No. __________

IN THE
Supreme Court of the United States

Adam Bereki,
Petitioner.
v.

SUPREME COURT OF CALIFORNIA,
Respondent.

Gary Humphreys et al
(Real Parties In Interest)

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Across nearly ten years, more than ten proceedings, and more than thirty-five state and federal judges, the preliminary constitutional questions in this case, involving Cal. Bus. & Prof. Code § 7031, were presented at every level and never heard (in the sense that a court "hears" a constitutional question only by engaging and answering it, *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876)) nor determined. Instead, both mandatory duties were avoided through: (1) relabeling — an alleged criminal matter recast as "civil," the penalty recast as "disgorgement" and a "civil consequence" without performing the required adjudication to support the labels —; (2) deference to the legislature; or, (3) refusal to answer at all. As a result, Petitioner was arbitrarily stripped of approximately $930,000, his contractor's license and livelihood, his home — with approximately $1.2 million in equity — and forced into bankruptcy, while no court, state or federal, ever determined whether the Constitution authorized any of it. Petitioner calls this structural non-adjudication. The failure involving § 7031 — which has occurred in every known case since 1939 — is systemic, not an aberration. The closure of the federal forum is also systemic and developed in the subsidiary question below.

   Structural non-adjudication. Whether a State may impose and enforce an all-compensation statutory exaction — alleged to be punitive, and therefore subject to the Excessive Fines Clause and all heightened protections in criminal proceedings — where the courts: **(1)** substituted a "civil" label bypassing all those protections and deferred to the legislature for the punitive-versus-remedial inquiry that governs, never adjudicating the nature of the proceeding and subsequently whether constitutional prohibitions applied; **(2)** refused to apply this Court's controlling precedent, and **(3)** later invoked finality and preclusion to bar review of the unadjudicated federal question, conceding that preclusion does not bar relief from a void judgment yet refusing to decide whether the judgment is void. Where the facts establishing voidness stand undisputed, as here, that refusal breaches a mandatory duty: the court must "declare the judgment void as a matter of law," *Thompson v. Coo*k, 20 Cal. 2d 564, 569–570 (1942), and has "no discretion . . . except to expunge it," *Andrews v. Superior Court*, 29 Cal. 2d 208, 214–215 (1946) — yet the courts refused to do either while unlawful enforcement continues.

   A subsidiary question is whether the Constitution's checking protections against the States can be left with no federal forum at all. Rooker-Feldman bars the lower federal courts from reviewing a state judgment, so this Court is the only federal forum in which a void state judgment can be tested and remedied against those protections. When this Court withholds review, the mandatory federal checks on unlawful state action — such as Art. I, § 10 invoked here — disappear, and the State is left to judge its own cause. This is precisely the safeguard the Founders enshrined: when one government invades the people's rights, they may invoke the other as the instrument of redress. The Federalist No. 28. Withholding review thus lets a State nullify a federal right through its own courts, overruling the Constitution's checking function and the Supremacy Clause– in this case leaving no forum anywhere. This Court has refused to let procedural rules, however labeled, produce that result.

Five grounds independently support review: **First,** non-judicial foreclosure operates in roughly thirty states, so the taking of inalienable home equity through a sale no court oversees is a national problem. **Second,** the California courts refuse to apply this Court's controlling precedents (see Question 4). **Third,** this Court granted certiorari on a related Excessive Fines question in *Jouppi v. Alaska*, No. 25-246, presented here in aggravated form. **Fourth,** this case also presents the same split with the Ninth Circuit evidenced in *Jouppi*, which holds it "critical" to review the specific violator's conduct rather than the offense in the abstract. *Thomas v. County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024). **Fifth,** state and federal executive officials, alerted to the deprivations herein, continue to abdicate their independent duty to investigate and intervene while unlawful enforcement continues.

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The seven questions that follow are not separate claims but the anatomy of the single defect of structural non-adjudication: a state and federal breakdown of the checks the Constitution presupposes, in which no branch checked another — the courts refusing to adjudicate whether the Constitution authorized the deprivation, and the executive refusing its independent duty to intervene while unlawful enforcement continues. The number of questions below is itself the proof. Each isolates one checkpoint that failed — legislative, executive, or judicial — and tracing each one is the only way to show the structural breakdown. Reducing them would conceal the defect, leaving each failure to look like isolated error when together they establish that no branch ever checked another and the officials of each are abdicating their fundamental duties.

2. **Bill of attainder.** Whether Article I, § 10's prohibition of a "Bill of Attainder" — which binds every organ of state government, not the legislature alone — is violated when the State imposes punishment by taking a person's property (including rights), livelihood, or home without a judicial trial, through summary legislative/administrative proceedings rather than proceedings according to the course of the common law St. George Tucker, Blackstone's Commentaries app. at 292 (1803) ("pains and penalties beyond, or contrary to the common law").

   The clause forbids punishment without a judicial trial. A judicial trial is an exercise of the judicial power. The specific questions are whether: **(1)** where the judge does not adjudicate but merely executes a sentence the legislature has fixed in advance, the judgment is in substance a legislative judgment —

punishment without judicial trial, whatever its form — as occurred here, the courts having deferred to the legislature on the questions that adjudication exists to decide including: **(a)** the character of the sanction (accepting the "civil" label rather than determining whether the statute was in substance punishment); **(b)** the application of the statute's intent/presumption — that every unlicensed person is incompetent and dishonest — without ever adjudicating it; and, **(c)** accepting the determination that Petitioner had no inalienable rights to his time and labor, to contract, or to privacy, surrendering the determination of these rights, the nature of the proceeding, and the culpability of the accused, so that the court adjudicated nothing and merely executed a legislative decree. A court sitting in this capacity is neither the fair and impartial tribunal due/judicial process requires, *In re Murchison*, 349 U.S. 133, 136 (1955). Nor one exercising the "independent judgment" the judicial power and system of checks and balances/separation of powers demand, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024).

(2) Whether, because the judicial power knows only two jurisdictions that arise *under* the Constitution — law and equity, U.S. Const. Art. III, § 2 — to whose limits Article VI, § 2 binds the judges of every State, both being the inheritance our ancestors "claimed . . . as their birthright," *Van Ness v. Pacard*, 27 U.S. 137, 144 (1829); Northwest Ordinance of 1787 — a proceeding not arising under the Constitution that is neither an action at law nor a suit in equity is no exercise of the judicial power at all, so that the punishment it imposes is a bill of pains and penalties.

There are four subsidiary questions.

a) In particular, whether each of the following is a bill of pains and penalties notwithstanding its "civil" label: **(1)** a roughly $930,000 forfeiture for the public offense of unlicensed contracting, obtained by private parties without indictment, jury (according to the course of the common law , in which the jury judges both the law and the fact, *Georgia v. Brailsford*, 3 U.S. 1, 4 (1794); *SEC v. Jarkesy*, 603 U.S. 109 (2024) (penalty triggers Seventh Amendment jury right), or any criminal-process safeguard; **(2)** the automatic statutory destruction of the inalienable rights to privacy, property in the form of one's time and labor, and to contract; **(3)** to the extent a license is even required– the automatic statutory destruction of vested right held in a contractor's license under § 7071.17, imposed with no hearing and no finding of unfitness or harm; and **(4)** the non-judicial foreclosure of a home under California Civil Code § 2924, destroying approximately $1.2 million in home equity property with no court involved in the sale and none of the protections deeply rooted in our Nation's history and tradition — an execution without any judgment: a $1.5 million fee simple absolute, the greatest estate known to the common law, transferred outright on a $62,523 debt, when the common-law rule required that a forced sale reach only "so much as is necessary" to satisfy the debt, *Stead's Executors v. Course*, 8 U.S. 403, 414 (1808), and upon a "default" manufactured by the enforcement chain itself. From 1354: "no Man . . . shall be put out of Land or Tenement . . . without being brought in Answer by due Process of the Law." 28 Edw. 3, c. 3 (1354).

b) Whether a total forfeiture — occurring under both § 7031 and § 2924 — is an unconstitutional excessive amercement where it satisfies none of the four conditions of the common-law "amercements test": (1) a genuine offence causing actual injury, not a presumed one — here supplied only by the conclusive presumption of "incompetence and dishonesty," (cf. Cal. Evid. Code § 600– presumption is not evidence; based on established fact not fiction) though the forfeiture "bears no articulable correlation to any injury," *United States v. Bajakajian*, 524 U.S. 321, 339 (1998); (2) proportion to the wrong; (3) preservation of the offender's livelihood; and (4) assessment by peers. A forfeiture satisfying none of these conditions violates the proportionality limit inherent in judicial adjudication according to the course of the common law and secured, in the alternative, by the Excessive Fines Clause as applied to the States. Magna Carta ch. 20 (1215); *Bajakajian*, 524 U.S. at 334; cf. *Hale v. Morgan*, 22 Cal. 3d 388, 403 (1978); cf. *Jouppi v. Alaska*, No. 25-246; *Austin v. United States*, 509 U.S. 602, 610 (1993).

c) Whether a fine or forfeiture — being punishment — may be imposed at all without a criminal conviction, or whether, as the common law and the Founders held, fines and forfeitures belong to the criminal side and follow only upon conviction, so that § 7031's forfeiture of roughly $930,000 and § 2924's forfeiture of a home and home equity — imposed with no conviction, no crime charged, and no criminal court, are punishments the state had no power to inflict; and together, stripping Petitioner of his entire estate in a forced bankruptcy — are a forfeiture of estate, forbidden even upon conviction. U.S. Const. art. III, § 3, cl. 2.

d) To what jurisdiction — what form and mode of proceeding arising under the California Constitution and the Constitution of the United States — was Petitioner subjected in each instance? A proceeding that is neither an action at law nor a suit in equity, with the safeguards each carries, being no known exercise of the judicial power either Constitution acknowledges. Cf. *Parsons v. Bedford*, 28 U.S. 433, 446–47 (1830); Cal. Const. 1849, art. VI, § 6 (vesting district courts with original jurisdiction "in law and equity" in civil cases).

3. **Deference to the legislature.** Whether a court that resolves a constitutional challenge by deferring to the legislature's policy judgment — or by invoking the presumption that a statute is constitutional — rather than, fully, fairly, impartially and independently determining whether the Constitution authorizes the statute, has exercised the judicial power at all, or has instead

administered legislative policy in judicial form. The wrong here being court's own: bound to hear *and* determine, it abdicated both functions by refusing to hear Petitioner's claims and refused to determine by accepting a legislatively-determined nature of the proceeding and status or presumption in place of the full, fair, impartial and independent judicial determination the Constitution required. And, where the statute is punitive, whether the resulting judgment is legislative punishment imposed without adjudication, a bill of pains and penalties the "civil" label cannot cure.

There are three subsidiary questions:

a) Whether the constitutional authority to subject a person to a forfeiture proceeding or a non-judicial taking must be determined before the deprivation occurs — a requirement rooted in the right to know the true nature and cause of a proceeding and in the guarantee of due and judicial process, both allegedly secured by Article I, § 10's command of judicial proceedings according to the course of the common law, and reflected in this Court's recognition that subjection to an unauthorized proceeding is itself a cognizable injury, *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023) — so that the presumption of constitutionality cannot carry a proceeding forward while the antecedent question of authority goes undecided, and the burden rests on the party invoking jurisdiction to establish that authority rather than on the defendant to rebut it from within an unauthorized proceeding.

b) Whether, because Article I, § 10 ("No State shall") and California's Article I, § 26 are self-executing, a statute transgressing them is void from enactment and carries no presumption of constitutionality, so that the burden was never the citizen's to bear — and whether the State must establish its constitutional authority — by what power it acts, which rights it impedes, and a reasoned justification, supported by authority, that the impairment falls within the established limits of the power invoked — before the deprivation, rather than enforce first and leave the citizen to litigate back over years, at ruinous cost, a right the Constitution already secured and already placed beyond the statute's reach. And whether the State's failure to make that showing, on the face of the enactment or before deprivation, denies the citizen the right to be informed of the true nature and cause of the proceeding against him.

c) Whether, because § 7031 forfeits all compensation with no proof of harm, no offsets, and no finding of actual incompetence, the scheme operates as an irrebuttable presumption that every person practicing a lawful calling in construction without a license is effectively guilty of the "incompetence and dishonesty" the licensing law names as its target, *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (1991), with the companion mechanism declaring the enforcing party's own recitals "conclusive evidence" in favor of the purchaser, Cal. Civ. Code § 2924(c), denies due process of law. *Heiner v. Donnan*, 285 U.S. 312, 325 (1932). *Bailey v. Alabama*, 219 U.S. 219, 239 (1911).

4. **Refusal to apply binding precedent.** Whether a state court's refusal to apply this Court's controlling precedent renders the resulting judgment void — both because the refusal to perform the *Kennedy v. Mendoza-Martinez* analysis that determines whether a nominally civil sanction is in substance punishment leaves the dispositive question structurally unadjudicated, and because a court that declines to adhere to controlling precedent, including its refusal to apply the intervening authority of *Liu v. SEC,* 591 U.S. 71 (2020) confining "disgorgement" to net profits after legitimate offsets and the penalty holding of *Kokesh v. SEC*, 581 U.S. 455, 467 (2017) (disgorgement imposed as a consequence of violating a public law and . . . intended to deter, not to compensate), presented below in 2018 and refused, acts in violation of the Supremacy Clause — which binds all state judges — and without the authority to render or affirm the judgment entered.

   A subsidiary question is what specifically is "disgorgement"? Whether a label unknown to the common law and equity and not deeply rooted in this Nation's history and tradition may be used to impose a sanction while escaping the analysis that every historically rooted form — penalty, forfeiture, accounting for profits, and underlying inalienable property rights determinations — would compel; whether, answering to no historic category, "disgorgement" operates to conceal a sanction's true character and to defeat the characterization inquiry this Court's precedents require, *Kennedy v. Mendoza-Martinez,* 372 U.S. 144 (1963); and whether it may therefore be imposed at all — or, at minimum, may not be imposed without the constitutional protections attaching to the historic form it in substance occupies. Cf. *Liu v. SEC*, supra (Thomas, J., dissenting); *Sripetch v. SEC*, 608 U.S. ___ (2026) (Thomas, J., concurring) (disgorgement now a legal remedy, not equitable).

5. **Subject matter jurisdiction/ void judgements– does "the judicial power" mean the power to decide, or the power to decide within the Constitution's limits?** Whether the constitutional violations presented here are structural jurisdictional defects that render the resulting judgments void, rather than merits errors correctable only on appeal. If the judicial power is the power to decide within constitutional limits, no court was ever granted power to render them for how can a court have subject matter jurisdiction to violate a constitution, such that a judgment that violates the constitution is not error in the exercise of jurisdiction, but action without it, and void.

   The nature of a void judgment is deeply rooted in this Nation's history and tradition and enshrined in both the state and federal Constitutions, yet finality, res judicata, and the Rooker-Feldman doctrine are increasingly invoked to dilute and/or deny this protection — treating as correctable error what is in truth a jurisdictional nullity that never bound anyone. This question is structural, not merits: it does not ask whether the courts below reasoned correctly, but whether the judicial power reached these judgments at all — that power being the power to fully, fairly, impartially, and independently determine according to law, not to impose a disposition affecting the rights of the parties the Constitution forbids. A court that renders a judgment the Constitution withholds has not exercised the judicial power wrongly; it has acted without it, and its judgment is void. As *Windsor* put it, a court "must act judicially in all things, and cannot then transcend the power conferred by the law." 93 U.S. at 282–83.

There are eight issues pertaining to the true nature and extent of subject-matter jurisdiction, presented as subsidiary questions:

a) Whether the constitutional limits on the judicial power — under both the United States and California Constitutions — are self-executing conditions built into the grant itself, not external restraints on a power otherwise complete, so that the power to take any action or render a judgment the Constitution forbids was never conferred. The subject-matter jurisdiction of a court, though conferred by a constitution, being at all times and as to every issue in the case subject to the mandatory and prohibitory provisions of that constitution that limit the judicial power. "It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent[.]" *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824); Art. VI, § 2; "He must act in conformity with the law from which his power is derived[.]" *Stead's Executors v. Course*, 8 U.S. 403, 414 (1808). The Constitution is "the supreme Law of the Land," binding the "judicial Officers… of the United States and of the several States" alike, U.S. Const. art. VI, § 2 & cl. 3; there "can be no rule making or legislation which would abrogate" the rights secured by the Constitution, *Miranda v. Arizona*, 384 U.S. 436, 491 (1966). California's Constitution makes the same limits express, declaring its provisions "mandatory and prohibitory," Cal. Const. art. I, § 26, so that "everything done in violation of it is void," *Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 307 (2002) (quoting *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 484 (1886)). Under either charter, a court's compliance with constitutional limits is not discretionary, and a judgment rendered in their violation is void. This holds on either of two independent grounds: the power to determine the issue or render judgment never existed; or, even assuming the court initially possessed jurisdiction over the issue of the type of case, it completely lost the power to take any action affecting the parties' rights the moment it transgressed a mandatory constitutional prohibition. E.g. *Cohen v. Barrett*, 5 Cal. 195, 211 (1855) (subject matter and the relief sought must be within the statute and constitution before jurisdiction will attach).

b) Whether subject-matter jurisdiction is issue-specific — attaching to every issue in the case, the "subject matter" being the substance of the issue and "jurisdiction" being the court's power/authority regarding that issue to take any action affecting a litigant's rights or property, so that the power/authority over the type of case is only one issue of many and not a license to take action or render a judgment the Constitution withholds at any time — given that this Court has long measured jurisdiction act by act: a court "has jurisdiction to render a particular judgment only when… the court keeps within the limitations prescribed by the law," *In re Bonner*, 151 U.S. 242, 259 (1894); "If it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void… even prior to a reversal." *Elliott v. Peirsol*, 26 U.S. 328, 340 (1828); see also *Thompson Pacific Construction, Inc. v. City of Sunnyvale*, 155 Cal. App. 4th 525, 538 (2007) ("Even where there is jurisdiction over the parties and the general subject matter, fundamental jurisdiction may be absent when a trial court purports to grant relief that it has no authority to grant"); *Selma Auto Mall II v. Appellate Department*, 44 Cal. App. 4th 1672, 1683–84 (1996) ("Proceedings outside the authority of the court, or in contravention of statutory prohibitions, are, whether the court has jurisdiction of the parties and subject matter of the action or not, "utterly void." [Citation]. The mere fact that the court has jurisdiction of the subject matter of an action before it does not justify an exercise of a power not authorized by law, or a grant of relief to a party that the law declares shall not be granted.") so that the self-executing mandatory limit is not a boundary a court crosses while holding the power, but marks power a court never holds — or whether jurisdiction attaches only and completely to the general nature of the case.

c) Whether "excess of jurisdiction" — the doctrine treating some acts beyond a court's power as merely voidable rather than void (e.g. *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 291 (1941))— can exist at all as against a constitutional limit, or whether a court either has the power to act or does not, so that any action or judgment transgressing the Constitution is without jurisdiction and void, not voidable — a nullity from the moment of its entry, there being no known authority to "exceed" what the Constitution prohibits, whether or not the court had jurisdiction of the parties and type of case. *Elliott v. Peirsol*, 26 U.S. at 340. *VanHorne's Lessee v. Dorrance*, 2 U.S. 304, 308 (C.C.D. Pa. 1795) ("every act of the Legislature, repugnant to the Constitution, [is] absolutely void); *Marbury v. Madison*, 5 U.S. 137 (1803); *Windsor,* 93 U.S. 274. The rule is ancient: what is done contrary to due process "shall be void in the Law, and holden for Error." 42 Edw. 3, c. 3 (1368). And the remedy was mandatory, not discretionary: "if any thing be done against the same, it shall be redressed and holden for none." 25 Edw. 3, st. 5, c. 4 (1351).

d) Whether, being void, the judgment is a nullity that may be challenged at any time, and so is not cured by finality or res judicata, neither of which can supply a power the Constitution withheld; and whether there is a mandatory, non-discretionary duty to both examine and vacate judgment that is void, regardless of time. *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660 (2004) (void judgment "vulnerable to direct or collateral attack at any time"); *Thompson*, 20 Cal. 2d at 569–570; *Andrews*, 29 Cal. 2d at 214–215. Cf. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923) (treating a decision "whether right or wrong" as "an exercise of jurisdiction," while citing *Elliott v. Peirsol*, 26 U.S. 328, 340 (1828), whose rule voids the judgment of a court that "act[s] without authority").

e) Whether the judicial power can be exercised at all over an action the Constitution declares non-cognizable: a private citizen "lacks a judicially cognizable interest in the prosecution … of another," *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); Cal. Const. art. V, §1 yet § 7031 commissions precisely that prosecution — so that the resulting judgment is not an exercise of the judicial power at all, and is void.

f) Whether a court declines to exercise "the judicial power" — jurisdiction being "the right to hear and determine" — fully, fairly, impartially, and according to law — when, presented with a dispositive, properly raised claim that a judgment is void, it denies relief without determining that claim: whether the claim comes before the court by judicial notice of a record establishing that no court has ever determined it, or by a litigant's direct presentation of it — so that the denial is itself an affirmative act of deprivation, not mere inaction.

g) Whether an act that violates the Constitution is a judicial act at all?

h) Whether a court declines to exercise the judicial power when, presented with a properly raised and dispositive constitutional question, it invokes the canon of constitutional avoidance to dispose of the case on a narrower ground that does not in fact resolve the controversy, leaving the citizen subject to the very statute avoided and exposed to renewed litigation on the same question; the avoidance canon being a rule of judicial restraint that presupposes an alternate ground on which "the case may be disposed of," *Ashwander v. TVA*, 297 U.S. 288, 346–47 (1936) (Brandeis, J., concurring), and not a license to withhold a determination the Constitution commands, for this Court "will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should," having "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given," *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) — so that avoidance invoked to escape, rather than resolve, the constitutional question is no exercise of the judicial power but a refusal of it, and the judgment it produces leaves the antecedent question of constitutional authority undetermined and the deprivation unadjudicated.

6. **Inalienable rights and contracts.** Whether — no court having ever adjudicated whether the Constitution authorizes it — the State may convert an inalienable right to pursue an ordinary calling, antecedent to government, retained by the people under the Ninth Amendment and natural justice, and secured by California Constitution Article I, § 1, into a licensed privilege subject to categorical forfeiture of all time and labor for the want of a license; whether §§ 7028/7031 may annihilate the obligation of a performed private contract and the compensation earned under it in violation of the Contracts Clause of Article I, § 10; and whether California Civil Code § 2924 may likewise convert the inalienable right in one's home and its equity — secured by those same protections — into a privilege the State extinguishes through non-judicial machinery, with no judicial determination of its authority at any stage**;** in each case, where what is labeled regulation is in substance the destruction of the right itself.

   There are five subsidiary questions:

   a) Whether any legislative power can exceed the power the People possessed and could delegate: "nobody can transfer to another more power than he has in himself," and no man holds power in himself to strip his neighbor of lawfully earned compensation, or to take the title of A and give it to B; so that § 7031's transfer of a contractor's entire compensation to a private party — void of any power to make it, or if not, void without adjudicated harm, forfeiture for crime, or compensation — and § 2924's transfer of a home's title and equity to a private purchaser without adjudication, each exceeds any power the People could confer, and is "utterly void." *Billings v. Hal*l, 7 Cal. 1 (1857); *Calder v. Bull*, 3 U.S. 386, 388 (1798); *VanHorne's Lessee* 2 U.S. at 310 (C.C.D. Pa. 1795) (the legislature "had no authority to make an act devesting one citizen of his freehold, and vesting it in another, without a just compensation").

   b) Whether the power to regulate includes any power to punish — or whether punishment, by whatever name the legislature gives it, may be inflicted only through judicial adjudication; and whether the power to regulate another's calling or property can ever exceed the power a man holds in himself over his own — there being no power, in a government "not designed to be paternal in form" (*Ex parte Jentzsch*, 112 Cal. 468, 472 (1896)), to presume a competent adult incapable of his own bargains and forfeit his calling and property in the fruits of his faculties by force of status without an individualized adjudication of fitness. *Billings v. Hall*, 7 Cal. 1, 11–13 (1857);

c) Whether the equity in a home — its value above the debt — is itself inalienable property (Cal. Const. art. I, § 1; Magna Carta ch. 39 (1215); natural justice); and, if so, whether § 2924's transfer of that equity to a private purchaser is without any power the People could confer, and is void — no power existing to take the property of A and give it to B — or, if not, whether it may be extinguished through a summary nonjudicial "fire sale auction" that neither adjudicates the right nor captures the property's value, when even a judicial foreclosure of the same debt requires a court-determined fair value (*Peugh v. Davis*, 96 U.S. 332, 337 (1877); *Cuckmere Brick Co. v. Mutual Finance Ltd.* [1971] Ch. 949 (even English power-of-sale creditor owes a duty to obtain true market value; § 2924 imposes no comparable duty); *Liu v. SEC,* 591 U.S. 71 (2020).

d) Whether the "illegal contract" label can strip these transfers of constitutional protection — where the illegality derives solely from the same licensing statute challenged as void, so that the label assumes the validity of the enactment at issue; and where any lawful voiding requires restoration of the status quo, so that value conferred (compensation under § 7031, equity under § 2924) must be accounted for rather than transferred outright to the party who retained it — the antecedent question being who holds the property right in the fruits of one's time and labor, such that the State may transfer it by force of status without accounting and judicial adjudication, or whether that right, being inalienable, was never the State's to convey.

e) Whether, under the California and United States Constitutions, the right to property — including the fruits of one's time and labor — is an inalienable individual right antecedent to government, which the State may only secure and not destroy, or instead is a collective interest the People are deemed to hold in common that the legislature may redistribute or extinguish at will by force of status; and whether the principle that no power exists to take the property of A and give it to B — *Calder v. Bull*, 3 U.S. 386, 388 (1798); *Fletcher v. Peck*, 10 U.S. 87, 135-9 (1810); *Billings v. Hall*, 7 Cal. 1 (1857) — resolved that question against the State at California's founding.

7. **Extrinsic Fraud and Fraud on the court.** Whether a judgment and its subsequent enforcement are void for extrinsic fraud and fraud upon the court where the record establishes a sustained pattern of conduct that prevented adjudication of the proceeding's true nature and corrupted the judicial process itself, including: (a) a court clerk's rejection of Petitioner's filing challenging jurisdiction through an e-filing notice never entered on the record and purporting to state the court's denial; (b) clerks' refusal to file Petitioner's

timely answers raising defects in jurisdiction and title, followed by entry of default and a writ of possession; (c) the striking of Petitioner's appellate brief and refusal to adjudicate the appellate court's own jurisdiction; (d) the use of a false factual predicate — that the jurisdictional question(s) had already been decided — to foreclose any adjudication of the court's constitutional authority to impose the punishment; (e) the use of (1) summary denial and (2) a frivolous label to dispose of meritorious claims without full, fair, and impartial adjudication; (f) the entry, affirmance, and enforcement in any way — a judgment bearing the form of a judicial determination — and treated as one for every enforcement purpose — worked an extrinsic fraud that kept Petitioner out of the court it simulated, and a fraud upon the court that corrupted the judicial process itself, where no judicial power was ever exercised to produce it. The appearance of adjudication was the instrument of both wrongs: Petitioner was present in form and heard in name, yet denied the "hearing and determination" that alone makes a proceeding judicial — prevented from ever obtaining the full, fair, and impartial adjudication the process purported to give, while the counterfeit judgment stood as though rendered by a power that never acted; and, (g) whether such fraud equally taints every affirmance, denial of review, determination, and enforcement action built upon the tainted predicate in both the § 7031 and § 2924 proceedings.

A subsidiary question is whether the judgment(s) procured and maintained by extrinsic fraud and/or fraud upon the court is void and results in a jurisdictional defect, rather than merely voidable, such that it is subject to direct or collateral attack at any time, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244–46 (1944); *County of San Diego v. Gorham*, 186 Cal. App. 4th 1215, 1228–29 (2010) and cannot be insulated by finality, res judicata, law of the case — none of which can attach to a judgment the court had no personal and/or subject matter jurisdiction to render — and whether every affirmance, denial of review, determination, and enforcement action resting upon such a judgment, in both the § 7031 and § 2924 proceedings, is likewise void.

8. **Executive duty to intervene.** Whether, when presented with a bona fide complaint for deprivation of constitutionally protected rights under either the California or United States Constitution — including by judicial officers and private parties participating in joint action under color of law — state and federal executive officials have an independent mandatory non-discretionary duty to fully, fairly, and impartially investigate, determine, and intervene if a violation is found, given the protections inherent in the rights themselves, the right to petition for redress of grievances, and the executive's duty to see the law faithfully executed — such independent duty being not an appeal, but the performance of the executive's own checking and faithful-execution functions.

PARTIES TO THE PROCEEDING

Petitioner, who was petitioner below, is Adam Bereki, appearing *in propria persona*.

Respondent is the Supreme Court of California, whose judgment was entered January 21, 2026.

Real Parties in Interest are Gary Humphreys and Karen Humphreys, the purported judgment creditors in the underlying state proceedings.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the following parties related to this proceeding are non-governmental corporate entities of which Petitioner is aware**:**

Citizens Bank, N.A. — Real Party in Interest; national banking association. Parent corporation: Citizens Financial Group, Inc. (NYSE: CFG), a publicly held corporation.

MTC Financial, Inc. (d/b/a Trustee Corps) — Real Party in Interest; California corporation. Petitioner is unaware of any publicly held parent corporation owning 10% or more of its stock.

PROCEDURAL HISTORY AND RELATED PROCEEDINGS

The following proceedings are directly related within the meaning of Rule 14.1(b)(iii):

- *Humphreys v. Bereki*, No. 30-2015-00805807 (Cal. Super. Ct., Orange Cnty.) (§ 7031 forfeiture judgment entered Apr. 20, 2017; Motion to Vacate Void Judgment; Independent Action in Equity (denied June 26, 2025));
- *Bereki v. Humphreys*, No. G055075 (Cal. Ct. App., 4th Dist., Div. 3) (affirming § 7031 forfeiture judgment, Oct. 30, 2018; rehearing presenting *Kokesh v. SEC* denied, Nov. 20, 2018);
- *Bereki v. Humphreys,* No. S252954 (Cal. Supreme Court.), (petition for review denied Jan. 30, 2019);
- *Bereki v. Humphreys*, No. 18-1416 (petition for writ of certiorari denied Oct. 7, 2019);
- *Bereki v. Humphreys*, No. 8:19-cv-02050-CBM-ADS(x) (C.D. Cal.) (independent action in equity to vacate void judgment dismissed under Rooker-Feldman);
- *Bereki v. Humphreys*, No. 20-55181 (9th Cir.) (dismissing appeal as "frivolous")
- *Bereki v. Humphreys*, No. G065695 (Cal. Ct. App., 4th Dist., Div. 3) (dismissing appeal from denial of motion to vacate void judgment, Oct. 30, 2025);
- *In re Bereki,* No. 22A426 (U.S. Supreme Court), (App. for Emergency Stay, denied);
- *In re Bereki*, No. 22-12076 (Bankr. C.D. Cal.) (Chapter 7; § 7031 judgment lien avoided);
- *Canjian Hou v. Bereki*, No. 30-2025-01459684 (Cal. Super. Ct., Orange Cnty.) (related unlawful detainer);
- *Bereki v. Hou,* Nos. 30-2025-1482941 (Lead Case) and 30-2025-01487778 (Cal. Super. Ct., Orange Cnty) (related unlawful detainer appeals; dismissed);
- *Bereki v. Fourth District Court of Appeal* (Humphreys, Real Parties in Interest), No. S294386 (Cal.) (petition for writ of mandate and application for stay denied Jan. 21, 2026);
- *Bereki v. Superior Court of Cal.,* No. S294339 (Canjian Hou, Real Party in Interest) (petition for writ of mandate and application for stay denied by Cal. Ct. App., 4th Dist., Div. 3, No. G066337 Dec. 18, 2025; Recall of Transfer denied).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari issue, as in substance a writ of error, to vacate the judgments below rendered without jurisdiction.

OPINIONS BELOW

The decisions below are unreported: the California Supreme Court's order denying mandate and stay (App. A, A–01); the Court of Appeal, Fourth District, Division Three (Apps. B, A–02; C, A–10); and the Superior Court's order denying the Independent Action in Equity to vacate the judgment as void (App. D, A–10).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). Petitioner further maintains that, because every other forum has closed and no court has adjudicated his federal claims, review on these facts is mandatory rather than discretionary, and that the Exceptions and Regulations Clause cannot leave an Article I, § 10 claim with no forum in any court. Without waiving it, he invokes § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are: U.S. Const. Art. I, § 10; the 8th and 14th Amendments, and Art. III, § 2; Cal. Bus. & Prof. Code §§ 7031, 7071.17; and Cal. Civ. Code § 2924 are reproduced at App. E.

STATEMENT OF THE CASE

"It would be like saying to a party, appear, and you shall be heard; and, when he has appeared, saying …you shall not be heard."
— *Windsor v. McVeigh*, 93 U.S. 274, 278 (1876)

In America's 250th year, this petition asks whether the constitutional guarantees it celebrates remain enforceable in fact, or survive in name only — when a citizen can be stripped of his livelihood, his property, and his home, and no court, state or federal, will say whether the Constitution permitted any of it.

Two California statutory schemes converge in this case; in no known case has any court determined the constitutionality of either under the main protection invoked here — Article I, § 10's prohibition of bills of pains and penalties.

For more than eighty-six years, California has administered a punitive contractor-forfeiture regime that operates as regulatory enforcement: a licensing bureau, automatic statutory suspensions, and a penal forfeiture the courts impose by sorting a party into the status "unlicensed" and applying the statutory consequence. That consequence strips all compensation for completed work, with no finding of harm, accounting, or property rights determination. And for more than one hundred years, California's non-judicial foreclosure scheme, Civil Code § 2924, has taken homes with no court involved at any stage before the sale, its constitutionality never examined against the Article I, §10 protections in any known case. In Petitioner's case the two converged: the first stripped him of roughly $930,000, his contractor's license, and his livelihood; the second took his home, sold roughly $1.2 million below fair market value from the first scheme's void judgment, when no court would intervene.

When the constitutional questions are directly presented, the courts: (1) summarily refuse to adjudicate; (2) defer to the legislature; (3) relabel the penalty in undefined terms such as "disgorgement" or "civil consequence" that conceal its punitive effect; and/or (4) acknowledge the penalty, but then refuse to apply the constitutional protections required, including refusing to apply this Court's precedents. The result is the twin injury this Court has condemned: subjection to an unlawful proceeding whose authority was never adjudicated — a "here-and-now injury," complete upon subjection and not cured by later review, *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023) — and the abdication of the judiciary's fundamental duty to exercise independent judgment and "say what the law is." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). A court that enforces a statutory penalty while refusing to determine whether the Constitution permits it is not exercising the judicial power; it is administering legislative policy in judicial form — a legislative enforcement bureau imposing legislatively prescribed punishment without a judicial determination of rights, a bill of pains and penalties in violation of Article I, § 10.

As used herein, "structural non-adjudication" is the failure to exercise the judicial power over a dispositive constitutional question— including the termination of a proceeding without reaching the merits of that question, by whatever procedural route. Where a court never decides whether the Constitution authorizes the judgment it enters or enforces, the power to render that judgment does not exist, and the judgment — resting on a determination never made — is not an exercise of judicial power but is void.

Across more than ten proceedings, more than thirty-five state and federal judges, and nearly ten years, the constitutional questions were presented at every level and adjudicated at none — no court ever performed the analysis answering whether the judgment is constitutionally valid. Meritorious claims were repeatedly falsely labelled "frivolous" and summarily dismissed. Throughout, the California courts refused to apply this Court's controlling precedent — *Kennedy v. Mendoza-Martinez, Kokesh v. SEC,* and the intervening authority of *Liu v. SEC* — using labels that conceal penalties so severe they result in financial incapacitation. (Parts A–B; Reason IV, *infra*.)

On January 21, 2026, the Supreme Court of California granted judicial notice of the proffered record while summarily denying the writ — documentary proof that the state system, at its highest level, declined to hear and determine a claim it acknowledged was before it. (App. A, A–01).

Nor was the closure confined to the state courts. When Petitioner previously sought relief of the purported judgment in federal court, (1) this Court denied certiorari; (2) the district court dismissed his independent action under *Rooker-Feldman*; (3) the Court of Appeals dismissed his appeal as frivolous; and, (4) the bankruptcy court — though it had avoided the "judgment" lien — never reached the constitutional predicate to determine if the lien was ever valid — even as its stay-relief order, which included the lien, became the mechanism by which the foreclosure was carried out.

What Petitioner presents are not merely errors of decision but structural jurisdictional defects: California is enforcing statutory schemes that have no constitutional home, and courts refusing their independent checking functions are entering or affirming judgments the Constitution withholds the power to render — subjecting the People to a jurisdiction foreign to their constitution and unacknowledged by its law, the same complaint that was a principal cause of the American Revolution. Where every forum, state and federal, has refused to lawfully adjudicate a substantial federal claim and none remains, do the California and United States Constitutions remain in full force and effect? If they do, can this Court's duty to hear and determine this case be anything but mandatory?

A. Factual Background

In the underlying proceeding, Real Parties in Interest — private litigants — obtained a monetary judgment of approximately $930,000 against Petitioner for the public offense of unlicensed contracting under California Business and Professions Code § 7031 even though Petitioner was the qualifying individual of his company's general contractor license. That sum comprised $848,000 in compensation ordered forfeited under § 7031(b), together with approximately $82,000 in earned compensation for completed work that the Real Parties had not yet paid, denied under § 7031(a). Petitioner was thus ordered to forfeit every dollar received and denied every dollar still owed, for work the Real Parties retained in full. No offsets or deductions for legitimate business expenses were allowed, no profits traced, no damages evidenced. The result is not remedial; it is a total penal forfeiture. Despite the foregoing, the trial court characterized its judgment as "disgorgement" and "damages".

The same conduct is criminal under § 7028, carrying a maximum first-offense penalty of $5,000. Per Orange County District Attorney public-records responses, the average first-offense fine is about $750. The amount Petitioner was fined is 1,240 times this amount and more than an estimated thirty times his then qualifying net worth.

No sworn information, indictment, or other pleading was filed by the executive branch in the name of the People; the proceeding was styled "civil," and none of the heightened procedural safeguards attending punishment — including the excessive fines clause — were afforded him.

Enforcement of that judgment and additional punishment did not stop at the monetary penalty. Under § 7071.17, the void § 7031 judgment triggered the automatic suspension of his contractor's license (the one he allegedly didn't have) for failure to pay the penalty — without hearing, without any finding of professional unfitness or harm, and without any court determining whether the Constitution authorized that consequence. The suspension destroyed Petitioner's earning capacity as a general contractor for nearly six years and ultimately forced his bankruptcy (C.D. Cal., No. 22-12076).

The final link was the loss of Petitioner's home — sold by non-judicial foreclosure, then enforced by eviction under threat of force by the County Sheriff through a summary unlawful-detainer action: On November 18, 2024, Petitioner's Costa Mesa family home, then worth approximately $1.5 million, was sold under Civil Code § 2924, on a $62,523 debt, for approximately $371,688 — below the $600,000 homestead exemption — stripping him of roughly $1.2 million of protected equity.[1] The foreclosure enforced the same void, federally discharged and avoided § 7031 judgment — with no court ever adjudicating, before the sale, whether the judgment, the debt, or the foreclosure scheme was lawful.

Section 2924 eliminates every protection deeply rooted in our Nation's history and tradition: where California's own judicial-sale statutes require a hearing, a court-determined fair-market value, a ninety-percent price floor, an adjudicated debt and lien, and a right of redemption, a private trustee executes a statutory checklist and the sale occurs with no court involved at all. A forced-sale price is not value: California has defined fair market value for a century as the willing-seller price, *Sacramento etc. R.R. Co. v. Heilbron*, 156 Cal. 408, 409 (1909); Cal. Code Civ. Proc. § 1263.320(a). No lower federal court will reach the question: direct attacks on the judgment are turned away under *Rooker-Feldman*, and attacks on the sale as purely private

[1] Crediting even the *disputed* senior encumbrance (~$457,694), the sale destroyed over $650,000 in equity — above the State's $600,000 homestead floor. Unadjudicated: the 2005 note purportedly transferred without endorsement. Two institutions simultaneously claim possession, yet refuse to produce it, and none will verify the debt.

conduct, *see, e.g.*, *Charmicor, Inc. v. Deaner*, 572 F.2d 694, 696 (9th Cir. 1978). That leaves only this Court.

The purchaser, Canjian Hou, bid with alleged constructive and inquiry notice that the sale rested on a judgment challenged as void and discharged/avoided in bankruptcy; the foreclosure trustee refused to disclose bidders' identities, and when Hou was identified post-sale, Petitioner immediately gave him actual notice. Hou refused to do equity, then fraudulently obtained possession in limited civil proceedings — in a court lacking jurisdiction over complex title disputes or amounts exceeding $35,000 — on a default fraudulently filed after the Clerk twice refused to file Petitioner's answers and jurisdictional challenges. Hou then invoked the executive power of the State to remove Petitioner from his home by threat of force. Petitioner left under duress to avoid physical confrontation.

Petitioner's appeal was summarily dismissed by the limited appellate division that lacked jurisdiction (App. F, A–49). His writ of mandate to the Supreme Court of California, was transferred to the Fourth District Court of Appeal, which summarily denied it (App. G, A–50). When Petitioner applied to the Supreme Court to recall the failed transfer, that court's clerk refused by letter: "Without jurisdiction, this court is unable to consider your request." (App. H, A–51A). When he sought review here, this Court's Clerk's Office returned his papers, determining the clerk's letter "is not considered an order and is not reviewable," selecting the December 16, 2025 transfer as the operative final judgment, and declaring "the Court no longer has the power to review the petition." (App. H, A–51). Which state act, if any, was the final judgment of the highest court is a contested jurisdictional question reserved to the judicial power — here resolved by a clerk's office, never by any court. See concurrently filed Motion to Direct.

The structural non-adjudication thus compounds along two independent paths — the § 7031 judgment and the § 2924 foreclosure — converging on the same home, taken twice over without adjudication. Petitioner's damages from the destruction of his license and livelihood, the loss of his home, and the related deprivations exceed $20 million. The relief Petitioner seeks is correspondingly complete: vacatur of the void judgment and the restitution and damages that flow from it, including restoration of the home and compensation for the earnings the license suspension destroyed — relief denied at every level.

B. Procedural Background: A Complete Record of Structural Non-Adjudication

At no point — from entry of the 2017 judgment to the present — has any court adjudicated whether the judgment against Petitioner or the foreclosure sale is void.

The non-adjudication is not unique to Petitioner's case: no known court has ever adjudicated the constitutionality of § 7031 since its enactment in 1939, though it has been applied to impose total forfeitures countless times. The same appears true of § 2924 since its enactment in 1872: no known court has adjudicated its constitutionality on the merits against the guarantees Petitioner invokes. The one known decision approaching the question, *Garfinkle v. Superior Court*, 21 Cal. 3d 268, 277–82 (1978), applied the Fourteenth Amendment nexus test to a single object —

the trustee's exercise of a contractual power of sale — and held that private act "not state action." But Petitioner challenges the State's own act: § 2924's enactment, which eliminated the protections equity historically required before any forced sale of a home — the equity of redemption, judicial determination of the debt, the duty to obtain fair value, and judicial oversight at every stage et al. Petitioner never made a knowing, voluntary, or intelligent waiver of any rights. Their elimination is the State's legislative act, and a test for whether a private party's conduct triggers due process says nothing about whether the State's statute offends Article I, § 10; a deprivation the State authored, defined, and stripped of its historic safeguards is not rendered "private" because a trustee rather than a judge executes it. *Garfinkle* thus defined the question away — the § 2924 analogue of relabeling a penal forfeiture "disgorgement" or a "damages" — and could not have finally resolved it: the constitutionality of § 2924 under § 10 is a federal question this Court's jurisdiction exists to decide. No known federal court has reached it, and the companion § 2924 petition that would have brought it here, the Clerk refused to file.

The 2017 judgment and the 2018 affirmance. The Superior Court entered the $930,000 forfeiture as "disgorgement" and "damages". No constitutional analysis occurred. Petitioner challenged subject matter jurisdiction and was sanctioned $1,500; the challenge was never answered.

The Court of Appeal affirmed without adjudicating the constitutional questions. It relabeled the sanction, refused to apply controlling precedent, and deferred to the legislature on the three questions adjudication exists to decide: the sanction's character (the 'civil' label), guilt (the presumed 'incompetence and dishonesty'), and severity (harsh but unreviewable). It never acknowledged the § 7031(a) forfeiture. It never reached the foundational defect: § 7031 prescribes no offense, hence no jurisdiction to punish. *People v. Vasilyan*, 174 Cal. App. 4th 443 (2009); Cal. Penal Code § 681. Nor did it apply the four-part amercement test the common law fixes for any lawful sanction — genuine harm, proportionality, preservation of livelihood, and assessment by peers. Magna Carta ch. 20 (1215); *Bajakajian*, 524 U.S. at 339. (App. C, A–10 – A–23).

The court labeled the § 7031(b) total forfeiture an "equitable remedy" "civil consequence" and "disgorgement" — labels found nowhere in the statute, contrary to fundamental equitable principles (equity abhors a forfeiture), and contrary to the Supreme Court's controlling characterization of § 7031 as a "stiff all-or-nothing penalty" (*MW Erectors, Inc. v. Niederhauser*, 36 Cal. 4th 412, 426 (2005) to which no equitable considerations apply (*Lewis & Queen v. N.M. Ball Sons*, 48 Cal. 2d 141, 152 (1957)). The labels are structurally impossible: equity is residual — it follows the law and does not act first — yet the Real Parties had a purported remedy under the statute and proved no injury under it; nor any right to Petitioner or his company's property. A total forfeiture imposed with no legal predicate, refusing the very equitable considerations equity requires (App. C, A–20 ¶2, "offsets [are…] not permitted"), is not equity invoked but equity counterfeited.

On the strength of its labels , the Court of Appeal held the Excessive Fines Clause inapplicable. It arbitrarily deemed the forfeiture an "equitable remedy," "disgorgement," and a "civil consequence," without any analysis, then inferred "not punishment" from its labels — while contradicting itself by admitting the sanction was "not remedial" (App. C, A-20 ¶3). That is circular: the panel used its arbitrary conclusions as its premise. The lone authority it cited for the "civil" characterization decided only that § 7031 sits in civil rather than criminal proceedings — never whether the forfeiture is punitive — while describing the statute's aim as deterrence, the very hallmark of punishment. Nor did the panel confront controlling California law: the State recognizes only civil and criminal actions, Cal. Code Civ. Proc. § 24, and a proceeding whose "evident purpose and ultimate effect [is] to punish" is criminal "regardless of the form or circumlocutions of the statute." *Ex parte Clark*, 24 Cal. App. 389, 393 (1914). *Kilburn v. Law*, 111 Cal. 237, 240 (1896). Unlicensed contracting is a public offense punished as a crime, § 7028. Section 7031 punishes the same offense with an uncapped forfeiture. None of this was addressed. The label was applied and the inquiry skipped. Whether the sanction is punishment is the threshold the penal/remedial inquiry of *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963) exists to decide, and the predicate to whether it is excessive; the panel performed neither inquiry. It is "emphatically the province and duty of the judicial department to say what the law is," not to announce a result the absent analysis does not support. Nor is the omission the panel's alone: despite recognizing the statute as harsh and penal, the California Supreme Court has never, in any known case, subjected the penalty to constitutional analysis.

The panel also deferred, reaffirming that “[s]ection 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties[.]” (App. C, A–16, ¶3). Relying on *Alatriste v. Cesar's Exterior Designs, Inc.*, 183 Cal.App.4th 656, 672 (2010), it held that “absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute.” (App. C, A–22, ¶1.) But harshness is not committed to legislative discretion: the Constitution fixes limits on the severity of punishment — the Excessive Fines Clause among them — and whether the forfeiture exceeds them is the constitutional question the panel deferred to the Legislature. And whether an Article I, § 10 prohibition applied was likewise the question presented. The panel presumed its answer — deferring to the Legislature on the severity of the sanction while never adjudicating the prohibition that alone made deference permissible, abandoning the checking function an independent judiciary exists to perform. Cf. *Hale v. Morgan*, 22 Cal. 3d 388, 403 (1978).

Critically, the panel also never reached Petitioner’s threshold challenge — whether the State may convert an inalienable right to pursue an ordinary calling into a destructible privilege — a question logically antecedent to everything that followed, developed in Reason II.

Even an affirmance on the merits would not be an adjudication of authority to act: a void judgment affirmed on appeal is not thereby made valid. Petitioner sought rehearing, placing *Kokesh v. SEC* — its unanimous holding that “disgorgement” "bears all the hallmarks of a penalty" — squarely against the panel's declaration that "disgorgement is not punishment." The court's response was "DENIED."

Supreme Court Review. Review in the Supreme Court of California (No. S252954), certiorari in this Court (No. 18-1416), and Application for Emergency Stay (22A426) were thereafter denied without adjudication.

The 2019 motion to vacate. Petitioner moved in the Superior Court to vacate the judgment as void. The court declined to reach voidness, holding the arguments had been raised and rejected, the affirmance was final, and upon remittitur the trial court was revested with jurisdiction solely to carry out the judgment — though the challenge was to fundamental jurisdiction, never answered and raisable at any time.

The federal independent action. Petitioner then commenced an independent action in equity in the U.S. District Court (C.D. Cal. No. 8:19-CV-02050-CBM-ADS(x)) to challenge the statutes' constitutionality and set aside the 2017 judgment as void; it was dismissed on *Rooker-Feldman* grounds and the appeal declared "frivolous" (No. 20-55181), completing the closure of the federal courts and the denial of the right to invoke the federal check and balance protections.

The 2025 Independent Action in Equity and the post-Liu dismissal. Relying on *Liu v. SEC*, 591 U.S. 71 (2020) as intervening authority, and *MW Erec*tors, *supra*, Petitioner again moved to vacate the judgment as void. At the June 2025 hearing, the Superior Court relied on the void 2018 affirmance, refused to apply *Liu*, performed no constitutional analysis, applied *res judicata*, declared the judgment "final," and denied the motion. (App. D, A–24 – A–26).

The Court of Appeal declared the appeal "frivolous", grounding its refusal to determine voidness on the "finality" of the very judgment whose voidness was the question presented, a judgment that never adjudicated the constitutional authority to impose the forfeiture. (Reason IV, *infra*.)

Petition for Writ of Mandate. Petitioner filed a First Amended Petition for Writ of Mandate in the Supreme Court of California, supported by a request for judicial notice of the record establishing that no court had adjudicated the voidness question. The mandate petition squarely challenged the constitutionality of § 7031(a) and (b) and § 7071.17. (Full copy: adjudicationdenied.org, Petition I "Writ of Mandate"). On January 21, 2026, the Court denied it in summary order: "The request for judicial notice is granted. The petition for writ of mandate and application for stay are denied." (App. A, A–01).

No state or federal forum remains in which the questions presented can be heard.

REASONS FOR GRANTING THE WRIT

I. No Court Has Ever Adjudicated These Questions, and Every Other Forum Is Closed.

"The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury," and "[o]ne of the first duties of government is to afford that protection." *Marbury*, 5 U.S. at 163 (1803). Where "a specific duty is assigned by law, and individual rights depend upon the performance of that duty," the injured individual "has a right to resort to the laws of his country for a remedy." *Id.* at 166. California promises this protection: Cal. Gov. Code § 270. Article III's command that this Court "shall have appellate Jurisdiction" is such a duty: "[t]he constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation." *Cohens* 19 U.S. at 383-4. Petitioner's rights depend on its performance; the mandatory duty follows. "We have no ....right to decline the exercise of jurisdiction which is given, [...doing so] would be treason to the constitution." *Id.* at 404. No court has heard Petitioner's case.

The right. Two constitutional limits secure what the State destroyed without adjudication. First, Article I, § 10 forbids a State to impose punishment — the deprivation of life, liberty, or property — without a judicial determination of rights in the first instance. Second, the State may not convert inalienable rights secured by Cal. Const. art. I, § 1, the Magna Charta of 1215, and natural justice — including the right to pursue an ordinary calling — into mere privileges revocable at the cost of a fee and a license, nor impair the obligation of contracts entered in reliance on those rights. What § 10, and these fundamental rights protections secure is a real adjudication of whether the State possessed constitutional authority to do either — precisely what Petitioner was denied before his rights, property, and liberty were taken and his private contracts impaired. These violations are established in Reason II.

No court has adjudicated the questions Petitioner presents. Jurisdiction is "the right to hear and determine; not to determine without hearing." *Windsor* 93 U.S. at

277. A court does not supply the forum the Constitution requires merely by opening its doors and then declining to decide. The Supreme Court of California took judicial notice of the proffered record — and then summarily denied relief without reaching any of the questions presented. That disposition is the form of an adjudication without its substance. It "is not a judicial determination of rights, and is not entitled to respect in any other tribunal." *Id.* Where a noticed record establishes the defect and the opposing party never controverts it, "it is the duty of the court to declare the judgment void as a matter of law." *Thompson*, 20 Cal. 2d 569–570. The Real Parties never disputed the punishment or Article I, § 10 grounds at any stage. The Court refused *Thompson*'s mandatory duty.

Every other forum is closed. The state courts refused to adjudicate the constitutional questions at every level. The inferior federal courts are closed: Petitioner's independent action in equity to vacate the void judgment was dismissed under *Rooker-Feldman* for want of subject-matter jurisdiction. This, in concert with the certiorari denial, effectively overruled the Art. 1 § 10 federal checks on unlawful State action and gave the full faith and credit of the United States to the void judgment. No adequate substitute forum exists.

The closure does more than deny a forum. It changes what the statutes are. Law binds only because it can be tested against the Constitution that authorizes it: "arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law." *Hurtado v. California*, 110 U.S. 516, 535–36 (1884). The safeguard is "the enforcement of these limitations by judicial process." *Id.* A statute no court will examine is not law but edict — and §§ 7031 and 2924 have operated against Petitioner while every forum refused to test them: precisely what *Hurtado* and the Supremacy Clause say a valid law cannot be.

What that closure denied is the right the Constitution affirmatively secures. The first-instance judicial determination Article I, § 10 requires — an adjudication of whether the State possessed constitutional authority to impose the deprivation — is the irreducible minimum the Constitution demands before liberty, property, livelihood, or home may be forfeited; that determination was denied to Petitioner at every level.

The determination cannot be made by the State itself. Article I, § 10 is a federal check on state action, and a check the checked entity judges is no check at all. *Nemo judex in propria causa*. *In re Murchison*, 349 U.S. at 136. California enacted the statutes, enforces them through its own courts, commands the forfeiture, and — as to the home — authorized its seizure through non-judicial machinery. Legislator, enforcer, and judge of one cause, the State cannot supply the check § 10 requires; that forum must lie outside its system. As Hamilton explained, when one government invades the people's rights, they can invoke the other as the instrument of redress. The Federalist No. 28. That instrument is the federal judiciary — and where the State has closed its courts and the inferior federal courts cannot reach the question and provide full relief, this Court's jurisdiction is the only redress that remains. The substantive protections of § 10 cannot be legislated out of existence by judicially created doctrines or reading this Court's mandatory "shall have" as a discretionary "may." The discretionary gloss of § 1257 is a creature of the Judiciary Act of 1925, enacted to relieve this Court's docket on the promise that review would be denied only for petitions frivolous or already settled — neither of which applies here. See Jonathan Sternberg, *Deciding Not to Decide: The Judiciary Act of 1925 and the Discretionary Court*, 33 J. Sup. Ct. Hist. 1, 9–10 (2008); *Miranda* 384 U.S. at 491. The Article III command that this Court "shall have appellate Jurisdiction," together with § 10's prohibition, presupposes a forum in which that determination can be made. *Martin v. Hunter's Lessee*, 14 U.S. 304, 328–31 (1816). Art. VI, § 2.

This Court has enforced that principle against even the broadest assertions of power to close the courthouse. The Constitution forbids eliminating the floor of judicial review of a constitutional deprivation. See *Webster v. Doe*, 486 U.S. 592, 603 (1988); *Boumediene v. Bush*, 553 U.S. 723 (2008). Petitioner has no substitute, and the closure of the last avenue is itself the final constitutional violation.

On these facts the forum the Constitution requires, though present in form, never substantively existed: the determination Article I, § 10 requires was never made. To treat review as unavailable here would convert a constitutional duty into a matter of policy — the same objection Justices Thomas and Alito have pressed against discretionary refusals to exercise a jurisdiction the Constitution makes mandatory. *Florida v. California*, No. 22O162.

II. A Structural Breakdown of the Separation of Powers and the System of Checks and Balances Allowed the State to Punish Petitioner with No

Branch Checking Another — a Question of National Importance Only This Court Can Resolve.

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." *Northern v. Marathon,* 458 U.S. 50, 57 (1982). Madison condemned that accumulation because it destroys the mutual checks that stand between the State and the People: where no branch restrains another, the power to punish operates unchecked. California's Constitution, like the federal, separates the three powers precisely to prevent that. In the enforcement of § 7031, every check failed in sequence. The Legislature enacted a statute it had no power to enact, converting an inalienable right into a revocable privilege, and then handed the prosecutorial power — which its Constitution vests exclusively in the Governor — to private parties to wield for their own profit. The executive, rather than guarding the power the Constitution commits to it alone, acquiesced. The courts then imposed the forfeiture without ever determining whether the Constitution authorized any of it, abdicating their independent duty so no judicial check restrained either. And when that forfeiture reached Petitioner's home, a similar pattern repeated, including the home and equity taken under § 2924 with no court involved at all before the sale. When Petitioner sought to challenge the foreclosure and the constitutionality of § 2924 itself, every forum refused to adjudicate it (*Windsor* 93 U.S. at 274), and the Sheriff, refusing to investigate, threatened to forcibly remove him from his home. At every juncture where one branch was meant to check another, the check was absent or refused. This is the same unchecked power

Madison called "the very definition of tyranny" — reached not by gathering the three powers in one hand, but by dissolving the separation that keeps them apart, each branch exercising a power the Constitution forbids, and each branch refusing to perform the check on the others. Each link below is an instance of it.

A. The State converted an inalienable right into a revocable privilege and impaired the obligations of contracts made in reliance on it.

No court below ever decided the threshold question on which the entire judgment depends: whether the State may convert an inalienable right to pursue an ordinary calling into a licensed privilege destructible by legislative process. The right was secured as inalienable — antecedent to government and beyond the reach of ordinary legislation — long before the contracting statutes existed. Cal. Const. Art. 1, § 1. To declare a right inalienable while leaving "the Legislature unlimited power over it, would be a contradiction in terms, an idle provision." *Billings,* 7 Cal. at 11–12. *Billings* drew the line precisely. Life, liberty, and property fall within legislative power in only two ways — "except when forfeited by crime, or when the latter is taken for public use." *Id.* at 14. There is no third door by which the State may take property as a penalty without a crime and without compensation. Section 7031 claims that nonexistent door. It is among the most basic: "his right freely to labor, and to own the fruits of his toil." *Ex parte Jentzsch*, 112 Cal. at 473. That a right of this stature could be destroyed by legislative status, with no court ever asking whether the Constitution permits it, is the core of what went unadjudicated.

Because §§ 7028 and 7031 are void, they were never law at all, *Norton v. Shelby County*, 118 U.S. 425, 442 (1886), and never entered the background law of any contract. Their application recharacterizes lawfully earned compensation as forfeit and annihilates the obligation of private contracts — precisely what Article I, § 10 forbids: a State may not pass any "Law impairing the Obligation of Contracts." California's own courts so held: a statute stripping a contractor of money earned under his contract is "an infringement upon the inalienable right of contract," for "[t]he right of property antedates all Constitutions." *People v. Holder*, 53 Cal. App. 45, 52 (1921). Section 7031(b) does precisely what *Holder* forbids: it declares every dollar ever paid — however flawlessly the work was performed, and where the owner suffered no harm — subject to total, irrevocable forfeiture.

The judgment also rests on a line no court below drew: between regulating the manner of a calling and destroying the right to pursue it. Whatever power exists to regulate how work is done, no power was ever conferred to strip what the calling lawfully earned and transfer it to another — that is not regulation of a calling but destruction of the right itself, dressed as regulation. Cf. *Ex parte Andrews*, 18 Cal. 678, 682 (1861) (a power to destroy what is to be regulated "would be to deny instead of asserting a power of regulation"). Such a forfeiture is "a curious law for the protection of labor which punishes the laborer for working." *Ex parte Jentzsch*, 112 Cal. at 473. No court has ever identified the authority by which an inalienable right became forfeitable on the bare fact of alleged nonlicensure.

That conversion was the first and dispositive checkpoint: if the State lacked authority to make it, every step that followed — license destruction, bankruptcy, foreclosure — rests on a foundation the Constitution never supplied.

What § 7031 did to Petitioner's earnings, § 2924 did to his home equity: converted an inalienable right into a forfeitable privilege and extinguished it without any judicial determination of the State's authority at any stage. The causal chain above impaired every private contract in the ensuing bankruptcy — particularly the mortgage obligations whose purported unadjudicated "default" produced the § 2924 foreclosure. The State has no power to convert inalienable rights into privileges.

B. The State resurrected a Roman civil-law guardianship the People of California rejected at the founding of the State.

California's constitutional order rests on a deliberate, documented choice. In 1849–1850 the People and the First Legislature adopted the common law and rejected the Roman civil law as the foundation of the State's jurisprudence. The Report of the Senate Judiciary Committee on Civil and Common Law (App. E, A–27 – A–48) condemned the very premise on which § 7031 rests: the common law "allows parties to make their own bargains," whilst the civil law "looks upon man as incapable of judging for himself, assumes the guardianship over him, and interpolates into a contract that which the parties never agreed to." (A–36). "[O]ur government was not designed to be paternal in form." *Ex parte Jentzsch*, 112 Cal. at 472–473. The Legislature accordingly enacted that "the Courts shall be governed in their adjudications by . . . the American Common Law," (A–48) a choice entrenched in the guarantee of judicial proceedings according to the course of the common law. *Fowler v. Smith*, 2 Cal. 568, 568–569 (1852); Cal. Const. of 1849: art. I, § 3; art. VI, § 6; Northwest Ordinance of 1787, art. 2.

Sections 7028, 7031, and 7071.17 do precisely what that choice repudiated. They resurrect the civil-law guardianship model: because § 7031 forfeits all compensation with no proof of harm, no offsets, and no finding of actual incompetence, the scheme operates as an irrebuttable presumption that every unlicensed person is effectively guilty of the "incompetence and dishonesty" the licensing law names as its target, *Hydrotech*, 52 Cal. 3d at 995 (purpose of licensing law). The statutes further interpolate into every private construction contract terms the parties never agreed to — including the total-forfeiture mandate of § 7031. The mechanism is an irrebuttable presumption, and that is what makes it a bill of pains and penalties at the root: it brands the contractor incompetent, declares all his work valueless however competently performed, and strips him of every dollar paid, with no notice, hearing, or proof. "The fundamental conception of a court of justice is condemnation only after notice and hearing." *Estate of Buchman*, 123 Cal. App. 2d 546, 559 (1954). And "the power to create presumptions is not a means of escape from constitutional restrictions." *Bailey*, 219 U.S. at 239. A State may not substitute a conclusive presumption for incompetence for the individualized adjudication the Constitution requires. Even if the scheme were valid, the "unlicensed" predicate is absurd: the State's Licensing Board examined and certified Petitioner competent as the qualifying individual of the license, yet 7031 presumed him "incompetent and dishonest" over an alleged unpaid personal-license fee, overriding the State's own finding. And even if a license could be required, stripping it and the earned compensation is punishment. California recharacterized license-forfeiture from penal to regulatory, withholding the criminal safeguards the penal label had carried. *Schomig v. Keiser*, 189 Cal. 596, 598 (1922); *Webster v. Board of Dental Examiners*, 17 Cal. 2d 534, 537 (1941). Yet it concedes revocation "works an unavoidable punitive effect," *Yakov v. Board of Medical Examiners*, 68 Cal. 2d 67, 73 (1968), and is "in the nature of a penalty" because it destroys livelihood, *Lundborg v. Director*, 257 Cal. App. 2d 141, 147 (1967). A "civil" label cannot cure that and there is no such thing as a quasi-criminal act. *Ex parte Clark*, 24 Cal. App. at 395.

No California court has ever adjudicated whether the Legislature possessed authority to displace the common law and resurrect the civil-law guardianship regime — by what authority the agents of the People could declare their principals incompetent and dishonest, their contracts void, and their property forfeit.

There is a deeper reason the constitutional authority for these deprivations went unexamined: neither enforcement mechanism has a constitutional home in which it could be adjudicated. Section 7031 is the *actio popularis* of Roman civil law — the popular action by which a private party prosecutes a public offense and keeps the penalty as private profit — a power the People never delegated to private hands: California vests the supreme executive power exclusively in the Governor, Art. V, § 1, and a private citizen "lacks a judicially cognizable interest in the prosecution … of another." *Linda R.S*, 410 U.S. at 619. It bears every hallmark of civil-law prize condemnation: no proof of loss is required; set-off is forbidden; forfeiture follows from status, not adjudicated harm; the private captor keeps one hundred percent; and the court's function is purely confirmatory. Article III, § 2 sorts the judicial power arising under the Constitution into only two types of cases — law and equity — and this mechanism fits neither: it affords no common-law or equitable action, and its closest analogue — the *in rem* forfeiture of admiralty — must sit in an Article III court, which never happened.

Section 2924 reaches the same end from the opposite direction: it transferred more than a million dollars in home equity to a private party through no court at all, exercising none of the judicial power whose effect it nonetheless produces — the later unlawful detainer proceeding confirming possession without ever adjudicating the transfer's validity. § 7031 counterfeits the judicial power; § 2924 dispenses with it. California's own Supreme Court confirms the design: the Legislature intended a trustee's sale to "constitute a final adjudication of the rights of the borrower and the lender." *Smith v. Allen*, 68 Cal. 2d 93, 96 (1968). And the trustee's recitals are made "conclusive evidence" of compliance with its notice requirements, § 2924(c). The result is identical and identically forbidden: a law "that takes property from A. and gives it to B." is "against all reason and justice," and cannot be presumed within the legislative power. *Calder* 3 U.S. at 388.

C. The State imposed punishment at every link without any judicial determination — a bill of pains and penalties.

Article I, § 10 forbids any State to pass a bill of attainder — the infliction of punishment without a judicial trial; if less than death, a bill of pains and penalties. *Cummings*, 71 U.S. at 323; *Fletcher v. Peck*, 10 U.S. 87, 138 (1810).

The prohibition reaches substance, not form. *Cummings,* 71 U.S. at 325. It forbids punishment without adjudication: bills of attainder "supply the want of legal forms, … and of every other barrier which the laws provide against tyranny and injustice in ordinary cases." St. George Tucker, Blackstone's Commentaries app. at 292 (1803).

The clause binds the State, not the legislature alone. It says "[n]o State shall pass any Bill of Attainder," and a State acts through all three departments, reaching persons designated "by description" no less than by name. *United States v. Brown,* 381 U.S. 437, 442, 461 (1965). It is therefore irrelevant which department inflicts the deprivation. A court that merely executes a punishment the legislature has ordered violates the same prohibition — "a dependent judiciary might have executed the law, whilst they execrated the principles upon which it was founded." Tucker, app. at 293. California's separation of powers forbids that collapse of roles. Cal. Const. art. III, § 3.

Whether the State inflicts it through the form of adjudication without its substance, the prohibition is the same: in neither case has there been a full, fair, and impartial judicial determination of rights according to law. The tradition is explicit:

"all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void." 1 W. & M., 2d sess., c. 2 (1689).

Measured by substance, the § 7031 forfeiture is punishment (Statement A, *supra*); whether it is punishment in constitutional substance is answered not by the State's "civil" label but by substantive analysis including the *Kennedy* factors. The forfeiture's features supply the answer the courts refused to reach: the identical conduct, charged criminally under § 7028, carries a maximum fine of $5,000, making this "civil" forfeiture roughly 186 times the maximum criminal penalty; it bars any offset for value conferred and follows automatically from status rather than harm — the State manufactures the victim so it never has to prove one; and it is justified expressly by deterrence — yet imposed while shedding every protection the criminal process requires.

This Court's decision in *Liu v. SEC*, 591 U.S. 71 (2020), confirms the point. *Liu* confined the equitable remedy of "disgorgement" to a wrongdoer's net profits after deducting legitimate expenses — the precise label the state courts used to reject every constitutional challenge here before and after the "judgment". But the § 7031 forfeiture bears none of the features *Liu* makes essential: it is mandatory and total, deducts no expenses, is untethered to any net gain, bars any offset for value conferred, and was imposed on $930,000 of completed, non-defective work for which the record showed no loss and no profit. Calling the forfeiture "disgorgement" does not make it equity; it only obscures that it is punishment. California's own Supreme Court agrees:

§ 7031 imposes "a stiff all-or-nothing penalty" to which no equitable considerations apply.

The remaining punishment was imposed with no court at all. Section 7071.17 destroyed Petitioner's contractor's license automatically the moment the § 7031 judgment went unpaid — no hearing, no finding of unfitness or harm, no inquiry into ability to pay. *Cummings* recognizes that disqualification from the pursuits of a lawful avocation may be punishment, 71 U.S. at 320. A license, once vested, may not be suspended without a prior individualized hearing, *Bell v. Burson*, 402 U.S. 535, 539, 542 (1971); deprivation requires a court judgment after opportunity to be heard, *Ex parte Garland*, 71 U.S. 333, 378–79 (1866).

The deprivation then reached its apex in the taking of more than a million dollars in home equity by non-judicial foreclosure — a trustee's sale enforcing the same void, federally discharged judgment — with no judicial determination of any kind preceding the deprivation.

The destruction of a livelihood and the seizure of a home and equity are punishment beyond dispute. From first link to last the constitutionally mandated substance was withheld.

D. Every branch of State and federal government was alerted and none acted.

The failure was not confined to the courts. Petitioner filed more than fifteen complaints with state and federal executive and legislative agencies seeking an investigation and intervention to stop the deprivations. None fully, fairly, and impartially investigated, determined, or intervened. For the executive, the duty is one of faithful execution of the Constitution, not the discretionary power over criminal charging. See Petitioner's complaints to agencies, incorporated infra; available at adjudicationdenied.org: Official Complaint Audio/Video Exhibits). Where every organ of state and federal government has refused, the checks the Constitutions presuppose have failed entirely.

Both constitutions secure the right to petition for redress of grievances, which was also violated.

III. The Failure Is Systemic.

What befell Petitioner is systemic, not an aberration — and that is what makes the question presented of national importance.

In forty of forty § 7031 cases examined in a preliminary review of the Superior Court's records, the constitutional question was acknowledged in one and decided in none.

Across the reported and unreported decisions, California and federal courts uphold six- and seven-figure forfeitures without ever reaching the constitutional question. The figures below are approximate, drawn from preliminary examination rather than forensic audit:

- *Pacific Carpets, LLC v. 2525 Main Apartment, LP*, 2025 WL 3240321 (2025, unpub.) — ~$2.3 million.

- *American Building Innovation, LP v. Balfour Beatty Construction, LLC*, 104 Cal. App. 5th 954 (2024) — ~$700,000 + ~$1.5+ million in attorneys' fees.
- *MW Erectors,* 36 Cal. 4th 412 (2005) — ~$955,000.
- *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012) — ~$917,043.09.

The § 2924 foreclosure machinery operates the same way, at a scale that makes the stakes national in two senses. It transfers homes and home equity permanently with no court involved at any stage, and its constitutionality has gone unadjudicated for over a century. In 2025 alone, California recorded 29,777 foreclosure starts — third-highest of any State — and 4,030 completed bank repossessions, not including third-party foreclosures. (ATTOM, Year-End 2025 U.S. Foreclosure Market Report (Jan. 15, 2026)). Because California foreclosures are overwhelmingly non-judicial, that approximates annual § 2924 activity: roughly thirty-thousand California households each year forced into a process in which no court determines the debt's validity, the loss, or the proceeding's constitutionality. Some thirty States authorize power-of-sale foreclosure, so the constitutional question this petition presents reaches a structural jurisdictional defect operating nationwide.

The deprivation is not a singular injustice to be corrected case by case, but the routine output of a machinery that forfeits earnings and takes homes by the thousands without judicial determination.

IV. The Courts Below Refused to Apply This Court's Controlling Precedent Rendering the Judgment Void Under the Supremacy Clause.

A judgment that can be sustained only by refusing to apply this Court's controlling precedent is not an adjudication but its opposite, and it is void. The Supremacy Clause binds every state court to this Court's interpretations of federal law, and that duty is not discharged by silence: a court that denies relief in the face of on-point, controlling authority, without applying or distinguishing it, has not decided the federal question — it has refused to. See *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). The courts below refused twice over.

First, they presumed the very thing they were required to adjudicate, assigning the sanction's character both ways to defeat each argument in turn rather than applying the test that governs it — the penal–remedial inquiry of *Kennedy,* 372 U.S. at 168–69 (see Statement, supra). Character presumed from a "civil" label is not adjudicated; refusing the controlling inquiry leaves the dispositive question unanswered and strips the protections that attach to punishment on the strength of a name.

Second, they refused the intervening, controlling authority of *Liu*. "Disgorgement" that takes one hundred percent of gross compensation, with no offset and no proof of loss, is the penalty *Liu* forecloses. The Legislature itself confirms the point in its legislative history of § 7031(b): "those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, [they] are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid."

Petitioner placed *Liu* squarely before the state courts, and they refused to engage it. The Court of Appeal in No. G065695 (App. B, A–03) expressly conceded the governing rule — "Bereki is correct that doctrines of res judicata, collateral estoppel, and law of the case do not preclude relief from a void judgment" — then refused to make the void-judgment determination that concession required, dismissing the appeal as "frivolous" "relitigating" of issues "decided seven years ago" when those issues were never decided. (*Id.* at A–03 ¶1). The two cannot coexist: if preclusion does not bar a challenge to a void judgment, bringing one is not frivolous relitigation.

Confronted with *Liu* and other authorities recognizing 7031's penal nature, the panel declared that "nothing has changed" (A–09), then reclassified the structural jurisdictional defect *Liu* evidenced as ordinary "legal error" (A–08, ¶1), invoking *Griset v. Fair Political Practices Commission*, 25 Cal. 4th 688, 701 (2001), for the proposition that the trial court "lacked the power to . . . entertain" intervening law once the judgment was final (A–09, ¶2). But *Griset* bars reopening a *valid* final judgment; whether this judgment is void — and so never final — was the very question presented. The panel's reliance is therefore circular: finality is the conclusion that turns on validity, not a premise that can be assumed, and the panel invoked it to avoid the voidness determination on which finality itself depends. *Liu* does not reopen a valid judgment; it confirms the forfeiture was never lawful "disgorgement", a required step in the analysis that the judgment was void from entry. Worse, *Griset* is itself a void-judgment decision — it holds that a judgment rendered without jurisdiction is void and that a reviewing court's task is to reverse the void acts. The case the panel invoked to escape the void-judgment question is the case requiring it to answer. Calling the defect "legal error" does not make it so; it is the label by which the court escaped the rule it had just acknowledged — itself an act of non-adjudication that renders its judgment void and leaves the underlying void judgment standing on a void affirmance. To let the label stand is to place the edict of a legislative enforcement bureau above the Constitution — which is the supreme law of the land, and cannot be subordinated to the very acts it forbids.

The refusal is institutional, not isolated: the same division refused to adjudicate Petitioner's own constitutional challenge in 2018 (Statement, *supra*); months after Petitioner's 2025 briefing put *Liu* squarely before it, it ordered ~$2.34 million in § 7031(b) "disgorgement" in *Pacific Carpets*, *supra*, without engaging *Liu*; and it disposed of a direct Eighth Amendment challenge in *American Building Innovation*, *supra*, by deferring to the Legislature's policy judgment. Review was again denied by the Cal. Supreme Court. Across every known case, the constitutional challenge is met with relabeling, deference, avoidance, or refusal to apply this Court's controlling authority — anything but the constitutional determination the challenge requires.

V. No Adequate Remand Exists, and Only This Court Can Afford Complete Relief.

The defect cannot be cured by remand. A judge may not sit where his own court is the subject of the cause, yet every California forum that would hear the claim is implicated in the refusals it challenges — a remand returns the questions to the very judges disqualified from deciding them. The Article I, § 10 check on unlawful state action cannot be supplied by the courts that are its subject. Where a State's courts refuse obedience, this Court renders judgment itself. *Martin v. Hunter's Lessee*, 14 U.S. 304, 362 (1816).

Nor can the appellate process afford the full relief the record requires — vacatur, restitution, and damages running against parties beyond this appeal.

CONCLUSION

The California Constitution guarantees every person the inalienable rights of "acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." Art. I, § 1. The State took them all from Petitioner, and no court at any level would say whether the Constitution permitted any of it.

For the foregoing reasons, Petitioner respectfully asks this Court to: (1) grant the writ and fully adjudicate every question presented; (2) order real parties and the State to prove subject matter jurisdiction, the burden being theirs, not Petitioner's; (3) permit full briefing on every issue; and (4) grant leave to file an accounting for damages and restitution, and to join the parties necessary to afford complete relief — every lower forum having refused, been disqualified by conflict, or lacked the power to afford it. This Court should also direct the Clerk to file the companion petition and consolidate it with this one, ordering the parties and State to comply with (2) above.

Dated: August 31, 2026

Respectfully filed,

Adam Bereki

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that this petition contains approximately 8960 words as calculated by Microsoft Office Word for Mac, excluding the parts exempted by Rule 33.1(d).

I further certify that the statements of fact in this petition are true and correct, and that the documents annexed hereto are true and correct copies of the documents they purport to be, except for bates numbering or other non-substantive markings I or someone else may have made.

The complete records of all proceedings related to this case exceed ten thousand pages and include audio and video exhibits which cannot be reproduced in full in the Appendix. Petitioner incorporates those records and exhibits by reference; many are available from the dockets of the respective courts identified in the Procedural History or at adjudicationdenied.org. Petitioner will provide any exhibit the Court requests.

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

Signed on August 31, 2026

Adam Bereki

CERTIFICATE OF SERVICE

I, Tin Vo, hereby certify that on August 31, 2026, I served a true and correct copy of the foregoing Petition for a Writ of Certiorari and Motion for Leave to Proceed *Informa Pauperis* upon the following parties by the methods indicated:

Court of Appeal of the State of California,
Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701
Via United States Mail, first-class postage prepaid.

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102
Via United States Mail, first-class postage prepaid.

Office of the Attorney General of California
300 South Spring Street
Los Angeles, CA 90013-1230
Via United States Mail, first-class postage prepaid.

Governor of California
1201 O Street, Suite 9000
Sacramento, CA 95814
Via United States Mail, first-class postage prepaid.

William G. Bissell, Esq.
Counsel for Gary Humphreys and Karen Humphreys,
Real Parties in Interest
Via electronic mail: wbissell@wgb-law.com

Henry Paloci, Esq.
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Citizens Bank, N.A.
c/o CSC – Lawyers Incorporating Service
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Sacramento, CA 95833

Via USPS mail and electronic mail: steven.m.autieri@citizensbank.com, legal@trusteecorps.com
Real Party in Interest — Foreclosing Lender and as agent Trustee Corps for Principal Citizens Bank, N.A.

Christina J. Khil
Malcolm Cisneros, A Law Corporation
2112 Business Center Drive
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Attorney for Citizens Bank, N.A.
Via electronic mail: christinao@mclaw.org

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

Signed on August 31, 2026.

____
Tin Vo

TABLE OF APPENDICES

APPENDIX A

Supreme Court of California, Order Denying Petition for Writ of Mandate and Application for Stay, No. S294386 (Jan. 21, 2026)

SUPREME COURT
FILED

JAN 21 2026

Jorge Navarrete Clerk

Deputy

S294386

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ADAM BEREKI, Petitioner,

v.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE et al.,
Respondents;

GARY HAMPHREYS et al., Real Parties in Interest.

The request for judicial notice is granted.
The petition for writ of mandate and application for stay are denied.

GUERRERO
Chief Justice

APPENDIX B

Court of Appeal, Fourth Appellate District, Division Three,
Opinion Dismissing Appeal from Denial of Independent
Action in Equity to Vacate Void Judgment, No. G065695
(Oct. 30, 2025)

Court of Appeal, Fourth Appellate District, Division Three
Brandon L. Henson, Clerk/Executive Officer
Electronically FILED on 10/30/2025 by Amy Garza, Deputy Clerk

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.

G065695

(Super. Ct. No. 30-2015-00805807)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, David J. Hesseltine, Judge. Dismissed.

Adam Bereki, in pro. per., for Cross-defendant and Appellant.

Law Offices of William G. Bissell and William G. Bissell for Cross-complainants and Respondents.

* * *

THE COURT:*

"California courts have the inherent power to *dismiss* frivolous appeals." (*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1318.) "Of course, it is a power that should not be used except in the absolutely clearest cases." (*Ibid.*) This is such a case. We grant respondents' motion to dismiss because the appeal is premised on relitigating issues heard and decided seven years ago.

FACTS

In 2018, this court affirmed an April 2017 judgment against appellant Adam Bereki. The judgment ordered Bereki to repay (Bus. & Prof. Code, § 7031, subd. (b)).[1] $848,000 he had received for work on a condominium remodeling project. (*Humphreys v. Bereki* (Oct. 31, 2018, G055075) [nonpub. opn.].) It was not a default judgment; Bereki participated in the bench trial.

Our court's opinion rejected Bereki's seven arguments on appeal. Two of those arguments were: "(1) disgorgement under section 7031, subdivision (b), is unconstitutional or, alternatively, criminal in nature; [and] (2) the trial court erred in ordering disgorgement because [plaintiff] Spartan Associates, not Bereki, performed the work and Spartan Associates held a contractor's license." (*Humphreys v. Bereki*, *supra*, G055075.) We also summarily denied Bereki's petition for rehearing (which featured 11 separate arguments, including an argument that this court erred by declining to characterize disgorgement due to the lack of a contractor's license as a

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* Before Moore, Acting P. J., Delaney, J., and Gooding, J.

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

penalty, amounting to unconstitutional punishment or punitive damages under United States Supreme Court case law).

The California Supreme Court denied Bereki's petition for review and the United States Supreme Court denied his petition for writ of certiorari.

In February 2019, Bereki filed a motion to vacate the judgment as void; the trial court denied the motion in March 2019 concluding the 2019 motion was an attempt to argue issues "already raised and rejected."

Also in 2019, Bereki filed a lawsuit in federal district court regarding the same dispute. Among other reasons, that lawsuit was dismissed in 2020 "because [Bereki was] collaterally stopped from bringing [the] action." The Ninth Circuit Court of Appeals dismissed Bereki's appeal because it was frivolous.

In May 2025, Bereki filed a second motion in the trial court to vacate the judgment, which he continued to characterize as "void."

Bereki's recent motion contended the judgment was void "based on new evidence of extrinsic fraud and fraud on the court . . . . The new evidence includes a U.S. Supreme Court case [*Liu v. Securities and Exchange Commission* (2020) 591 U.S. 71] defining the nature and scope of the equitable remedy 'disgorgement' used to conceal the penal forfeiture in this case and [a new California case, *Eisenberg Village etc. v. Suffolk Construction Co., Inc.* (2020) 53 Cal.App.5th 1201], recognizing the penal nature of [section 7031]."

Bereki's motion added, "The judgment is void ab initio, due to lack of personal and subject matter jurisdiction, extrinsic fraud, fraud on the court, and due/judicial process violations, including no evidence [Bereki] personally performed construction work, as required by CACI [No.] 4560(3), and misapplication of [section] 7031[, subdivision] (a) and (b) when, assuming [Bereki] violated the licensing laws which he disputes, [section] 7028.5 would have been the correct statute. Section 7031[, subdivision] (b), as applied, is a penal action, not a civil equitable remedy under the law of unjust enrichment referred to as 'disgorgement', imposing punishment without executive authority or criminal safeguards as confirmed by new evidence: [the two cases identified in the preceding paragraph above]."

On June 26, 2025, the trial court denied the motion, pointing to the procedural history summarized above and concluding this was an attempt to argue "the Court of Appeal either did not sufficiently consider [certain issues] or got [those issues] wrong."

This appeal followed. After the appellate record was filed, respondents promptly moved to dismiss (Cal. Rules of Court, rule 8.54(a)), primarily on the ground that Bereki's arguments are barred because they have already been raised and rejected.[2]

ANALYSIS

A trial court may grant a motion to "set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d); see *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 15 [courts have "inherent nonstatutory power . . . to set aside void judgments"].) Our review of whether a judgment is void is de novo. (*Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822.) There is no fixed deadline to file a

[2] Respondents also contend the appeal is moot because Bereki was apparently discharged from his obligations to respondents by a bankruptcy court in 2023. Bereki contests mootness. We need not reach this issue.

motion to set aside a void judgment. (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 225.)

But there are limited circumstances in which a judgment may be accurately classified as void, as opposed to voidable or even just not accepted as legitimate by a tenacious litigant. Trial courts lack discretion "to set aside a judgment that is not void [o]nce six months have elapsed since the entry of a judgment." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495–496.)

"A judgment is 'void' . . . when the court entering that judgment 'lack[ed] jurisdiction in a fundamental sense' due to the '"entire absence of power to hear or determine the case"' resulting from the '"absence of authority over the subject matter or the parties."'" (*People v. The North River Ins. Co.* (2020) 48 Cal.App.5th 226, 233.) In other words, a judgment is void if the court entering judgment lacked subject matter jurisdiction over the dispute or personal jurisdiction over the party challenging the judgment. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1226 (*Gorham*).)

A judgment may also be "void" if it is procured by extrinsic fraud, resulting in a party being "prevented from presenting his or her claim or defense." (*Department of Industrial Relations v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App.4th 560, 570.) By "extrinsic fraud," courts mean a situation in which "'"the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff."' [Citation.] In those situations, there has not been 'a real contest in the trial or hearing of the case,' and the judgment may be set aside to open the case for a fair hearing." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47 (*Manson*).)

Likewise, a judgment may be "void" if it is the result of "extrinsic mistake." "Extrinsic mistake occurs 'when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits.' [Citation.] In contrast with extrinsic fraud, extrinsic mistake exists when the ground of relief is not so much the fraud or other misconduct of one of the parties as it is the excusable neglect of the defaulting party to appear and present his claim or defense. If that neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief on the ground of extrinsic mistake is present." (*Manson, supra*, 176 Cal.App.4th at p. 47.)

Other than a lack of subject matter jurisdiction, the existing grounds identified above for deeming a judgment "void" are directed to default judgments or trials that lack the participation of the losing side, i.e., situations in which a party simply does not appear at trial for one reason or another.[3] Default judgments may also be void if, e.g., the damages awarded exceed the amount prayed for in the operative pleading or statement of damages (*David S. Karton, A Law Corp. v. Dougherty* (2009) 171 Cal.App.4th 133, 150). Here, of course, the judgment at issue is not a default judgment or the result of a trial with only one side's participation. Bereki appeared at every phase of the proceedings and judgment was on the merits.

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[3] Of course, there may be other potential fact patterns, mercifully absent from California published cases, that could result in a judgment being deemed void, even with all parties participating at trial. (Cf. *Freedom Communications, Inc. v. Coronado* (Tex. 2012) 372 S.W.3d 621, 622 [order granting summary judgment was characterized as void on direct appeal "because the trial court judge accepted a bribe"].)

A judgment is not "void" merely because a court commits legal error, even extreme errors that are categorized as "voidable" and in excess of a court's jurisdiction. (*Johnson v. E-Z Ins. Brokerage, Inc.* (2009) 175 Cal.App.4th 86, 98–99.)

The gist of Bereki's motion is that the trial court and this court reached the wrong conclusions in 2017 and 2018 based on an incorrect understanding of the law and incorrect factual findings.

This was a dispute between contracting parties in Newport Beach, California. Money was exchanged for home renovations. One key factual dispute concerned whether Bereki himself (an individual who lacked a contractor's license) or the entity Spartan Associates (which apparently did have a contractor's license) was the party that contracted with respondents and performed work for respondents. The California state courts had subject matter jurisdiction to decide these questions. No facts are alleged to suggest that Bereki was misled about the time or location of trial. Indeed, Bereki appeared at trial and fully participated, raising numerous legal and factual arguments through trial, appeal, rehearing, petition for review, and petition for writ of certiorari. The California courts had personal jurisdiction over Bereki. No factual claim of extrinsic fraud, extrinsic mistake, of fraud on the court is identified.[4]

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[4] Bereki's opposition to the motion to dismiss points to an amended declaration filed in the trial court as containing support for "fraud" allegations. He claims the extrinsic fraud at issue was the inaccurate representation that the lawsuit was civil in nature, when in fact it was a criminal proceeding in which a penalty was imposed upon him. This is just another way of restating his legal arguments. It is not extrinsic fraud or fraud on the court to file a lawsuit, make legal arguments, or testify about facts. It is not fraud for a court to make factual findings and legal rulings.

Bereki, through sheer force of will, tries to connect his arguments to legal concepts of subject matter jurisdiction, personal jurisdiction, extrinsic fraud, extrinsic mistake, and fraud on the court. He is unsuccessful. Other than citations to legal authority postdating the earlier proceedings and some refinement of arguments previously made, nothing has changed.

Bereki is correct that doctrines of res judicata, collateral estoppel, and law of the case do not preclude relief from a void judgment. (See *Gorham*, *supra*, 186 Cal.App.4th at p. 1228 [“a judgment or order that is . . . void on its face . . . may be directly or collaterally attacked at any time”].) But merely applying the label “void” to a long-final judgment does not reopen the case to arguments that were or should have been made at trial and on direct appeal. Upon the issuance of this court’s remittitur following affirmance on direct appeal, the trial court lacked the power to reopen the final judgment to entertain arguments based merely on new facts or new law. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.)

DISPOSITION

The motion to dismiss the appeal is granted. The appeal is dismissed. Respondents shall recover costs incurred on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

The parties’ requests for sanctions (Cal. Rules of Court, rule 8.276), which were incorporated into their motion and opposition, respectively, are denied. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919 [denying sanctions request because party did not file “a separate sanctions motion as required by California Rules of Court, rule 8.276(b)(1)”].)

APPENDIX C

Court of Appeal, Fourth Appellate District, Division Three, Opinion Affirming § 7031 Forfeiture Judgment, No. G055075 (Oct. 31, 2018)

Court of Appeal, Fourth Appellate District, Division Three
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 10/31/2018 by Sandra Mendez, Deputy Clerk

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.	G055075
v.	(Super. Ct. No. 30-2015-00805807)
ADAM BEREKI,	O P I N I O N
Cross-defendant and Appellant,	

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.

APPENDIX D

Superior Court of California, County of Orange, Minute Order Denying Independent Action in Equity, No. 30-2015-00805807 (June 26, 2025)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 06/26/2025 TIME: 02:00:00 PM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: Erica Vargas CSR# 14698
BAILIFF/COURT ATTENDANT: D. Muldoon

CASE NO: **30-2015-00805807-CU-CO-CJC** CASE INIT.DATE: 08/21/2015
CASE TITLE: **THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 74574986
EVENT TYPE: Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Judgment, 05/28/2025

APPEARANCES
William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Cross - Defendant, present remotely.

Tentative Ruling posted on the Internet.

Hearing held, participants appearing remotely and in person.

The Court hears oral argument.

The Court confirms the tentative ruling as follows:

Before the court is the “Motion to Vacate Void Judgment” filed by cross-defendant Adam Bereki (Bereki) on May 28, 2025. As set forth below, the motion is **DENIED**.

This is the second “Motion to Vacate Void Judgment” Bereki has filed in this action. Bereki filed the first motion to vacate on February 19, 2019, shortly after the Court of Appeal issued its remittitur on its opinion affirming the judgment Bereki seeks to set aside as void. In denying that prior motion, the court (Judge Di Cesare) ruled, “The arguments presented on this motion were already raised and rejected, and the appellate decision affirming the underlying judgment on the merits is now final. Upon remittitur, the trial court is revested with jurisdiction of the case only to carry out the judgment as ordered by the appellate court. (People v. Dutra (2006) 145 Cal.App.4th 1359, 1365-1366.) Arguments on the merits of the underlying judgment cannot be entertained anew here. The Motion is therefore Denied.” (Mar. 15, 2019 Minute Order.)

This prohibition on raising challenges to the trial court judgment and Court of Appeal decision applies not only to challenges or arguments that previously were presented in those proceedings and rejected by the Court of Appeal, but also to any other challenges or arguments that could have been presented at that time. (Torrey Pines Bank v. Superior Court (1989) 216 Cal.App.3d 813, 821, citing Gates v. Superior Court (1986) 178 Cal.App.3d 301, 311 [“Res judicata bars ‘not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original suit'"].)

Bereki attempts to avoid that conclusion in a couple ways. First, he argues a void judgment can be challenged at any time, and neither law of the case, res judicata, nor any other doctrine prevents a void judgment from being challenged because its void. Assuming he is correct, there is an important distinction here. The specific reasons he now argues as the basis for the judgment being void were previously considered and rejected by the Court of Appeal. Accordingly, it is not simply that there was a prior appeal in this case that prevents Bereki from raising these challenges now. Rather, these challenges are precluded because the same challenges were previously raised and considered. Indeed, his current claims about the alleged punitive nature of Business and Professions Code section 7031, the lack of evidence, the lack of personal and/or subject matter jurisdiction, etc. were considered by the Court of Appeal and rejected. In the current motion, Bereki acknowledges he raised these issues, and says the Court of Appeal either did not sufficiently consider them or got them wrong. This court cannot find the judgment void based on a ground the Court of Appeal already considered and rejected.

Second, Bereki characterizes this motion, at least in the reply, as an "independent action in equity." This, however, is not an independent action in equity. To the contrary, it is another motion to vacate the judgment in the very same case in which the judgment was entered, and in which a prior motion to vacate already was denied. Nonetheless, he has failed to show an independent action would allow a different result because res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original action. (Torrey Pines Bank v. Superior Court (1989) 216 Cal.App.3d 813, 821; Gates v. Superior Court (1986) 178 Cal.App.3d 301, 311.) Bereki has failed to show any arguments presented in this motion were not and could not have been presented in the prior proceedings. Bereki's citation to Eisenberg Village v. Suffolk Construction Co. (2020) 53 Cal.App.5th 1201, 1212, and Liu v. SEC (2020) 591 U.S. 71, 79, do not change that result.

The court acknowledges Bereki's argument regarding fraud on the court, but the fraud argument is just a repackaging of the arguments the Court of Appeal already has rejected, i.e., his arguments about the punitive nature of section 7031, the lack of evidence, the lack of jurisdiction and the other arguments relating to those assertions.

As Bereki acknowledges, his arguments have not only been rejected by the Court of Appeal on his appeal from the judgment in this case, but also by the California Supreme Court in its denial of his petition for review, the United States Supreme Court in its denial of his petition for certiorari, the United States District Court in his unsuccessful separate lawsuit, and the Ninth Circuit in his appeal from the District Court's ruling.

In conclusion, having reviewed and considered Bereki's papers in connection with the present motion, Bereki has presented nothing to convince the court that it either can set aside the judgment, or assuming it could, that the court should set aside the judgment. Accordingly, the motion is **DENIED**.

Bereki's Request for Judicial Notice is **GRANTED** as to the existence of and legal effects of the various court records identified in the request (i.e., Exhibit 1-12), but otherwise **DENIED** as not relevant in context here.

Bereki's request to offer testimony by calling attorney William G. Bissell, counsel for cross-complainants Karen Humphreys and Gary Humphreys (collectively, Humphreys), at the hearing is **DENIED**. Law and motion matters such as Bereki's motion to vacate are customarily decided on the papers with evidence being presented through declarations, requests for judicial notice, and other similar means. Trial courts, however, do have discretion to consider oral testimony. (Rosenthal v. Great Western Financial Security Corp. (1996) 14 Cal.4th 394, 414.) Indeed, trial courts have the discretion to receive or not receive oral testimony on law and motion matters based on their determination whether oral testimony would be necessary or helpful in deciding the matter. (Reifler v. Superior Court (1974) 39 Cal.App.3d 479, 485.) Here, the trial court declines to exercise its discretion to receive oral testimony and therefore denies Bereki's request because the court finds it is neither necessary nor helpful based on the foregoing analysis of the issues presented.

Finally, the Humphreys' request for unspecified monetary sanctions is **DENIED**. That ruling, however, is without prejudice to any future request for sanctions and/or to a motion to deem Bereki a vexatious litigant if Bereki continues to repeatedly assert the same challenges to the judgment.

The Humphreys' counsel is ordered to give notice of this ruling.

After the Court issued its ruling, the moving party made an oral request to disqualify the judicial officer pursuant to Code of Civil Procedure section 170.1. The Court denied the request as untimely and procedurally improper, without prejudice to the moving party properly filing a written 170.1 motion in the future.

APPENDIX E

Report of Mr. Crosby on the Civil and Common Law, Cal. Senate Journal (Feb. 27, 1850)

[O.]

Report of Mr. Crosby on Civil and Common Law.

IN SENATE.
February 27, 1850.

THE Committee on the Judiciary, to whom was referred the petition of certain members of the bar of San Francisco, beg leave

RESPECTFULLY TO REPORT,

That they have had the same under consideration, and have given the subject, of which it treats, that candid and serious attention which its magnitude seems to demand. The petition, praying, as it does, that the Legislature will retain, in its substantial elements, the system of the Civil Law, distinctly presents the alternative of the adoption of the Common, or of the Civil Law, as the basis of the present and future Jurisprudence of this State. A choice between these two different, and in many respects conflicting systems, devolves upon this Legislature; and, we think, we do not over-estimate the importance of the subject, in expressing our conviction, that this choice is by far the most grave and serious duty which the present Legislature will be called upon to perform. It is, in truth, nothing less than laying the foundation of a system of Laws, which, if adapted to the wants and wishes of the People, will, in all probability, endure through generations to come, —which will control the immense business transactions of a great community,—which will direct and guide millions of human beings in their personal relations,—protect them in the enjoyment of liberty and property,—guard them through life, and dispose of their estates at the hour of death. Actuated by these considerations, and impressed with the necessity of mature deliberation and an unbiassed decision, your Committee have felt it their duty to submit to the indulgence of the Senate a more full and detailed Report upon the matter referred to them, than they should otherwise have felt themselves justified in doing.

The petition sets out with a description of the gentlemen, whose signatures are affixed to it, as "practising members of the Bar of San Francisco." Your Committee is of the opinion that the judgment of intelligent and well educated members of the legal profession upon this subject, is entitled to great weight, and should not be lightly disregarded. We are aware, that it is a somewhat popular doctrine, with which demagogues frequently seek to wheedle the people, that, in matters of Law and Legislation, the crude notions of any man, who is *not* a lawyer, are entitled to higher consideration than the deep reflection and rife experience of the most profound jurist. According to this creed that magic power, "good common sense," as it is termed, inspires every man who may happen to be possessed of it, instinctively, and without investigation or study, with a thorough knowledge of an abstruse and difficult science. In short, reduced to its simplest terms, and traced through its legitimate consequences, the proposition is, that the man who is entirely ignorant of a multifarious subject, is more competent to form a just and correct judgment concerning it, than the man who has made it the business of his life to comprehend it in theory and understand it in all its minute and practical details. From all such doctrine we respectfully dissent. We hold to the opinion, unpopular though it may be, that a person is best qualified to judge of the matter upon which he has bestowed most examination, and to which he has devoted most study and reflection. We hold that a carpenter may reasonably be expected to build a better house than a tailor, and a tailor stitch a coat more neatly than a house joiner; that a machinist may construct a steam engine, arrange and adapt its complicated parts, and set them all in harmonious motion, with more facility and greater success, than a shoemaker. We even think that an experienced surgeon may amputate an arm or a leg, with as little pain to the patient, and with as much safety to his life, as a wood sawyer; and that a well read and skilful physician will be able to counteract and remove the various "ills that flesh is heir to," as quickly and adroitly as a farrier, or even a quack doctor. And, for the same reasons, we do honestly maintain that a member of the Bar,—who has been educated to the profession which he practises,—who, from youth upwards, has made law his study and engrossing occupation,—who has bestowed upon it the "*viginti asinarum lucubrationes*,"—made it the subject of his reflections by day, and of his meditations by night,—traced it through all its ramifications and mysteries,—gloried in its excellence, and sorrowed over its defects,—is quite as competent to form a sound and correct judgment in respect to the wisdom or impropriety of its particular provisions, as well as the beauty or deformity of the whole, as if he had been educated behind the counter, or brought up at the anvil or the plough.

We think, therefore, that the enlightened opinions of the legal profession, when fairly expressed, should go far towards inducing conviction of the policy or impolicy of establishing, abrogating, or modifying, a system of laws; and if the petition under consideration be in unison with the settled convictions and real wishes of a large proportion of the practising members of the Bar in this State, we should feel bound to accord to it a very respectful deference.

For the purpose, then, of determining to what extent your Committee ought to consider the memorial as an expression of the sentiments of the Bar, we have taken some pains to ascertain the reasons why this petition happens to be laid before the Senate at the present time. From inquiries made by us, we have learned that, a short time since, a meeting of the members of the Bar of San Francisco was held, for the purpose of taking into consideration the subject of the adoption of the Common or of the Civil Law as the substratum of the legal system of the State. We have further learned, that such meeting was attended by a large portion of the members of the legal profession of that city; that it was adjourned once or twice, in order to enable all to express their predilections; and that, after a somewhat protracted discussion, in which some of the most distinguished of the petitioners took part, resolutions were almost unanimously passed, warmly recommending the Common Law, and earnestly requesting the Legislature to adopt it. We understand that these resolutions are now before the Assembly.

There are, according to the best information and judgment of your committee, not less than one hundred practising lawyers at San Francisco. The names of but eighteen persons are signed to this petition; and thus the Civil Law comes recommended by less than one fifth of the profession at that place. Your Committee would further suggest that, in their opinion, the disparity existing between the number of those whose choice would be the Civil Law, and of those whose strong partialities are in favor of the Common Law, is not greater in that portion of the profession practising at San Francisco, than it is throughout the residue of the State. If, therefore, the question is to be affected in any way by the known and expressed wishes of that profession to which the petitioners claim to belong, it must be in favor of the Common rather than of the Civil Law.

We will now proceed to the more immediate examination of the matter of the petition.

But before entering upon the subject in detail, we would premise, that no one for a moment entertains the idea of establishing in California the whole body of either the Common or the Civil Law. There are in each principles and doctrines, political, civil, and criminal, which are repugnant to American feelings, and inconsistent with American institutions. Neither the one nor the other ever has been, or ever can be, unqualifiedly adopted by any one of the United States. Thus, in Louisiana, where the Civil Law prevails, and in the rest of the States, in which the Common Law is recognised, great and radical additions, retrenchments, and alterations, have been made in the particular system which each has taken as the foundation of its jurisprudence. The Constitution of the United States swept away at once the entire political organization as well of the Common as of the Civil Law. The several State Constitutions make still further inroads, not only into the political, but also into the civil and criminal departments of both systems; and the statute law of each State eradicates many harsh doctrines, and abolishes many oppressive and tyrannical provisions, and in their place substitutes positive rules of action, milder and more enlightened in their nature, more applicable to our political organization, and more congenial with the cultivated feelings and liberal institutions of our people. But still the great body of each system remains untouched. Such is the wonderful complexity of human affairs—a complexity which must always increase more and more in proportion to the advance of commerce, of civilization, and of refinement—that of the immense multitude of questions which are brought before your courts for adjudication, but very few arise under, or are dependent upon, or can be controlled by, Constitutions or express statutory laws. Examine the reports of the different States, Louisiana amongst the rest, and it will be found that a precise rule has been laid down by statute for scarcely a tithe of the cases which the Courts have been called upon to decide; and should the futile attempt be made to provide, in advance, for every contingency which may occur, your volumes of legislation would be increased to a number that, to apply sacred language to a profane subject, the world would not contain them.

We know it to be a favorite theme of some men, more loquacious than wise, that the entire laws of a community, regulating every variety of business, and defining and providing the penalty for every grade of crime, may be, and ought to be, reduced within the compass of a common sized spelling-book—so that every man might become his own lawyer and judge—so that the farmer, the artisan, the merchant, with this "vade mecum" in his pocket, at the plough, in the workshop, or in the counting-house, might be enabled, at a moment's warning, to open its leaves and point directly to the very page, section, and line, which would elucidate the darkest case, solve the most abstruse legal problem, clearly define his rights, and prescribe the exact remedy for his wrongs. It is scarcely necessary to say that all such notions are but the wild chimeras of ignorance and folly, or the erratic fancies of a spirit more reprehensible and more to be deprecated than ignorance and folly conjoined. The features and forms of men are not more diverse than their minds—and their business transactions are as ever-varying as their mental and moral characters. One man views the same object, whether physical, or moral, or legal, in a different light from another—no two men ever do the same thing in precisely the same way—perhaps no two cases ever arose without a shade of difference between them; and, until you can cast the forms and features of all men in the same mould, reduce the operations of their minds to the same uniform level, and endow each individual with the same moral sense and the same intellectual faculties, you may expect nothing less than diversity in their modes of business, in their bargains and sales, their contracts, conveyances, and testaments, and their manifold devices for the perpetration of fraud and of crime. To undertake, by statute or by code, to establish a just and accurate rule for every contingency of human avarice and passions, and for all the endless phases of varied life, is to essay a task which never yet was accomplished—a task which, until the Almighty shall change the nature and attributes of man, must for ever remain equally impracticable and absurd. In truth, all the provisions of constitutions, and statutes, and codes, are but pebbles on the sea-shore—the vast ocean of legal science lies beyond. The most, therefore, that can be expected from the present Legislature is, to set the machinery of government in operation in all its departments, establish a system of pleadings and practice, enact certain statutes providing for the most common cases of judicial investigation; and for the rest, resort to one of the two great repositories of legal learning, the Common or the Civil Law.

The question naturally presents itself here, What is the Common Law? what the Civil Law? and what the distinction between them? The several divisions of this question we shall now proceed to answer in their order.

The Common Law is that system of jurisprudence which, deducing its origin from the traditionary customs and simple laws of the Saxons, becoming blended with many of the customs and laws of the Normans, enriched with the most valuable portions of the Civil Law, modified and enlarged by the numerous Acts of the English Parliament, smoothed in its asperities and moulded into shape by a succession of as learned and wise and sagacious intellects as the world ever saw, has grown up, during the lapse of centuries, under the reformed religion and enlightened philosophy and literature of England, and has come down to us, amended and improved by the American Legislature, and adapted to the republican principles and energetic character of the American people. To that system the world is indebted for whatever it enjoys of free government, of political and religious liberty, of untrammelled legislation, and unbought administration of justice. To that system do we now owe the institution of trial by jury, and the privileges of the writ of Habeas Corpus, both equally unknown in the Civil Law. Under that system all the great branches of human industry—agriculture, commerce, and manufactures—enjoy equal protection and equal favor; and under that, less than under any scheme ever devised by the wisdom of man, has personal liberty been subject to the restrictions and assaults of prerogative and arbitrary power.

The Civil Law, on the other hand, is that system which, based upon the crude laws of a rough, fierce people, whose passion was war, and whose lust, conquest—received, in its progress through the various stages of civilization from barbarism to luxurious and effeminate refinement, a variety of additions and alterations, from the Plebiscita of the Roman Plebeians, from the Senatus-consulta of the Roman Senate, from the decrees of Consuls and Tribunes, from the adjudications of prætors, from the responses of men learned in the laws, and from the edicts and rescripts of the profligate tyrants of Rome, until, in the early ages of

Christianity, the whole chaotic mass was, by the order and under the patronage of the Emperor Justinian, systematized, reduced into form, and promulgated for observance by the Roman people, in the shape of four books called the Institutes, fifty books known as the Pandects, and certain additional edicts designated as the Novels of Justinian. Thereafter, and until the final downfall of the Eastern Empire of Rome, the Justinian code furnished the guide for the legal tribunals throughout the provinces subject to the Imperial sway, in all cases political, civil, and criminal, except so far as particular decisions were commanded, annulled, or modified by the arbitrary will of despotic power. But, as century after century, wave upon wave of Northern barbarism poured down on the effeminacy of Southern Europe, sparing in its course neither the intellectual nor the material monuments of civilization, the administration of Roman law was, city after city, and province after province, gradually obliterated at the same time, and to the same extent, that Roman power was crushed, and Roman institutions demolished. The whole system of Justinian was at length swept from the face of the earth, or buried in the recesses of cloisters, alike forgotten and unknown. In the twelfth century, however, a copy of it was accidentally discovered at Amalfi, in Italy; and, owing to the arbitrary nature of some of its provisions, as well as to the wisdom and excellence of its general features, it was seized upon with avidity by the clergy, as favorable to their spiritual authority, and by monarchs, as conducive to the support of their despotic power. It was at once taught in the schools, studied in the convents, sanctioned by kings, and commanded by the Holy Father himself, who held the keys of heaven. In a few years it became the prevailing system of laws throughout most of that portion of Europe, in which the founder of Christianity was respected, and the saints and martyrs adored. Thus, as in earlier times, the fine arts, literature, philosophy, and graceful superstitions of Greece, had captivated the rude minds and softened the stern natures of the Roman people; so centuries afterwards, the refined system of Roman jurisprudence overthrew the uncouth customs and ill-digested laws of its conquerors, and led captive kings and nobles, clergy and laity, in the progress of its triumphal procession. With the exception of England alone, the code of Justinian became engrafted upon the local institutions of each separate principality and kingdom, and constituted a general system of European law; but neither the favor of kings, the denunciations of priests, nor even the fulminations from the Papal See itself, could ever induce the English barons, the English courts, or the English people, to receive it as a substitute for their own favorite and immemorial customs. At this early period, then, when the dawn of a new civiliza ion was just beginning to burst upon the world, the kingdoms of Europe, though united in religious superstitions, were divided in reverence for laws. That division has continued to the present day; and has also extended over the islands and continents, not then known, but since discovered and occupied. Wherever the English flag has been unfurled upon a savage or hostile shore, possession has been taken at the same time in the name of its sovereign, and in behalf of its laws; and upon whatever bleak and rock-bound coast an English colony has been planted, there also have the colonists established the Common Law, and ever afterwards clung to it as the inalienable birthright of themselves and their children, with a tenacity that no power, no suffering, no fear of danger, no hope of reward, could induce them to relax. In the same way has the Roman or Civil Law gone hand in hand with the extended dominion of the continental nations of Europe. Thus it happens that at the present time the whole christianized world is ruled by one system or the other. England, her colonies in all parts of the globe, and the United States, with the exception of Louisiana, adhere to the Common Law; whilst, excepting Russia and Turkey, the nations on the continent of Europe, Mexico, Guatemala, all the republics of South Ameri a, together wi h the empire of Brazil, maintain the supremacy of the Civil Law, with certain restrictions, limitations, and additions, necessary to adapt it to the peculiar organization of each particular state.

Having thus endeavored to convey a general idea of the two systems in question, we come now to speak more particularly of some of the differences existing between them. And in so doing, we propose barely to call the attention of the Senate to a few leading characteristics and results, without attempting to trace them out through their remote and manifold and intricate consequences.

To commence, then, with the domestic relations. The Civil Law regards husband and wife, connected it is true by the nuptial tie, yet disunited in person, and with dissevered interests in property. It treats their union in the light of a partnership, no more intimate or confiding than an ordinary partnership in mercantile or commercial business. Whereas the Common Law deems the unseen bond which unites husband and wife, as so close in its connexion, and so indissoluble in its nature, that they become one in person, and for most purposes one in estate. At the same time, it puts the burden of maintenance and protection where it rightfully belongs, and makes the husband, as Providence designed he should be, in truth and reality the head of the household. The concessions which it makes to the wife, in respect to property, by compelling the payment of her debts and vesting her with an estate in dower, are a full compensation for the sacrifices which it requires her to make, and an ample equivalent for the communion of goods allowed her by the Civil Law. The result is, that in no country has the female sex been more highly respected and better provided for—no where has woman enjoyed more perfect legal protection, or been more elevated in society; and nowhere has the nuptial vow been more sacredly observed, or the nuptial tie less often dissevered, than in the Common Law countries—England and the United States.

The Civil Law holds the age of majority in males, for most of the ordinary purposes of life, at twenty-five years. Even after this, the son continues in many respects subject to the parental authority until it is dissevered in one of six specified modes. This system retains man in a continued state of pupilage and subordination from earliest infancy, until in some cases his locks become hoary with age. But the Common Law absolves the age of twenty-one from parental restraint, and clothes it with the complete panoply of manhood. It bids the youth go forth into the world, to act, to strive, to suffer,—an equal with his fellow man—to put forth his energies in the service of his country, or in the eager strife for the acquisition of wealth or the achievement of renown. Hence, under the latter system, the activity, the impetuosity, the talents of early manhood, stimulated by fresh aspirations of ambition, or love of gain, are, at the earliest practicable period, put under requisition and brought into exercise, in developing the resources, and adding to the wealth and glory of a State; whilst, under the former, they stagnate for lack of sufficient inducement to action, and are to a great degree lost.

While the fundamental principles of domestic society thus differ in the two systems, an equal diversity runs throughout all the deductions therefrom; and we are convinced that, in the several relations above-noticed, and also in that of guardian and ward, contrasted with tutor or curator and pupil, there are nicer distinctions and a greater multiplicity of rules and qualifications in the Civil than in the Common Law.

Again, in relation to mercantile transactions. In the Civil Law the purchaser of property may, within the period of a certain limitation, in some countries four, and in others two years, come into court and claim, under the doctrine of lesion, that the goods purchased by him were worth only a part of the price which he paid therefor. Thus A sells property to B in a perfectly fair sale, without deceit or false representation. After the expiration of some months, or it may be years, B brings suit, and alleges that he paid twice the value of the property, and compels A to make restitution. But the Common Law in such cases, where no fraud appears, and no false representations are made, leaves each party to act upon his own responsibility, and for his own interest, as his judgment shall dictate.

But again: The Civil Law holds, under the doctrine of implied warranty. that where one article eventually proves to be of different material from, or of inferior quality to, that which the purchaser intended to buy, and supposed he was buying, he may require the vender to refund the whole or a portion of the consideration received. Thus A sells to B a package of broadcloth or a bale of sheeting, both parties supposing the goods to be in perfect condition, both having the same opportunity of inspection and examination, and both equally ignorant of any defect. After the goods are removed, perhaps thousands of miles, they are ascertained to be damaged. B then brings suit against A, and recovers upon the ground of warranty implied by law. On the other hand, the Common Law more wisely says, that if B wished to guard against the contingency of a possible defect, he should have made it a part of the contract of sale, that A give his express warranty of the merchantable quality of the goods. Its doctrine is *caveat emptor;* and when a trade is fairly consummated, without fraud or undue advantage, or untrue statements, the rights of the parties are fixed, and it becomes too late for retraction. In other words, the Common Law allows parties to make their own bargains, and when they are made, holds them to a strict compliance; whilst the Civil Law looks upon man as incapable of judging for himself, assumes the guardianship over him, and interpolates into a contract that which the parties never agreed to. The one is protective of trade, and a free and rapid interchange of commodities—the other is restrictive of both.

If time and space permitted, and it would not be occupying too much attention of the Senate, we might trace the same general principle of distinction through various other departments of the two systems, through their provisions for the tenure and transfer of real estate, for the transmission of inheritances and successions, for the execution and validity of last wills and testaments, and the distribution of property in pursuance of them, and for the enumeration of the powers and duties of executors, administrators, and trustees; but we must pass them by, and hasten to other considerations, for we deem it of more consequence to understand the general scope, and tendency, and results of the two systems, than the single and isolated principles which go to make them up. We have already invited your attention to a few of their leading heads, and contrasted their strong points of difference; and in so doing have only touched upon the confines of a wide and diversified field of legal science. To follow up the infinite divisions, sub-divisions, and exceptions of even the few branches to which we have particularly adverted, would require more time than we have had to bestow; and to run out the comparison between the various heads which we have merely designated by name, would fill more volumes than a library could contain. We shall, therefore, leave this part of the subject and proceed to consider various objections which are sometimes urged against the Common Law.

And first, it is claimed, that under this system the landed interest has ever prevailed over the interests of commerce, manufactures, and labor. It is probably desired that the inference should be drawn, that while the Common Law fosters and encourages agriculture, it operates to depress and impoverish commerce, manufactures, and labor, and that the Civil Law has a tendency to promote and cherish them all. The objection, if of any weight at all, is applicable only to the system as administered in England and her colonies, and not as it prevails in the United States; in other words, to the English rather than to the American Common Law. But we deny that it is of any validity anywhere. On the contrary, we maintain that nowhere do all these great branches of national wealth thrive as vigorously and prosper to so great an extent as they do under the countenance and protection of the Common Law. Is there any country of the world in which wages are higher and labor less subservient to the great landed interest, than in England and the United States? If there are, we have not heard of them.

It is true, that in the former, owing to a peculiar combination of circumstances, and despite the elevating principles of the Common Law, the laborer does not occupy as favorable a position as he does in the United States. But we would ask, in what country governed by the civil system, is his condition better? Everyone knows, that in France, Spain, Italy, Germany, Mexico, and South America, he is depressed in the last degree. In truth, in no nook or corner of the earth, except in the United States, is labor looked upon otherwise than as degrading, and as the appropriate task of serfs; and nowhere, save under the benign influences of American Common Law, can it look up, in the midst of its toil, and say that it receives an adequate and abundant reward.

Is it otherwise in respect to manufactures? We have yet to learn that England and the United States are behind any nation of the earth in the growth and prosperity of the manufacturing interest. They are eminently the great manufacturers of the world. Their superiority is seen equally in the nicety of a pin, and in the strength and power of a steam engine. Their skill is displayed, with the same success, upon a penknife and a sabre, and the excellence of their handiwork is confessed, as well in the coarser cloths for substantial use, as in the delicate gauze which enfolds the form of beauty.

How is it with that other department of industry, over which it is claimed that the landed interest predominates? English and American commerce enlivens every port, whitens every sea, woos every breeze. Its enterprise is not consumed by the fervid heat of a tropical sun, nor chilled by the eternal frosts of the frigid zone. It goes forth from every city and town, from every river, and bay, and inlet; pushes its career wherever civilized man can penetrate; it circles the earth in quest of the necessaries and luxuries of life, and returns, at last, laden with the spoils of a whole ransacked world. Its merchants are princes, its ships palaces, its sphere, the illimitable sea. On the other hand, the commerce of the Civil Law countries is confined to a limited range, and prosecuted in inferior ships. It creeps timidly along a few familiar shores, or if, occasionally, it does put forth into remoter regions, it is with a hesitating, faltering step, uncertain in its movements, sluggish in its progress, and unprofitable in its results. It is not fostered by the quickening influence of English and American law—it writhes under the petitioners' favorite system. The spirit of life is not in it—it is dead.

If, then, the laboring, the manufacturing, and the commercial interests are in a higher state of prosperity in those countries governed by the Common, than in those under the dominion of the Civil Law, we see not how an argument can be drawn in favor of the latter against the former, on the ground that the landed interest predominates over all the others. And if the landed interest does indeed so predominate, then we have not only commerce, manufactures, and labor, but agriculture also, constituting altogether the great departments of human industry from which any nation can expect to derive wealth and power —all enjoying more perfect protection, all better promoted and cherished and fostered, all more highly successful, under the worst administration of the Common than under the best code founded upon the Civil Law.

It has been said by a distinguished writer upon the principles of government, that the laws of a country are fashioned after the character of its people. To a certain extent, this is true. But it is at the same time equally true, to as great an extent, that the character of a people is moulded by its laws. The two mutually act and re-act, the one upon the other, each producing gradual, though perhaps imperceptible changes, until, when generations have passed away, it becomes impossible to resolve, with any degree of accuracy, what effect the character of a people has had in the formation of its laws, or what influence the laws have had in determining the character of a people. It would be a curious, if not an instructive subject of inquiry, were it possible to arrive at a satisfactory conclusion, to ascertain how far the intellectual and moral condition of the people of those countries in which the Civil Law prevails, has been produced by their legal system, and what influence the free principles and exact justice of the Common Law have exercised in developing the sturdy, sagacious, and self-relying spirit of the English and American people. To whatever cause it may be owing, it is nevertheless true, that with a few rare exceptions on either side, there is a strongly marked boundary between the domains of the respective systems. In the one, you perceive the activity, the throng, the tumult of business life—in the other, the stagnation of an inconsiderable and waning trade; in the one, the boldness, the impetuosity, the invention of advancing knowledge and civilization—in the other, feebleness of intellect, timidity of spirit, and the crouching subserviency of slaves; in the one, the strength and freshness of manhood—in the other, the weakness of incipient decay. The one possesses a progressive and reforming nature—the other partakes of quietude and repose; the one is the genius of the present and the future—the other, the spirit of the past; the one is full of energetic and vigorous life—the other, replete with the memories of a by-gone and antiquated order of things. It was with views of the Civil Law like these, that Chancellor Kent, whose authority is invoked by the petitioners, says, in the eloquent language quoted by them, "that it is impossible, while engaged in the contemplation of the system, not to be struck with some portion of the awe and veneration which are felt in the midst of the solitude of a majestic ruin."

But the technicalities of the Common Law are objected to, as if there were none in the opposing system, and the whole was as simple and plain as a New England Primer. On the contrary, we take it upon ourselves to say, that for every one technicality in the former, we will point out another in the latter. We speak of the Common Law as it is now, not as it was three centuries ago, or even when Sir James Mackintosh uttered his criticisms upon it. But technicalities in any system of law, whether Common or Civil, whether the law of Moses or the law of the Koran, are as necessary and unavoidable as they are in any other profession, art, trade, or mystery. Medicine and divinity, painting and poetry, commerce and navigation, chemistry, mineralogy, botany, and geology, all have their own peculiar and appropriate technicalities. The merchant has his; the mechanic, his; the engineer, his. A printer cannot explain the use of his types or his press, a watchmaker the construction of a watch, or a jeweller the setting of a diamond, without the use of technicalities. Nay, even the work of legislation, in which we are now engaged, has its own peculiar and indispensable terms, which are nothing but technicalities. In all these cases, instead of being objectionable, they are in the highest degree deserving of commendation. They are, in reality, labor-saving machines, enabling people to express by one significant word, what would otherwise require a long and tedious circumlocution. If, then, they are necessary in every department of human art and science, how can it be expected that law, the most abstruse and comprehensive of them all, shall be divested of them? The wit of man never has and never will accomplish so difficult a task. He, therefore, who indulges in the expectation that it may be freed from them, and reduced to such a state of simplicity that he who runs may read, and the wayfaring man, though a fool, need not err therein; or he, who supposes that all the principles of any civilized system of jurisprudence are so written in the heart of every man who has received a moral education, that he will be able to comprehend them without study, and apply them without hesitation or doubt—much more, he who imagines that, because a man of sense and moral culture may experience no hardship in living under a law which compels him to do what he ought to do, he will find in his breast a response to all the technicalities, principles, and rules of the Civil Law, with all their multiplied divisions and qualifications, subdivisions, ramifications, and exceptions, the explanation and illustration of which have filled thousands of volumes, and occupied for centuries the life-long study and application of thousands of the wisest and most learned men of the world, is doomed to pass through life under a mistake, and will probably die with it uncorrected.

The charge of dilatoriness is also made against the Common Law. But is it true, that it is only where this system has prevailed that courts have become odious for their wearisome delays? The very converse of the proposition supposed is true. In all the Civil Law countries of Europe and America, with but two solitary exceptions, the courts are notorious for prolixity and dilatoriness of proceedings, and for verbosity of pleadings and process, occasioning ruinous expenses, and swallowing up whole estates in the vortex of a single litigation. And although, in former times, the courts of England were in some cases justly exposed to the censure of unnecessary delays, yet, at the present day, England and the United States are the only countries where justice is both swift and sure in the pursuit of wrong, and punishment treads closely upon the heels of crime. But the truth is, we see nothing inherent in either system which necessarily requires the intervention of long delays. In this respect the administration of the system is of more consequence than the system itself. If we authorize but one or two terms of the several courts in a year, choose weak and incompetent judges, and pay them the same salaries which we give to the doorkeepers of our respective legislative halls, we must expect that, enact whatever laws we may, litigation will drag its slow length along. Lowness of price implies inferiority in the quality of law, as in the quality of everything else; and it is in this view that a cheap judiciary will always prove, in the end, the dearest of all.

It is also urged that something is due to the rights of the people who became a part of the American Union by the acquisition of California. Undoubtedly the same respect should be paid to their interests that is awarded to all the citizens of this State. They stand upon the same equal level with the rest, neither elevated above nor depressed below their fellows; and we should be the last persons in the world to countenance the least infringement upon any of their rights. They have become citizens, like ourselves they stand at the polls, they sit in the halls of legislation, they appear in the courts of justice, as our equals. They will receive from the Legislature, courts, and juries, the same attentive hearing, the same fair and impartial determination of their rights, that all other citizens are entitled to claim. But if it be meant that it is due to their rights that they should become recipients of special legislation, or should, for their exclusive benefit, have laws enacted or continued injurious or ill adapted to the best interests of the whole State, we take issue upon the allegation, and deny it. There is no just ground for supposing that rights will not be regarded under one system as much as under the other. In Texas and Florida, both formerly Civil Law countries, the Common Law was afterwards substituted, and we are not aware that the life, liberty, and property of those who were citizens at the time of such change, have not since been quite as well protected under the latter as they had before been under the former.

Having thus endeavored to answer several objections which are sometimes urged against the Common Law, we shall now proceed to consider certain reasons which, in our opinion, render its adoption in this State peculiarly appropriate; and this, too, without especial reference to its intrinsic superiority. Nay, in this view, we are willing to concede, against our own strong and decided convictions, that the Civil Law is equally wise in its provisions, humane in its doctrines, progressive in its spirit, and susceptible of an equally expeditious administration.

We wish to remark in the outset, that we by no means concede the position that the Civil Law is in full force in this State at the present time. It is extremely uncertain to what extent it ever did prevail. Situated at so great a distance from the Mexican capital, occupying months in the interchange of communications with that central point of law and legislation, connected with it by the fragile tie of common descent, rather than by any intimate communion of interests or sympa thy of feeling, exposed to frequent revolutions of the general and departmental governments, finding but little stability in the Mexican Congress, little convenience for the promulgation of its laws, and less power to enforce them, the people of California seem to have been governed principally by local customs, which were sometimes in accordance with the Civil Law, and sometimes in contravention of it. However this may be, it is very certain that it now prevails to but a limited extent, and equally certain that the Common Law controls most of the business transactions of the country. The American people found California a wilderness—they have peopled it; they found it without commerce or trade—they have created them; they found it without courts—they have organized them; they found it destitute of officers to enforce laws—they have elected them; they found it in the midst of anarchy—they have bid the warring elements be still, have evoked order out of confusion, and from the chaotic mass have called forth a fair and beautiful creation. Throughout all this they have taken the Common Law, the only system with which they were acquainted, as their guide. Their bargains have been made in pursuance of it—their contracts, deeds, and wills have been drawn up and executed with its usual formalities—their courts have taken its rules to govern their adjudications—their marriages have been solemnized under it—and, after death, their property has been distributed as it prescribes. Are you to hold all or a great portion of these things as naught? Will you overturn or invalidate the immense business transactions of a great community? And yet to this must you come, if you say that the Civil Law is in force throughout the State. The first settlers of the United States brought with them from the mother country the Common Law, and established it in an uninhabited region. The emigrants to California have brought with them the same system, and have established it in a country almost equally unoccupied. If a change therefore is made, it must be a substitution of the Civil Law in place of the Common Law. If you sanction the latter by legislative enactment, you only give your authority to what has already been done in anticipation of such authority.

But the precedent of Louisiana, in which the Civil Law prevailed at the time of its cession to the United States, may possibly be cited as a parallel case. The analogy, however, does not hold good. There existed in Louisiana, at the time of its acquisition, a government in full operation in all its departments, a system of laws regularly and effectually administered, and a population huge in comparison with the first influx of American settlers. The immigration there was, at first, but a trifling rill, creeping languidly to the river, and it has continued to increase but gently and moderately down to the present time. The American population there have thus, gradually and imperceptibly, accommodated themselves to the habits, and adopted the customs and laws of a community which they found, at the respective periods of their settlement, completely organized, and consisting of much greater numbers than themselves. In confirmation of this, we have barely to call your attention to the fact, that the immigration to Louisiana from the United States, during a course of some forty-seven years, has not probably been greater than that which has flooded California during the short period of one year. Here we have, indeed, had no paltry and insignificant stream, lost in the great ocean, without its feeble tribute being perceived; it has been, and still continues, the broad, deep, rushing torrent, swollen by continued rains and the melted snow from a thousand mountain tops, suddenly pouring down upon and inundating a whole region of country.

The petitioners ask, in substance, for the adoption of the English definition of crimes, the English Law of Evidence, the English Commercial Law, and the Civil Code of Louisiana. Without doubting that a harmonious and symmetrical system might be deduced from them all, by the long and patient labor of years, of men fully adequate to the task, we must, nevertheless, be allowed to suggest our opinion, that were we to attempt to adopt them, as they are, without more labor devoted to reconciling their jarring provisions than any Legislature would have either the will or the time to bestow, we should have a system of laws which would be no system at all—a system of contradictions and absurdities—a rule here conflicting with a rule there—the same principles thrice reiterated, and each time in different terms, and in a new shape—a system, which, though of the earth, earthy, would yet be neither fish, flesh, nor fowl.

But there are additional reasons of still greater cogency for the adoption of the Common Law. Of the thirty States in the Union, twenty-nine are governed by the Common, and one by the Civil Law. More than twenty-nine thirtieths of the citizens of the United States have been brought up under and accustomed to transact their business in compliance with the principles of the former system. More than twenty-nine thirtieths of the emigration to this country is from Common Law States; and an equal proportion of the business of our people is now and will continue to be, carried on by Common Law men. If you change this system, which, in all ordinary matters, they sufficiently understand, you draw a cloud of doubt and uncertainty over every department of business. In the most familiar transactions, as well as in those of graver import, merchants, mechanics, farmers, speculators, and miners, will hesitate in taking a single step, without having first been put to the trouble and expense of consulting a lawyer, to ascertain whether the contemplated matter, or the particular method of doing it, well known by them to be valid under the Common Law, would not, under the Civil system, prove an utter nullity, or require a different mode of performance. Indeed, if the legal profession were in reality, as the ignorant and prejudiced sometimes allege, composed of a mercenary class, seeking their own emoluments, and regardless of the general and permanent welfare and convenience of the whole community, there is nothing which they ought so ardently to desire as the granting of the prayer of the petitioners; for in that event their offices must be thronged by clients to repair blunders already committed, to prosecute or defend suits occasioned by such blunders, or to procure legal opinions in advance, whether a contract or instrument, requiring by the Common Law a well known method of execution, or a compliance with certain definite rules, would not in the Civil Law demand another mode of execution, or a compliance with other, or different, or additional rules. Nay more, and worse—the best lawyers in the State, though having a general acquaintance with the Civil system, yet not being possessed of accurate and critical knowledge of its minute and practical details, would be in doubt how to advise their clients; and your judges, educated under the Common Law, and perhaps competent to administer it creditably, would not know how to decide *according to law*, but would be obliged to base their judgments either upon the system with which they are familiar, or upon their own abstract notions of right or wrong in every case. The community would thus be exposed to the exercise of discretionary and arbitrary judicial power, and would find themselves in a condition which a profound writer upon law has declared to be the very worst phase of civilized society—that in which the laws are vague and uncertain.

Closely in connexion with the foregoing remarks, occurs another which we deem deserving of very great consideration. Books are to a lawyer or a judge what tools are to a mechanic, or surgical instruments to a surgeon; and it is important that such books should be cheap, accessible, and convenient for use; and highly appropriate, if not indispensable, that they should exist in the native language of the American people. Adopt the Common Law, and lawyers, and judges, and the community at large can readily procure all necessary books, at a moderate price, in their own tongue, and bearing the venerated names and containing the extensive learning of such jurists as Blackstone and Chitty, Story and Kent, together with the reported decisions of all the wise and eminent judges in England and the United States, headed by the illustrious talents and genius of Mansfield and Marshall. The names of such men, and a host of their compeers, are to every American amongst us familiar as his land's language; they are connected with his earliest associations of business and study—endeared to him by a thousand recollections—and constitute many bright links in the golden chain of memory which, stretching across the Sierra Nevada, binds him to the land and the institutions of his fathers. On the other hand, substitute the Civil for the Common Law, and it will be with great delay and expense, in limited supplies, and in strange tongues, that books can be procured which will be found absolutely necessary for the lawyer and the judge in the intelligent administration of the system. The Louisiana Reports, a few copies of translations of the Institutes, and perhaps of the Pandects, and of the works of Pothier & Domat, may perhaps be procured by diligent search. Beyond this you will, for the most part, be obliged to resort to the original works upon the Civil Law, written in the Spanish, Italian, French, German, and Latin languages, which, if they can be found at all in the United States, will have to be ferreted out amongst the dusty volumes of some antiquarian bookseller, and can be purchased only at an exorbitant price; and, in order to clear up a disputed point, to elucidate a novel question, or deduce new corollaries from old principles, it will become necessary to refer back to works existing only in a foreign language, to names strange to an American ear, to Escriche and Febrero, to the Nueva and Novissima Recopilaciones, to the Partistas, to the Fuero Real of Alonzo the Wise, and perhaps even to the Fuero Juzqo of his Gothic predecessors.

But, finally, another reason which we would urge in behalf of the

Common Law is, that we may have a system which will be satisfactory to the people, and therefore permanent. A continual fluctuation in the fundamental laws of any country is a great calamity. A sudden and radical alteration of them is even more difficult to be carried into effect, than a fundamental and violent change in the political organization of the government. A system of laws always becomes inseparably interwoven and intimately blended with the character of the community, reared under and habitual to them. A substitution so great as would be that of the Civil for the Common Law, of a whole system, so radical and entire, and over a community so extensive and homogeneous as the American population of California, though often attempted, has never yet once met with success. You might as well undertake to eradicate the American character and plant the Mexican in its stead—to substitute the Catholic for the Protestant religion, by statute—to abolish the English language and sanction none but the Spanish, by legislative enactment; for the laws, not less than the character, religion, and language, constitute part and parcel of the American mind. We apprehend that any such attempt, if made, would in due season be answered by the people, as the bishops were answered by the sturdy barons of England at Runnymede, when a similar effort was made to impose upon them a part of this same system of Rome, "We will that the laws of England be not changed."

We have thus endeavored to present before you some of the reasons which impressed the minds of your committee that the prayer of the petitioners should not be granted. In so doing, we have necessarily been led into a more lengthened review than at first we anticipated. We have wished to discharge the duty imposed upon us by the Senate in a manner somewhat commensurate with what we have deemed the importance of the subject. We have conceded that the Civil Law has great merits, and displays great wisdom; but we have insisted that the Common Law is congenial with the American character, and the character suited to the law, and that in this mutual adaptation consists the excellence of each.

Your committee, therefore, recommend the establishment of the system of pleadings and practice which has already been laid before you; the prompt organization of the Courts, with not less than six terms of the District and County Courts of San Francisco in each year, and not less than four terms in each of the other counties of the State. The immediate passage of a bill erecting a municipal Court for San Francisco, with three Judges, and one term every month; the enactment of statutes providing for the tenure and transfer of real estate, for the recording of deeds and mortgages, for the practice upon writs of habeas corpus, and in other special proceedings, with such other legislation connected therewith as may be deemed necessary; and then a statutory provision, that all laws heretofore in force be abolished; and that in cases not falling within the Constitution of the United States, or the Constitution or statutes of this State, the Courts shall be governed in their adjudications by the English Common Law, as received and modified in the United States; in other words, by the AMERICAN COMMON LAW.

They, therefore, herewith return the petition referred to, and respectfully ask to be discharged from the further consideration thereof.

All of which is respectfully submitted.

By order of the Committee.

ELISHA O. CROSBY, Chairman.

APPENDIX F

Superior Court of California, County of Orange, Appellate Division, Minute Order Dismissing Unlawful Detainer Appeal, Hou v. Bereki, No. 30-2025-01482941 (Dec. 18, 2025)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

MINUTE ORDER

DATE: 12/18/2025 TIME: 07:50:00 AM DEPT:

JUDICIAL OFFICER PRESIDING: Appellate Panel
CLERK: N. Sharma
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **30-2025-01482941-CL-UD-CJC** CASE INIT.DATE: 05/15/2025
CASE TITLE: **Hou vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

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APPEARANCES

Appellate Panel Judge(s):

Honorable Megan L. Wagner, Assistant Presiding Judge
Honorable Thomas S. McConville, Judge
Honorable Vibhav Mittal, Judge

Trial Court Case Number: 30-2025-01459684

Written notice of the briefing schedule having been given to the parties, and the Appellant having failed to comply with California Rules of Court, rule 8.882(a), the Court on its own motion orders the appeal dismissed pursuant to California Rules of Court, rule 8.882(c).

Respondent is awarded costs on appeal.

APPENDIX G

Court of Appeal, Fourth Appellate District, Division Three, Order Denying Petition for Writ of Mandate and Immediate Stay, No. G066337 (Dec. 18, 2025)

Court of Appeal, Fourth Appellate District, Division Three
Brandon L. Henson, Clerk/Executive Officer
Electronically FILED on 12/18/2025 by Israel Valencia, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ADAM BEREKI, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; CANJIAN HOU, Real Party in Interest.	G066337 (Super. Ct. Nos. 30-2025-01459684, 30-2025-01482941, 30-2025-01487778) O R D E R

THE COURT:*

Petitioner's request for judicial notice is GRANTED. The petition for writ of mandate or other relief, as well as the request for immediate stay, are DENIED.

MOORE, ACTING P. J.

* Before Moore, Acting P. J., Delaney, J., and Gooding, J.

APPENDIX H

Supreme Court of the United States, Office of the Clerk, Letter Returning Application for Extension of Time, No. S294339 (Apr. 16, 2026)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

April 16, 2026

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129

RE: Adam Bereki v. Superior Court of Orange County, et al.
CASC No. S294339

COPY

Dear Mr. Bereki:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked April 9, 2026 and received April 14, 2026. The application is returned for the following reason(s):

It appears you are requesting an extension of time to file a petition for a writ of certiorari seeking review of the attached letter from the California Supreme Court dated January 26, 2026. The January 26, 2026 letter by the California Supreme Court appears to take no action on a document titled as an "application to recall transfer and for reinstatement or original jurisdiction." The letter is not considered an order and is not reviewable by this Court.

Additionally, to the extent you wish to seek review of the order dated December 16, 2025, the application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was December 16, 2025. Therefore the application for an extension of time was due on or before March 16, 2026. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

Sincerely,
Scott S. Harris, Clerk
By: COPY
Rashonda Garner
(202) 479-3025

Enclosures

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

January 26, 2026

SENT VIA EMAIL & USPS

Adam Bereki
3649 Metter Street
Las Vegas, NV 89129
abereki@gmail.com

Re: *BEREKI v. S.C. (HOU)* – S294339

Dear Mr. Bereki:

No action may be taken on your "Application to recall transfer and for reinstatement or original jurisdiction", received on January 26, 2026. The order transferring your petition was final forthwith and may not be reconsidered. Without jurisdiction, this court is unable to consider your request for legal relief.

Sincerely,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

M. Chang

By: M. Chang, Deputy Clerk

Enclosure

cc: Rec.

APPENDIX I

Constitutional and Statutory Provisions Involved (Cal. Bus. & Prof. Code §§ 7031, 7071.17; Cal. Civ. Code § 2924)

Business and Professions Code - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.12]
(Heading of Division 3 added by Stats. 1939, Ch. 30.)

CHAPTER 9. Contractors [7000 - 7191]
(Chapter 9 added by Stats. 1939, Ch. 37.)

ARTICLE 2. Application of Chapter [7025 - 7036]
(Article 2 added by Stats. 1939, Ch. 37.)

7031.

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

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

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing in this subdivision shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding subdivision (b) of Section 143, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (e) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (e) and (f) enacted during the 1994 portion of the 1993–1994 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

(Amended by Stats. 2020, Ch. 312, Sec. 56. (SB 1474) Effective January 1, 2021.)

Business and Professions Code - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.12]
(Heading of Division 3 added by Stats. 1939, Ch. 30.)

CHAPTER 9. Contractors [7000 - 7191]
(Chapter 9 added by Stats. 1939, Ch. 37.)

ARTICLE 5. Licensing [7065 - 7077]
(Article 5 added by Stats. 1939, Ch. 37.)

7071.17.

(a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

(b) (1) Notwithstanding any other provision of law, all licensees shall notify the registrar in writing of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied final judgment.

(2) The suspension shall not be removed until proof of satisfaction of the judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar.

(3) If the licensee notifies the registrar in writing within 90 days of the imposition of any unsatisfied final judgment, the licensee shall, as a condition to the continual maintenance of the license, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to all unsatisfied judgments applicable under this section.

(4) The licensee has 90 days from the date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. In lieu of filing the bond required by this section, the licensee may provide the board with a notarized copy of any accord reached with any individual holding an unsatisfied final judgment.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied final judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section does not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(j) (1) If a judgment is entered against a licensee or any personnel of record of a licensee, then a qualifying person or personnel of record of the licensee at the time of the activities on which the judgment is based shall be automatically prohibited from serving as a qualifying individual or other personnel of record on any license until the judgment is satisfied.

(2) The prohibition described in paragraph (1) shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee or with any of the same judgment debtor personnel to be suspended until the license of the judgment debtor is reinstated, the judgment is satisfied, or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, lawful money or cashier's check deposited pursuant to paragraph (1) of subdivision (a) of Section 995.710 of the Code of Civil Procedure, may be submitted in lieu of the bond.

(l) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of an unsatisfied final judgment in accordance with this section is cause for disciplinary action.

(Amended by Stats. 2020, Ch. 370, Sec. 10. (SB 1371) Effective January 1, 2021.)

Civil Code - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.91]
(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.91]
(Part 4 enacted 1872.)

TITLE 14. LIEN [2872 - 3081]
(Title 14 enacted 1872.)

CHAPTER 2. Mortgage [2920 - 2968]
(Chapter 2 enacted 1872.)

ARTICLE 1. Mortgages in General [2920 - 2944.10]
(Article 1 enacted 1872.)

2924.

(a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. If, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Financial Protection and Innovation, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of the beneficiary's election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may record a notice of sale pursuant to Section 2924f up to 5 days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the recording of the notice of default.

(5) Whenever a sale is postponed for a period of at least 10 business days pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within 5 business days following the postponement. Information provided pursuant to this paragraph shall not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale that would otherwise be valid under Section 2924f.

(6) An entity shall not record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. An agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee, or substituted trustee under the deed of trust shall not record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

(b) In performing acts required by this article or responding to requests for payoff or reinstatement information, the trustee shall not incur liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article or responding to requests for payoff or reinstatement information, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

(f) With respect to residential real property containing no more than four dwelling units, a separate document containing a summary of the notice of default information in English and the languages described in Section 1632 shall be attached to the notice of default provided to the mortgagor or trustor pursuant to Section 2923.3.

(Amended by Stats. 2024, Ch. 142, Sec. 1. (AB 295) Effective July 18, 2024.)