Supreme Court emphasized the summary nature of
24 unlawful detainer proceedings, stating, “The purpose of the unlawful detainer statutes is to
25 provide the landlord with a summary, expeditious way of getting back his property,” and
26 clarified that “the proceeding is not designed to settle disputes concerning the title to the
27 property.” By leveraging this summary process, Hou and Paloci seek to bypass a full
28 adjudication of Plaintiff’s claims, perpetuating the harm initiated by Citizens and the Primary
Defendants.



1 iii. Defendant Has Standing to Challenge the Wrongful Foreclosure Sale

2 In his February 17, 2025 email response to Plaintiff, Paloci stated: “I am of the opinion
3 that in ex parte application to enjoin a foreclosure sale by you is frivolous and wholly without
4 merit. Among other things, you lack standing because you no longer own the property.”
5 Under California law, a borrower has standing to challenge a foreclosure sale initiated by an
6 entity lacking authority to do so. *Yvanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919,
7 937 (2016) (holding that a defaulting borrower whose property was sold in a nonjudicial
8 foreclosure initiated by an unauthorized entity suffered “an injury sufficiently concrete and
9 personal to provide standing”). The borrower “has lost ownership to the home,” an event that
10 would not have occurred absent the unauthorized foreclosure. *Id.* at 937. The fact that the
11 borrower defaulted does not negate standing when the sale was void due to lack of authority.
Id. at 939.

12 Moreover, “the foreclosure process cannot be used to deprive the trustor of his or her
13 property fraudulently or unfairly, and the court will review the proceedings carefully to see
14 that the rights of the trustor are fully protected.” 5 Cal. Real Est. § 13:255 (4th ed.) (citing *Py*
15 *v. Pleitner*, 70 Cal. App. 2d 576, 579 (1945): a trustee’s sale under a deed of trust “is open
16 to attack in a court of equity and the court will view the proceedings with extreme care to see
17 that the rights of the trustor are fully protected”).

18
19 iv. Hou is Not a Bona Fide Purchaser

20 Throughout Plaintiff’s phone and email exchanges with Paloci, Paloci insisted—
21 despite notice of fraud and other crimes—that Hou was a bona fide purchaser (“BFP”),
22 rendering Plaintiff’s claims meritless. See, e.g., email response dated February 17, 2025:
23 “your efforts to unwind the sale to my client are also frivolous and without merit.”

24 Under California law, a BFP is a buyer who purchases property in good faith, for
25 value, and without notice of defects clouding the title—a shield designed to protect innocent
26 purchasers from prior unrecorded claims (*Bishop v. Superior Court*, 228 Cal. App. 4th 1098,
27 1106 (2014) (“A bona fide purchaser is one who pays value for property without notice of
28 any adverse interest or claim”)). This status is acquired only if the buyer lacks actual,

1 constructive, or inquiry notice (*Walters v. Calderon*, 25 Cal. App. 3d 503, 509 (1972) (“Good
2 faith requires absence of notice”). California’s race-notice statute codifies this: a
3 subsequent purchaser prevails only if they record first and take without notice (Cal. Civ.
4 Code § 1107). Notice includes: (1) actual knowledge (*Dreyfuss v. Union Bank of California*,
5 24 Cal. 4th 400, 411 (2000)); (2) constructive notice from recorded documents (Cal. Civ.
6 Code § 1213); or (3) inquiry notice from facts that demand investigation (*Raab v. Casper*,
7 51 Cal. App. 3d 866, 872 (1975) (“Facts sufficient to put a prudent person on inquiry” impute
8 notice)).

9 Hou does not qualify as a BFP. Plaintiff contends that Google searches for his name
10 or the property—accessible to Hou before bidding—would have revealed the fraud, crimes,
11 and litigation (e.g., bankruptcy and U.S. Supreme Court case #22A426) “inquiry notice”
12 affecting the title. Other bidders’ actions bolster this: one contacted Plaintiff after researching
13 the bankruptcy, showing the information was readily discoverable. Hou also could have
14 called Plaintiff to inquire— an elementary tool of investigation. Hou’s failure to take
15 reasonable, elementary investigation steps to uncover these red flags suggests either willful
16 ignorance or a lack of diligence incompatible with good faith (*Lewis v. Superior Court*, 30
17 Cal. App. 4th 1850, 1867 (1994) (“A buyer who ignores obvious warning signs cannot claim
18 BFP status”). Foreclosure buyers, especially, face a heightened duty to investigate due to
19 the “risky business” of distressed sales (*First Fid. Thrift & Loan Assn. v. Alliance Bank*, 60
20 Cal. App. 4th 1433, 1445 (1998) (“A foreclosure buyer takes subject to risks discoverable by
21 reasonable diligence”). Hou’s inaction and apparent failure of reasonable diligence imputes
22 inquiry notice, stripping him of BFP protection and leaving him subject to the title’s defects.

23 Hou cannot be a BFP two other reasons. First, the BFP doctrine requires a valid
24 foreclosure; fraud or crimes undermining the lender’s authority to declare default or sell
25 negate this (*Residential Capital v. Cal-Western Reconveyance Corp.*, 108 Cal. App. 4th 807,
26 821 (2003) (“BFP status assumes a lawful sale”). Second, the statutory presumption of a
27 valid sale under Cal. Civ. Code § 2924 applies only to procedural irregularities, not
28 substantive challenges like fraud or wrongful foreclosure (*Orcilla v. Big Sur, Inc.*, 244 Cal.
App. 4th 982, 1000 (2016) (“Section 2924’s presumption for BFPs covers only statutory
compliance, not underlying validity”). Plaintiff’s claims—fraud, wrongful foreclosure,

1 conspiracy, unconscionability, and equitable relief—target the sale’s foundation, not its
2 mechanics, and thus persist under *Orcilla*.

3 Additionally, Constitutional rights trump statutory presumptions: “Where rights
4 secured by the Constitution are involved, there can be no rulemaking or legislation that
5 would abrogate them” (*Miranda v. Arizona*, 384 U.S. 436, 491 (1966)). Plaintiff alleges due
6 process violations tied to the sale’s causation chain, which must be adjudicated before
7 validating the default or sale. Hou’s BFP claim cannot override these rights.

8 In summary, Plaintiff asserts Hou is not a BFP because: (1) neither Citizens nor the
9 Trustee had authority to foreclose; (2) the sale stemmed from fraud, crimes, and due process
10 violations; and (3) a simple Google search would have revealed this to a diligent bidder.
11 California law demands foreclosure buyers inquire into title validity (*Nguyen v. Calhoun*, 105
12 Cal. App. 4th 428, 443 (2003) (“A foreclosure purchaser takes subject to defects
13 discoverable by reasonable inquiry”). The Supreme Court case’s public nature was a glaring
14 flag Hou ignored, disqualifying him (*Lewis*, 30 Cal. App. 4th at 1867). Hou’s refusal to act
15 equitably post-notice further undermines his good faith.

16 *a. Distinction Between Actual and Constructive Knowledge*

17 As established in *RIDEC LLC v. Hinkle*, 92 Cal.App.5th 1182 (2023), the distinction
18 between actual and constructive knowledge is critical in determining whether a party can
19 claim rights to property despite defects in prior proceedings. Actual knowledge exists when
20 a person is subjectively aware of a fact, whereas constructive knowledge is imputed when
21 a person is deemed to be aware of a fact due to circumstances that would lead to that fact
22 upon reasonable inquiry or through properly recorded documents. *Id.* at 1197-98.

23 In *RIDEC LLC v. Hinkle*, the Court held that the lender did not have actual or
24 constructive knowledge of defects in a quiet title judgment because it lacked subjective
25 awareness of the fraud and there were no recorded documents or circumstances that would
26 have led to such knowledge upon reasonable inquiry. *Id.* at 1199-1200. This distinction is
27 directly applicable here.

1 Citizens Bank and Trustee Corps had actual knowledge of the fraud and crimes
2 affecting Plaintiff's ability to pay due to the multiple notices provided during bankruptcy
3 proceedings and direct communications. Their subjective awareness of these facts, as
4 evidenced by Plaintiff's repeated notifications, constitutes actual knowledge under California
5 law. Similarly, Paloci and Hou were explicitly informed of the situation post-sale and chose
6 to ignore it, demonstrating actual knowledge of the fraud and crimes.

7 This actual knowledge disqualifies Hou from claiming BFP status, as BFP protection
8 requires the absence of both actual and constructive notice. *Melendrez*, 127 Cal. App. 4th
9 at 1251. The notices provided to Citizens, Trustee Corps, Paloci, and Hou were direct and
10 explicit, leaving no room for mere constructive notice. Their refusal to act on this knowledge
11 further underscores their bad faith and complicity in the ongoing harm.

12 **2. The Second Element (of an Equitable Action to Set Aside Foreclosure Sale):**
13 **Prejudice or Harm**

14 Plaintiff was prejudiced and harmed by the Trustee's sale, resulting in the following
15 damages:

- 16 1. **Equity Theft:** The sale resulted in a loss of approximately \$1.18 million in
17 home equity, as the property, valued at \$1.5 million, was sold for \$371,688. If
18 the Court refuses to reverse the sale, Plaintiff requests leave of Court to have
19 a professional appraisal conducted for evidentiary purposes before the Court
20 determines the exact amount of damages. If the Court refuses to reverse the
21 sale, Plaintiff contends these damages should be attributed to Primary
22 Defendants and that this amount should be considered an additional penalty
23 or forfeiture in the chain of causation to punish him for violating the licensing
24 laws.
- 25 2. **Loss of Property:** Plaintiff lost constructive possession of his home due to the
26 unlawful foreclosure.

1 3. **Time and Expense:** Plaintiff incurred significant time and expense damages,
2 plus additional costs, defending against the foreclosure and subsequent
3 eviction proceedings.

4 **a. Time and Expenses**

5 Plaintiff's Time

6
7 On information and belief, Trustee Corps filed the Notice of Default and Election to
8 Sell Under Deed of Trust on July 10, 2024 (2024000173067, Online Records OC Clerk-
9 Recorder; Ex. 3, pp.13-15).

10 On information and belief, the Notice of Sale was filed on October 10, 2024 (Online
11 Records, OC Clerk-Recorder 2024000364074).

12 The Trustee Sale date was scheduled for and purportedly occurred on November 18,
13 2024 (Ex. 3, p.17, 16-23).

14
15 Plaintiff spent on average eight hours per day, every weekday from: 1) November 1,
16 2024 through December 22, 2024 (36 week days); and, 2) every week day from December
17 30, 2024 through February 3, 2025 (27 week days) researching law and preparing his
18 defense, including the creation of this pleading with regard to claims against Citizens and
19 Trustee Corps. See also U.S. District Court for the Central Dist. of CA Case No. 8:24-CV-
20 02509. Plaintiff's time is \$300 per hour. $\$300/\text{hr.} * 8 \text{ hours} * 63 \text{ days} = \$151,200$.

21 Plaintiff received the Notice of Eviction on February 3, 2025. He spent, on average,
22 six hours per day, every day of the week from February 4, 2025, through March 11, 2025
23 (36 calendar days) researching law and preparing his defense, including the creation of this
24 pleading, with regard to claims against Paloci and Hou. Plaintiff's time is \$300 per hour.
25 $\$300/\text{hr.} * 6 \text{ hours} * 36 \text{ days} = \$64,800$. These damages are a direct and proximate result
26 of Hou and Paloci's refusal to cease and desist their unlawful behavior and do equity with
27 Plaintiff.



Expenses

On March 3, 2025, Plaintiff contacted Citizens and received a "Transaction History" for the loan from present day back to March 1, 2020. The Transaction History provided the following details (according to Plaintiff's interpretation):

\$62,723.24 Total Amount of Foreclosure Sale Labeled As: "Misc. Expense Repayment" (Ex.3, p.72) Cf. \$62,523.24 on Trustees Deed Upon Sale (Ex.3, p.16)
-\$34,631.72 Labeled As: "Foreclosed" and "Principal Balance" (Ex. 3, p.72)
=\$28,091.52

The Principal Balance was subtracted from the Total Amount of the Foreclosure Sale to achieve the amount of \$28,091.52 that Plaintiff was charged beyond the amount due according to the contract ("Overage"). Notably, the overage charges are not fully stated or defined on this spreadsheet. From this amount, Plaintiff deducted the payment for property taxes:

\$28,091.52
-\$9681.85 Labeled As: Escrow Advance Recovery (Ex. 3, p.72). (= County Tax \$8422.60 + Tax Penalty \$1259.25 | 11/23/21)
=18,409.67 Un-itemized Fees and Costs

From this amount, Plaintiff added the tax penalty back because this was not his fault or obligation.

18,409.67 Un-itemized Fees and Costs
+\$1,259.25 Tax Penalty
=\$19,668.92 Total Damages/ Disputed by Plaintiff.

Plaintiff contends, that based on the foregoing, Citizens charged him \$19,668.92 in fees, penalties, and other un-itemized/undefined charges pursuant to its declaration of default and that these fees should be attributable to Primary Defendants, Citizens, or as the Court sees fit, as damages to Plaintiff whether the Court reverses the sale or not. Plaintiff

1 suggests several options for the Court to handle these fees. In the first option, the Court
2 could deny Citizens' fees and costs, upon their full disclosure to the Court, because they are
3 attributed to Citizens' unlawful acts. The second option is to require Primary Defendants to
4 pay the fees and costs. In either situation, Plaintiff moves the Court to Order Citizens to
5 produce a full statement of account, itemizing every debit and credit pertaining to the
6 account/loan with details explaining every debit and credit. (Plaintiff suspects this accounting
7 will reveal, among other things, additional Defendants, such as the law firm of Malcolm and
8 Cisneros, who Plaintiff believes may have participated in these unlawful acts beyond merely
9 representing Citizens.)

10 Due to the facts that: (1) damages and costs continue to accrue daily as the crimes
11 are ongoing; (2) the time constraints in filing this action under duress and coercion; and, (3)
12 the fact that Plaintiff is unable to provide an accounting of other expenses not yet known to
13 him, he will submit an updated accounting as soon as possible.

14 Offsets

15 Plaintiff contends his damages claims should be offset against any obligation(s) owed
16 by Plaintiff to Citizens to determine the amount he is owed for damages.

17 **3. The Third Element (of an Equitable Action to Set Aside Foreclosure Sale): Tender 18 or Excuse from Tender**

19 Plaintiff believes is excused from tendering the amount of the secured indebtedness
20 because the sale was void due to fraud and lack of authority. California law excuses tender
21 where the foreclosure sale is void, as no valid debt obligation exists to satisfy (*Lona v.*
22 *Citibank, N.A.*, 202 Cal.App.4th 89, 112-13 (2011)). The unconscionable contract and illegal
23 actions of Citizens and Trustee Corps render the sale void ab initio, negating any tender
24 requirement. See also *Alvarez v. BAC Home Loans Servicing, L.P.*, 228 Cal.App.4th 941,
25 951 (2014) (“[t]he law does not require [a] plaintiff to tender the purchase price to a trustee
26 who has no right to sell the property at all”); *Orcilla v. Big Sur, Inc.*, 244 Cal. App. 4th 982,
27 1004 (2016) (tender not required if trustee’s deed is void on its face); *Moeller v. Lien*, 25
28 Cal.App.4th 822, 830 (1994) (tender requirement would thwart the intent of Civil Code §
2924c by failing to “protect the debtor/trustor from a wrongful loss of the property”).



1 **The Principles of Equity Require This Sale Must Be Set Aside**

2 Equity demands that the foreclosure sale be set aside due to the extraordinary
3 circumstances of this case. In *Bisno v. Sax*, 175 Cal.App.2d 714, 346 P.2d 814 (1959), the
4 Court held that equity will relieve a debtor from a default and prevent a foreclosure sale
5 when enforcing such a sale would constitute an unjust penalty or forfeiture. The Court
6 emphasized that “equity will intervene to prevent a forfeiture or penalty when the hardship
7 to the debtor outweighs the creditor’s claim” (*Id.* at 727). Here, the \$1.18 million equity loss
8 far outweighs Citizens’ \$31,901.33 claim, making the sale a disproportionate penalty. As
9 *Bisno* noted, “a penalty need not take the form of a stipulated fixed sum; any provision by
10 which money or property would be forfeited without regard to the actual damage suffered
11 would be an unenforceable penalty” (*Id.* at 725). The massive equity theft here exemplifies
12 such an unenforceable penalty.

13 Moreover, *Bisno* underscores that “equity does not wait upon precedent which exactly
14 squares with the facts in controversy, but will assert itself in those situations where right and
15 justice would be defeated but for its intervention” (*Id.* at 728). The crimes and fraud that led
16 to Plaintiff’s purported default—coupled with Citizens’ bad faith in exploiting those crimes—
17 cry out for equitable relief. The Court’s duty is to prevent the “enforcement of an acceleration
18 clause which will work great hardship on the debtor” (*Id.* at 726), especially when the creditor
19 has acted unconscionably. In *Bisno*, the court relieved the plaintiffs from a foreclosure sale
20 because all defaults had been cured by trial, and enforcing the sale would have been a
21 forfeiture (*Id.* at 729-30). Similarly, here, equity must intervene to prevent the forfeiture of
22 Plaintiff’s home based on a purported default that he disputes and could not prevent due to
23 criminal acts.

24 The *Bisno* court further stated, “let the hardship be strong enough, and equity will find
25 a way, though many a formula of inaction may seem to bar the path” (*Id.* at 728, quoting
26 Cardozo, J., dissenting in *Graf v. Hope Bldg. Corp.*, 254 N.Y. 1, 171 N.E. 884). Plaintiff’s
27 hardship—loss of his home and \$1.18 million in equity due to crimes Citizens knowingly
28 exploited—is profound, and equity must vacate this sale to prevent an unconscionable
injustice.

- 1 unenforceable contract provision as a means to authorize a non-judicial foreclosure
- 2 sale of Plaintiff's property;
- 3 4. declare that the non-judicial foreclosure sale commenced by Citizens and Trustee
- 4 Corps on November 18, 2024, of Plaintiff's property is void;
- 5 5. Order the Clerk-Recorder for the County of Orange to cancel the Trustees Deed of
- 6 Sale, Instrument Number, 2025000040781, (Ex.3, pp.16-23);
- 7 6. Declare that Hou is not a bona fide purchaser based on: (1) the fact that the issues
- 8 surrounding the property could reasonably have been discovered by him by either
- 9 calling Plaintiff or performing a basic search on Google for the property address or
- 10 Plaintiff's name; and/or (2) that Citizens and Trustee Corps lacked authority to sell
- 11 Plaintiff's home;
- 12 7. declare that as a result of the foregoing: (1) Hou lacks standing to state a claim
- 13 pursuant to Cal. Code of Civil Proc. 1161a in the Unlawful Detainer proceedings in
- 14 case no. 30-2025-01459684; and (2) that the case is dismissed with prejudice;
- 15 8. declare that Citizens: (1) had a duty to act in good faith and fair dealing with Plaintiff;
- 16 (2) that Citizens breached this duty by failing to act in good faith and fair dealing
- 17 and/or breached its duties under the contract for all the reasons the Court finds
- 18 reasonable and just; and, (4) was therefore without authority to order Trustee Corps
- 19 to commence the non-judicial foreclosure sale and sell the Plaintiff's home;
- 20 9. declare that Trustee Corps: (1) had a duty to act in good faith and dealing with
- 21 Plaintiff; (2) that Trustee Corps breached this duty by failing to act in good faith and
- 22 fair dealing and/or breached its duties under the contract for all the reasons the Court
- 23 finds reasonable and just; and, (3) was therefore without authority to sell Plaintiff's
- 24 home;
- 25 10. declare that Citizens: (1) had a duty to under Civil Code 1708 "to abstain from injuring
- 26 [Plaintiff's] person or property ...or infringing upon any of his rights"; (2) that Citizens
- 27 breached this duty for all the reasons the Court finds reasonable and just; (3) that as
- 28 a result, Citizens lacked authority to declare a default and/or to order Trustee Corps
- to commence the non-judicial foreclosure sale and sell Plaintiff's home;
- 11. declare that Trustee Corps: (1) had a duty to under Civil Code 1708 "to abstain from
- injuring [Plaintiff's] person or property ...or infringing upon any of his rights"; (2) that

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- Trustee Corps breached this duty for all the reasons the Court finds reasonable and just; (3) that as a result, Trustee lacked authority sell Plaintiff's home;
12. declare: (1) that Citizens and Trustee Corps had actual knowledge of Plaintiff's peril including the fraud, crimes, repeated denial of judicial process, and deprivations of Constitutionally protected rights; (2) that because they refused to seek other remedial relief that would not further harm him and instead chose to use non-judicial foreclosure proceedings to sell him that would further deny him due/judicial process, steal his property, and transfer more than an estimated \$1.18 million dollars in home equity to Hou; that they conspired to aid and abet Principal Defendants in each and every crime and deprivation of rights and are thereby liable for damages;
13. that the surplus funds be returned to Hou, less the amount awarded to Plaintiff and that this amount be paid to Hou within five business days.
14. (Plaintiff has run out of time to finish this request and will Amend it as soon as possible; see other claims and Complaint and Cross-Complaint).
15. All other relief the Court deems reasonable and just

COMPLAINT & CROSS-COMPLAINT

As previously alleged, all statements made in this action are incorporated, where applicable, with all claims for relief.

In the event the Court does not grant Plaintiff equitable relief to restore all rights and property lost as a result of the aforementioned allegations, any rights and property not restored rae intended to be included in this Complaint/Cross-Complaint as a claim for relief.

Any claims for relief in this complaint that are redundant based on the Court awarding full restoration of all rights and property will be withdrawn.

On September 20, 2017, shortly after trial and Judgment had been issued by Chaffee, Plaintiff emailed Bissell informing him/the Humphreys of the lack of subject matter jurisdiction of the Court and the Humphreys failure to sustain their burden of proof for standing. Bissell replied "Mr. Bereki: Thank you for your clarification and the opportunity to avoid the trouble that may befall me as a result of the trial conducted in this matter. As I

1 remain unpersuaded by your position, I suppose I (and I guess Judge Chaffee as
2 well) will just have to take my chances that the court will have the same view of your
3 argument as I do.”

4 **STATUTES OF LIMITATION:**
5 **INAPPLICABLE OR EQUITABLY TOLLED FOR ALL CLAIMS FOR RELIEF**

6 Despite the procedural history detailed in this action, Plaintiff asserts that any
7 applicable statutes of limitation for the claims for relief herein are either inapplicable or
8 equitably tolled due to Defendants’ ongoing misconduct and the systemic denial of a fair
9 forum for redress. Plaintiff has never been truly heard in any court of California or the United
10 States, nor in any other branch of government thereof. The mere occurrence of procedural
11 measures and decisions by public officials purportedly acting under color of law does not
12 constitute a genuine hearing or adjudication of Plaintiff’s rights. As alleged throughout this
13 complaint, Defendants—including the Primary Defendants (David Chaffee, James Di
14 Cesare, Richard Aronson, Thomas Goethals, Kathleen O’Leary, William Bissell, et al.),
15 Citizens Bank N.A., Trustee Corps, Canjian Hou, Henry D. Paloci, and Henry D. Paloci III,
16 P.A.—have individually and collectively engaged in a persistent conspiracy to deny Plaintiff
17 a full, fair, impartial, and independent hearing, as evidenced by the imposition of a void
18 \$930,000 judgment (Case No. 30-2015-00805807), the fraudulent foreclosure sale of his
19 home on November 18, 2024 (Ex. 3, pp. 16-23), and the continued pursuit of unlawful
20 detainer proceedings (Case No. 30-2015-01459684, filed February 11, 2025). This ongoing
21 deprivation of due process, rooted in extrinsic fraud and structural jurisdictional errors,
22 renders traditional limitation periods inapplicable or subject to tolling.

23 In civil rights suits, federal courts apply state tolling rules unless inconsistent with
24 federal law. *Guerrero v. Gates*, 442 F.3d 697, 706 (9th Cir. 2006). California recognizes
25 equitable tolling when a plaintiff, possessing multiple legal remedies, reasonably and in good
26 faith pursues one designed to lessen the extent of his injuries or damages, thereby allowing
27 the statutory period to run. *Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1137
28 (9th Cir. 2001) (internal quotation marks and citation omitted). Plaintiff has made an
extraordinary effort to mitigate his injuries by seeking relief across all branches of California
and United States government—judicial, executive, and legislative—as documented herein

1 and repeated notices to Defendants (e.g., April 16, 2023 email to Khil; February 4, 2025
2 email to Paloci, Ex. 4, pp. 9-10; serving Primary Defendants with previous judicial
3 complaints— see Proofs of Service for each action, Exhibit A). Despite these diligent efforts,
4 he has been denied relief at every turn, including through judicial affirmances tainted by
5 fraud (e.g., Fourth District Court of Appeal Case No. G055075) and the refusal of equitable
6 consideration by Citizens, Trustee Corps, Hou, and Paloci (e.g., February 17, 2025 email,
7 Ex. 4, p. 19). This relentless pursuit of remedies, met with systemic obstruction, warrants
8 equitable tolling under California law, as Plaintiff’s actions were reasonable and aimed at
9 reducing the harm now quantified at over 6 million dollars.

10 Moreover, statutes of limitation cannot apply when no adequate forum for relief is
11 available or has been effectively denied. The U.S. Supreme Court has recognized that due
12 process requires “an opportunity ... granted at a meaningful time and in a meaningful
13 manner” for a hearing appropriate to the case. *Armstrong v. Manzo*, 380 U.S. 545, 552
14 (1965). Here, Plaintiff’s inability to secure a fair tribunal—due to Defendants’ conspiracy to
15 pervert justice—nullifies any limitation period until such a forum exists. California courts
16 similarly hold that statutes of limitation are tolled where access to justice is obstructed by
17 fraud or concealment. *Bernson v. Browning-Ferris Indus.*, 7 Cal. 4th 926, 931 (1994) (tolling
18 applies when defendant’s fraudulent concealment prevents timely filing).

19 Additionally, statutes of limitation begin to run only when a crime or wrong is
20 complete, yet Plaintiff alleges an ongoing conspiracy that remains “in progress.” Defendants
21 have failed to cease their unlawful behavior or take required action to halt Plaintiff’s injuries,
22 as seen in the continued enforcement of the foreclosure sale by Hou and Paloci (e.g.,
23 unlawful detainer filing,) and the persistent refusal of Primary Defendants and others not yet
24 named herein to vacate the void judgment. California law recognizes that continuing
25 violations toll limitation periods until the wrongful conduct ends. *Richards v. CH2M Hill, Inc.*,
26 26 Cal. 4th 798, 811-12 (2001) (statute tolled for ongoing disability discrimination). Here, the
27 conspiracy to deny Plaintiff redress—evidenced by Citizens’ exploitation of the fraud (e.g.,
28 Transaction History, Ex. 3, p. 72), Trustee Corps’ execution of the sale, and the Primary
29 Defendants’ judicial misconduct—continues to irreparably harm Plaintiff through loss of his
30 home, equity, and livelihood, rendering limitation periods inapplicable until the harm ceases.

1 Defendants' unlawful actions have also caused Plaintiff emotional, psychological,
2 physical, and financial harm that substantially hindered his ability to file this complaint
3 sooner. By unlawfully restraining Plaintiff from acting as a general contractor for over six
4 years (since the 2017 judgment) and forcing him into bankruptcy and self-representation,
5 Defendants imposed a burden requiring thousands of hours of legal study to competently
6 defend himself without counsel. This hindrance tolls the statute under California's equitable
7 estoppel doctrine, which prevents defendants from benefiting from delays they caused.
8 *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 383-84 (2003) (tolling applies where defendant's
9 conduct delays plaintiff's filing). Plaintiff's financial hardship and the complexity of the
10 conspiracy further excuse any delay, aligning with federal equitable tolling principles in civil
11 rights cases where extraordinary circumstances prevent timely action. *Holland v. Florida*,
12 560 U.S. 631, 649 (2010).

13 Consequently, Plaintiff asserts that any statutes of limitation for the claims herein—
14 whether for wrongful foreclosure, gross negligence, or other relief—are either inapplicable
15 due to the absence of a fair forum and the ongoing nature of the conspiracy, or equitably
16 tolled based on his diligent pursuit of remedies, Defendants' obstruction, and the debilitating
17 impact of their actions. This Court should reject any limitation defense as inconsistent with
18 justice and constitutional guarantees of due process.

19 **FIRST CLAIM FOR RELIEF:**

20 **WRONGFUL FORECLOSURE AGAINST TRUSTEE CORPS AND CITIZENS**

21 (and against Primary Defendants if the Court Refused to Vacate the Sale and Cancel the
22 Instrument)

23 **Statement of Required Elements and Citation:** The elements of wrongful
24 foreclosure in California are: (1) the trustee or mortgagee caused an illegal, fraudulent, or
25 willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed
26 of trust; (2) the party attacking the sale suffered prejudice or harm; and (3) the trustor or
27 mortgagor tendered the amount of the secured indebtedness or was excused from
28 tendering. *Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 929-30 (2016).

1. Illegal, Fraudulent, or Willfully Oppressive Sale

1 sale, as here, where Citizens exploited crimes to declare default, rendering the debt
2 obligation invalid.

3
4 **Damages Sought**

5 Plaintiff incorporates all previously requested relief regarding vacating the sale,
6 cancelling the Trustees Deed instrument and compensatory damages for his time and labor.
7 In the event the Court refuses the vacate the sale and cancel the instrument, he seeks
8 damages in the amount of an estimated \$1.18 million dollars against Primary Defendants
9 and Citizens and Trustee Corps (exact amount to be proven pending a Court-ordered
10 appraisal and submission of additional evidence); estimated \$5,000 for moving expenses
11 (exact amount to be proven by actual expenses), \$200,000 for loss of tax base value over
12 30 years (exact amount to be proven by evidence), emotional distress damages to be proven
13 at trial, punitive damages for the willful oppression, all other allowable expenses unknown
14 or not included at this time and all other relief the Court deems reasonable and just to
15 compensate Plaintiff for all harm that has been caused.

16 **SECOND CLAIM FOR RELIEF:**

17 **GROSS NEGLIGENCE FOR VIOLATION OF PENAL CODE SECTIONS 211**
18 **(ROBBERY), 487 (GRAND THEFT), 182(a)(1), (2), (3), (4) (CONSPIRACY), AND 31**
19 **(AIDING AND ABETTING)**

20 (Against Citizens Bank N.A., Trustee Corps, Primary Defendants, Canjian Hou, Henry D.
21 Paloci, and Henry D. Paloci Iii, P.A)

22 **Statement of Required Elements and Citation.** In California, gross negligence
23 requires: (1) a duty of care owed by the defendant to the plaintiff; (2) an extreme departure
24 from the ordinary standard of care, exhibiting reckless disregard or willful indifference; (3)
25 proximate causation of harm; and (4) resulting damages. *City of Santa Barbara v. Superior*
26 *Court*, 41 Cal. 4th 747, 754-55 (2007). Gross negligence surpasses ordinary negligence by
27 involving conduct so reckless or wanton that it demonstrates a conscious indifference to
28 consequences. *Id.* Under the negligence per se doctrine (Cal. Evid. Code § 669), violation
of criminal statutes—such as Penal Code §§ 211 (robbery), 487 (grand theft), 182(a)(1)-(4)
(conspiracy), and 31 (aiding and abetting)—presumes negligence if: (1) the defendant



1 violated the statute; (2) the violation proximately caused the plaintiff's injury; (3) the statute
2 was intended to protect the plaintiff's class; and (4) the injury was the type the statute aimed
3 to prevent. *Ramirez v. Nelson*, 44 Cal. 4th 908, 917-18 (2008). Civil conspiracy allegations
4 enhance this claim by demonstrating coordinated reckless conduct among defendants to
5 further these statutory violations. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th
6 503, 511 (1994).

7 **1. Duty of Care**

8
9 **Allegations from Motion to Vacate:** Defendants Citizens Bank N.A. ("Citizens"),
10 Trustee Corps, Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A., and the Primary
11 Defendants (David Chaffee, James Di Cesare, Richard Aronson, Thomas Goethals,
12 Kathleen O'Leary, William Bissell, et al.) owed Plaintiff Adam Bereki a duty of care under
13 Civil Code § 1708 ("Every person is bound ... to abstain from injuring the person or property
14 of another, or infringing upon any of his or her rights") and, for Citizens, the implied covenant
15 of good faith and fair dealing inherent in the mortgage contract (Deed of Trust, Ex. 3, pp.1-
16 12). *Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d 654, 658 (1958). This duty required
17 Defendants to refrain from depriving Plaintiff of his inalienable rights to liberty, property,
18 privacy and the pursuit of happiness, as protected by the Cal. Constitution Art. I, §1 including
19 his right to work as a general contractor and retain his property at 818 Spirit, Costa Mesa,
20 CA. The Primary Defendants owed a duty not to impose an unlawful judgment or suspend
21 Plaintiff's contractor's license without due/ judicial process without a judicial determination
22 of rights (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, §10). Citizens and Trustee Corps had
23 a specific duty not to exploit the resulting fraud and income impairment to declare a default
24 or conduct a foreclosure sale, as repeatedly notified via bankruptcy filings and emails
25 previously evidenced. Hou and Paloci, post-sale, had a duty under § 1708 not to pursue
26 possession through unlawful detainer (Case No. 30-2015-01459684, filed February 11,
27 2025) after notice of the fraud and rights deprivations (e.g., February 4, 2025 email, Ex. 4,
28 p.4, pp. 9-10).

This duty is reinforced by *Lingsch v. Savage*, 213 Cal. App. 2d 729, 735-36 (1963),
imposing a duty to disclose known facts materially affecting property value—here, the fraud,

1 crimes, and jurisdictional defects Citizens and Trustee Corps suppressed from bidders (e.g.,
2 February 7, 2025 email from Trustee Corps, Ex. 4, p. 24), and which Hou and Paloci ignored
3 post-notice.

4 **1. Extreme Departure from Ordinary Standard of Care**
5 **(Negligence Per Se and Gross Negligence)**

6 **Allegations from Complaint:** Defendants' conduct constituted an extreme departure
7 from the standard of care by recklessly violating Penal Code §§ 211, 487, 182(a)(1)-(4), and
8 31, demonstrating willful indifference to Plaintiff's inalienable rights, property, and livelihood:

- 9 ○ **Penal Code § 211 (Robbery):** The Primary Defendants forcibly took Plaintiff's
10 liberty and property by imposing a fraudulent \$930,000 judgment in 2017
11 (Case No. 30-2015-00805807, affirmed G055075) and suspending his
12 contractor's license without due/judicial process, using the combined force of
13 the Legislative, Executive, and Judicial power of California to deprive him of
14 his money and livelihood without lawful authority. Citizens and Trustee Corps
15 furthered this forcible theft/robbery by exploiting the Judgment's effects to take
16 Plaintiff's home via a fraudulent foreclosure sale on November 18, 2024 (Ex.
17 3, pp. 16-23), selling it for \$371,688 despite its \$1.5 million value, knowing the
18 default stemmed from the Primary Defendants' fraud (e.g., bankruptcy notices,
19 emails). Hou and Paloci completed the robbery by pursuing unlawful detainer
20 post-notice (February 11, 2025 filing), seeking to forcibly evict Plaintiff with
21 reckless disregard for these prior deprivations (e.g., February 17, 2025 email,
22 Ex. 4, p. 21).
- 23 ○ **Penal Code § 487 (Grand Theft, Lesser Included Offense of Robbery):**
24 Defendants stole Plaintiff's property and rights exceeding the \$950 threshold:
25 the Primary Defendants took \$930,000 via the void judgment and over \$3
26 million (estimated) in lost earnings by suspending his license (Motion to
27 Vacate, Harms Suffered); Citizens and Trustee Corps stole \$1.18 million in
28 home equity (\$1.5 million value minus \$371,688 sale price); and Hou retained
this equity despite Plaintiff's offer to return surplus funds (February 9, 2025

1 email, Ex. 4, p. 19). This grand theft spanned monetary assets, real property,
2 and Plaintiff's vested right to work, executed with reckless disregard.

- 3 ○ **Penal Code § 182(a)(1)-(4) (Conspiracy):** Defendants conspired with civil
4 intent to exploit and perpetuate the Primary Defendants' initial fraud, stripping
5 Plaintiff of his rights and property under color of law:
 - 6 ▪ **§ 182(a)(1) – Conspiracy to Commit a Crime:** Defendants agreed to
7 commit robbery (§ 211) and grand theft (§ 487). The Primary
8 Defendants imposed the fraudulent judgment and license suspension,
9 knowing it would impair Plaintiff's income (e.g., Motion to Vacate,
10 Extrinsic Fraud). Citizens declared a default based on this fraud (e.g.,
11 April 16, 2023 email), Trustee Corps executed the sale despite notice
12 (e.g., February 4, 2025 email), and Hou/Paloci pursued possession
13 post-sale (e.g., February 17, 2025 email) all relying on the initial wrong.
 - 14 ▪ **§ 182(a)(2) – Falsely and Maliciously to Indict Another for Any
15 Crime, or to Procure Another to be Charged or Arrested for Any
16 Crime:** The Primary Defendants conspired to falsely and maliciously
17 procure Plaintiff's punishment under the guise of a civil action (Case
18 No. 30-2015-00805807), fraudulently concealing a penal sanction
19 (\$930,000 judgment for unlicensed contracting under Bus. & Prof. Code
20 § 7031(b)) as "disgorgement" without criminal safeguards (Appendix C,
21 Court of Appeal Opinion). This criminal charge, lacking due and judicial
22 process, aimed to ruin Plaintiff financially and professionally, triggering
23 downstream actions by Citizens, Trustee Corps, Hou, and Paloci, who
24 relied on this false penalty to justify their thefts/ forcible taking of
25 Plaintiff's property (e.g., foreclosure, UD action).
 - 26 ▪ **§ 182(a)(3) – Falsely to Move or Maintain Any Suit, Action, or
27 Proceeding:** Defendants conspired to falsely initiate and maintain legal
28 proceedings against Plaintiff. The Primary Defendants falsely moved
the 2017 suit resulting in the void judgment, lacking jurisdiction due to
extrinsic fraud and private prosecution (Motion to Vacate, Structural
Jurisdictional Errors,). Hou and Paloci falsely maintained the unlawful
detainer action (Case No. 30-2015-01459684, filed February 11, 2025)

1 despite notice of its invalid basis (e.g., February 4, 2025 email), relying
2 on the Primary Defendants’ fraudulent act, while Citizens and Trustee
3 Corps supported this chain through the foreclosure (e.g., February 7,
4 2025 email).

- 5 ▪ **§ 182(a)(4) – To Cheat and Defraud Any Person of Any Property by
6 Criminal Means, or by False Pretenses or Promises:** Defendants
7 conspired to cheat and defraud Plaintiff of his \$930,000, livelihood, and
8 \$1.5 million property by criminal means and false pretenses. The
9 Primary Defendants used the false pretense of a lawful “disgorgement”
10 judgment (Appendix C) to take \$930,000 and suspend his license.
11 Citizens and Trustee Corps falsely represented the default and
12 foreclosure sale as valid despite knowing the fraud (e.g., bankruptcy
13 filings, Ex. 3, pp. 37-42; February 7, 2025 email), employing the criminal
14 means of forcible taking/robbery (§ 211) to seize his home. Hou and
15 Paloci used the false pretense of lawful ownership (UD complaint, Ex.
16 4, p.27 et seq.) to retain the stolen equity, rejecting Plaintiff’s equitable
17 offer (February 9, 2025 email).

- 18 ○ **Penal Code § 31 (Aiding and Abetting):** The Primary Defendants aided each
19 other in the fraudulent judgment and license suspension. Citizens and Trustee
20 Corps aided the Primary Defendants by using the judgment to trigger
21 foreclosure (e.g., Notice of Default, July 10, 2024, Ex. 3, pp. 13-15), while Hou
22 and Paloci aided post-sale by leveraging the illegal sale (e.g., UD complaint)

- 23 • **Negligence Per Se Application:** Per *Ramirez v. Nelson*, 44 Cal. 4th at 917-18, these
24 violations establish negligence because: (1) Defendants violated §§ 211, 487, 182,
25 and 31; (2) the violations caused Plaintiff’s loss of rights, earnings, and property; (3)
26 these statutes protect individuals like Plaintiff from theft and conspiracies; and (4) the
27 harms—loss of liberty, livelihood, and home—were the type these statutes aim to
28 prevent. *Elsner v. Uveges*, 34 Cal. 4th 915, 927-28 (2004).
- **Gross Negligence Elevation:** This rises to gross negligence due to Defendants’
willful indifference. The Primary Defendants imposed the judgment and suspension
knowing their lack of jurisdiction and refusal to heed Plaintiff’s warnings,
characterizing all his claims on appeal as “Meritless” (Appendix C- Court of Appeal

1 Opinion; Motion to Vacate, Structural Jurisdictional Errors), Citizens ignored warnings
2 (e.g., bankruptcy filings, Ex. 3, pp. 37-42), Trustee Corps sold without disclosure
3 (February 7, 2025 email), and Hou/Paloci rejected equity post-notice (February 17,
4 2025 email), all relying on the initial fraud.

- 5 • **Civil Conspiracy:** Defendants’ coordinated actions—Primary Defendants’ judgment,
6 Citizens’ default, Trustee Corps’ sale, and Hou/Paloci’s eviction—form a civil
7 conspiracy, each knowingly furthering the scheme. *Applied Equip. Corp.*, 7 Cal. 4th
8 at 511.

9 **3. Proximate Causation**

10 **Allegations from Complaint:** Defendants’ gross negligence proximately caused
11 Plaintiff’s harms. The Primary Defendants’ \$930,000 judgment and license suspension
12 (since 2017) stripped Plaintiff of over \$3 million (est.) in earnings, impairing his ability to pay
13 Citizens, which then declared a fraudulent default and, with Trustee Corps, sold his home
14 on November 18, 2024, costing \$1.18 million in equity. Hou and Paloci’s unlawful detainer
15 (filed February 11, 2025) seeks to finalize this deprivation. But for this chain of reckless
16 violations, Plaintiff would retain his rights, livelihood, and home. *Lugtu v. Cal. Highway*
17 *Patrol*, 26 Cal. 4th 703, 725 (2001).

18 **4. Resulting Damages**

19 **Allegations from Complaint:** Plaintiff suffered:

- 20 ○ \$930,000 from the void judgment (Case No. G055075)
- 21 ○ Over \$3 million (est) in lost earnings from license suspension (Motion to
22 Vacate, Harms Suffered);
- 23 ○ \$1.18 million in equity theft (\$1.5 million home value minus \$371,688 sale
24 price, Second Element: Prejudice or Harm);
- 25 ○ \$151,200 in time defending against Citizens and Trustee Corps (8 hours/day,
26 \$300/hour, 63 weekdays, Second Element: Time and Expenses);
- 27 ○ \$64,800 in time defending against Hou and Paloci (6 hours/day, \$300/hour, 36
28 days, Second Element: Time and Expenses);
- \$19,668.92 in un-itemized fees from Citizens (Ex. 3, p. 72);
- \$5,000 in estimated moving expenses (to be proven);

- \$200,000 in lost tax base value over 30 years (to be proven, The Alternative);
- Emotional distress from loss of inalienable rights, to be proven at trial.

Alternative: Negligence Per Se

If the Court finds the conduct does not rise to gross negligence, it still constitutes negligence per se under Evidence Code § 669, as Defendants' violations of §§ 211, 487, 182, and 31 breached their duty, proximately causing Plaintiff's injuries, aligning with statutes protecting against theft and conspiracies. *Jacobs v. Coldwell Banker*, 14 Cal. App. 5th 438, 446-47 (2017).

Why Gross Negligence Applies

The conduct exceeds ordinary negligence due to its egregious recklessness. The Primary Defendants initiated a void judgment and suspension, Citizens and Trustee Corps exploited it after notice (e.g., October 28, 2024 email), and Hou/Paloci pursued eviction despite knowledge (e.g., February 4, 2025 email), showing conscious indifference akin to *Ramirez* (44 Cal. 4th at 918) and justifying punitive damages under Civil Code § 3294.

Damages Sought

Plaintiff seeks compensatory damages of:

- \$5,028,000 against Primary Defendants for his expert time and labor in performing this forensic investigation and defense against their unlawful acts (exact amount to be proven);
- The return of his home or \$1,180,000 against all Defendants for equity theft;
- \$151,200 against Citizens and Trustee Corps for time defending;
- \$64,800 against Hou, Henry D. Paloci, and Henry D. Paloci III, P.A. for time defending;
- \$19,668.92 against Citizens for un-itemized fees;
- \$5,000 for moving expenses (exact amount to be proven if required to move);
- \$200,000 for tax base loss over 30 years (exact amount to be proven if required to move);
- Emotional distress damages, to be proven at trial;

- Punitive damages under Civil Code § 3294 for reckless indifference;
- Costs of suit and all other relief the Court deems just.

CIVIL CONSPIRACY

(Against Citizens Bank N.A., Trustee Corps, Primary Defendants, Canjian Hou, Henry D. Paloci, and Henry D. Paloci Iii, P.A.)

Statement of Required Elements and Citation. In California, civil conspiracy requires: (1) an agreement among two or more persons; (2) to commit a wrongful act; (3) one or more overt acts in furtherance of the agreement; and (4) resulting damages to the plaintiff. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (1994). Conspiracy is not a standalone tort but imposes joint liability for underlying wrongs committed pursuant to the agreement. *Id.* The wrongful acts here include fraud, theft, and deprivation of Plaintiff’s inalienable rights, as detailed throughout the complaint.

Agreement Among Defendants

Allegations from Complaint: Defendants Citizens Bank N.A. (“Citizens”), Trustee Corps, Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A., and the Primary Defendants (David Chaffee, James Di Cesare, Richard Aronson, Thomas Goethals, Kathleen O’Leary, William Bissell, et al.) formed an agreement, express or implied, to deprive Plaintiff Adam Bereki of his property, livelihood, and constitutional rights. The Primary Defendants initiated this conspiracy by imposing a fraudulent \$930,000 judgment in 2017 (Case No. 30-2015-00805807; Appeal Case No. G055075) and suspending his contractor’s license without lawful authority (Motion to Vacate, Extrinsic Fraud). Citizens and Trustee Corps joined by exploiting this judgment to declare a default and conduct a wrongful foreclosure sale on November 18, 2024 (Ex. 3, pp. 16-23), despite repeated notice of its invalidity (e.g., bankruptcy filings, Ex. 3, pp. 37-42; April 16, 2023 email to Khil). Hou and Paloci furthered the agreement by pursuing unlawful detainer (Case No. 30-2015-01459684, filed February 11, 2025) after actual notice of the fraud and prior deprivations (e.g., February 4, 2025 email,). This coordination is evidenced by their reliance on each other’s acts, forming a chain

1 of misconduct aimed at Plaintiff's ruin and homelessness, as alleged in the Complaint's
2 Overview and Motion to Vacate.

3 ***Wrongful Acts***

4 **Allegations from Complaint:** The conspiracy aimed to commit multiple wrongful
5 acts against Plaintiff:

- 6 ○ Imposition of a void \$930,000 judgment by the Primary Defendants,
7 mischaracterized as equitable "disgorgement" to mask its punitive nature
8 (Appendix C, Court of Appeal Opinion), constituting extrinsic fraud and
9 violating Plaintiff's due/judicial process rights under the Article I, §10 and the
10 Fifth and Fourteenth Amendments and California Constitution, Article I,
11 Sections 7,9 (Motion to Vacate).
- 12 ○ Suspension of Plaintiff's contractor's license caused by the Primary
13 Defendants, stripping his inalienable right to work and pursue his livelihood,
14 protected by the Northwest Ordinance of 1787 and U.S. Constitution, Article I,
15 Section 10 (Conversion of Private Rights into Public Privileges; Motion to
16 Vacate, Harms Suffered), and causing over \$3 million (est.) in lost earnings.
- 17 ○ Wrongful foreclosure by Citizens and Trustee Corps, stealing \$1.18 million in
18 home equity (\$1.5 million property value minus \$371,688 sale price) through
19 a sale rooted in the Primary Defendants' fraud, executed with reckless
20 disregard despite Plaintiff's notices (e.g., bankruptcy response, Ex. 3, pp. 37-
21 42; February 2, 2024 email).
- 22 ○ Pursuit of unlawful detainer by Hou and Paloci, falsely asserting ownership to
23 finalize the theft of Plaintiff's home and equity, despite knowledge of the
24 fraudulent foreclosure and prior wrongs (e.g., February 17, 2025 email; UD
25 complaint), further depriving Plaintiff of his property rights.
- 26 ○ Collective deprivation of Plaintiff's inalienable rights to liberty, property, and
27 the pursuit of happiness, as the conspiracy's actions forced bankruptcy,
28 emotional distress, and ongoing financial ruin (Motion to Vacate; Constitutional
Crisis Mandating Relief).

Overt Acts in Furtherance

Allegations from Complaint: Defendants committed overt acts to advance the conspiracy:

- The Primary Defendants filed and affirmed the fraudulent judgment in 2017 (Case No. 30-2015-00805807) causing Plaintiff’s license to be suspended, setting the stage for his financial collapse (Motion to Vacate, Factual Background).
- Citizens declared a default based on Plaintiff’s inability to pay, caused by the judgment, and ordered Trustee Corps to proceed with foreclosure, ignoring Plaintiff’s pleas and evidence of fraud (e.g., Notice of Default, July 10, 2024, Ex. 3, pp. 13-15; April 16, 2023 email to Khil).
- Trustee Corps conducted the foreclosure sale on November 18, 2024, selling Plaintiff’s home for a fraction of its value without disclosing the fraud to bidders (e.g., February 7, 2025 email, Ex. 4, p. 24; Ex. 3, pp. 16-23).
- Hou and Paloci filed the unlawful detainer action on February 11, 2025 (Case No. 30-2015-01459684), refusing Plaintiff’s offer to return surplus funds and do equity (February 9, 2025 email), persisting despite notice of the conspiracy’s origins (February 4, 2025 email, Ex. 4, pp. 4, 9-10).

**FOURTH CLAIM FOR RELIEF:
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

(Against Primary Defendants (David Chaffee, James Di Cesare, Richard Aronson, Thomas Goethals, Kathleen O’leary), Citizens Bank N.A., Trustee Corps, Canjian Hou, Henry D. Paloci, And Henry D. Paloci Iii, P.A.)

Statement of Required Elements and Citation. Under 42 U.S.C. § 1983, a plaintiff must prove: (1) deprivation of a right secured by the U.S. Constitution or federal law; (2) by a person acting under color of state law; and (3) causation of injury. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). Private actors may be liable under § 1983 if they willfully participate in a conspiracy with state actors to violate constitutional rights. *Dennis v.*

1 *Sparks*, 449 U.S. 24, 27-28 (1980). Here, Plaintiff alleges violations of due process (Fifth
2 and Fourteenth Amendments), the Excessive Fines Clause (Eighth Amendment), and the
3 Contract Clause (Article I, Section 10), caused by the Primary Defendants' state actions and
4 the other Defendants' conspiratorial involvement.

5 6 ***Deprivation of Constitutional Rights***

7 **Allegations from Complaint:** Plaintiff was deprived of multiple Constitutional rights
8 by Defendants:

- 9
- 10 ○ **Due/Judicial Process (Cal. Const. Art. I, §§ 7,9 U.S. Const. Art. I, §10, Fifth
11 and Fourteenth Amendments):** The Primary Defendants—David Chaffee,
12 James Di Cesare, Richard Aronson, Thomas Goethals, and Kathleen O'Leary,
13 acting as judges and justices—imposed a \$930,000 judgment in 2017 (Case
14 No. 30-2015-00805807) and suspended Plaintiff's contractor's license without
15 a fair hearing, jury trial, or criminal safeguards, despite its penal nature under
16 Business and Professions Code § 7031(b) (Motion to Vacate, Extrinsic Fraud,;
17 Constitutional Crisis Mandating Relief). This void judgment, affirmed on appeal
18 (Case No. G055075), lacked subject matter jurisdiction due to extrinsic fraud
19 and private prosecution, violating Plaintiff's right to a "fair trial in a fair tribunal"
20 (*In re Murchison*, 349 U.S. 133, 136 (1955)). Citizens Bank N.A. ("Citizens"),
21 Trustee Corps, Canjian Hou, Henry D. Paloci, and Henry D. Paloci III, P.A.
22 furthered this deprivation by exploiting the judgment to wrongfully foreclose on
23 Plaintiff's home (November 18, 2024, Ex. 3, pp. 16-23) and pursue unlawful
24 detainer (Case No. 30-2015-01459684, filed February 11, 2025), denying
25 Plaintiff any meaningful opportunity to contest the underlying fraud (e.g.,
26 bankruptcy response, Ex. 3, pp. 37-42).
 - 27 ○ **Excessive Fines Clause (Eighth Amendment):** The \$930,000 judgment, 186
28 times the \$5,000 misdemeanor cap under Business and Professions Code §
7028, was grossly disproportionate to the alleged unlicensed contracting
offense, constituting an excessive fine (Constitutional Crisis Mandating
Relief; *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (fines must be

1 proportional)). This penalty, imposed without due process, forced Plaintiff's
2 financial ruin, bankruptcy, and loss of livelihood, effects the other Defendants
3 knowingly capitalized on (e.g., foreclosure sale for \$371,688 vs. \$1.5 million
4 value, Second Element: Prejudice or Harm).

- 5 ○ **Contract Clause (Article I, Section 10):** The Primary Defendants' judgment
6 and license suspension impaired Plaintiff's private contracts—his mortgage
7 with Citizens and other creditors—by stripping his income stream, violating the
8 constitutional prohibition on state impairment of contract obligations (Historical
9 Legal Framework at America's Founding; Conversion of Private Rights into
10 Public Privileges). Citizens and Trustee Corps exacerbated this by foreclosing
11 based on the impaired mortgage, while Hou and Paloci sought to profit from
12 the resulting title transfer (e.g., UD complaint).

12 ***Acting Under Color of State Law***

13 **Allegations from Complaint:** The Primary Defendants acted under color of state law
14 as judicial officers of the Superior Court of Orange County and Fourth District Court of
15 Appeal, wielding California's judicial authority to impose the judgment and license
16 suspension. Their actions, though *ultra vires* due to lack of jurisdiction (Motion to Vacate,
17 Structural Jurisdictional Errors), were cloaked in official capacity, satisfying the "under color
18 of law" requirement (*West v. Atkins*, 487 U.S. 42, 49-50 (1988)). Citizens, Trustee Corps,
19 Hou, Henry D. Paloci, and Henry D. Paloci III, P.A., while private actors, became liable under
20 § 1983 by willfully participating in a conspiracy with the Primary Defendants. They knowingly
21 relied on the void judgment to declare a default (e.g., Notice of Default, July 10, 2024, Ex.
22 3, pp. 13-15), execute the foreclosure (e.g., February 7, 2025 email, Ex. 4, p. 24), and pursue
23 eviction (e.g., February 17, 2025 email, Ex. 4, pp. 27-47), acting in concert with the state
24 action's effects (*Dennis v. Sparks*, 449 U.S. at 27-28 (private parties liable for conspiring
25 with judge)).

25 ***Causation and Injury***

26 **Allegations from Complaint:** The Primary Defendants' unconstitutional acts directly
27 caused Plaintiff's injuries: the \$930,000 judgment extracted funds and triggered income loss,
28 the license suspension deprived him of over \$1 million in earnings (Motion to Vacate, Harms

1 Suffered), and both rendered him unable to pay Citizens, leading to the foreclosure of his
2 home (valued at \$1.5 million, sold for \$371,688 Second Element: Prejudice or Harm).
3 Citizens and Trustee Corps proximately caused further injury by exploiting this state action
4 for the foreclosure, while Hou and Paloci compounded the harm by pursuing possession
5 despite notice of the constitutional violations (e.g., February 4, 2025 email, Ex. 4, pp. 9-10).
6 But for this conspiracy, Plaintiff would retain his rights, livelihood, privacy, and property
7 (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982) (state action liability extends to
private parties invoking unconstitutional judgments)).

8 ***Damages Sought***

9 Plaintiff seeks compensatory damages of:

- 10 • Plaintiff incorporates all damages allegations from the Second Claim for
- 11 Relief; and,
- 12 • Emotional distress damages from Constitutional violations, to be proven at
- 13 trial;
- 14 • Punitive damages under § 1983 against all Defendants for willful misconduct
- 15 (*Smith v. Wade*, 461 U.S. 30, 56 (1983));
- 16 • Attorney fees and costs under 42 U.S.C. § 1988;
- 17 • All other relief the Court deems just.

18 ***Why § 1983 Applies***

19 The Primary Defendants' imposition of an unconstitutional judgment and license
20 suspension under color of state law directly violated Plaintiff's due/ judicial process,
21 excessive fines, and contract rights, as detailed in the complaint's Constitutional Crisis
22 section. The private Defendants' knowing participation—exploiting this state action for profit
23 (foreclosure, UD)—makes them co-conspirators under *Dennis v. Sparks*. This claim
24 addresses the root of Plaintiff's harms (judicial misconduct) and their ripple effects,
25 warranting federal relief under § 1983.

26 **FIFTH CLAIM FOR RELIEF:**

27 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

1 (Against Primary Defendants (David Chaffee, James Di Cesare, Richard Aronson, Thomas
2 Goethals, Kathleen O’leary), William Bissell, Citizens Bank N.A., Trustee Corps, Canjian
3 Hou, Henry D. Paloci, And Henry D. Paloci Iii, P.A.)

4 **Statement of Required Elements and Citation.** In California, intentional infliction of
5 emotional distress (IIED) requires: (1) extreme and outrageous conduct by the defendant;
6 (2) intent to cause, or reckless disregard of the probability of causing, emotional distress; (3)
7 severe emotional distress suffered by the plaintiff; and (4) actual and proximate causation
8 of the distress by the defendant’s conduct. *Christensen v. Superior Court*, 54 Cal. 3d 868,
9 903 (1991). Conduct is outrageous if it exceeds all bounds of decency tolerated in a civilized
10 society, and emotional distress is severe if it is of such substantial or enduring quality that
11 no reasonable person should be expected to endure it. *Fletcher v. W. Nat’l Life Ins. Co.*, 10
12 Cal. App. 3d 376, 397 (1970). Additionally, emotional distress damages are compensable
13 without physical injury when tied to tortious interference with property rights, as affirmed in
14 *Erlach v. Sierra Asset Servicing, LLC*, 226 Cal. App. 4th 1281, 1299 (2014) (“the negligent
15 infliction of emotional distress—anxiety, worry, discomfort—is compensable without physical
16 injury in cases involving the tortious interference with property rights”).

16 ***Extreme and Outrageous Conduct***

17 **Allegations from Complaint and Declaration:** Defendants engaged in extreme and
18 outrageous conduct that exceeds all bounds of decency:

- 19 ○ The Primary Defendants (David Chaffee, James Di Cesare, Richard Aronson,
20 Thomas Goethals, Kathleen O’Leary) and William Bissell imposed a fraudulent
21 \$930,000 judgment in 2017 (Case No. 30-2015-00805807) causing the
22 suspension of Plaintiff’s contractor’s license without lawful authority or due/
23 judicial process, misrepresenting the penalty as “disgorgement” to mask its
24 punitive nature (Motion to Vacate, Extrinsic Fraud; Appendix C, Court of
25 Appeal Opinion). This judicial misconduct, detailed as “egregious abuse of
26 power” (Complaint, Overview), stripped Plaintiff of his livelihood and property
27 rights, initiating a cascade of harm.
- 28 ○ Citizens Bank N.A. (“Citizens”) and Trustee Corps exploited this void judgment
to declare a default and conduct a wrongful foreclosure sale on November 18,

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2024 (Ex. 3, pp. 16-23), selling Plaintiff’s home—valued at \$1.5 million—for \$371,688, despite repeated notices of the fraud (e.g., bankruptcy filings, Ex. 3, pp. 37-42; April 16, 2023 email to Khil). Their refusal to halt the sale, even after Plaintiff’s pleas (e.g., February 2, 2024 email), constitutes outrageous profiteering from known injustice.

- Canjian Hou, Henry D. Paloci, and Henry D. Paloci III, P.A. pursued unlawful detainer (Case No. 30-2015-01459684, filed February 11, 2025) to evict Plaintiff, rejecting his offer to return surplus funds and do equity (February 9, 2025 email), despite actual knowledge of the fraudulent judgment and foreclosure (e.g., February 4, 2025 email, Ex. 4, p.4, pp. 9-10). This relentless pursuit to capitalize on Plaintiff’s ruin amplifies the outrage.
- Plaintiff’s declaration, filed in the original Superior Court case and Motion to Vacate, notified Chaffee, Di Cesare, Bissell, and the Humphreys of the “emotional, psychological, financial, and physical harm” caused by their “fraud,” “abuse of process,” “deprivations of [his] rights,” and “intentional infliction of emotional distress,” labeling it “domestic terrorism” (Ex. [to be added on Amendment]). Defendants’ persistence despite this notice underscores their conduct’s extremity.

Intent or Reckless Disregard

Allegations from Complaint and Declaration: Defendants acted with intent to cause, or reckless disregard of the probability of causing, Plaintiff’s emotional distress:

- The Primary Defendants and Bissell knowingly imposed an unlawful judgment and license suspension, aware it would devastate Plaintiff’s finances and livelihood (Motion to Vacate, Harms Suffered), as evidenced by their receipt of Plaintiff’s declaration detailing the distress ([To be added on Amendment]).
- Citizens and Trustee Corps proceeded with foreclosure despite Plaintiff’s repeated warnings of the judgment’s fraud (e.g., bankruptcy response, Ex. 3, pp. 37-42; October 28, 2024 email to Autieri), recklessly ignoring the inevitable emotional toll of losing his home of nearly 20 years (Second Element: Prejudice or Harm).

- Hou and Paloci pressed the unlawful detainer action after Plaintiff's explicit notice of his suffering and the underlying wrongs (e.g., February 17, 2025 email), demonstrating reckless disregard by refusing equitable resolution.
- This intent or recklessness is inferred from Defendants' coordinated conspiracy (Motion to Vacate: Civil Conspiracy Against an Attorney) and persistence despite Plaintiff's documented pleas, satisfying *Fletcher*, 10 Cal. App. 3d at 397 (intent where distress is a natural consequence of outrageous acts).

Severe Emotional Distress

Allegations from Complaint and Declaration: Plaintiff suffered severe emotional distress of a quality no reasonable person should endure:

- Plaintiff's declaration states: "I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority... The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) ... are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income". He further notes "thousands of dollars in Emergency Room visits to multiple hospitals" and ongoing treatment by a doctor three days per week to cope.
- This distress, ongoing since the 2017 judgment, intensified with the foreclosure and UD action, is tied to the loss of his home (\$1.18 million equity), livelihood (\$1 million+ in earnings), and Constitutional rights (Constitutional Crisis Mandating Relief), meeting the severity threshold under *Christensen*, 54 Cal. 3d at 903.

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Causation

Allegations from Complaint and Declaration: Defendants’ outrageous conduct directly and proximately caused Plaintiff’s severe emotional distress:

- The Primary Defendants and Bissell’s fraudulent judgment and license suspension initiated the distress, as Plaintiff notified them via declaration ([To be added on Amendment), triggering financial ruin and physical/psychological symptoms (Motion to Vacate, Harms Suffered).
- Citizens and Trustee Corps’ foreclosure, exploiting this ruin, compounded the distress by stripping Plaintiff’s home, a loss he links to ongoing panic, anxiety, and depression (Second Element: Prejudice or Harm; Ex. 3, pp. 16-23).
- Hou and Paloci’s UD action, despite notice of Plaintiff’s suffering (e.g., February 4, 2025 email, Ex. 4, pp. 9-10), exacerbated his fear and anxiety, as he faces imminent eviction (UD complaint).
- But for this chain of conduct, Plaintiff would not endure such enduring distress, aligning with *Erlach*, 226 Cal. App. 4th at 1299 (distress compensable when tied to property rights interference).

Why IIED Applies

Defendants’ actions—imposing a void judgment, suspending Plaintiff’s license, foreclosing on his home, and pursuing eviction—constitute a relentless campaign of outrageous conduct, far beyond mere negligence or economic harm. Plaintiff’s declaration, filed and served on Chaffee, Di Cesare, Bissell, and the Humphreys, put them on notice of his severe distress, yet they persisted, as did Citizens, Trustee Corps, Hou, and Paloci with full knowledge (e.g., bankruptcy filings, Ex. 3, pp. 37-42; February 17, 2025 email). This reckless or intentional infliction of suffering, tied to the tortious interference with Plaintiff’s property and rights, warrants relief under *Christensen* and *Erlach*.

Damages Sought

Plaintiff seeks:

- Compensatory damages for severe emotional distress, to be proven at trial, supported by medical records and ongoing treatment costs;
- Punitive damages under Civil Code § 3294 for Defendants’ intentional or reckless conduct;
- Costs of suit and all other relief the Court deems just.

**SIXTH CLAIM FOR RELIEF:
CHALLENGE TO THE CONSTITUTIONALITY OF NON-JUDICIAL FORECLOSURE**

(Against Rob Bonta (Attorney General) in His Official Capacity)

I. Reclassifying Non-Judicial Foreclosure as State Action – Historical Roots, Systemic Flaws, and Constitutional Imperatives (Incorporating Evidence from Plaintiff’s Case and Additional Arguments)

Introduction

Non-judicial foreclosure, governed by California Civil Code § 2924, permits lenders to foreclose on properties without judicial oversight, relying on a “power of sale” clause in the deed of trust. The California Supreme Court, in *Garfinkle v. Superior Court*, 21 Cal.3d 268 (1978), deemed this a private contractual matter, not state action. This brief challenges that classification, arguing that non-judicial foreclosure constitutes state action due to its historical origins, systemic flaws, and—most critically—the punitive nature of state-sanctioned home equity theft. By enabling the transfer of home equity to new buyers without compensating prior owners, this process imposes an unconstitutional penalty, implicating the due and judicial process clauses and takings clauses of the California and United States Constitutions. Precedents like *Shelley v. Kraemer*, 334 U.S. 1 (1948), and *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), highlight the state’s role, necessitating constitutional scrutiny. In *Shelley*, the Supreme Court held that state enforcement of private discriminatory covenants constituted state action, establishing that judicial or statutory backing of private conduct can trigger constitutional protections; here, the state’s statutory framework similarly enables inequitable property transfers. Likewise, *Lugar* found state action where a private creditor used a state-created prejudgment attachment process, underscoring that when the state delegates coercive power to private parties—as in



1 California’s non-judicial foreclosure system—it becomes a participant in the deprivation of
2 rights.

3 **Evidence from Plaintiff’s Case:** In Plaintiff’s case, a non-judicial foreclosure
4 executed under California Civil Code § 2924 resulted in the loss of his home and significant
5 equity. Citizens, the second mortgage holder, initiated the foreclosure, selling the property
6 to Hou for \$371,688, despite Bereki owing only approx. \$62,000 (disputed) to Citizens. This
7 left an estimated \$1.18 million in equity uncompensated, transferred to the buyer without
8 judicial review (assuming the invalidity of the first mortgage, which is disputed; see First
9 Amended Complaint to be filed hereafter). This exemplifies one example of how the state’s
10 statutory framework enables punitive equity theft failing to protect the property rights of the
debtor/trustor, implicating it as a state actor in violating Plaintiff’s constitutional rights.

11 ***A. The Primary Issue: Home Equity Theft as a Punitive Sanction and***
12 ***Unconstitutional Taking***

13 The most egregious flaw in non-judicial foreclosure is its facilitation of home equity
14 theft, a punitive measure that transfers substantial property value from homeowners to new
15 buyers without just compensation. Enabled by California Civil Code § 2924, this practice
16 constitutes an unconstitutional taking and a severe penalty, undermining fundamental
17 property rights.

- 18 • **Scale of Equity Loss:** A 2022 National Consumer Law Center study revealed that
19 California homeowners lose an average of \$100,000 in equity per non-judicial
20 foreclosure, with properties often sold at less than 50% of market value. Unlike judicial
21 foreclosure, where surplus proceeds are returned, non-judicial foreclosure transfers
22 this equity to the buyer or lender without recourse for the prior owner.

23 In non-judicial foreclosures, California Civil Code § 2924k governs the distribution of
24 proceeds after a foreclosure sale. The trustee is required to disburse funds in the
25 following order: (1) costs and expenses of the sale, including trustee fees; (2) the debt
26 owed to the foreclosing lender; (3) junior lienholders in order of priority; and (4) any
27 remaining surplus to the former homeowner. While this statute theoretically ensures
28 surplus funds are returned, it does not mandate a fair market value sale, often



1 resulting in properties sold well below their worth—sometimes less than 50% of
2 market value as noted in the 2022 National Consumer Law Center study. For
3 example, Plaintiff’s case, despite being eligible to receive surplus funds after the sale
4 (which have not yet been disbursed) because the bid exceeded the loan amount, the
5 sale still led to more than an estimated \$1.18 million-dollar equity theft, highlighting
6 how the statutory framework fails to protect the full equity interest, transferring
7 substantial value to the buyer without judicial oversight or adequate compensation.
8 Assembly Bill 2424 (effective January 1, 2025) adds a requirement that trustees
9 cannot sell a property at the initial sale for less than 67% of its fair market value
10 (California Civil Code § 2924f), but this still falls short of ensuring full equity retention
11 and applies only prospectively.

12 In judicial foreclosures, California Code of Civil Procedure § 726(b) governs surplus
13 funds, requiring the court to oversee the sale and distribution of proceeds. After
14 satisfying the foreclosing lender’s judgment, costs, and junior liens, any surplus is
15 returned to the homeowner. Unlike non-judicial foreclosures, judicial sales may offer
16 a post-sale redemption period (California Code of Civil Procedure § 729.010 et seq.),
17 allowing the homeowner to reclaim the property by paying the sale price plus costs
18 within three months if the sale satisfied the debt, or one year if it did not. However,
19 even with surplus returned, the sale price often fails to reflect true market value, as
20 auctions prioritize speed over equity preservation, mirroring the punitive equity loss
21 seen in non-judicial cases. Both systems, while providing for surplus, do not prevent
22 the underlying theft of equity when properties are undervalued, implicating the state
23 in a process that violates the Takings Clause of the California and U.S. Constitutions
24 by failing to ensure just compensation.

- 25 • **Legal Precedent on Surplus Equity:** In *Tyler v. Hennepin County*, 143 S. Ct. 1369
26 (2023), the U.S. Supreme Court unanimously held that retaining surplus equity after
27 a tax foreclosure violates the Fifth Amendment’s Takings Clause.
28 While *Tyler* addressed state tax debts, its core principle—that the government cannot

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seize more property than necessary—applies to non-judicial mortgage foreclosures, where statutes permit the loss of equity far exceeding the debt owed.

- **Unconstitutional Property Transfer:** More directly, *Kelo v. City of New London*, 545 U.S. 469 (2005), illustrates the constitutional peril of transferring property from one private party to another. Here, California Civil Code § 2924 authorizes the sale of a home—often at a fraction of its value—to a new buyer, leaving the prior owner uncompensated for their equity all while protecting the lenders property interest. This state-enabled transfer without recognition of the borrowers home equity property interest, devoid of judicial oversight, constitutes a penalty disproportionate to the default, akin to an unlawful taking. Post-*Kelo*, many states, including California, restricted such transfers, yet non-judicial foreclosure persists as a loophole, sanctioning private-to-private property shifts without due/judicial process or compensation.

(Clarification of the Takings Clause claim: This Complaint invokes Takings Clause protections of the California and United States Constitutions to argue that non-judicial foreclosure constitutes an unconstitutional taking by enabling the transfer of homeowners’ equity to private buyers without just compensation, as exemplified by *Tyler v. Hennepin County*, 143 S. Ct. 1369 (2023), where the Supreme Court struck down the retention of surplus equity as an excessive seizure beyond what was owed. While *Kelo v. City of New London*, 545 U.S. 469 (2005), upheld a government taking for economic development as serving a public purpose, non-judicial foreclosure lacks even this justification, transferring property solely for private gain—a distinction that heightens its constitutional defect. The absence of a public purpose is not the sole basis for Plaintiff’s claim; rather, it underscores that the state’s role in facilitating this uncompensated deprivation, absent any societal benefit, renders it a punitive taking akin to a forfeiture, implicating both the Takings Clause and due and judicial process protections.)

- **One-Sided Guarantee of Property Rights:** In most mortgage contracts, which are contracts of adhesion, the lender’s rights to repayment are secured, but the borrower’s home equity is not. This imbalance, supported by the state through California Civil Code § 2924, creates a one-sided guarantee of property rights in favor

1 of big banks, resulting in a penal forfeiture of property without judicial process—akin
2 to a bill of pains and penalties. This punitive outcome, embedded in the statutory
3 framework, further underscores the state’s role in violating constitutional protections.

4 This home equity theft is not a mere byproduct but a punitive outcome embedded in
5 the statutory framework, making it the paramount reason to reclassify non-judicial
6 foreclosure as state action. The state’s role in crafting and upholding this system directly
7 implicates it in violating homeowners’ constitutional rights.

8 **Evidence from Plaintiff’s Case:** Plaintiff’s foreclosure vividly illustrates this punitive
9 home equity theft. His home was sold for \$371,688, with only about \$62,000 owed to
10 Citizens, resulting in an estimated \$1.18 million dollars in home equity (assuming the
11 invalidity of the first mortgage) transferred to Hou without compensation. This transfer,
12 facilitated by California Civil Code § 2924, mirrors the unconstitutional taking in *Tyler* and
13 the private-to-private shift in *Kelo*, but lacks any public purpose. Plaintiff’s loss of equity,
14 enabled by state law without judicial oversight, underscores the punitive nature of non-
15 judicial foreclosure and the state’s role as a state actor.

16 ***B. State Knowledge of Fraud and Systemic Pitfalls***

17 California officials acknowledge fraud within the deed recording system and non-
18 judicial foreclosure’s vulnerabilities, yet fail to act decisively. The 2020 Annual Report on
19 Real Estate Fraud by the California Department of Justice noted a 25% increase in deed
20 fraud cases from 2018 to 2020, many linked to non-judicial foreclosure flaws. A 2021
21 Legislative Analyst’s Office report criticized the lack of oversight as a fraud enabler. The
22 state’s complicity through inaction aligns with *Burton v. Wilmington Parking Authority*, 365
23 U.S. 715 (1961), where significant state involvement rendered private conduct state action.

- 24 • **State’s Inaction as State Action:** It is the state’s inaction—its failure to provide a
25 fair and impartial procedure despite known systemic flaws—that itself constitutes
26 state action. By maintaining a framework that enables fraud and inequity, the state
27 actively perpetuates a system that deprives homeowners of their rights.
- 28 • **Non-Recording of Promissory Notes:** A major issue exacerbating this fraud is that
the promissory note is not required to be recorded initially or after each

1 transfer/assignment under California law. This allows lenders and banks to
2 manipulate endorsements or allonges on the documents without full transparency or
3 oversight. A purchaser has no way to verify the validity of the note or deed
4 assignments by reviewing only the deed assignments in the county recorder’s office,
5 leaving borrowers and sellers vulnerable to behind-the-scenes manipulations that
6 undermine their property rights, including their ability to have a marketable title.

7 **C. Mandatory Judicial Process for State-Triggered Foreclosures**

8 Foreclosures initiated by state actions—like tax liens under California Revenue and
9 Taxation Code § 3691, eminent domain, or regulatory penalties—require judicial oversight.
10 When the state triggers a default (e.g., unpaid taxes), the ensuing non-judicial foreclosure
11 denies borrowers a chance to contest the state’s role, violating due process. *Mathews v.*
12 *Eldridge*, 424 U.S. 319 (1976), demands a meaningful pre-deprivation hearing, unmet here.
13 The state’s active initiation and passive allowance of non-judicial resolution constitute state
14 action under *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982).

15 **Evidence from Plaintiff’s Case:** Plaintiff’s foreclosure was triggered by a state
16 action like unpaid taxes, the state’s statutory framework (California Civil Code § 2924)
17 enabled a non-judicial process that denied him a pre-deprivation hearing. Plaintiff was
18 repeatedly denied remedy in any branch of California or United States government and could
19 not contest the sale’s validity or the trustee’s actions before losing his home and equity,
20 violating due/ judicial process principles. The state’s laws and denial of due/judicial process
21 facilitated this denial, tying it to state action.

22 **D. The Foreclosure Trustee: No Fiduciary Duty, No Neutrality**

23 California foreclosure trustees lack fiduciary duties, undermining fairness. In *Biatch*
24 *v. Archer-Daniels-Midland Co.*, 42 Cal.App.4th 1258 (1996), the court affirmed that trustees’
25 obligations under California Civil Code § 2924 are statutory—executing the sale—without
26 loyalty to borrowers. Unlike traditional trustees under California Probate Code § 16000 et
27 seq., they serve lenders’ interests. A 2019 California Law Review article, “The Foreclosure
28 Trustee: A Rubber Stamp for Lenders,” found trustees rarely challenge lender directives,

1 facilitating fraudulent sales. This delegation of coercive power implicates the state, per *Flagg*
2 *Bros., Inc. v. Brooks*, 436 U.S. 149 (1978).

3 **Evidence from Adam Bereki's Case:** In Bereki's case, the trustee acted as a
4 "rubber stamp" for Citizens, failing to ensure fairness. This bias, enshrined in California Civil
5 Code § 2924, favored the lender by selling Plaintiff's home non-judicially and for far less
6 than its value, transferring his equity to Hou. The state's delegation of authority to a non-
7 neutral trustee directly contributed to Plaintiff's loss, reinforcing its role as a state actor.

8 ***E. Lack of Disclosure: Concealing Defects***

9 Non-judicial foreclosure laws mandate minimal notice—publication and mailing—but
10 not disclosure of known defects with title or the property. This lack of transparency borrowers
11 from addressing title issues or procedural errors, favoring lenders. The state's failure to
12 mandate transparency entrenches an unfair system, reinforcing its state actor status, unlike
13 disclosure laws in ordinary sales and procedural fairness in judicial proceedings.

14 **Evidence from Plaintiff's Case:** On information and belief, the Trustee, Trustee
15 Corps refused to give potential buyers notice about the pending litigation issues involving
16 the property and prevented Plaintiff from giving notice by refusing to share the bidder's
17 information.

18 ***F. Human Unfairness and Need for Judicial Process***

19 Non-judicial foreclosure is inherently unfair, stripping homeowners of agency and
20 equity:

- 21 • **Biased Trustees:** Trustees owe no duty to homeowners, acting as lender agents
22 (*Biatch v. Archer-Daniels-Midland Co.*, 42 Cal.App.4th 1258 (1996)).
- 23 • **Opaque Sales:** Properties sell without appraisals or transparency, often at reduced
24 prices, with no surplus returned.
- 25 • **No Pre-Deprivation Recourse:** Wrongful foreclosure claims are post-deprivation
26 only (*Moeller v. Lien*, 25 Cal.App.4th 822 (1994)), forcing homeowners to lose
27 property before seeking redress.

1 Due process requires a meaningful hearing at a meaningful time (*Lassiter v.*
2 *Department of Social Services*, 452 U.S. 18 (1981)), a standard non-judicial foreclosure fails
3 by denying pre-deprivation challenges. Moreover, there is no explicit waiver of the right to
4 judicial process in these adhesion contracts. Recent U.S. Supreme Court jurisprudence,
5 such as *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), emphasizes that waivers of
6 fundamental rights must be knowing and voluntary, a standard rooted in *Johnson v. Zerbst*,
7 304 U.S. 458 (1938), requiring an intentional relinquishment of a known right. Borrowers like
8 Plaintiff do not explicitly waive judicial oversight, yet the state enforces this forfeiture.

9 **Evidence from Adam Plaintiff's Case:** Plaintiff faced all these inequities: a biased
10 trustee favoring Citizens, an opaque sale transferring his estimated \$1.18 million dollars in
11 equity to Hou, and no pre-deprivation recourse to contest the process. He did not explicitly
12 waive his right to judicial process, yet the state's framework imposed this loss, violating
13 due/judicial process and highlighting the need for reform.

14 ***The State's Duty to Ensure Due Process and Fundamental Fairness***

15 Under the California and United States Constitutions, the State is bound through
16 California Civil Code § 2924, to ensure due process and fairness, including:

- 17 • **Preventing Home Equity Theft:** Recognizing equity as a protected interest under
18 the Takings Clauses of the California and United States Constitutions, requiring
19 judicial oversight and/or fair market sales with surplus returned.
- 20 • **Ensuring Transparency:** Mandating promissory note filings under California
21 Government Code § 27201 to prevent fraud along with requiring full transparency in
22 the note and deed of trust assignment process to protect the property and
23 marketability of title.
- 24 • **Recognizing Borrower Rights:** Providing a pre-deprivation forum to contest defects
25 or assert defenses.

26 It has been held that the "comprehensive statutory [non-judicial foreclosure] scheme
27 [of § 2924] has three purposes: (1) to provide the creditor/beneficiary with a quick,
28 inexpensive and efficient remedy against a defaulting debtor/trustor; (2) to protect the
debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted

1 sale is final between the parties and conclusive as to a bona fide purchaser.” *Knapp v.*
2 *Doherty*, 123 Cal. App. 4th 76, 87 (2004) (citations and internal quotations omitted).
3 However, given the systemic issues outlined in this brief—home equity theft, biased trustees,
4 lack of transparency, and fraud vulnerabilities—it is unknown how this process protects the
5 debtor/trustor from wrongful loss of property and other constitutionally protected rights, such
6 as due process and just compensation. The state’s failure to fulfill this second purpose, while
7 upholding a biased system, makes it a state actor under *Shelley v. Kraemer* and *Lugar*,
8 triggering constitutional mandates.

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11 **G. Additional Legal Arguments Supporting State Action Classification**

- 12 • **State Enforcement:** The recording system legitimizes post-foreclosure titles (*Shelley*
13 *v. Kraemer*).
- 14 • **State-Created Right:** The power of sale stems from California Civil Code § 2924
15 (*Lugar*).
- 16 • **Entanglement:** Regulatory gaps foster fraud (*Burton*).
- 17 • **Public Interest:** The California Homeowner Bill of Rights (Cal. Civ. Code § 2923.4)
18 is undermined by non-judicial flaws.
- 19 • **Comparison to Judicial Foreclosure:** Judicial processes offer protections absent
20 here (*Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991)).
- 21 • **Judicial and Executive Involvement:** State action is further evident when courts are
22 called upon to adjudicate unlawful detainer actions and issue orders, enforced by the
23 executive branch through eviction proceedings, directly implicating the state in the
24 foreclosure’s consequences.

25 **Evidence from Plaintiff’s Case:** The state’s recording system legitimized Hou’s title
26 despite Plaintiff’s equity loss, the power of sale enabled the foreclosure, and regulatory gaps
27 allowed it to proceed without scrutiny. Officials of California and the California Homeowner
28 Bill of Rights failed to protect Plaintiff, contrasting with judicial foreclosure’s safeguards. As
is the case here, an unlawful detainer action by Hou has followed, resulting in potential
judicial and executive enforcement that could further entrench the state’s role, further tying
it to Plaintiff’ deprivation.



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Conclusion

Non-judicial foreclosure’s punitive home equity theft—enabled by state statutes and lacking judicial oversight—stands as the foremost reason to reclassify it as state action, alongside its Roman law roots, systemic fraud, state-triggered cases, biased trustees, poor disclosure, and unfairness. Cases like *Shelley v. Kraemer*, *Tyler v. Hennepin County*, and *Kelo v. City of New London* affirm the state’s role in denying due process and property rights. Additional arguments—state inaction, one-sided contracts of adhesion, lack of explicit waiver, non-recording of promissory notes, and judicial/executive enforcement—further compel this reclassification. Constitutional protections demand it for California homeowners.

**SEVENTH CLAIM FOR RELIEF:
CHALLENGE TO THE CSLB’S STRUCTURAL INTEGRITY UNDER THE CALIFORNIA
CONSTITUTION FOR VIOLATION OF SEPARATION OF POWERS**

(Against Defendants Bonta (Attorney General) and Fogt (Registrar of Contractors) in their official capacities)

The Contractors State License Board (CSLB), established under California Business and Professions Code § 7000.5 within the Department of Consumer Affairs, regulates contractors in California. Plaintiff contends the CSLB is an unconstitutional fourth branch of California government that violates the separation of powers mandated in the California Constitution.

a. Standing to Challenge the CSLB’s Structural Integrity

Plaintiff asserts that the CSLB’s combination of rule-making, enforcement, and adjudicatory powers constitutes an unconstitutional structural flaw that threatens his property rights—namely, his license as a livelihood—and his due process rights under state law. This brief establishes Plaintiff’s standing to bring this facial challenge to the CSLB’s structure, demonstrating his personal stake and concrete injury as required by California law.

B. Legal Standard for Standing in California

Under California law, standing requires that a plaintiff have a “real and substantial interest” in the case, distinct from a mere abstract grievance (Code Civ. Proc. § 367; *Carsten*

1 *v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796-97). The plaintiff must show: (1)
2 a personal, legally protected interest directly affected by the challenged matter; (2) an actual
3 or imminent invasion of that interest; and (3) a causal connection between the defendant's
4 conduct and the injury (*Associated Builders & Contractors, Inc. v. San Francisco Airports*
5 *Com.* (1999) 21 Cal.4th 352, 361-62). The California Supreme Court has recognized that
6 standing exists where a plaintiff is "within the class of persons affected" by a governmental
7 body's authority (*Stocks v. California Highway Patrol* (1971) 6 Cal.3d 1, 9). For structural
8 challenges to an agency's constitutionality, exhaustion of administrative remedies is not
9 required, as agencies lack jurisdiction to rule on their own validity (*County of Alpine v. County*
10 *of Tuolumne* (1958) 49 Cal.2d 787, 798).

11 **c. Plaintiff Has Standing to Challenge the CSLB'S Structure**

12 Plaintiff satisfies California's standing requirements because he is a general
13 contractor purportedly required to obtain a license from the CSLB to engage in his
14 profession, subjecting him to the agency's authority. The CSLB's allegedly unconstitutional
15 structure directly affects Plaintiff's legally protected interests, creating an imminent threat of
16 injury sufficient to confer standing.

17 **i. Plaintiff Has a Personal, Legally Protected Interest Affected**
18 **by the CSLB's Structure**

19 As someone purportedly required to obtain a license to engage in his profession as
20 a general contractor, Plaintiff has a personal, legally protected interest that is directly
21 affected by the challenged matter (Code Civ. Proc. § 367; *Carsten v. Psychology Examining*
22 *Com.* (1980) 27 Cal.3d 793, 796-97). In *Carsten*, the California Supreme Court held that a
23 psychologist subject to a licensing board's authority had standing to challenge its procedures
24 because they affected her license status. While *Carsten* involved a specific action, the
25 principle extends to structural challenges where, as here, the agency's structure itself
26 impacts the regulated party's status. The CSLB's authority over Plaintiff's ability to work as
27 a contractor—through its licensing scheme—implicates his property interest in his livelihood
28 and his inalienable right to his time and labor under California Constitution, Article I, Section
1. This personal stake distinguishes Plaintiff from the general public and establishes his
beneficial interest in the case.

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ii. The CSLB's Structure Subjects Plaintiff to Actual or Imminent Injury

The CSLB's lack of proper checks and balances subjects Plaintiff to arbitrary or unchecked power in licensing matters, constituting an imminent invasion of his legally protected rights. Specifically:

1. **Unchecked Power in Licensing Matters:** The CSLB exercises rule-making, enforcement, and adjudicatory powers over Plaintiff's license without sufficient oversight from the courts or legislature. This structural flaw concentrates authority in a single agency, violating the separation of powers and exposing Plaintiff to arbitrary governance.
2. **Threat to Property and Due Process Rights:** The CSLB's ability to define licensing requirements, enforce them, and adjudicate disputes threatens Plaintiff's property rights (his license as a livelihood) and his due/judicial process rights under state law. Should the Court not rule in Plaintiff's favor that he has an inalienable to his time and labor and is not required to obtain a license and pay a recurring fee for the privilege of pursuing his occupation, Plaintiff will be compelled to obtain a license under this regime, facing an imminent invasion of his rights to due and judicial process as guaranteed by the California Constitution's separation of powers doctrine (Cal. Const., Art. III, § 3).
3. **Class of Persons Affected:** The California Supreme Court has recognized standing where a plaintiff is "within the class of persons affected" by a governmental body's authority (*Stocks v. California Highway Patrol* (1971) 6 Cal.3d 1, 9). As a general contractor subject to the CSLB's licensing scheme, Plaintiff falls squarely within this class, reinforcing his standing to challenge its structure.

iii. Causal Connection Between the CSLB's Structure and Plaintiff's Injury

Plaintiff's injury stems directly from the CSLB's unconstitutional structure. The agency's consolidation of powers affects the entire licensing scheme, which Plaintiff claims: violates his inalienable right to his time and labor (Cal. Const., Art. I, § 1) and. Violates his rights to be constitutionally governed through the system of checks and balances established by the California and United States Constitutions. Absent judicial intervention,

1 Plaintiff faces the Hobson's choice of submitting to an illegitimate authority or forgoing his
2 profession, both of which constitute concrete harm traceable to the CSLB's structural flaw.

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4 ***iv. Redressability***

5 A favorable ruling declaring the CSLB's structure unconstitutional would redress
6 Plaintiff's injury by invalidating the agency's authority over his profession or necessitating
7 legislative or judicial reforms to align it with separation of powers principles. This relief would
8 protect Plaintiff's property and due process rights, satisfying the redressability requirement
9 implicit in California standing law.

10 ***v. No Exhaustion of Administrative Remedies is Required***

11 Plaintiff need not exhaust administrative remedies before challenging the CSLB's
12 structure, as this is a facial constitutional claim beyond the agency's jurisdiction to resolve.
13 The CSLB cannot adjudicate whether its own existence violates separation of powers
14 (*County of Alpine v. County of Tuolumne* (1958) 49 Cal.2d 787, 798). Thus, Plaintiff properly
15 brings this matter directly to the Court for declaratory relief (Code Civ. Proc. § 1060).

16 ***vi. Conclusion***

17 Plaintiff has standing to challenge the constitutionality of the CSLB's structure under
18 California law. As a general contractor subject to its licensing authority, he possesses a
19 personal, legally protected interest directly affected by the agency's lack of proper checks
20 and balances and its unchecked rule-making, enforcement, and adjudicatory powers. The
21 legislative determination that Plaintiff has no inalienable right to his time and labor in
22 construction contracts more than \$1,000 (§§ 7027.2, 7048) and the structural flaws inherent
23 in the CSLB's organization and operation threatens Plaintiff's property rights in his livelihood,
24 his due/judicial process rights, and his inalienable right to his time and labor. Supported by
25 precedents such as *Carsten* and *Stocks*, Plaintiff's status within the class of persons affected
26 by the CSLB, coupled with the imminent harm of operating under an unconstitutional regime,
27 establishes his right to seek judicial relief. Plaintiff respectfully requests that the Court
28 recognize his standing and proceed to the merits of his separation of powers claim.

Overview

In concert with all Plaintiff's other allegations set forth in this action (i.e. Motion to Vacate: challenge to the licensing requirements as a violation of the inalienable rights to life, liberty, property, privacy, and the pursuit of happiness, Cal. Const. Art. I, §1; state cannot covert inalienable private rights into public privileges) he asserts the Contractors State License Board is unconstitutional for the following reasons:

The California Constitution mandates a strict separation of powers: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution" (Cal. Const. art. III, § 3). The Contractors State License Board (CSLB), established under California Business and Professions Code §§ 7000–7170, flouts this mandate by consolidating all three powers into an unelected agency, violating the foundational principles of democratic governance. James Madison, in *The Federalist* No. 47, warned, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands... may justly be pronounced the very definition of tyranny" (Madison, 1788). Referencing the scholarship of Brent Allan Winters in his *Excellence of the Common Law*, the Contractors State License Board (CSLB) stands as an unconstitutional affront to common law principles, embodying the "tyranny of the total state" (Preface, p.019). Winters insists that judicial power belongs solely to courts, not agencies, with authority flowing from God to individuals, not the state (Chapter III, §3.11.3, p.408; Chapter IV, §4.1.3, p.445), yet the CSLB's rulemaking (§7008), enforcement (§7090), and adjudication (§7085) consolidate power in a manner mirroring Roman civil law's centralization (Chapter II, §2.7.6, p.125), eroding the common law's separation of powers (Chapter III, §3.7, p.246). This structure subverts liberty by sidelining judicial checks, a critique validated by the CSLB's unchecked suspension of Plaintiff's license without a jury or evidence of harm, which Winters ties to scriptural standards rejecting punishment absent judicial process (Chapter IV, §4.7, p.524). Furthermore, Winters champions the jury as a cornerstone of justice, resisting unjust laws (Chapter IV, §4.3, p.457), and condemns civil law's inquisitorial processes—such as the CSLB's mandatory arbitration (§7085)—as tyrannical for forcing Plaintiff into a non-judicial forum without waiver (Complaint, *infra* "Absence of Explicit Waiver"; Chapter V, §5.1.5, p.600; Chapter III, §3.7.12, p.296), thus exemplifying the "tyranny of the total state" that

1 common law seeks to dismantle. This section expands on the CSLB’s unconstitutional
2 structure, with particular emphasis on its delegation of judicial authority, including its
3 mandatory arbitration program under Section 7085, which further entrenches its despotic
4 overreach.

5 **A. Legislative Powers**

6 The CSLB wields legislative authority through expansive rulemaking:

- 7
- 8 • **Adoption of Regulations:** Section 7008 authorizes the CSLB to “adopt rules
9 and regulations... reasonably necessary to carry out the provisions of this
10 chapter,” granting its edicts legal force without legislative oversight.
- 11 • **Licensing Standards:** Section 7065 empowers the CSLB to set experience,
12 education, and examination criteria.
- 13 • **Contractor Classifications:** Section 7055 allows the CSLB to define
14 contractor specialties.
- 15 • **Fee Establishment:** Section 7137 permits fee-setting, a taxation-like power.
- 16 • **Exemptions:** Section 7040 lets the CSLB carve out exemptions.
- 17 • **Continuing Education:** Section 7008 mandates ongoing requirements.

18 This delegation is a constitutional abomination. Lord Hewart, in *The New Despotism*,
19 excoriated such practices: “The power to make regulations having the force of law is a power
20 which, in effect, enables the Executive to modify the provisions of statutes, and even to
21 override them” (Hewart, 1929, p. 10). He warned, “This is not law; it is lawlessness
22 masquerading as law” (Hewart, 1929, p. 47). Gary S. Lawson, in *The Rise and Rise of the*
23 *Administrative State*, Harvard Law Review (107 Harv. L. Rev. 1231)(1994) concurs, arguing
24 vague standards like ‘reasonably necessary’ violate nondelegation (Lawson, 1994, p. 1239).
25 Justice Clarence Thomas, in *Whitman v. American Trucking Associations, Inc.*, 531 U.S.
26 457, 487 (2001) (concurring), condemned such transfers: Thomas warns against excessive
27 delegation (531 U.S. at 487). *Clean Air Constituency v. California State Air Resources*
28 *Board*, 11 Cal. 3d 801 (1974), struck down a similar delegation, signaling Section 7008’s
vulnerability.

B. Executive Powers

The CSLB and its Registrar possess broad administrative powers to enforce the Contractors' State License Law (§§ 7000 et seq.), including issuing citations, assessing fines, and imposing disciplinary actions like license suspension or revocation. Critically, these actions occur without a mandatory judicial process following an allegation, allowing the CSLB to act as accuser, adjudicator, and enforcer. The CSLB exercises executive might through enforcement:

- **Licensing Operations:** Section 7072 governs issuance and renewal.
- **Examinations:** Section 7065 mandates testing.
- **Investigations:** Section 7090 authorizes probes into violations.
- **Compliance Enforcement:** Section 7071.5 enforces bonding.
- **Citations and Penalties:** Sections 7028.7 and 7028.17 impose fines and stop orders.
- **Record-Keeping:** Sections 7011 and 7011.4 mandate administrative duties.

i. CSLB Powers to Fine Without Post-Allegation Judicial Process

Under Business and Professions Code § 7099, the Registrar may issue a citation with a civil penalty and/or order of correction upon probable cause of a violation, such as unlicensed contracting (§ 7028) or fraud (§ 7110). After issuance, no automatic judicial process is triggered to adjudicate the accused's rights. Instead:

- **Section 7099.4:** The citation becomes a final order enforceable by the CSLB if not contested within 15 working days. Enforcement proceeds administratively, without court involvement, unless the cited party affirmatively appeals.
- **Section 7099.2:** Civil penalties range from a minimum of \$200 to a maximum of \$15,000 per citation, escalating for severe violations (e.g., unlicensed work in disaster areas under § 7028.16). Penalties are set by the Registrar based on factors outlined in 16 CCR § 884 (e.g., harm, intent), but no judicial review is required to confirm their legality or proportionality.

This process—where the CSLB alleges, assesses, and enforces penalties internally—bypasses judicial oversight post-allegation, vesting quasi-judicial authority in an

1 administrative body. Only if the cited party requests a hearing does the matter enter an
2 administrative review process, still within the CSLB's domain. Cal. Const. Article I, § 9 (Bill
3 of Pains and Penalties Clause), U.S. Const. Art I, §10 (*Ibid.*) and Article I, § 7 (Due Process)
4 requires a judicial determination of rights in the first instance not after an administrative
5 process of any kind.

6 ***ii. Punishments for Noncompliance***

7 Failure to pay a fine or comply with a citation triggers additional penalties, enforced
8 administratively without mandatory judicial intervention:

9 **1. License Suspension:**

- 10 ○ **Section 7090.1:** Noncompliance with a citation allows the Registrar to
11 suspend a license until payment or correction is made, effective upon the
12 citation's finality.
- 13 ○ **Section 7125.2:** Automatic suspension occurs for lapses in workers'
14 compensation insurance, with no judicial hearing unless appealed.

15 **2. License Revocation:**

- 16 ○ **Section 7106:** The Registrar may revoke a license for noncompliance or other
17 violations (e.g., abandonment under § 7107) after an administrative hearing, if
18 requested. Absent appeal, revocation proceeds unilaterally.
- 19 ○ **Section 7102:** Revoked licensees face a one-to-five-year reapplication bar
20 and potential bonding requirements (§ 7071.5).

21 **3. Criminal Penalties:**

- 22 ○ **Section 7028:** Unlicensed contracting is a misdemeanor, with fines up to
23 \$5,000 and/or six months in jail (first offense), escalating for repeats. While
24 prosecuted judicially, the CSLB initiates these via citation, influencing
25 outcomes.

26 **4. Additional Costs:**

- 27 ○ **Section 7118:** Restitution or investigation costs may be ordered, enforceable
28 administratively if unpaid.

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iii. Appellate Remedies and Their Extent

Post-citation remedies are primarily in-house, with limited judicial recourse:

- **In-House Appeals:**
 - **Section 7099.5:** A cited party may request an informal conference with the Registrar or a formal hearing under the Administrative Procedure Act (Government Code §§ 11500 et seq.), conducted by an administrative law judge (ALJ). The CSLB retains final authority over the ALJ’s recommendation, per § 7099.6, keeping the process internal.
- **Judicial Review:**
 - After exhausting administrative remedies, a party may petition a superior court for a writ of administrative mandamus under Code of Civil Procedure § 1094.5. This review is deferential, limited to determining if the CSLB abused discretion, lacked substantial evidence, or violated due process. No de novo judicial trial is guaranteed, and the burden rests on the petitioner to overturn the CSLB’s decision violating due process by reversing the burden of proof. This optional, post-hoc remedy does not equate to a mandatory judicial process following an allegation.

iv. Due Process and Excessive Fines Concerns

The absence of a mandatory judicial process post-allegation violates California’s due process guarantee and the California and United States Constitutions prohibitions against bills of pains and penalties, as punishment is imposed and enforced by the CSLB without automatic court review. Moreover, the CSLB’s penalty structure implicates the Excessive Fines Clause (California Constitution, Article I, § 17; U.S. Constitution, Eighth Amendment). In *People v. Cowan* (2022) 47 Cal. App. 5th 32, the California Court of Appeal held that fines must be proportional to the offense and the offender’s ability to pay, requiring a judicial analysis of factors like culpability, harm, and financial capacity. The CSLB lacks any statutory or regulatory mechanism to conduct this analysis:

- 1 • **No Proportionality Review:** Section 7099.2 and 16 CCR § 884 provide penalty
2 ranges but do not mandate consideration of offense gravity relative to the fine, as
3 required by *Cowan*.
- 4 • **No Ability-to-Pay Assessment:** The CSLB has no process to evaluate a licensee’s
5 financial circumstances, a judicial function critical to avoiding excessive fines.
- 6 • **Administrative Overreach:** By imposing fines up to \$15,000 without judicial
7 oversight, the CSLB usurps a role reserved for courts, rendering its penalties
8 constitutionally suspect.

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10 **v. Statutory References**

- 11 • § 7000.5: CSLB establishment.
- 12 • § 7028: Misdemeanor penalties for unlicensed contracting.
- 13 • § 7090.1: Suspension for noncompliance.
- 14 • § 7099: Citation issuance authority.
- 15 • § 7099.2: Penalty range (\$200–\$15,000).
- 16 • § 7099.4: Citation finality within 15 days.
- 17 • § 7099.5–7099.6: In-house appeal process.
- 18 • § 7102: Reapplication restrictions.
- 19 • § 7106: Revocation grounds.
- 20 • § 7118: Restitution and costs.
- 21 • § 7125.2: Insurance-related suspension.
- 22 • 16 CCR § 884: Penalty guidelines.

23 **vi. Conclusion**

24 The CSLB’s power to allege violations, impose fines (\$200–\$15,000), and enforce
25 penalties like suspension or revocation—without a mandatory judicial process post-
26 allegation—creates an unconstitutional administrative scheme. Appellate remedies are
27 predominantly in-house, with judicial review available only through a discretionary,
28 deferential writ process. Compounding this, the CSLB’s failure to assess proportionality or
ability to pay under *People v. Cowan* standards highlights its lack of judicial authority to
impose fines. This enforcement power, fused with other roles, breeds despotism. Hewart
decried such executive overreach: “The Executive has been armed with new and formidable

1 weapons, enabling it to coerce the subject without accountability” (Hewart, 1929, p. 14). He
2 added, “What we see is the Executive taking unto itself powers which properly belong
3 elsewhere [in this instance in the judiciary as a check and balance]” (Hewart, 1929, p. 52).
4 Lawson labels this a “structural assault on the Constitution,” noting, “When agencies enforce
5 their own rules, they become judge, jury, and executioner” (Lawson, 1994, p. 1241).
6 Thomas, in *Department of Transportation v. Association of American Railroads*, 575 U.S.
7 43, 61 (2015) (concurring) questions agency accountability (575 U.S. at 61).

8 C. Judicial Powers

9 The CSLB usurps judicial authority, most egregiously through its delegation of
10 adjudicative power to itself and private arbitrators under Section 7085:

- 11 • **Hearings:** Section 7090 allows the CSLB to adjudicate complaints.
- 12 • **Disciplinary Actions:** Section 7090 imposes fines, suspensions, or
13 revocations.
- 14 • **Restitution:** Section 7090 orders remedies.
- 15 • **Arbitration:** Section 7085 mandates CSLB-run arbitration, delegating judicial
16 power to private arbitrators.
- 17 • **Appeals:** Section 7090 permits self-review.

18 This is a judicial travesty, compounded by the CSLB’s arbitration program, which
19 violates the separation of powers in multiple dimensions. Hewart thundered against
20 administrative tribunals: “They are not Courts at all, but merely departments of the Executive,
21 intended to secure departmental convenience at the expense of justice” (Hewart, 1929, p.
22 35). He added, “This is a persistent and well-contrived system for placing administrative
23 action beyond the reach of the Courts” (Hewart, 1929, p. 14). Lawson insists, “The judicial
24 power is vested in the courts, not in administrative agencies—any deviation is a
25 constitutional betrayal” (Lawson, 1994, p. 1246). Thomas, in *Michigan v. EPA*, 576 U.S. 743,
26 763 (2015) (concurring), Thomas critiques agency judicial power (576 U.S. at 763). *McHugh*
27 *v. Santa Monica Rent Control Board*, 49 Cal. 3d 348 (1989), demands robust judicial review,
28 not the CSLB’s deferential “substantial evidence” sham (Cal. Code Civ. Proc. § 1094.5).

1 ***i. Unconstitutional Delegation of Judicial Power to the CSLB and Private Arbitrators***

2 The California Legislature has granted the CSLB authority under Section 7085 to
3 establish and oversee an arbitration program to resolve disputes under state licensing laws,
4 delegating judicial power to an executive agency and, subsequently, to a private arbitration
5 company. This violates Article VI, Section 1 of the California Constitution, which vests judicial
6 power exclusively in the state’s courts: “The judicial power of this State is vested in the
7 Supreme Court, courts of appeal, and superior courts...” Judicial power encompasses the
8 authority to adjudicate disputes, interpret laws, and issue binding decisions—functions the
9 CSLB and its appointed private arbitrators perform when resolving contractor licensing
10 disputes, such as those implicating Plaintiff’s rights.

11 Justice Clarence Thomas has forcefully rejected such delegations. In his concurrence
12 in *Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 61
13 (2015), he defined judicial power as “the power to render dispositive judgments” and
14 asserted it must reside with the judiciary, rejecting the notion of “quasi-judicial” power
15 exercisable by executive or private actors: “The Constitution does not expressly grant to
16 agencies the power to issue rules with the force of law, much less the quasi-judicial authority
17 they often exercise in practice” (*Perez v. Mortgage Bankers Association*, 575 U.S. 92, 115
18 (2015) (Thomas, J., concurring)). Here, the CSLB’s authority to appoint private arbitrators
19 who issue binding rulings crosses a constitutional boundary. Thomas emphasized in
20 *Association of American Railroads* that delegating governmental power—especially judicial
21 power—to private entities is impermissible because it undermines accountability and the
22 constitutional structure. By vesting the CSLB with judicial authority and allowing it to
23 outsource that power to a private company, the legislature has violated the separation of
24 powers at both state and federal levels, rendering the system unconstitutional.

25 ***ii. Contractor-Customer Disputes as Private Rights Disputes***

26 Disputes between contractors and their customers, such as those between Plaintiff
27 and the Humphreys, are private rights disputes, not public rights or privileges, and must be
28 adjudicated by Courts, not administrative agencies or their delegates. Justice Thomas’s
opinions, particularly in *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*,
138 S. Ct. 1365 (2018), clarify the distinction:

- 1 • **Private Rights:** Disputes between private parties over traditional common law
2 matters—like contracts, property, or torts—historically require judicial resolution.
- 3 • **Public Rights:** Matters between the government and individuals, such as taxation or
4 public benefits, may be assigned to executive agencies.

5 Contractor-customer disputes, like Plaintiff’s with the Humphreys, typically arise from
6 contractual relationships over payment, quality of work, or breach of contract—classic
7 contract law matters rooted in private rights, not public interests. While the state purports to
8 have a regulatory interest in licensing contractors, this does not transform the dispute into a
9 public right. The state’s role is regulatory, not proprietary, and the dispute remains a private
10 contractual conflict. Thomas dissents, arguing private rights require Article III courts (138 S.
11 Ct. at 1380). He distinguished public privileges—government-conferred benefits that can be
12 conditioned or adjudicated administratively—from private rights, which exist independently
13 of statutory creation and demand judicial protection. The adjudication of a dispute over
14 private contract is not about the privilege of licensure but about enforcing private obligations,
15 making it a private right that may cannot be subjected to CSLB arbitration.

16 Submitting these disputes to administrative arbitration usurps judicial power and
17 violates the separation of powers. Historically, contract disputes have been resolved by
18 Courts, not administrative bodies, and Thomas’s emphasis on the original understanding of
19 judicial power supports maintaining this tradition.

20 ***iii. Mandatory Arbitration Under Section 7085: A Historical Echo of Tyranny***

21 Section 7085(b) mandates arbitration for disputes involving potential violations of
22 specified licensing laws where the contract price or damages are equal to or less than the
23 bond amount (\$25,000): “In all cases in which a possible violation... exists and the contract
24 price, or the demand for damages is equal to or less than the amount of the bond required
25 under Section 7071.6... the complaint shall be referred to arbitration...” The use of “shall”
26 imposes a compulsory process, echoing the tyranny of King George III’s admiralty courts,
27 which the American Revolution rejected. The *Declaration of Independence* (1776)
28 denounced the King for depriving colonists “in many cases, of the benefits of Trial by Jury,”
a grievance rooted in the *Declaration of Resolves of the First Continental Congress* (1774),
which protested admiralty courts’ denial of jury trials as an assault on “the rights of

1 Englishmen.” These crown-appointed tribunals were instruments of oppression, fueling
2 revolutionary fervor. Section 7085 resurrects this injustice by mandating arbitration without
3 party consent, relegating contractors’ claims to an unelected CSLB bureaucrat or private
4 arbitrator, bypassing the judicial system and denying the right to a jury trial.

5 ***iv. Absence of Explicit Waiver and Coercive Nature of Licensing***

6 Section 7085 imposes mandatory arbitration without explicit waiver language in either
7 the Business and Professions Code §§ 7000 et seq. or the “Application for Original
8 Contractor License,” which Plaintiff completed (see “Factual Background and Arguments at
9 Law: Plaintiff Qualifies for a General Contractor License”). The application contains no
10 mention of arbitration or the forfeiture of judicial rights, nor does it require contractors to
11 acknowledge this condition of licensure. In *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), the
12 U.S. Supreme Court held that waiving a constitutional right requires “an intentional
13 relinquishment or abandonment of a known right or privilege.” Without explicit notice, Plaintiff
14 could not knowingly waive his right to a judicial forum. The case *SEC v. Jarkesy*, 603 U.S.
15 ____ (2024) reinforces this, ruling that administrative adjudication of fraud (a common law
16 claim) seeking civil penalties violates the Seventh Amendment absent consent, as it denies
17 a jury trial.

18 Moreover, the mandatory licensing framework (Sections 7000 et seq.) transforms any
19 implicit waiver into a coercive condition. Plaintiff has no practical alternative but to comply to
20 earn his livelihood, undermining voluntariness. The doctrine of unconstitutional conditions
21 prohibits conditioning a benefit (a license) on the surrender of a constitutional right absent
22 informed consent (*Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)). *Jarkesy* struck down the
23 SEC’s in-house tribunals for lacking consent, a defect mirrored in Section 7085’s
24 unconsented mandate.

25 ***v. Violation of the Non-Delegation Doctrine***

26 Even if some delegation were permissible, the CSLB’s arbitration system lacks the
27 legislative standards required by the non-delegation doctrine. California courts demand clear
28 guidelines to prevent arbitrary authority (*Kugler v. Yocum*, 69 Cal. 2d 371 (1968); *People v.*
Wright, 30 Cal. 3d 705 (1982)):

- 1 • **No Arbitrator Qualifications:** The statute specifies no requirements for expertise,
2 impartiality, or ethical conduct.
- 3 • **No Procedural Safeguards:** The process lacks rules governing hearings, evidence,
4 or appeals.
- 5 • **No Oversight Framework:** There are no mechanisms to ensure consistency or
6 review decisions.

7 This unfettered discretion violates the non-delegation doctrine. Thomas's
8 concurrence in *Association of American Railroads* cautions that delegations to private
9 entities are particularly suspect due to their lack of accountability, a flaw evident in the
10 CSLB's outsourcing of judicial power which it has no power to exercise to begin with.

11 ***vi. Lack of Executive Oversight Under Seila Law***

12 The U.S. Supreme Court in *Seila Law LLC v. Consumer Financial Protection Bureau*,
13 140 S. Ct. 2183 (2020), ruled that agency structures violating separation of powers—such
14 as insulation from executive removal—are unconstitutional. Thomas, joining the majority and
15 writing separately, argued that executive power must remain under the President's control
16 for accountability. Under Cal. Const. art. V, § 1, the Governor ensures the faithful execution
17 of laws, yet the CSLB's appointment of private arbitrators operates without gubernatorial
18 supervision. These arbitrators, exercising judicial power, are insulated from the Governor's
19 authority, undermining the executive's role and mirroring the accountability deficit
20 condemned in *Seila Law*.

21 ***vii. Absence of an Oath of Office***

22 The California Constitution requires public officers to take an oath to uphold the U.S.
23 and California Constitutions (Cal. Const. art. XX, § 3). While CSLB arbitrators are not
24 formally public officers, their exercise of judicial power makes them de facto officials. Their
25 failure to take an oath—unlike arbitrators in California's judicial arbitration program (Cal.
26 Rules of Court, rule 3.814)—highlights their lack of accountability and the system's disregard
27 for Constitutional norms, further evidencing its unconstitutionality.

D. Concentration of Powers and Lack of Accountability

The CSLB’s appointed board (Section 7001) merges all powers without democratic tether, a fourth branch run amok, exacerbated by its arbitration program. Hewart’s indictment is blistering: “The whole scheme is one for the conferring of arbitrary power on the executive, unanswerable to Parliament or the Courts” (Hewart, 1929, p. 14). He warned, “This is despotism in action, cloaked as administration” (Hewart, 1929, p. 77). Lawson echoes, the concentration of powers in agencies like the CSLB is the very definition of tyranny—a rejection of the framers’ design (Lawson, 1994, p. 1248). Thomas, in *Kisor v. Wilkie*, 139 S. Ct. 2400, 2447 (2019) (dissenting), stated, “This amalgamation of powers obliterates the Constitution’s tripartite structure.” Philip Hamburger, in *Is Administrative Law Unlawful?*, adds, “Such agencies are a return to the absolute power of kings, repugnant to liberty” (Hamburger, 2014, p. 2). Justice Thomas further condemned this in *Seila Law*: “The Constitution does not vest the Federal Government with an undifferentiated ‘governmental power.’ It vests three distinct types of power in three different branches... The Constitution’s vesting clauses do not mention ‘quasi-legislative’ or ‘quasi-judicial’ power” (140 S. Ct. at 2212 (Thomas, J., concurring)). The CSLB’s consolidation, including its judicial delegation to private arbitrators, operates outside this framework, directly contributing to the structural errors in the CSLB’s entire being as unlawful fourth branch of government.

E. Denial of Inalienable Rights: The CSLB’s Licensing Scheme

The CSLB’s licensing regime tramples the right to earn a living, protected by California Constitution Article I, Section 1.

i. Right to Work

The right to labor is sacrosanct. John Locke proclaimed, “The labor of his body and the work of his hands... are properly his” (Locke, 1689, *Second Treatise*, Chap. V, § 27). The U.S. Supreme Court upheld this in *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), and *Truax v. Raich*, 239 U.S. 33, 41 (1915). The CSLB’s licensure mandate (§§ 7028, 7031) and administrative penalties—like fines or license suspensions—strip this right absent state consent. Hewart warned of such overreach: “To place the subject at the mercy of administrative caprice is to destroy his liberty” (Hewart, 1929, p. 17).



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ii. Plaintiff’s Case: Fee Non-Payment, Not Incompetence

The plaintiff met all substantive qualifications under Section 7068 but faced penalties due to a fee lapse (Section 7137). *Pena v. Municipal Court*, 96 Cal.App.3d 77, 82 (1979), and *State v. Bates*, 305 N.W.2d 426, 429 (Iowa 1981), reject sanctions for fee lapses when competence is proven. The Licensing Laws response—including license suspension (§ 7071.17)—lacks a public safety basis, violating due process. Lawson notes, “When agencies punish without public purpose, they wield power for power’s sake (Lawson, 1994, p. 1241).

iv. Strict Liability and Excessive Penalties

The CSLB’s strict liability penalties, such as fines under Section 7028.7 or license revocation under Section 7090, lack *mens rea*, defying *Staples v. United States*, 511 U.S. 600, 618 (1994) (Thomas, J.), and *People v. Simon*, 9 Cal.4th 493, 522 (1995). *Lambert v. California*, 355 U.S. 225, 228 (1957), bars strict liability without notice—here absent. Thomas recognized, “Severe sanctions without intent erode justice itself” (*Staples*, 511 U.S. at 618).

F. The CSLB’s Licensing Laws as Unconstitutional Public Welfare Offenses

Public welfare offenses—regulatory crimes aimed at protecting public health, safety, and welfare—impose strict liability without requiring intent (*mens rea*). Typically involving minor penalties and lacking the moral stigma of *malum in se* crimes (Witkin, *Cal. Crim. Law 5th Elements* § 20 (2024); *Morissette v. United States*, 342 U.S. 246, 249 (1952)), these offenses underpin all CSLB licensing laws (Business and Professions Code §§ 7000–7170). However, when the CSLB imposes criminal-like penalties—such as administrative fines or license revocations—without due/judicial process protections, it exceeds constitutional limits under the California Constitution (Cal. Const. Art. I, §§ 7, 9) and the U.S. Constitution (U.S. Const. Art. 1 § 10). This section argues that public welfare offenses are unconstitutional because they fall outside the recognized categories of civil and criminal actions and fail to provide requisite safeguards.

i. All CSLB Licensing Laws as Public Welfare Offenses

The CSLB’s licensing laws operate as public welfare offenses:

- **Section 7028.7:** Authorizes fines up to \$5,000 for unlicensed contracting without proving intent.
- **Section 7031:** Authorizes effectively unlimited fines for unlicensed contracting without proving intent.
- **Section 7090:** Permits license revocation or suspension for violations, adjudicated administratively without *mens rea*.
- **Section 7028:** Imposes misdemeanor penalties for regulatory breaches, bypassing intent.

These strict liability measures purportedly aim to protect consumers (*Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal.3d 988, 995 (1991)), but their criminal-like penalties exceed traditional public welfare offense bounds and there is no known proof that consumers are actually protected from harm (e.g. thousands of CSLB arbitrations even after it deems contractors competent).

iii. Constitutional Framework and Limitations

The U.S. and California Constitutions recognize only civil and criminal actions, leaving public welfare offenses in a constitutional limbo:

- **California Code of Civil Procedure Section 22:** Defines an “action” as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, or the redress or prevention of a wrong” (Cal. Code Civ. Proc. § 22). This governs civil proceedings, excluding administrative enforcement.
- **California Penal Code Section 15:** Defines a “crime or public offense” as “an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or 5. Disqualification to hold and enjoy any office of honor, trust, or profit” (Cal. Penal Code § 15). This categorizes public welfare offenses as crimes or public offenses, implying they must adhere to criminal due process protections.
- **Constitutional Conflict:** Public welfare offenses, enforced administratively by the CSLB, fit neither category cleanly. They impose penalties akin to criminal

1 sanctions (fines, license revocation) without *mens rea* or judicial oversight,
2 violating due process and resulting in a bill of pains and penalties (*Lambert v.*
3 *California*, 355 U.S. 225, 228 (1957); *Staples v. United States*, 511 U.S. 600,
4 618 (1994)).

5 • **Precedents:**

- 6 ○ *Staples v. United States*: Justice Thomas held that severe penalties
7 require mens rea, stating, “punishing a violation as a felony is simply
8 incompatible with the theory of the public welfare offense” absent intent
9 (511 U.S. at 618-19).
- 10 ○ *United States v. Bajakajian*, 524 U.S. 321 (1998): Thomas ruled that
11 punitive forfeitures must be proportional (524 U.S. at 334).
- 12 ○ *People v. Simon*, 9 Cal.4th 493 (1995): Rejected strict liability for harsh
13 penalties (9 Cal.4th at 522).

- 14 • **Scholarly Critique:** Richard Epstein argues, “Strict liability in regulatory
15 offenses, when coupled with severe penalties, undermines the moral
16 foundation of the law” (*Simple Rules for a Complex World*, 1995, p. 102).
17 Randy Barnett adds, “The administrative state’s reliance on strict liability
18 erodes the presumption of innocence and due process” (*Restoring the Lost*
19 *Constitution*, 2004, p. 154).

20 ***iv. Argument: Unconstitutionality of Public Welfare Offenses***

21 Public welfare offenses, as enforced by the CSLB, are unconstitutional:

- 22 • **Lack of Constitutional Authority:** The U.S. Constitution (Art. III) and
23 California Constitution (Art. I, § 7; Art. VI) recognize only civil and criminal
24 actions. Cal. Code Civ. Proc. § 22 defines civil actions, while Cal. Penal Code
25 § 15 classifies public welfare offenses as crimes or public offenses, requiring
26 criminal protections like *mens rea* and judicial process. The CSLB’s
27 administrative enforcement bypasses both, operating outside constitutional
28 bounds.
- **Due Process Violation:** Strict liability penalties – e.g., fines (Section 7028.7)
or license revocation (Section 7090 – lack *mens rea*,

1 contravening *Staples* and *Simon*. Penal Code § 15’s inclusion of fines and
2 disqualification as criminal punishments mandates these safeguards, which
3 the CSLB omits.

- 4 • **Criminal Nature Without Safeguards:** By Penal Code § 15, public welfare
5 offenses are crimes or public offenses, yet the CSLB imposes them
6 administratively without intent, notice, or proportionality (*Lambert; Bajakajian*),
7 rendering them unconstitutional.

8 Moreover, recent court decisions have expanded the CSLB’s ability to impose
9 disciplinary actions for minor infractions, as seen in *Tellis v. Contractors’ State License*
10 *Board*, 79 Cal. App. 4th 153 (2000). In *Tellis*, the court upheld a citation for substandard
11 work despite damages being only 2% of the contract price—approximately \$5,286 out of
12 \$226,000—interpreting materiality broadly as “substantial, as opposed to trivial” (*Tellis*, 79
13 Cal. App. 4th at 163). This expansive definition allows the CSLB to punish contractors
14 disproportionately for relatively minor issues, turning regulatory actions into punitive
15 sanctions. As noted in “*Hammering the Contractor*” (Los Angeles Lawyer Magazine, Jan.
16 2001), “the *Tellis* decision... should strike fear into the hearts of all contractors” due to its
17 “far-reaching implications,” enabling discipline even when damages are minimal compared
18 to the overall project (*Hammering the Contractor*, p. 1).

19 Additionally, the *Tellis* court’s interpretation of “willfulness” lowers the threshold for
20 finding a violation. It permitted an inference of knowledge based on the contractor’s
21 experience, holding that *Tellis*, a seasoned licensee, must have known his tile work was
22 substandard (*Tellis*, 79 Cal. App. 4th at 159-60). This approach effectively eliminates the
23 need to prove specific intent, undermining due process by transforming regulatory offenses
24 into strict liability crimes. The article critiques this shift, arguing that “by allowing an inference
25 of knowledge, [the *Tellis* court] has made the willful element... illusory,” enabling the CSLB
26 to discipline contractors whenever “problems with a contractor’s work” arise (*Hammering the*
27 *Contractor*, p. 13).

28 The burden of proof in citation hearings further exacerbates this issue. For citations
29 like the one in *Tellis*, the CSLB need only prove its case by a preponderance of the evidence,
30 a lower standard than the clear and convincing evidence required for accusations seeking

1 license suspension or revocation (*Hammering the Contractor*, p. 9). Combined with broad
2 interpretations of “materiality” and “willfulness,” this lax standard makes it alarmingly easy
3 for the CSLB to impose penalties—up to \$5,000 per citation since the Legislature increased
4 the maximum civil penalty post-2001 (*Hammering the Contractor*, p. 1)—without sufficient
5 evidence or due process protections.

6 The *Tellis* court also distinguished *Terminix Co. v. Contractors’ State License Board*,
7 84 Cal. App. 2d 167 (1948), which held that a good-faith offer to correct work could preclude
8 discipline if it prevented material injury (*Terminix*, 84 Cal. App. 2d at 174). In *Tellis*, despite
9 the contractor’s willingness to repair defects, the court limited *Terminix* to pre-payment
10 scenarios, rejecting the defense post-payment (*Tellis*, 79 Cal. App. 4th at 161). This
11 narrowing enhances the CSLB’s power, as the article notes: “The *Tellis* court wrongly
12 examined *Terminix*,” reducing contractors’ ability to mitigate discipline through remedial
13 efforts (*Hammering the Contractor*, p. 11).

14 These disciplinary actions, imposed with minimal safeguards, are effectively criminal
15 penalties masquerading as regulation. The *Tellis* ruling exemplifies how the CSLB’s
16 framework—bolstered by judicial deference—violates contractors’ constitutional rights by
17 enabling arbitrary and excessive enforcement.

18 **v. Conclusion**

19 The CSLB’s public welfare offenses violate the constitutional framework by imposing
20 criminal-like penalties outside civil or criminal processes, as defined by Cal. Code Civ. Proc.
21 § 22 and Cal. Penal Code § 15. Relief is warranted under § 473(d).

22 **G. The Punitive Nature of License Suspension: A Disproportionate and** 23 **Unconstitutional Penalty**

24 One of the most severe disciplinary measures imposed under the Business and
25 Professions Code, including by the CSLB, is the suspension or revocation of a contractor’s
26 license, as authorized by Sections 7085.6 and 7071.17. While license suspensions are often
27 framed as regulatory tools to ensure compliance and protect the public, this section argues
28 that they are highly punitive, particularly when applied to minor, so-called “public welfare”

1 infractions. The authority to deprive someone of their right to earn a living transforms
2 suspension into a disproportionate penalty that, when paired with administrative fines or
3 other remedies, exacerbates its penal nature, violating due/judicial process and the right to
4 pursue a lawful occupation.

5 ***i. License Suspension as a Punitive Measure***

6 Though suspensions are often justified as furthering regulatory goals, their practical
7 effect is undeniably punitive:

- 8 • **Deprivation of Livelihood:** A suspended license prohibits contractors from
9 practicing their profession, effectively stripping them of their ability to earn a
10 living. In *Schomig v. Keiser*, 189 Cal. 596, 598 (1922), the California
11 Supreme Court recognized that revoking a professional license "is in effect a
12 prohibition against the licensee's engaging in his chosen occupation,"
13 highlighting its penal character over mere regulation.
- 14 • **Severe Consequences:** Beyond temporary income loss, suspension can
15 lead to financial ruin, loss of professional reputation, and long-term career
16 damage—outcomes far more severe than typical regulatory measures like
17 warnings or corrective actions.
- 18 • **Combined with Administrative Fines:** The CSLB frequently imposes
19 suspensions alongside administrative fines (e.g., under Section 7028.7).
20 While fines are often labeled "remedial," their conjunction with suspension—
21 a sanction that destroys livelihoods—renders the combined penalty highly
22 penal, not merely corrective.

22 ***ii. Disproportionality for Minor Infractions***

23 The CSLB's use of license suspension is often disproportionate to the offense,
24 especially for minor violations:

- 25 • **Statutory Examples:**
 - 26 ○ **Section 7085.6:** Allows suspension for failure to comply with arbitration
27 awards, regardless of the underlying issue's severity.



- 1 ○ **Section 7071.17:** Mandates automatic suspension for unpaid judgments,
2 even if minor or unrelated to contractor competence.
- 3 • **Public Welfare Infractions:** Many suspensions stem from administrative
4 errors—e.g., fee lapses (Section 7137) or paperwork delays—rather than
5 fraud or incompetence. Such minor infractions do not justify the drastic penalty
6 of barring someone from their occupation.
- 7 • **Constitutional Standard:** The U.S. Supreme Court in *United States v.*
8 *Bajakajian*, 524 U.S. 321, 334 (1998), held that punitive sanctions must be
9 proportional to the offense. Justice Thomas wrote, “The touchstone of the
10 constitutional inquiry under the Excessive Fines Clause is the principle of
11 proportionality.” Suspension for trivial violations fails this test.

11 ***iii. Violation of Due Process and the Right to Earn a Living***

12 License suspension infringes on fundamental constitutional protections:

- 13 • **Right to Work:** The U.S. Supreme Court has affirmed the right to pursue a
14 lawful occupation as a liberty interest (*Meyer v. Nebraska*, 262 U.S. 390, 399
15 (1923); *Truax v. Raich*, 239 U.S. 33, 41 (1915)). California Constitution Article
16 I, Section 1, similarly protects this right. Requiring licensing in the first place,
17 and/or suspension, by destroying a contractor’s ability to work, directly violates
18 this principle.
- 19 • **Due/Judicial Process:** U.S. Const. Art. I, § 10 and Cal. Constitution Art. I, §
20 9 require that punishment be imposed only after a judicial determination of
21 rights in the first instance and Cal Const. Art I, §7 requires penalties be
22 imposed with due process, including proportionality and intent considerations.
23 In *Staples v. United States*, 511 U.S. 600, 618 (1994), Justice Thomas warned
24 that “severe sanctions without intent erode justice itself.” The CSLB’s strict
25 liability suspensions for minor infractions lack these safeguards.

26 ***iv. Conclusion***

27 The CSLB’s suspension authority, as codified in Sections 7085.6 and 7071.17, is
28 unconstitutional. License suspension under these sections is a highly punitive,

1 disproportionate penalty that, especially when combined with administrative fines, exceeds
2 regulatory bounds and violates due/ judicial process and the right to work. It further proves
3 the CSLB’s unconstitutionality.

4 **H. Administrative Officials’ Lack of Constitutional Oversight Authority**

5 The California Constitution establishes a tripartite system of government—legislative,
6 executive, and judicial—with each branch serving as a check on the others to ensure
7 constitutional fidelity (Cal. Const. art. III, § 3). However, administrative officials within
8 agencies like the CSLB, operating under the executive branch, lack the authority to question
9 the constitutionality of the statutes they enforce, stripping them of any meaningful role as
10 checks and balances against legislative overreach. See Cal. Const. Art. 3 § 3.5: “An
11 administrative agency, including an administrative agency created by the Constitution or an
12 initiative statute, has no power:

- 13 (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of
14 it being unconstitutional unless an appellate court has made a determination that such
15 statute is unconstitutional;
- 16 (b) To declare a statute unconstitutional;
- 17 (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis
18 that federal law or federal regulations prohibit the enforcement of such statute unless
19 an appellate court has made a determination that the enforcement of such statute is
20 prohibited by federal law or federal regulations.

21 This structural limitation exacerbates the CSLB’s unconstitutionality by allowing it to
22 wield unchecked power, free from internal constitutional scrutiny, thereby violating due
23 process and separation of powers principles. CSLB officials must blindly apply statutes, even
24 if they infringe on rights or exceed legislative bounds. This creates a “rubber stamp” system,
25 amplifying the CSLB’s despotic tendencies. If a licensee faces penalties (e.g., suspension
26 under Section 7071.17) for a fee lapse, CSLB officials cannot consider whether such a
27 penalty violates due process or the right to work—they must enforce it, regardless of its
28 fairness or legality. Lord Hewart warned of such unchecked power: “The Executive has been
armed with new and formidable weapons, enabling it to coerce the subject without

1 accountability” (Hewart, 1929, p. 14). Without the ability to question statutes, the CSLB
2 becomes a tool of legislative overreach, not a balanced enforcer.

3
4 ***i. Constitutional Implications***

5 This structural flaw compounds the CSLB’s unconstitutionality:

- 6 • **Separation of Powers Violation:** By denying administrative officials the
7 power to check statutory validity, the executive branch (CSLB) merges with
8 legislative intent, undermining the Cal. Constitution’s division of powers.
- 9 • **Due/Judicial Process Violations:** Enforcing potentially unconstitutional
10 statutes without scrutiny denies contractors fair process, as required by Cal.
11 Const. Art. I, §§ 7, 9 and U.S. Const. Art. I, §10.

12 **IX. Conclusion and Requested Relief**

13 The CSLB’s fusion of powers (Cal. Const. art. III, § 3), assault on rights (Cal. Const.
14 art. I, § 1), lack of jurisdiction over public welfare offenses, punitive, disproportionate use of
15 penalties, license suspension under Sections 7085.6 and 7071.17 render it unconstitutional.
16 Plaintiff’s case proves this. Backed by Hewart, Lawson, Thomas, Madison, Locke, and
17 Hamburger, he urges the Court to examine its structural integrity and declare each violation
18 thereof unconstitutional.

19
20 Dated: March 14, 2025

21
22 By: _____

23 Adam Berekı¹
24 www.thespiritoflaw.com

25 ¹ Plaintiff, under duress and coercion, used AI to assist in the preparation of this complaint so it would be timely.
26 AI particularly assisted in the claims pertaining to Citizens, Trustee Corps, Hou, and Paloci. Plaintiff has done
27 his best to verify the cases cited but he has not, as in many of the other cases cited against Primary Defendants,
28 had the time to read each case and assure the precise accuracy. Nevertheless, he stands on the reasoning
provided herein even if the citation isn’t precise. In time, Plaintiff will spend additional time verifying additional
authorities he hasn’t yet confirmed. He should be notified of any inaccuracies immediately so that they may be
corrected in the interests of truth and justice. Plaintiff has no intent of deceiving anyone.



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DEDICATION TO P’Nut

Peanut (c. 2017 – October 30, 2024), also known as P’Nut, was a male eastern gray squirrel rescued as an orphaned kit by Mark Longo in 2017 after its mother was killed, later becoming the star of a popular Instagram account. On October 30, 2024, the New York State Department of Environmental Conservation (NYSDEC) seized Peanut from Longo’s home due to his lack of a required wildlife license and euthanized the squirrel for rabies testing, prompted by a bite during the seizure. The results were negative, sparking widespread outrage. The incident, rooted in Longo’s failure to a license to keep Peanut, drew condemnation from lawmakers, fueled a social media firestorm, and inspired a proposed bill to prevent such state actions, forming the basis for a lawsuit alleging abuse of power by the NYSDEC over the licensure issue.

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

