Case No. S_____ **IN THE**

SUPREME COURT OF CALIFORNIA

Adam Bereki, *Petitioner,*

vs.

Karen and Gary Humphreys, *Respondents,*

After Appeal to the Court of Appeal

Fourth Appellate District, Division Three

Court of Appeal Case No. G055075

Orange County Superior Court Case No. 30-2015-00805807

PETITION FOR REVIEW

Adam Bereki

In Propria Persona

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2. Does a trial/appeal court obtain jurisdiction over the subject matter if a Plaintiff fails to prove all of the elements of the offense as required by the Judicial Council?

3. Has Petitioner been denied a Republican form of government?

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WHY REVIEW SHOULD BE GRANTED

This case involves issues of statewide importance effecting all professions regulated by the Business and Professions Code in California, most especially, Contractors. It further effects all remedies available under the code to consumers.

The structural jurisdictional errors of this case are of even greater moment to every action in California as they concern the fundamental power of every court, including this supreme court to act. As such, they require this court's intervention and must be addressed *(Marriage of Oddino (1997) 16 C 4th 67, 73)*.

STATEMENT OF FACTS AND LEGAL DISCUSSION

a. Were the trial and appellate courts deprived of jurisdiction to render and affirm judgment that violates the due process requirements of punitive damage awards?

The instant case involves an $848,000 penalty of disgorgement against Petitioner for allegedly contracting without a license in the remodel of Respondents vacation home (Business and Professions Code, "BPC", or "the code", §7031(b)). The trial and appellate courts denied Petitioner the due process protections of grossly excessive punitive damage awards.

In *Kokesh v SEC, (2017) 518 US* ____the US supreme court held SEC disgorgement in reference to 28 USC §2462 (a five year statute of limitations on the imposition of penalties) had all the hallmarks of a penalty and was therefore punitive in nature.

Based on the supreme court's historical jurisprudence as reaffirmed in *Kokesh*, the judgment in the instant case is also a penalty and therefore subject to the due process provisions of punitive damage awards.

The appeal court however affirmed the trial court's judgment and claimed disgorgement was "an equitable remedy" and therefore not a penalty/punishment (Op. p8).

In *Lewis & Queen v. N. M. Ball Sons (Cal. 1957), 48 Cal. 2d 141, 308* this court held: courts may not resort to equitable considerations, such as unjust enrichment, in defiance of §7031.

If equitable considerations including set-off or unjust enrichment are denied, it can't possibly be an equitable action or remedy. Equity is defined as the quality of being fair and impartial. Without these considerations, the concept of equity of destroyed. This is one of the reasons why in *Kokesh* the US supreme court concluded disgorgement was punishment.

In legal terms disgorgement is defined as the giving up or return of "ill gotten gains" or "profits". California courts have interpreted "all compensation paid" as used in §7031(b) to mean not only the disgorgement of "profits" or "ill gotten gains", but all payments made whatsoever, including reimbursement for material costs, irrespective of any injury or damage, and *without* equitable considerations.

Punitive damages on the other hand are defined as being independent from, and not in any way compensation for, any actual damages suffered.

In *Kokesh* the court examined it's historical jurisprudence on the nature of penal actions citing *Huntington* v. *Attrill*, (1892) 146 U. S. 657:

The definition of "penalty" as a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws,", gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual." *Id.*, at 668. Second, a pecuniary sanction operates as a penalty if it is sought "for the purpose of punishment, and to deter others from offending in like manner" rather than to compensate victims. *Ibid.*

Application of these principles readily demonstrates disgorgement pursuant to §7031(b) constitutes a penalty.

First, §7031(b) is a matter of public policy effecting commerce and is therefore a wrong to the public even though the penalty is paid to an individual party and not the government. It is a consequence for violating public laws and not in the private non-commercial setting, especially considering all of the payments made were by commercial paper/negotiable instruments *(Bank of Columbia v Okely (1819), 17 US 235, 243; Cohens v Virgina, (1821) 19 US 264, 403; Constitution for the United States [1787-1791] "Constitution", Article 1,§9)*

Second, the jurisprudence of this state has repeatedly reaffirmed §7031's deterrence nature (Op. Pp. 7-8). Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because "deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]." *(Bell v Wolfish, 441 US 520, 539)*

Third, it is not compensatory. §7031(b) requires no evidence of any injury or damage and none were evidenced in this case.

Nor is it a remedial sanction that restores the status quo. Equitable considerations were denied and no evidence was admitted to differentiate profits or gains from costs or benefits conferred or exchanged.

The project was done at cost for the family of close friends. There were no gains or profits. Materials and labor were provided commensurate to the agreement in direct exchange for the compensation received without markups. In this sense all compensation had already been returned throughout the remodel project without evidence of any injury or damage thereby making the award entirely punitive.

Kokesh continues:

"As demonstrated here…disgorgement may be ordered without consideration of a defendant's expenses that reduced the amount of illegal profit. In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off and is therefore punitive."

Although disgorgement may serve compensatory goals in some cases, "sanctions frequently serve more than one purpose" *(Austin v United States, 509 US 602, 610)*. Because they "go beyond compensation, are intended to punish, and label defendants wrong- doers" as a consequence of violating public laws, (citation), disgorgement orders represent a penalty…"

The US Supreme Court has established a three part test for evaluating the validity of punitive damages in civil cases (*State Farm Mut. Automobile Ins. Co. v. Campbell (2003) 538 U.S. 408)*[1]*:*

1) the reprehensibility of the conduct being punished;
2) the reasonableness of the relationship between the harm and the award;and
3) the difference between the award and the civil penalties authorized in comparable cases.

Under this test, use of the disgorgement sword to ***hypothetically*** take anything more than nominal damages from Petitioner and give them to Respondents fails every element of the test for the following reasons:

[1] *BMW of North America, Inc. v. Gore (1996) 517 U.S. 559, 568)*

REASONABLENESS

First, the relationship between the "harm" and disgorgement of $848,000 is grossly disproportionate. At "trial", Respondents presented no evidence of any damages proximately cause by Petitioner's *alleged* failure to be licensed.

Compensatory damages are intended to redress the concrete loss the 'victim' has suffered by reason of the 'perpetrators' wrongful conduct. By contrast, punitive damages serve a broader function; they are aimed at deterrence and retribution. *Id 416*

California and federal courts have constrained awards of punitive damages to a reasonable relationship to the actual damages suffered.

In the instant case, disgorgement of anything would be an infinite multiple of the non-existent damages.

COMPARABLE CASE AWARDS

Second, the difference between the $848k disgorgement award and both the criminal and civil penalties authorized in comparable cases is astronomic. The maximum criminal penalty is $5,000 plus restitution of actual economic loss. The maximum civil penalty that could be assessed by the Contractors State License Board, "CSLB", is also $5,000. Thus, a "disgorgement" of $848k would be 169 TIMES the comparable criminal or civil penalty.

The judgment in this case is more than three times the financial penalty for treason, – the highest crime of our country– which is $250,000. Furthermore, it forces Peititioner into elements of financial ruin and bankruptcy.

Punitive damages in excess of $5000 therefore do not pass Constitutional muster.

REPREHENSIBLE

Third, the conduct is not reprehensible. Not only was there no evidence of any damages whatsoever, had there been, they would have been purely economic. No one was hurt or injured. There was no evidence of fraud, oppression, or malice.

No evidence was presented the compensation had not been returned in the form of materials and labor services provided.

Respondents interacted exclusively with Petitioner who had the work experience and passed the competency exam to qualify for numerous contractors licenses.

Prior to hiring Petitioner or his company, Respondent Gary Humphreys was intimately aware of Petitioner's competency by the previous projects he had done at Respondents business and for other family members (RT 93–10).

* * *

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

"A court of this state does not have jurisdiction to render a judgment that violates the California Constitution or the Constitution of the United States…" *(County of Ventura v Tillett (1982) 133 Cal. App. 3d 105).*

b. Were the trial and appellate courts deprived of jurisdiction to render and affirm judgment if Respondents failed to establish all of the elements of the offense as defined in CACI 4560?

The California Judicial Council adopted CACI 4560 which explicitly declares each of the elements of a cause of action pursuant to §7031(b):

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

1. That there was a contract between Respondents and Petitioner under which Petitioner was required to perform services for Respondents;
2. That a valid contractor's license was required to perform these services; and
3. That the Respondents paid Petitioner for contractor services that Petitioner performed as required by the contract.

Having failed to prove each of the elements of their cause of action, the court had a non-discretionary duty to dismiss Respondents claim.

Petitioner was the sole owner of The Spartan Associates, Inc., "Spartan", a class B general contractor which was a small business that did construction work for Petitioner's friends or referrals therefrom. Petitioner was close friends with Respondents son and brother who hired Spartan to work for them over the course of about five years. Based on their mutual friendship the written contractual formalities were sometimes relaxed. Regardless, it was understood Spartan was performing the work as evidenced by the invoices it created and the payments that were made directly thereto (Exhibit [39]).

Spartan also, right before it began the project of this case, worked directly for Respondents company, Humphreys & Associates, Inc. (Exhibit [39]).

In April of 2012, Respondents son referred Petitioner and Spartan to meet with Respondents to remodel their south California waterfront vacation home. At the time of the meeting, Respondents had purchased one upstairs unit of a three unit condominium and desired to do a "face-lift" remodel consisting roughly of new paint, carpet, etc.

Subsequent to the initial project walk through, Petitioner sent Respondents an email specifying the details of the work they wished to have performed. Nowhere in this email however was the word "Spartan" used.

Initial work began on the project a few days later which included packing up all of Respondents property, moving and storing it, and basic demolition work. Throughout this phase, which is work that is NOT required to be licensed, the building was discovered to be in a state of serious disrepair and presented a plethora health and safety issues. Based on the expanded scope of the project effecting the entire building, Respondents decided to purchase the other upstairs unit and combine their two units into one. This work would require architectural and engineering drawings and building permits.

Spartan and obtained the building permits as evidenced at trial (Exhibit [34]). The description of the work on the permits states: "188 SF DEMO TO COMBINE 2nd FLOOR UNITS (B&C) TO CREATE 1…" indicating the actual project that commenced. Spartan was also listed as the contractor.

Prior to trial, Respondents filed a Motion For Summary Judgment (CT 231) wherein they claimed the **"undisputed facts"** were that they had contracted with Spartan and Spartan performed the work (not Adam Bereki/ Petitioner). They represented the April 2012 emails mentioned above memorialized this agreement.

At trial however, Respondents took the opposite position to support an amended first cause of action they filed about one month before trial. That first cause of action was for disgorgement where they claimed they never contracted with Spartan, but rather with Petitioner, and another man, Glenn Overley who had also done some work on the project. Despite having allegedly formed the central agreement of this case with Mr. Overley, he was never deposed, never mentioned in their complaint, and never called to testify at trial. The entire judgment award was subsequently made against Petitioner.

At trial, Respondents admitted some of the April 2012 emails and claimed they were the sole agreements for the entire project. Nowhere in those emails is there any mention of two units or combining them. The quote for work therein is for $75k, not $848k.

Spartan admitted the building permits it obtained detailing the actual project that transpired (Exhibit [34]) and testified it performed all of the work. It further admitted a seventy (70) page Interior and Exterior design presentation (Exhibit [31]) it created which on every page includes the logo and words "Spartan Construction" and details all of the interior and exterior design elements of the project agreed upon by Respondents.

Additionally, Exhibit [303] was admitted, which is a spreadsheet created by Respondents detailing to whom they made their payments. Of the $848,000 paid, $795,000 was directly deposited into Spartan's checking account. Some of these checks were made directly to "Adam Bereki" (Petitioner) or "Adam Bereki Spartan Construction" despite Petitioner asking Respondents to make their checks payable to Spartan.

The significance of all of this is that Respondents failed to rebut any of Spartan's testimony that it exclusively performed the work on the project. They failed to call a single witness or produce any evidence of what specific work was performed, what work was required to be licensed, who performed it, and who accepted compensation for it which are all required by CACI 4560. This information is requisite to establish a cause of action especially because a large portion of the work performed was not required to be licensed, such as interior design.

Additionally, Spartan hired other licensed contractors who also performed work and accepted compensation (Exhibit [33]). Their compensation is NOT subject to disgorgement pursuant to §7031(b).

The trial court was required to differentiate work performed by licensed contractors and work not performed by licensed contractors. The same goes for work required to be licensed and work not required to be licensed. In error, the court took the entire amount of compensation ($848,000) which wasn't even paid to Petitioner, and ordered Petitioner to disgorge all of it.

Even more alarming, both the trial and appellate courts appear to have based their judgments on the April 2012 emails that don't even contain the scope of work for the project. **This is evidenced by the appellate court's misstatement of material facts in its Opinion p2.** It appears the court derived these misstatements, not from the evidence, but the misrepresentation in Respondents Reply Brief, p7. The court was repeatedly warned about Respondents misstatements. Fraud upon the court was also repeatedly evidenced throughout Petitioners Briefs.

Legislature did not extend jurisdiction to a cause of action that only meets one or two of these three elements. Rather, **ALL** of them must be met in order to vest the trial court with jurisdiction over the subject matter empowering it to act and award judgment *(Thompson v Louisville, (1960) 382 US 199; McNutt v General Motors (1936) 298 US 178; Buis v State 19 OK CR 28)*

The appeal court concluded there was ample evidence to sustain the trial courts award yet omitted stating what this evidence actually is. The same problem occurred with the trial court. The only evidence of it's findings are an unsigned minute order that doesn't even state the code section violated *(See Breedlove v. Breedlove, 161 Cal. App. 2d 712)*. Petitioner believes this is also a violation of due process because findings of facts and conclusions of law are necessary to present a meaningful and substantive appeal or petition and were repeatedly denied. The facts establishing jurisdiction which includes the court's findings of facts and conclusions of law must be affirmatively in the record. The constitutionality of §632 CCP was also challenged on appeal which the court did not address.

c. Was Petitioner was denied a judicial hearing of his competency?

California courts have repeatedly held the contractors state licensing laws, "CSLLs", are "designed to protect the public from *incompetent* or dishonest providers of building and construction services."[2] This results in an unconstitutional presumption the People of California are incompetent and dishonest and denies them a judicial hearing resulting in a Bill of Attainder.

I

"Presumptions are not a means of escaping constitutional protections"

(Bailey v Alabama (1911) 219 US 219)).

LICENSE. Permission by some *competent* authority to do some act which, without such permission, would be illegal. (Black's Law Dictionary, 4th Ed. West Publishing (1968)).(*emphasis* added)

The presumption of incompetence as repeatedly affirmed in the jurisprudence of California courts results in two deprivations of Rights. First, it denies the People their Right to notice and a judicial hearing of their 'competency' (*Windsor v McVeigh (1876) 93 US 274; The Estate of Buchman (1954) 123 Cal. App. 2d 546).* Second, the courts inflict punishment for the violation of certain sections such as §7031(b) without any nexus to an injury or damage. The result is a Bill of Attainder/Pains and Penalties[3] *(Article 1, §9; Cummings v Missouri (1867) 71 US 277; United States v Lovett (1938) 328 US 303)*. In the instant case the denial of a judicial hearing also includes the the denial of protections afforded in criminal proceedings.

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[2] *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 517

[3] A Bill of Pains and Penalties is specifically punishment without a judicial hearing.

The result is defendants, including Petitioner, are subjected to a deprivation of their property and Rights by a non-judicial legislative/administrative tribunal cloaked as a judicial constitutional proceeding *(FRC v General Electric (1930) 281 US 464; Ex parte Bakelite Corp. (1929) 279 US 438).*

While the presumption of incompetence is certainly true for artificial persons/ fictions of law, it is definitely not so for the People[4].

II

Petitioner is not an artificial person, fiction of law or thing in commerce.

In 2009, Petitioner provided the work experience and passed the Contractor's State License Board's, "CSLB's" exam to become a "qualifying individual" for a contractors license in the name of a California corporation/ artificial "person", The Spartan Associates, Inc.

A "qualifying individual" is defined as the person listed in CSLB's personnel of record, who has demonstrated his or her knowledge and experience through the application process, *and holds one or more license classifications.* Qualifiers must exercise direct supervision and control of construction operations[5].

The reasoning here is legitimate. A corporation (artificial person/entity/thing in commerce) has no cognitive functioning and therefore cannot qualify for it's own license. It also cannot supervise and control operations.

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[4] If the People are 'incompetent' how can they form the intent to violate the offense? How are they suddenly 'competent' on election day?

[5] http://www.cslb.ca.gov/Newsletter/2012-Winter/qualifier.asp

It is the qualifying individual, the biological being who brings ‘competency’ to the license of an artificial commercial entity. The license cannot ‘survive’ without the qualifier and §7096 declares that a qualifying individual is a “licensee”.

The problem here is the same standards and requirements of licensing for artificial commercial entities are applied across the board to biological beings. This is a systemic cancer within the legal and justice system of America evidenced by our country’s history with slavery. The People are NOT things/ entities in commerce and have inalienable (not lien-able, non-commercial) Rights.

Mr. Justice Daniel in his dissent in *Rundle v Delaware & Raritan Canal Co., (1852) 55 US 80, 99* warned of the issue surrounding differentiating corporations/ commercial entities from living beings more than 150 years ago:

...This must mean the natural physical beings composing those separate communities, and can by no violence of interpretation be made to signify artificial, incorporeal, theoretical, and invisible creations.

Having passed the state’s non-judicial competency exam for licensing as a qualifying individual, the trial and appellate courts proceeded to determine Petitioner “incompetent” and awarded/affirmed judgment against him without any hearing on the matter whatsoever relying on the erroneous legislative presumption.

Argument could loosely be made this was because Petitioner didn’t obtain a license in his name. At that point – momentarily excluding all other issues raised thus far – the only qualifying difference would be his ability to pay a tax or licensing fee for another license, qualifications which are beyond the state’s use of police powers.

Petitioner is not challenging a state's authority to regulate an industry. What is being challenged is the means of doing so which, in most cases, is through the use of fictions and presumptions that have no basis in factual reality, are therefore without merit and in violation of numerous foundational Constitutional protections.

Petitioner's inalienable (not lien-able, non-commercial) Rights to his time and labor cannot be commercially liened by legislative enactments unconstitutionally expanding Congress' commerce clause powers to convert his Rights into a privilege for which he is then required to obtain a license and charged a fee for *(Murdock v Pennsylvania, (1943) 319 US 105)*. The lien of Petitioners property Rights as punishment without a judicial hearing in the specific manner executed in this case is also a violation of the 13th Amendment resulting in involuntary servitude.

If Petitioner must ask the state's permission and pay a tax or fee for the revocable *privilege* of being able to earn a living, then clearly he has no inalienable Right to his property in the form of his time and labor and, as has transpired here, he can be excluded from earning a living in his profession entirely and therefore in constructive custody. (see part e.)

III

The BPC only requires artificial persons to obtain a license.

The Business and Professions Code clearly defines the relationship amongst the "persons" or entities upon which it acts. It defines a "person" in §7025 as: an

individual, a firm, partnership, corporation, limited liability company, association or other organization, or any combination thereof.

§7068.1 further defines that a “natural person” must qualify on behalf of an “individual” or “firm” (as found in §7025). This is because an “individual" or “firm” are artificial persons having no cognitive functioning. They are not competent to perform work without the work experience and supervision of a natural person or more specifically, a biological being.

Nowhere in the code does it require a “natural person” or biological being to be licensed.

In fact, entire sections of the code refer only to “natural persons” further differentiating a “natural person” from an “individual”. See §7150.

To interpret the meaning of a particular statute or statutory definition, one must employ the same rules of statutory interpretation which were used to compose such statute or definition. Of the eight rules of statutory interpretation, the rule *noscitur a sociis* (known by its associates) applies:

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

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

An individual is not defined anywhere in the code with the exception of §7068.1. An Application For Original Contractors License however requires the qualifying

individual to submit a Social Security or other tax payer identification number. This requirement clearly indicates the jurisdiction and venue of the contract is for all intents and purposes federal as the Application will not be processed without it. Therefore, we must look to federal authority for further clarity.

Under government organization and employees, 5 USC §552a(a)2 defines an “individual” as “a citizen of the United States or an alien lawfully admitted for permanent residence”. It further defines an “individual” as an "officer or employee of the government of the United States” (5 USC §552a(a)13) .

Petitioner is not a “citizen of the United States”, “employee or officer of the government of the United States”or an "alien lawfully admitted for permanent residence”.

The Fourteenth Amendment of July 9, 1868, has numerous defects and is easily debunked, the most significant flaw being found in the first portion of Section 1 defining who exactly is a citizen of the United States:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States . . .

Americans are People (The unanimous Declaration of the thirteen united States of America, Preamble; Constitution, Preamble), not persons (political subjects with certain rights and duties).

Secondly and most importantly, “persons born or naturalized in the United States” are not “citizens of the United States” strictly by birth or naturalization: They also must be “subject to the jurisdiction” of the United States.

This is why residents of Puerto Rico, Guam, the Virgin Islands, etc. are legally classified as citizens of the United States: The United States has jurisdiction over the territory in which those bodies politic reside.

There is no geographic area anywhere in the Union that is subject to the jurisdiction of the United States, (*Cohens v Viriginia, (1821) 19 US 264, 434; Caha v. U.S. (1894), 152 U.S. 211, 215, Julliard, infra)*; the American People are the sovereign author and source of all law in America, (*Yick Wo v. Hopkins (1886), 118 U.S. 356, 370);* and no American domiciled and residing without federal territory is subject to the jurisdiction of the United States.

Not being subject to the jurisdiction of the United States, Americans domiciled and residing throughout the Union do not qualify as 14th Amendment "citizens of the United States."

The Slaughterhouse Cases, (1873) 83 U.S. 36, 73–74, provide some additional historical context:

> The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.

In *Van Valkenburg v Brown, (1872) 43 Cal. 43,* this court declared *"*No white person…owes the status of citizenship to the recent amendments to the Federal Constitution" (referring specifically to the so-called 14th Amendment).

Clearly, there is a significant difference in State Citizenship and citizenship conferred by the so-called 14th Amendment. State Citizen's have inalienable

Rights and delegated certain sovereign powers to ordain and establish government. Powers delegated do not equal powers surrendered. So-called 'citizens of the United States' receive revocable government privileges aka "civil rights".

[T]here is no such thing as a power of inherent sovereignty in the government of the United States. It is a government of delegated powers, supreme within its prescribed sphere [federal territory] but powerless outside of it [the Union]. In this country, sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution, entrusted to it; all else is withheld *(Julliard v. Greenman (1884), 110 U.S. 421, 467).*

In *Connecticut Insurance v Johnson, (1938) 303 US 77,* the US supreme Court ruled the word "person" as referenced in the so-called 14th Amendment includes corporations (artificial persons). Corporations, like so-called 14th Amendment "persons" have no inalienable Rights.

Among the "joint tenants in the sovereignty," Chisholm, supra, that comprise the American People, none is a so-called person. The American People are the supreme political authority in the Republic, Yick Wo, supra.

While not explicitly stated, CACI 4560 (2) includes the burden of proof of whether Petitioner was a "person" required to be licensed (as explained above) which is entirely absent from the record (see also *Bass v United States, 784 Fed. 2d. 1282)*. While it is unclear exactly what Petitioner's status actually is, it certainly is not a fiction of law or commercial entity and must be determined in a judicial proceeding.

The appeal court attempted to 'resolve' the issue over the definition of an "individual" in §7025 by referring to Webster's Dictionary (Op. p9). This is not correct because an "individual" is in fact defined by 5 USC §552a which is NOT a "natural person" or biological being.

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

The Business and Professions Code §7000 et seq only applies to artificial persons and cannot be recast to extend beyond the limited reach given by denying Constitutional protections.

There was no evidence presented at trial Petitioner is an "individual", 'citizen of the United States', 'resident' of the District of Columbia, "alien lawfully admitted for permanent residence" or a thing/entity in commerce.

d. Has Petitioner has been denied a Republican form of government?

On every voter application, and nearly every application for a professional license, an applicant is required to declare under penalty of perjury they are a "citizen of the united states". That sounds well and good until one discovers there are in fact two "United States". One is representative of the collective government of the States united, the other, a municipal corporation (16 Stat. 419) also known as the District of Columbia, "the District". The municipal law of the District of Columbia is Roman Civil Law.

Roman Civil Law equates to absolute, exclusive territorial, personal, and subject-matter legislative power (and executive and judicial jurisdiction) over residents of municipal territory.

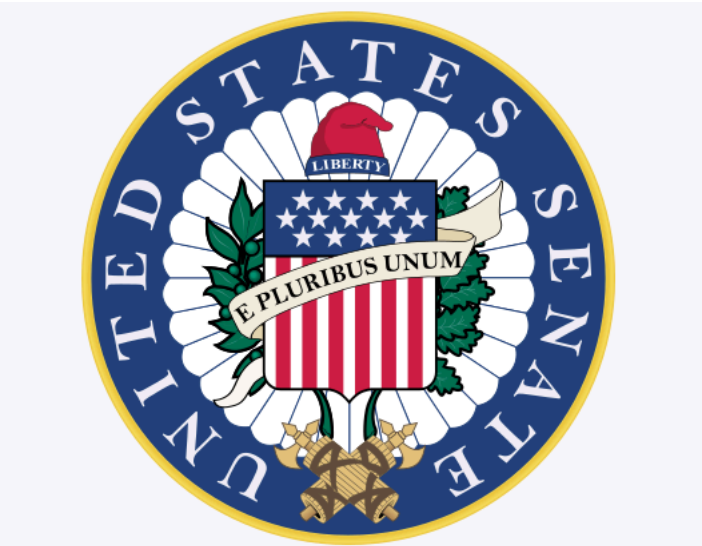
"It is therefore a self evident proposition, that the jurisprudence of the United States[6] is not founded in the civil law" (*Baines, infra.)*. This is in large part because the Constitution for the United States (Article 4, §4) ensures a Republican, not a municipal form of government.

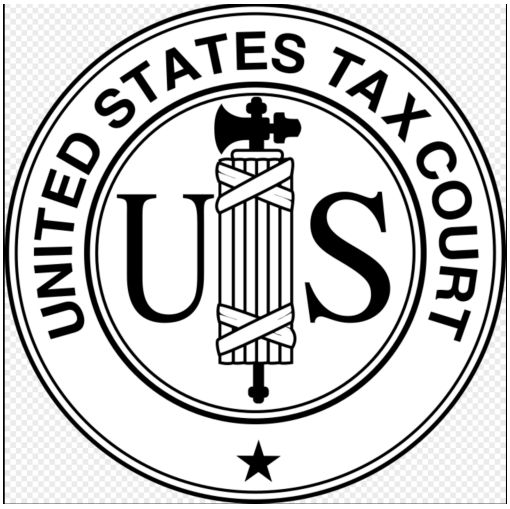
The best symbol of Roman Civil Law is the badge of authority borne before Roman magistrates in ancient Rome, the fasces (Lat., from plural of fascis bundle)—a bundle of rods with an ax bound up in the middle and the blade projecting—as displayed on the Seal of the United States Senate, the wall behind

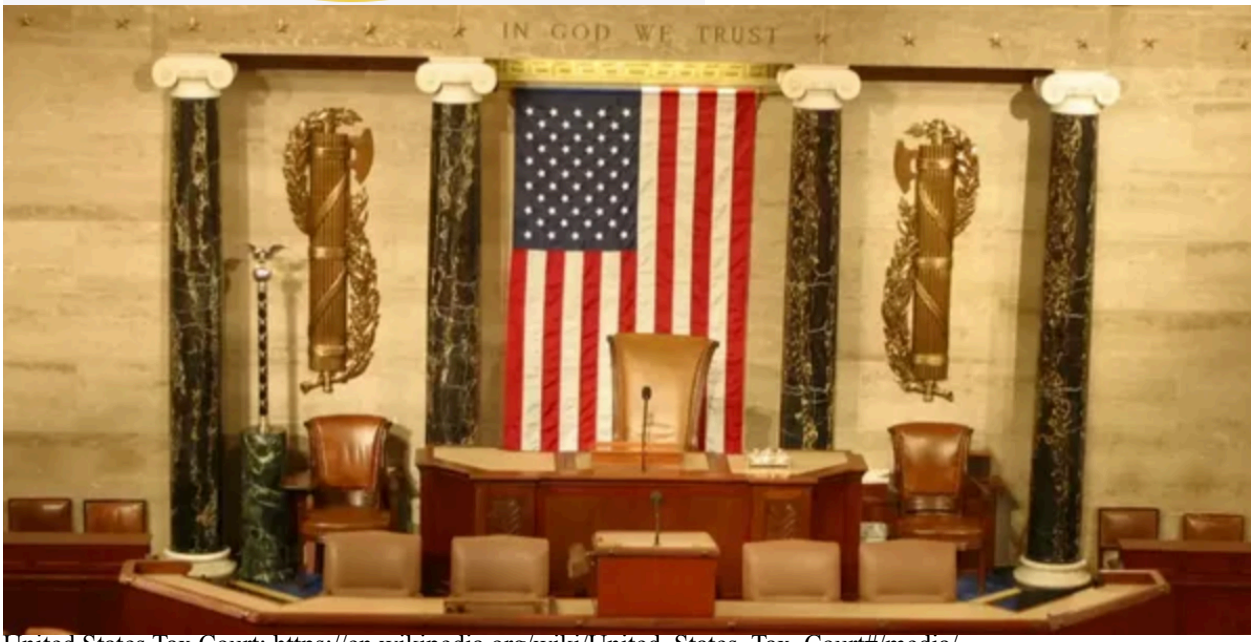
[6] the government of the States united!

the podium in the House of Representatives, reverse of the Mercury dime, National Guard Bureau insignia, Seal of the United States Tax Court, etc.

These images are important to see and confirm for oneself:[7]







United States Tax Court: https://en.wikipedia.org/wiki/United_States_Tax_Court#/media/File:Seal_of_the_United_States_Tax_Court.svg

Americans who do not physically reside in the District of Columbia today nevertheless are treated as residents of that municipality for legal purposes based on certain stealth legislation, fraud, and misrepresentation.

The purpose of the stealth legislation is revenue. That is to re-venue the unsuspecting American People to a jurisdiction foreign to their Constitution and unacknowledged by their Laws by giving their purported 'consent' to be ruled under Roman Civil Law/ Admiralty.

The 'sleight of hand' in changing the venue and jurisdiction from a judicial State admitted under common Law to a municipal territory under civil law is accomplished in several steps. First, by federal government control of the information in the 'mandatory' education system so that children aren't taught the *actual* nature of the Constitution, history and laws of their country.

Second, through the implementation of millions of codes, statutes, and regulations the average person – living in survival mode just to make ends meet – has no time to be able to comprehend. Any attempt at doing so often results in despair and being utterly overwhelmed.

Third, by changing the common meanings of words to their opposite such as "person" (a living being) in law almost always means or includes a corporation, a lifeless 'dead' fiction.

Another example is the transmutation of the word "State" in violation of literally dozens of legal principles and supreme court decisions to mean the District of Columbia such as found in The Act of June 30, 1864, 13 Stat. 223, 306:

SEC. 182. And be it further enacted, That wherever the word state is used in this act it shall be construed to include the territories and the District of Columbia, where such construction is necessary to carry out the provisions of this act.

The District of Columbia is not a "State" as defined by the Constitution.

Since June 30, 1864, in all congressional statutes and constitutional amendments, such as the Fourteenth, Sixteenth, and Eighteenth Articles of Amendment to the Constitution, "state," "State," and "United States" are defined or construed to mean, ultimately, the District of Columbia.

The fourth and final straw is the implementation of a judiciary that when confronted with these abominations of justice, either has no idea it's happening and thinks a Petitioner is some sort of crack pot, or in fact knowingly conceals all of it by denying any remedy[8].

It's important to see how this is actually carried out within the Business and Professions Code.

The statute used in this case, §7031(b) reads as follows:

"…a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

[8] The appellate "court" denied Petitioner's Motion For Judicial Notice on this issue violating judicial process and the supreme court's holdings in *Miranda v Arizona, (1966) 384 US 436, 491:"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."*

Why not just say "may bring an action in California". The reason is, the de jure State "California" is NOT the venue.

The General Provisions of the BPC at §21 define the word "state" as: "State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories. (emphasis added)

YOU CANNOT READ THE DEFINITION OF §21 USING YOUR DEFINITION OF WHAT A STATE IS. YOU MUST READ IT AS IF YOU DON'T KNOW BECAUSE §21 IS GIVING IT A NEW MEANING!

You can't use the word "state" to define "*state* of california". That's like saying "zirca means zirca of California". We still don't know what "zirca" means.

Again, why not just say "State means California". It obviously doesn't say that because that's not what it means.

The only definition *actually* given by §21 is that it includes the District of Columbia and the territories.

The California Civil Code of Procedure §17 upon which jurisdiction was alleged for the appeal court to hear this case defines "state" as: "State" includes the District of Columbia and the territories when applied to the different parts of the United States, and the words "United States" may include the district and territories. It can't get any clearer!

There is no Constitutional authority for any de jure State to have jurisdiction over the District of Columbia or the territories or vice versa.

Let's return to an "Application For Original Contractors License".

The Application reveals the mandatory requirement of submission to the District of Columbia by providing a Social Security Number (SSN), Individual Tax Payer Identification Number (ITIN) or Federal Employer Identification Number (FEIN):

If you fail to disclose your SSN, ITIN, or FEIN, your application will not be processed (Page 8, Application For Original Contractors License (6/17); http://www.cslb.ca.gov/Resources/FormsAndApplications/ApplicationForOriginalContractorsLicense.pdf

The controlling definition of "State" in the chapter of the Internal Revenue Code ("IRC" or "26 U.S.C.") relating to Social Security payroll and Medicare taxes, Chapter 21 Federal Insurance Contributions Act (FICA), is Section 3121(e)(1); to wit:

(e) . . . For purposes of this chapter—

. . . (1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Because "includes" is also an IRC term and appears in the above definition of "State," we first must account for its definition and meaning before we can determine the full extent of the meaning of "State."

The controlling definition of the IRC term "includes" is found at 26 U.S.C. § 7701(c); to wit:

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Another way of saying the same thing in fewer words is "The terms 'includes' and 'including' do not exclude things not enumerated which are in the same general class." (27 C.F.R. § 72.11).

This means that other things, though not expressed in a particular definition, nevertheless are included in its meaning if they are of the same general class as those listed.

[Is your mind numb yet? Are you tuning out? That's the point of all this confusing legalese legislation! It's actually a form of psychological warfare upon the People.]

In the above definition of the IRC term "State," what the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, and American Samoa have in common is that they are all bodies politic (a) subject to the exclusive legislative power of Congress[9] and (b) whose respective government imposes its own income taxes and withholding taxes on its own residents[10].

There is one and only one other body politic of this same general class: the Commonwealth of the Northern Mariana Islands.

Wherefore, the 26 U.S.C. § 3121(e)(1) "States" are the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and Commonwealth of the Northern Mariana Islands and no other body politic.

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[9] Constitution, Articles I, sec. 8, cl. 17 and IV, sec. 3, cl. 2.

[10] IRS.gov, "Persons Employed In a U.S. Possession / Territory - FIT," https://www.irs.gov/individuals/international-taxpayers/persons-employed-in-us-possessions (accessed September 10, 2018).

This means that for purposes of Social Security payroll and Medicare taxes, only residents of the "State" of District of Columbia are liable (the five other so-called States have their own withholding taxes); residents of Union-members (e.g., Florida, Idaho, Oklahoma, etc.) are excluded.

Therefore if one does not reside in the District of Columbia but is paying Social Security payroll and Medicare taxes, they are being treated (and conducting themselves) as a resident, for legal purposes, of the "State" of District of Columbia.

The same thing happens when one submits an "Application" for a "Contractors License".

Certain proceedings in courts of the United States

Every civil or criminal proceeding in every court of the United States regarding an alleged debt allegedly owed to the United States is administered in accordance with the provisions of 28 U.S.C. Judiciary and Judicial Procedure, Chapter 176, Federal Debt Collection Procedure, which provides its own exclusive definition of "State" and "United States"; to wit:

§3002. Definitions

As used in this chapter:

. . . (14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

(15) "United States" means—

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the

United States; or

(C) an instrumentality of the United States.

Rules and principles of statutory interpretation

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

We cannot know the exact meaning of the above definition of "State" until we account for the following things: (a) there is a phrase of uncertain meaning in the definition, "the several States," and (b) there is another 28 U.S.C. § 3002 term in the definition, "United States."

Regarding (a): Whereas, it is not possible to know the meaning of the phrase "the several States" until the meaning of "State" is determined, the rule that allows us to interpret the meaning of this phrase correctly is Rule 8, noscitur a sociis (known by its associates).

Applying noscitur a sociis, the surrounding words in the statute, i.e., "any of . . . the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States," tell us that the phrase "the several States" means the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and each respective territory and possession of the United States and no other body politic.

Regarding (b): Inspecting subsections (A), (B), and (C) of the above controlling definition of the statutory term "United States" at 28 U.S.C. § 3002(15), we see that the controlling subsection is (A): "a Federal corporation."

Whereas, the only Federal corporation possessed of agencies, departments, commissions, boards, instrumentalities, and other entities, as those things are expressly listed in subsections (B) and (C) of the definition, is the District of Columbia, a Federal municipal corporation:

● The meaning of the 28 U.S.C. § 3002(15) term "United States" equates to the District of Columbia; and

● The District of Columbia (a Federal municipal corporation) is also known as and doing business as "United States."

Correct interpretation of the meaning of the 28 U.S.C. § 3002(14) term "State"

The 28 U.S.C. § 3002(14) term "State" means any of the following: the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, American Samoa, Virgin Islands, Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, Palmyra Atoll, Wake Atoll, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Midway Atoll, Sand Island, Kingman Reef, or Navassa Island[11] and no other body politic.

Notice that none of the members of the Union (e.g., New Mexico, Vermont, Oregon) are included in the meaning of the definition of the 28 U.S.C. § 3002(14) term "State."

[11] See U.S. Dept. of the Interior, Office of Insular Affairs, "Islands We Serve," http://www.doi.gov/oia/islands/index.cfm, and "Puerto Rico," https://www.doi.gov/oia/islands/puertorico; and U.S. Fish & Wildlife Service, "Navassa Island," https://www.fws.gov/refuge/Navassa_Island, and "Pacific Remote Islands: https://www.fws.gov/refuge/Pacific_Remote_Islands_Marine_National_Monument;

Correct interpretation of the meaning of the 28 U.S.C. § 3002(15) term

"United States"

Congress have created a special "United States" for use in all civil or criminal proceedings in all courts of the United States regarding an alleged debt allegedly owed to the "United States" (District of Columbia)—and each and every mention of "United States" in any such civil or criminal proceeding (as in United States District Judge, United States District Court, United States Marshal, United States Attorney, etc.) literally and legally means "a Federal corporation" and equates to the District of Columbia, a Federal municipal corporation.

Every legislative, executive, and judicial officer of that certain government established by the Constitution must have constitutional authority for every official act he undertakes; to wit (Underline emphasis added.):

As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it. . . . It can be brought into activity in no other way. . . . (*The Mayor v. Cooper, (1867) 73 U.S. 247, 252)*.

There being no provision of the Constitution that gives officers of a municipal corporation the capacity to take jurisdiction anywhere outside the territory occupied by the body politic of the subject municipality, no act of Congress can supply anything that creates jurisdiction for such officers anywhere else.

Modernly, all counties are municipal corporations incorporated under the authority of the "state" / "State" / "STATE," each of which is a statutory term the ultimate meaning of which in all American bodies of law is the District of Columbia.

In the dictionary, the primary definition of the word "state" equates to a body politic, not a geographical area. Since the words "state" / "State" / "STATE" have been transmuted into meaning ultimately, the District of Columbia (a particular body politic), the title "State of California" literally is code for District of Columbia of California, i.e. that certain body politic of legal residents of the District of Columbia who physically reside in California.

Article IV, Section 4 of the Constitution for the United States of America, "Constitution", provides, in pertinent part, that "The United States shall guarantee to every State in this Union a Republican Form of Government."

Notwithstanding this guarantee, the current form of government found in "every State in this Union," id., though seemingly republican in form, is ultimately municipal—because, as evidenced, every such State (i.e., body politic, not geographic area) has been transmuted into a political subdivision of the District of Columbia, a municipal corporation, 16 Stat. 419, whose municipal law is Roman Civil Law.

"…the jurisprudence of the United States is not founded in the civil law" (*Bains v James and Catherine, (1832) 2 F. Cas. 410)*.

Based on this evidence it is apparent neither the trial court nor the appellate court, nor this Supreme Court are "judicial constitution courts" *(FRC, supra)*. Has the de jure State: California been legally transmuted to a territory?

Jurisdiction was directly challenged at the trial court and on appeal. As such, Respondents have the burden of proving it which they have repeatedly failed to do. The courts therefore have a non-discretionary duty to dismiss this case. *(McNutt v General Motors (1936) 298 US 178).*

Both the trial and appeal courts have refused to provide the actual details of the evidence they rely upon to substantiate jurisdiction and/or find Petitioner in violation of the offense. This cannot possibly be considered judicial process or fair and impartial proceedings.

In this instance it is imperative as commensurate with Article 5 of the Constitution, a convention of the People must be convened to decide these issues effecting their collective status and standing. Constitutionally speaking, this nor any other court or legislative body has such status, standing, or capacity to do so.

e. Is Petitioner in Constructive Custody?

Petitioner was also the qualifying individual on another contractors license. Subsequent to the closure of that business pursuant to the housing crisis, a complaint was generated with the CSLB. The CSLB investigated the complaint over a period of years and then conducted a "mandatory arbitration" hearing pursuant to §7085 which it failed to notify Petitioner (as the qualifying individual) of. The hearing was conducted and judgment awarded without Petitioner able to represent his interests resulting in a suspension of all licenses upon which Petitioner was the qualifying individual. Spartan, whose licensed was also effected was also not notified. (This happened after the conclusion of Respondents project.)

Petitioner wrote numerous letters to the CSLB repeatedly saying he had never been notified of the hearing. The Chief of Enforcement replied, insisting the judgment was valid and to obtain a license he must pay the award.

§7085 does not give any legislative authority to conduct "mandatory arbitration". It allows for arbitration upon consent of both parties which Petitioner nor Spartan or Blackrock ever consented to. There is no indication anywhere on the Application For Original Contractors License or elsewhere one is making a knowing, voluntary, and intelligent waiver of their rights to judicial process to be subject to arbitration without appeal *(Johnson v Zerbst, (1938) 304 US 458)*.

Pursuant to a certified public records act request, Petitioner confirmed the CSLB never sent a notification to him or Spartan of the proceedings and further confirmed, by other documents no consent was made.

Based on the unLawful behavior of the courts in this case and the CSLB, Petitioner is unable to work in his profession in fear of the threat of incarceration

for contracting without a license or further cruel and unusual fines and punishment. He is faced with being forced into bankruptcy and being divested of his entire estate. He has been deprived of his property – the Right to work in his profession using his talents, his State Citizenship and Rights protected thereby, and his humanity as a biological being, without just compensation.

Despite raising all of these Constitutional issues on appeal, the appeal court failed to address them with the exception of part a. There is no mention of them in it's Opinion which Petitioner feels is another violation of judicial process. The court cannot deny a litigants Constitutional claims by ignoring them.

"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be **treason** to the Constitution" (*Cohens v Virigina, supra.)*

Petitioner respectfully requests this court grant this Petition for Review.

Adam Bereki
In Propria Persona
December 9, 2018

WORD COUNT CERTIFICATE

Not including sections identified by CRC 8.204(c)(3), this brief has 8357 words. I rely upon the word-counting function of Pages, the word-processing program used to generate this Petition, in making this certification.

Dated: December 10, 2018

Adam Bereki, In Propria Persona

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GARY HUMPHREYS et al., Cross-complainants and Respondents. v. ADAM BEREKI, Cross-defendant and Appellant,	G055075 (Super. Ct. No. 30-2015-00805807) O P I N I O N

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

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

William G. Bissell for Defendants and Respondents.

* * *

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

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

I

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II

DISCUSSION

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

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

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

A. Disgorgement Remedy Under Section 7031

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Contractor Licensing Requirement

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

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

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

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

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

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

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

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

C. Disgorgement Remedy Under Section 7031

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

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

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

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

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

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

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

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

D. Statement of Decision

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

III

DISPOSITION

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

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.

POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	FOR COURT USE ONLY
NAME: Adam Bereki FIRM NAME: In Propria Persona STREET ADDRESS: 818 Spirit CITY: Costa Mesa STATE: Ca ZIP CODE: [92626] TELEPHONE NO.: 949.241.6693 FAX NO. : E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 700 W. Civic Center Dr MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center	CASE NUMBER: G055075/ 30-2015-00805807
Plaintiff/Petitioner: Adam Bereki Defendant/Respondent: Karen and Gary Humphreys	JUDICIAL OFFICER: Chaffee
PROOF OF SERVICE—CIVIL **Check method of service *(only one):*** ☐ By Personal Service ☒ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	DEPARTMENT: C-20

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

1. At the time of service I was over 18 years of age **and not a party to this action**.
2. My residence or business address is:
   818 Spirit Costa Mesa, California, [92626]
3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*
4. On *(date):* 12/9/18 I served the following **documents** *(specify):*
   Peition For Review
   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served: Clerk of Court; Contractors State License Board
   b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
   Business or residential address where person was served:
   Central Justice Center Attn Clerk of Court 700 W. Civic Center Drive Santa Ana 92701; CSLB PO Box 26000 Sacramento, CA 95826
   c. ☐ *(Complete if service was by fax.)*
   Fax number where person was served:
   ☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Form Approved for Optional Use
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POS-040 [Rev. February 1, 2017]

PROOF OF SERVICE—CIVIL
(Proof of Service)

Code of Civil Procedure, §§ 1011, 1013, 1013a, 2015.5; Cal. Rules of Court, rule 2.306
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CASE NAME:	CASE NUMBER:
Spartan v. Humphreys	605575

6. b. [x] **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

(1) [ ] deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) [ ] placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:

c. [ ] **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. [ ] **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. [ ] **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date: 12/9/18

Roseanne Bereki
(TYPE OR PRINT NAME OF DECLARANT)

▶ Roseanne Bereki
(SIGNATURE OF DECLARANT)

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

DECLARATION OF MESSENGER

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

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

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

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

Date:

(NAME OF DECLARANT)

▶
(SIGNATURE OF DECLARANT)